

Neutral Citation Number: [2018] ECC StA 1

IN THE CONSISTORY COURT OF THE DIOCESE OF ST ALBANS

IN THE MATTER OF: CHESHUNT CEMETERY (No 1)

PETITION NUMBER 512

THE PROPOSED EXHUMATION OF THE LATE INFANT ELIZABETH (LIZZIE)
HUGILL

JUDGMENT

1. On 1 February 2018 a petition was presented seeking the exhumation of the cremated remains of Elizabeth Hugill (“Lizzie”) who died in tragic circumstances aged 10 months on 19 December 1982. The petition was presented jointly by Lizzie’s parents, Mrs Beverly Wilson and her ex-husband Mr Michael Hugill (the “Petitioners”). Mrs Wilson appeared in person before me at a hearing held at the offices of the Diocesan Registry on Tuesday 26 June 2018, helpfully supported by her sister, Mrs Lora Jackson and brother-in-law, Mr Rob Jackson.
2. Lizzie’s body was cremated and her remains interred in an identified plot in consecrated ground in Cheshunt Cemetery on 30 December 1982. The Petitioners had no input into the funeral arrangements nor contact with the funeral director, all of the funeral and burial arrangements having been made by Mrs Wilson’s former parents-in-law. Mrs Wilson and Mr Hugill themselves were too distressed to take part in managing those arrangements and the parents-in-law proceeded to choose a local cemetery within easy reach.
3. As a result of these facts, it arose that Lizzie’s remains were buried in an area of consecrated ground in Cheshunt Cemetery without the Petitioners’ knowledge of the fact that the plot was in consecrated ground. Mrs Wilson explained to me that she and Mr Hugill are both Atheists. In accordance with their views, neither Lizzie nor her two brothers were ever baptised, they were raised in an Atheist household and deceased grandparents have been given non-denominational funerals. Her clear

evidence, which I accept, was that had she and her husband been consulted at the time as to the place of Lizzie's burial and informed that it was to be in consecrated ground and what that meant, they would have chosen an un-consecrated plot elsewhere without hesitation.

4. However, the Petitioners remained unaware of the consecrated nature of the ground for over 35 years. During this time, Mrs Wilson visited Lizzie's grave regularly and continues to do so, despite the fact that she moved, in 1993, to St Ives, around 1 hour's drive away. Mrs Wilson informed me that the journey is becoming increasingly difficult for her to manage as a result of deteriorating eyesight.
5. In October 2017, the sisters Mrs Wilson and Mrs Jackson took steps to make their wills and put in place funeral wishes. Mrs Wilson's wish is for her remains to be interred with those of Lizzie. Accordingly, for the first time, enquiries were made in or around October 2017, and the discovery was made that Lizzie's remains were buried in consecrated ground. Mrs Wilson's evidence, which I also accept, was that although her wish to have her remains interred with those of Lizzie is as strong as ever, she is unable to do so because it is against her own system of belief to be buried in consecrated ground. Accordingly, shortly after the discovery was made, Mrs Wilson and Mr Hugill brought the petition seeking exhumation of Lizzie's remains and their re-interment in un-consecrated ground in Ramsey Road Cemetery, St Ives.
6. There is unanimity within the family in support of the petition to exhume Lizzie's remains. Written evidence provided by the funeral director is that Lizzie's remains were interred in a wooden coffin which, after 35 years, will have substantially deteriorated. However, there was confirmation in the documentary evidence before me that the funeral director is prepared to remove the remains and place them in a new coffin, and also that a confirmed un-consecrated plot is available for reburial of Lizzie's remains in Hill Rise Cemetery, St Ives.
7. This matter came before the Chancellor, His Honour Roger Kaye QC, on paper on 4 February 2018. He gave a preliminary indication that the lapse of time and the likely lack of portability of the decomposed remains were strong factors in favour of refusing the petition. However he permitted the service of any further materials relied on by the petitioners, to be followed by a hearing before me to lead to a final decision.

Legal framework:

8. The starting point is the presumption that the burial of human remains in consecrated ground is permanent. As described in *Re Tunbridge Wells Cemetery* [2016] ECC Roc 1 “*The presumption arises from the Christian theology and tradition that burial, or as here, the interment of cremated remains, is to be seen as the act of committing the mortal remains of the departed into the hands of God as represented by His Holy Church*”. The permanence of Christian burial has been rigorously upheld by the Consistory Courts.

9. However the Court has a discretion to permit exhumation in exceptional circumstances, which is the subject of the Court of Arches judgment in *Re Blagdon Cemetery* ([2002] Fam. 299). The factors identified in that case, although not determinative nor representing an exclusive list of potentially exceptional circumstances, provide guidelines as to how the Court should exercise its discretion. In broad summary, they are as follows: (1) medical reasons: although the deteriorating health of surviving members of the family, which may make it difficult for them to visit an existing grave, is not normally a sufficient reason in itself to justify an exhumation; (2) lapse of time: generally, the longer the period since the original interment, the more difficult it will be to show that the removal of the remains is justified; (3) mistake: a simple change of mind on the part of the surviving relatives about where the remains should be interred is not generally sufficient justification for the grant of a faculty. However a genuine error as to the nature of the ground may be sufficient to justify permission being granted. That this might occur as a result of lack of knowledge or understanding on the Petitioners’ part at the time of burial (that it was taking place in consecrated ground with its significance as a Christian place of burial) is specifically cited in *Re Blagdon* as potentially giving rise to a “*fundamental*” mistake; (4) local support: the support of close relatives is normally required, but the support of third parties is not usually a relevant consideration; (5) precedent: the Court will have regard to the possible effect of any faculty granted to authorise an exhumation in setting a precedent and will not wish to undermine the general presumption that interment is intended to be final; (6) the Court will have regard to the existence of an established family grave plot, and may be prepared to grant a

faculty for exhumation where the intention is to bring the remains of family members together in one plot.

10. On the case that has been presented to me it appears that the most important and relevant of the factors referred to above is mistake. In particular, Mrs Wilson's evidence that she was at all material times, until on or around September 2017, unaware that Lizzie's remains had been interred in consecrated ground by reason of her total (and understandable) lack of contact with the funeral arrangements when they were made, and her evidence that, as an Atheist, the burial in these circumstances is something she would never have agreed to if she had been informed. These facts, in my judgment, amount to a fundamental mistake as to the arrangements made for the interment of Lizzie's remains.
11. To weigh against the impact of the mistake in this case are the state of the interred remains and the 35 years which have passed since the interment. I am troubled by the fact that the wooden coffin will have deteriorated over the long passage of time and there must be some doubt as to what trace of remains will be recoverable in such circumstances, or indeed how they can be recovered or transported. In putting this problem to Mrs Wilson at the hearing, I was informed that the funeral director with whom Mrs Wilson has been in contact in preparing for this hearing has considered this aspect and raised no concerns in relation to her request. He regards it as feasible despite the passage of time and the inevitable deteriorations involved. I take his attitude into account in reviewing the issue of the deterioration of the coffin. I also take into account the fact there is a cogent explanation for the lengthy passage of time in this case, namely that the Petitioners simply did not know of the mistake (and I accept that there was no basis that would have caused them to uncover the fact earlier than Mrs Wilson in fact did) until September 2017. Not only that but Mrs Wilson acted with alacrity once the mistake was known in bringing this petition forward, and was able to do so following only a few months of enquiries, which I regard as proper and necessary in the circumstances which presented themselves to her.
12. There were other factors raised before me which I have noted, but which I find do not operate materially for or against the grant of a faculty. These were matters such as:

- a. The deterioration of Mrs Wilson's eyesight; the increased difficulties she suffers in driving to and from the existing plot; anxiety that has been suffered since Lizzie's death. I have not taken these factors into account in reaching my decision. There was no medical or other independent evidence on these points and, in any event, they were (sensibly) not strongly advanced by Mrs Wilson at the hearing;
 - b. The support of the Petitioners' immediate family I respect as important in the context of their bringing the petition but it does not, in my view, amount to any sort of special circumstance of itself;
 - c. Furthermore, the fact that Mrs Wilson wishes to be buried with Lizzie's remains is not a special circumstance (such as might arise in other circumstances where there is, for example, an established family grave) and accordingly I do not rely on that element of the evidence in my considerations either;
 - d. As to precedent and any risk that a decision granting the necessary permission might precipitate a number of similar claims, I am satisfied that this case turns on its own facts which are sufficiently specific to obviate concern in this regard, to the extent that it might otherwise outweigh other important considerations in this case.
13. Weighing all of the matters I have referred to above leads me to the conclusion that this is a case of exceptional circumstances based on a fundamental mistake at the time of the interment. It is set in the context of an unusual set of facts taking into account, in particular, the fact that the petitioners played no part in, and were unaware of any detail relating to, Lizzie's funeral arrangements. None of the other factors I have evaluated above are sufficiently strong to lead me to any conclusion other than that it is appropriate to grant the petition in this case.
14. It follows that a faculty for the exhumation of the remains of Lizzie Hugill shall issue on the following conditions:
 - a. That the removal be effected with due care and attention to decency, early in the morning and the grave screened from the view of the public.

- b. That the remains be re-interred forthwith in the new grave and in any intervening period, they shall be kept safely, privately and decently.
 - c. That due notification of the time of the proposed exhumation be given to the Chief Environmental Health Officer and any instruction given by him or his representative, either before or at the time of such exhumation, must be carefully carried out in addition to the conditions above
 - d. That the exhumation be supervised by a Clerk in Holy Orders
 - e. The the Court Fees are paid in full before the exhumation takes place
15. The costs of the petition shall be calculated by the Registrar and paid by the Petitioners in accordance with the *The Ecclesiastical Judges, Legal Officers and Others (Fees) Order 2017*. However, in relation to the fee prescribed at paragraph 4(2)(11)(a) of the Order, I direct that only half of this fee should be payable in respect of this Petition; the Consistory Court was able to hear two Petitions in a single morning, in accordance with Rule 1.1 (2)(b).
16. I also direct that a copy of this judgment be sent to the cemeteries manager (or equivalent) of each local authority operating a cemetery within the Diocese of St Albans. Practice in recent years may of course have changed, but it strikes me that mistakes such as the mistake outlined in this case could be prevented if the consecrated status of a burial plot – and the legal consequences of choosing such a plot – were made clear to families prior to interment.

Lyndsey de Mestre QC

Deputy Chancellor

18 July 2018