

NEUTRAL CITATION NUMBER [2019] ECC SWK 2

IN THE CONSISTORY COURT OF THE
DIOCESE OF SOUTHWARK

IN THE MATTER OF CHARLWOOD, ST NICHOLAS

JUDGMENT

1. This Petition dated 14 May 2018 is for the exhumation and cremation of the body of Gwendolen Patricia Crow. The Petitioner is Rebecca Jane Crow, the daughter of the deceased. The other next of kin signed a declaration, dated 14 May 2018, stating their full agreement to the proposed exhumation and cremation. These signatories are: William John Crow, the husband of the deceased, and Justine Andrea Crow, Tiffany Ellen Crow and Gemma Louise Crow, the daughters of the deceased. The Petitioner also signed this declaration.
2. Mrs Crow died on 10 January 2000 and was buried on 20 January 2000. There are no other interments in the grave.
3. The Churchyard is consecrated ground. By an undated letter, the Priest-in-Charge of St Nicholas, Charlwood, the Reverend Sue Weakley, confirmed that, having spoken to the churchwardens and various members of the PCC, there would be no objection to the Petition from the church. Whilst there is no formal resolution to this effect, I take this as sufficient evidence of the Parish's consent to the Petition.
4. The proposal is for the body to be taken to the Surrey and Sussex Crematorium for cremation and a letter dated 6 July 2018 from the Crematorium confirms this. The family wish to scatter the cremated remains in a garden.
5. In the Petition Form, the reasons for the proposed removal of the body are stated as follows:

“Our Mother’s death in a road traffic accident was extremely sudden and of course a great shock to family and friends. A very close family friend helped us at this time as our father was not of a state of mind to undertake the arrangements for the funeral or to deal with the police. This family friend, with the very best of intentions, made the arrangements to inter our mother locally and my sisters and myself concluded, at the time, that it was the wishes of our mother and at the very least our father. It has

subsequently transpired that we none of us had any real idea of what her wishes were or would have been and that assumptions were made at the time that we now deeply regret.

Our family had/has no longstanding roots or family and friends in the area of Charlwood as our parents had only recently moved there and our father then moved a long way from the area (Suffolk) quite soon after the death. He has subsequently re-married and expressed a wish to be cremated (not buried). He has said that he has no understanding as to why our mother was actually laid there or that he would wish to be laid there. He has no use for the grave although the original arrangements were apparently that there would be a space for his interment.

Our mother did not refer to herself as a Christian (neither does our father) and was not a church goer or observer of Christian ceremony of any kind and we were not brought up as Church going Christians and it was therefore some surprise to us that she would be buried in a churchyard and most particularly in consecrated ground.

None of the family reside anywhere near the cemetery, nor do we gain any solace from visiting the grave when we are able to. In fact we dislike it intensely and worry that we cannot spend the time tending it that it requires as the grave itself is in a very shaded dank and damp area of the cemetery. Our mother was a gardener so the thought that it might look neglected is particularly upsetting. We do not regard this as a suitable place to honour the memory of this woman and we wish therefore to take steps to rectify an unhappy situation in a dignified and respectful manner.

The person who arranged the funeral is now very ill and dying. We do not wish him to be involved or bothered in any way with the process for which we are making application.”

6. After initial consideration of the matter, the Chancellor asked for some more information and explained that he would expect the significance of burial in consecrated ground to have been explained to the relevant person organising the funeral. He suggested that investigations of this point might be made. Mr Michael Gill of Rowland Brothers Exhumation Services replied to the Chancellor’s questions. At the same time, the Petitioner indicated that she wished to exercise her right to be heard. In due course, the Petition was transferred to me for determination.
7. I held a hearing on 27 February 2019 at the offices of the Registry, attended by the Diocesan Registrar and Registry Clerk. The Petitioner attended with her elder sister, Justine Crow. Both gave oral evidence, upon affirmation.
8. The Petition is unopposed and nobody else appeared at the hearing.
9. I found the Petitioner and her sister to be careful and honest witnesses, speaking about memories which were painful and difficult. I accept their evidence in full whilst recognising that, as they stated, the lapse of time and the stressful circumstances of their mother’s death and aftermath made it hard for them to recall or explain all of the relevant events.
10. The Petitioner said that her mother was 58 years old when she died and her father was 60. The circumstances of the death were tragic and remarkable. Ms Justine Crow (“Justine”) was able to give a full account. Mrs Crow died in a road traffic accident whilst driving to Justine’s book shop. Justine was due to give birth the next day and Mrs Crow was coming to help serve in the shop. Apparently, she hit some black ice, had a minor accident and ended up in

the ditch at the side of the road. She rang Mr Crow and the AA but, while waiting for assistance, another vehicle hit her and Mr Crow arrived to find the fire brigade taking the roof off the car to extract his wife. She died of her injuries in hospital in Carshalton. Justine's baby son, her third child, was born the next day.

11. Clearly, the entire family was in a state of shock. Both witnesses described their father as "*traumatised*" – his word too, in a recent conversation with the Petitioner. Their younger sister Tiffany also reacted very badly to the shock. The Petitioner was, at this time, living in the Middle East. She returned to England as soon as possible after being telephoned by Tiffany. The youngest sister, Jemma, was living in Cornwall.
12. There was an inquest and the funeral occurred ten days after the death.
13. Neither witness could remember anything about the funeral arrangements. Justine was obviously fully occupied with the birth of her baby. Mr Crow apparently retreated into his study and a shell of silence, not talking to anyone except a family friend, Mr Simon Ebsor, who came to the house and who said that he would deal with all the arrangements for the funeral. Mr Ebsor was a practicing Christian. The Petitioner had to take on her mother's role as secretary to her father in the running of his own business as well as dealing with solicitors and the police about the accident. She was also doing her best to support Justine in London. Tiffany was at her father's house but was receiving medical treatment for shock and not involved with funeral arrangements. Jemma went straight to London to help Justine.
14. The Petitioner described going to see "*the Vicar*" and feeling panic-stricken when asked about readings and hymns, in case the incumbent realised that they were not a Christian family and refused to do the funeral. She assumed that this was what her father wanted, though she was surprised, since her parents were convinced atheists and the girls had all been deliberately brought up in that stance. Justine confirmed this. The Petitioner was also surprised by the choice of burial rather than cremation, as her mother had said that she wanted the latter. She raised this with Mr Ebsor, who said that Mrs Crow had wanted to be "*somewhere where people could gather*".
15. The Petitioner felt angry, confused and as though her father had abdicated responsibility. In June 2000, the daughters received a memorandum from their father about their mother's memorial. Nobody objected to it and it was erected. The Petitioner, Justine and Tiffany used to 'gather' at the grave annually, with their children, but both witnesses described how this always felt wrong and became increasingly disturbing. Eventually they gave up going, Gemma has never visited and there was no mention of Mr Crow's having done so either. He has said recently to the Petitioner that he thought that they wanted the grave and the memorial. Despite what was said in the Petition, the witnesses had no complaints about the location as such – "*we couldn't ask for a more picturesque setting*", the Petitioner said. But she described the continuing situation as "*a source of anguish*".
16. Mr Crow moved to Suffolk with his new wife a couple of years or so after the death. The Petitioner and Justine are close to him, but have felt unable to discuss the funeral and burial until recently.
17. Increasingly, the Petitioner began to feel that she should set about trying to move their mother's remains; her sisters readily agreed. Only recently has the Petitioner felt able to talk to her father about it; he stated that he had not been responsible for the decision as he was traumatised at the time, thinking that he, too, was going to die. Justine said that she can now see that the decision was "*wrong*", though, at the time, she had thought it was "*what everyone wanted – it has become obvious now that we have all discussed it*" that it was wrong. She

described how “frightening” it was when her “workaholic” father “fell apart” after her mother’s death. Justine said that, until the Petitioner had started to explore exhumation, she had had no idea that a change might have been possible. Her own feelings were compounded by a sense of guilt that their mother had died whilst on her way to help her. Justine added that, for many years after the death, the Petitioner had suffered with mental health issues.

18. I gave the Petitioner the chance to adduce medical evidence if she wished and I have received a short report from her GP, Dr Sarah Reid, who has been treating her since her return to England in 2012. She confirms a history of problems which I need not rehearse. Whilst Dr Reid does not attribute the problems to the death or the surrounding events, the Petitioner’s condition, including depression with other complicating factors, will, at the very least, have contributed to difficulties of communication and deciding to research exhumation and take the necessary steps.
19. The funeral directors who made arrangements at the time, Stoneman Funeral Service of Redhill, were also contacted by the Registry Clerk, at my request. Having consulted their records, they confirmed that Mr Simon Ebsor gave the instructions at the time. They also stated that a double depth grave was dug, though they have no record of a subsequent interment. The Registry Clerk has confirmed, from researching the relevant archives, that there is no record of any grave reservation by Faculty.
20. Having set out the facts, I must now deal with the relevant legal principles. These were set out by the Court of Arches in the case of In re Blagdon Cemetery [2002] Fam 299. Decisions of the Arches Court are binding on me.
21. In the recent decision In the matter of the Petition of Kathrine Tollis [2016] ECC Oxf 2, McGregor Ch summarised the effect of Blagdon and gratefully adopt his summary, as follows:

“In Blagdon the Court of Arches held that there was a presumption that Christian burial was permanent, that remains should not be portable, and that a faculty for exhumation would only exceptionally be granted. According to the Court of Arches, “Exceptional means ‘forming an exception’ (Concise Oxford Dictionary, 8th ed (1990)) and guidelines can assist in identifying various categories of exception. Whether the facts in a particular case warrant a finding that the case is to be treated as an exception is for the chancellor to determine on the balance of probabilities.” It is for a petitioner to satisfy the court on the balance of probabilities that there are special circumstances which constitute good and proper reason for making an exception to the norm that Christian burial is final.

The guidelines provided by the Court of Arches can be summarised as follows:

- a. *Advancing years, deteriorating health and moving to a new area are not in themselves adequate reasons for permitting exhumation. Any medical reasons relied upon by a petitioner have to be very powerful indeed to create an exception to the norm of permanence, for example, serious psychiatric or psychological problems where medical evidence demonstrates a link between that medical condition and the question of location of the grave of a deceased person to whom the petitioner had a special attachment.*
- b. *The passage of a substantial period of time since burial will not in itself be fatal to a petition, although it might be potentially relevant in assessing the genuineness of the petitioner’s case.*

- c. *Since double and triple graves in which the remains of members of the same family could be buried together were to be encouraged, the bringing together of family members' remains in a single grave can provide special reasons for permitting exhumation despite the lapse of a long period of time since burial. But where no burial had yet occurred in a family grave clear evidence as to the existence of a legal right to such a grave would be required to justify exhumation.*
- d. *Although mistake as to the location of the grave or, in certain circumstances, as to the significance of burial in consecrated ground could be a good and proper reason, mere change of mind as to the place of burial by those responsible for the interment could not.*
- e. *Although the views of close relatives were a very significant factor, the amount of local support for the petition would normally be irrelevant.*
- f. *In view of the desirability of securing equality of treatment between petitioners so far as circumstances permitted, the court has to take into account the impact its decision is likely to have on other similar petitions. The Court of Arches referred to 'the desirability of securing equality of treatment, so far as circumstances permit it, as between petitioners.' ..."*

22. I only add that the Court of Arches, having considered the caselaw on the subject, said:

"The variety of wording which has been used in judgments demonstrates the difficulty in identifying appropriate wording for a general test in what is essentially a matter of discretion. We consider that it should always be made clear that it is for the petitioner to satisfy the consistory court that there are special circumstances in his/her case which justify the making of an exception from the norm that Christian burial, that is burial of a body or cremated remains in a consecrated churchyard or consecrated part of a local authority cemetery, is final. It will then be for the chancellor to decide whether the petitioner has so satisfied him/her."

23. On the facts of Mrs Tollis' case, the Chancellor decided that he must refuse her Petition because he was unable to hold that she had demonstrated exceptional circumstances. That decision is not binding on me, though I mention it as an example of the application of Blagdon in practice, particularly bearing in mind Principle (f). There are other Consistory Court decisions in which petitioners succeeded. Each case must be decided on its own facts in the light of the stringent principles laid down in Blagdon.

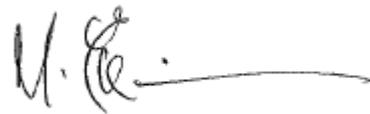
24. It is possible for a Faculty to be granted in an appropriate case to authorise the removal of a dead body from consecrated to unconsecrated ground and this happened in Blagdon. In Re Talbot [1901] PI, such a removal was authorised by Faculty, the Court pointing out that since the enactment of s.25 Burial Act 1851, the removal of dead bodies from unconsecrated places has been under the control of the Secretary of State, therefore the objection to the grant of a Faculty for the removal of remains to unconsecrated ground formerly arising from the absence of adequate protection against their disturbance no longer exists. The Faculty in that case was granted subject to a condition that it should not be acted upon until licence from the Secretary of State had been obtained.

25. Whilst the guidance in Blagdon on particular arguments is valuable, there is no suggestion that the scope of possible exceptions is limited to these categories. The facts of the current Petition do not fall exactly within all or any of the circumstances specifically addressed in Blagdon.

26. As I have said, the facts of this case are tragic and remarkable. Whilst not a 'mistake' case of

the sort which the Courts have sometimes considered, such as burial in consecrated as opposed to un-consecrated ground as a result of administrative error, I am persuaded that there was a fundamental mistake of intention in this case. With so many pressures and difficulties, combined with the impact of shock affecting all the family members in different ways, it is clear that Mr Ebsor, the faithful family friend, took charge in the way that he thought best. Neither the Petitioner nor her sister criticised him; they knew that he acted from the best of motives, but the fact is that the wrong decision was made. For a family of conscientious atheists, Christian burial was not the right choice. The daughters have tried very hard to honour and make sense of their mother's memory through the medium of her grave, but they reached a point whereby the thing which should provide some solace was doing the opposite. Clearly, this has taken its toll on all of them in different ways and, whilst the medical report does not satisfy the stringent provisions as to causation in Blagdon Principle (a), I have no doubt that the Petitioner's illness has not been made any easier to bear by the circumstances. The medical evidence helps to explain the delay, along with the mutual reticence which all members of this bereaved family have displayed in talking about the matter. I am in no doubt about the genuineness of this Petition and am satisfied that Blagdon Principle (b) is not a reason to refuse it.

27. Principle (c) is not relevant.
28. As to Principle (d), this is not a case of "*mere change of mind*". My interpretation of the evidence is that the family's minds, for perfectly understandable reasons, were never actually engaged in the decision. At the moment when explanations might have been given, the Petitioner, brought up by her parents as a decided atheist, was too afraid of discovery to seek the guidance of the priest. This is one of the several tragedies of miscommunication in this case.
29. Blagdon Principle (e) is satisfied, though not determinative.
30. As I have demonstrated, the facts of this case are so extraordinary that I do not consider that my decision will create any kind of precedent. It is certainly not intended to do so.
31. Accordingly, I direct that a Faculty shall issue as prayed, subject to the usual conditions concerned with decency, public health and the consent of the Secretary of State.



MORAG ELLIS QC

DEPUTY CHANCELLOR

31 MAY 2019