

Neutral Citation Number: [2022] ECC Ely 6

In the Consistory Court of the Diocese of Ely

In the Matter of a Faculty Petition

The Church of St Andrew's Cherry Hinton

In Re An Exhumation

PRELIMINARY MATTERS

1. The circumstances which have led to this application for a faculty to exhume the mortal remains of a person from the churchyard at St Andrew's Church Cherry Hinton are tragic and deeply personal to the family. The family's privacy should be respected and for this reason I will not include the name of the petitioner or any unnecessary details which might identify the personalities involved.

BACKGROUND

2. The petitioner is the sister of the deceased. They were very close; she describes them as having a "unique bond" having been brought up as children in Paris. She was 18 when the deceased committed suicide at the age of 20 in October 1988. The way in which he took his life was in itself traumatic and something that neither the petitioner nor her mother (hereafter referred to as "EL") have ever got over.
3. The Catholic Church to which the deceased and the family belonged would not perform the burial. EL's Catholic parish priest is saddened to think that the Catholic Church did not take proper care of this family at the time. As a result the deceased was buried in the churchyard at St Andrew's.
4. The family left Cambridgeshire shortly after the burial had taken place. Whilst EL felt able to return to her son's grave, her priest has described

how she nevertheless grieved over the fact that her son was buried somewhere which they never considered to be home and she had expressed the hope that he could be exhumed and be brought to London.

5. The petitioner has never been able to visit her brother's grave. She wrote that it is something that in the 34 years since his death she could not emotionally or psychologically cope with. This is notwithstanding that she mourns and misses him everyday. From the contents of her letter overall I am satisfied that her feeling towards visiting the grave are genuine and strong.
6. Matters have been brought to a head because the petitioner's mother has died and is awaiting burial. The petitioner knows that EL wanted to be buried with her son and wanted the petitioner to be buried with her as well. EL's parish priest has confirmed that he had begun to look into the possibility of an exhumation before she died. The petitioner accepts that a simple solution would be to bury her mother at St Andrew's but she would then be unable to visit either her brother's or her mother's grave and she could not conceive of her own burial being at St Andrew's.
7. She has found a family burial plot at GreenAcres Kemnal Park, South East London, which describes itself as "a unique cemetery and ceremonial park...serving the members of all faiths and communities." The ground is not consecrated but EL's parish priest, in these more enlightened times, has agreed that he will bury EL and, if the faculty is granted, the deceased using the full Catholic Rites.
8. The application for a faculty is supported by Revd Karin Voth Harman, vicar of Cherry Hinton who is in no doubt that "...pastoral concerns are considerable enough to warrant this move". She states that the

deceased had no real roots in Cherry Hinton nor any connection to the church.

9. The funeral director who would carry out the exhumation is confident that, although it is likely that little will remain of the coffin, they will be able to remove the deceased independently of the coffin.

THE LAW

10. The two leading cases on which all subsequent decisions have been based are In Re Christ Church Alsager (1998) 3 WLR 1394, a decision of the Chancery Court of York, and In Re Blagdon Cemetery (2002] 3 WLR 603, a decision of the Arches Court.

11. From the decision of the Arches Court of Canterbury I derive the following guidance:
 - (a) There is a presumption that Christian burial is permanent and that remains should not be portable.
 - (b) A Faculty for exhumation would only be exceptionally granted.
 - (c) It is for the Petitioner to satisfy the court on a balance of probabilities that there were special circumstances which constituted good and proper reason for making an exception to the norm that Christian burial was final.
 - (d) In deciding whether such good and proper reason had been made out it was not practical to consider whether that reason was likely to be regarded as acceptable by right thinking members of the Church at large.
 - (e) In certain circumstances a mistake as to the significance of burial in consecrated ground could be good and proper reason, mere change of mind as to the place of burial by those responsible for interment could not.
 - (f) The views of close relatives are a very significant factor, but local support for the Petition would normally be irrelevant.
 - (g) The Court must have regard to the impact its decision may have on other similar Petitions in order to ensure consistency.

12. At paragraph 36 of the judgment the court set out a non-exhaustive list of relevant factors which a court could take into account which included the establishment of a family grave. In that case the court was dealing with a son who had died unnaturally young as a result of an industrial accident. It was the intention of the petitioners to bring their son to a family grave in which they had expected to be the first occupants:

“The concept of a family grave is, of course, of long standing...Burials in double or treble depth graves continue to take place at the present time. They are to be encouraged. They express family unity and they are environmentally friendly in demonstrating an economical use of land for burials. Normally the burial of family members in the family grave occurs immediately following the death of the particular member of the family, whereas in this case Steven’s remains will have to be disturbed after many years in order to inter them in a new family grave.

37. Notwithstanding this, we have concluded that there are special factors in this case which make it an exception to the norm of permanence which we have explained earlier in this judgment. These factors are: (1) the sudden and unnatural death of Steven at an age when he had expressed no view about where he would like to be buried; (2) the absence of any link between him and the community in which he was buried; (3) his parents’ lack of a permanent home at the time of his unexpected death; (4) his parents’ inquiries of their solicitor shortly after Steven’s death about the possibility of moving his remains once they had acquired a permanent home; (5) having lived in Stowmarket for several years as their permanent home and having become part of the local community, their purchase of a triple depth burial plot in Stowmarket Cemetery.

38. Our decision is not a novel one. Faculties have been granted in the past for the bringing together, or accumulation, of family members in a single grave after many years provided special reasons were put forward for the lapse of time since the date of burial. Mr Hill drew our attention to a decision of Newsom QC Ch in *In re St James’s Churchyard, Hampton Hill (1982)*...where he granted a faculty over 50 years after the death for remains to be exhumed and transported to Canada to be reburied in a family plot in Woodstock, Ontario.”

DECISION

13. There are a number of issues raised in Blagdon which militate against granting a faculty, and I judge the permanence of burial to be a very important principle of Christian faith. However, the fact that exhumations have been granted even where the burial has taken place decades earlier identifies that that principle can be overridden where it is just to do so.
14. As I have set out, the court in Blagdon were critical of the question formulated by the Chancery Court of York In Alsager:

“Is there a good and proper reason for exhumation that reason being likely to be regarded as acceptable by right thinking members of the Church at large?”
15. They considered that creating an objective standard within a Christian context would be difficult to apply in practice; if the chancellor does not take evidence, then an assumption has to be made as to the notional views of right thinking members of the Church at large.
16. I respectfully agree. However, I have found it useful to test the principles set out in Blagdon against what right thinking members of the public would think of a church who by refusing to grant a faculty would prevent a very distressed petitioner from ever visiting the grave of her brother and, were she forced to inter the body of her mother with her brother in Cherry Hinton, of ever visiting her mother’s grave either. Burial on consecrated ground is not only to place a loved one back into the care of the church until the Day of Judgment, but also to allow the living to visit the grave of a departed relative or friend and seek solace in so doing. Where the petitioner, who is the only surviving member of the family is unable to visit the grave of her brother then the purpose of his burial in the churchyard at St Andrew’s is thwarted.

17. Where, as here, the guidance provided by Blagdon conforms with what right thinking members of the church would regard as acceptable, in my judgment the petitioner has satisfied me on a balance of probabilities that there are special circumstances which constitute a good and proper reason for making an exception to the norm that Christian burial is final. I will grant the faculty to exhume the deceased's mortal remains.

CONDITIONS

18. The following conditions are placed on the grant of the faculty:

- (a) The exhumation takes place on a date which will allow the deceased to be reburied at GreenAcres Kemnal Park as soon thereafter as is practically possible.
- (b) Sight screens are erected round the grave so as to prevent the public from viewing the exhumation.
- (c) It is carried out at a time of day when the public are less likely to be in or around the churchyard.
- (d) The vicar of Cherry Hinton or another priest nominated by her is present during the exhumation and removal of the deceased from the churchyard.
- (e) That the priest in charge at Our Ladye Star of the Sea or another Catholic priest nominated by him is present at GreenAcres Kemnal Park to receive the deceased and to bury him using the full Catholic Rites.

His Honour Judge Leonard KC
Chancellor of the Diocese of Ely
17th November 2022