

Neutral Citation Number: [2022] ECC Lon 1

IN THE CONSISTORY COURT

DIOCESE OF LONDON

In the Matter of:

The City of Westminster, East Finchley Cemetery

-and-

In the Matter of:

A Petition of Derek Disson – Faculty 4180

-and-

In the Matter of:

A proposed Exhumation of the Mortal Remains of the late Henry Jones, the late Bridget Jones and the late Winifred Kerman, their proposed Cremation and Scattering of their Ashes in Golders Green Cemetery.

Judgment of the Chancellor

April 21, 2022.

JUDGMENT

1. This is an application by way of petition by Derek Disson for a Faculty to authorise the exhumation of the mortal remains of the late Henry Jones, the late Bridget Jones and the late Winifred Kerman who died respectively in 1921, 1951 and 1954 and who were buried in East Finchley Cemetery shortly after each of their deaths.
2. I concluded that this Petition should be considered on the papers and that no useful purpose would be served by an oral hearing as all the material is before me in writing. I have borne in mind that this will reduce costs for the Petitioner, be a faster way of reaching my decision, cause no injustice to the Petitioner and be consistent with the interests of justice. I gave the Petitioner an opportunity to

argue for an oral hearing if he wished (although the final decision is mine) but he was content the Petition should be decided on the papers.

3. The petition is not in proper order as, in the case of exhumations not forming part of a churchyard re-ordering scheme, a separate faculty is required in the case of each application for an exhumation. Having considered the papers, however, I have decided to waive that particular requirement as I have decided that first, there are no material differences in the consideration of the application in respect of each of the deceased and, secondly, because I have also concluded that each of the applications must fail as being far outside of the exceptions to the general and important rule relating to the finality of Christian burial set out in the leading case of *Re Blagdon Cemetery* [2002] Fam 299, Court of Arches.
4. Mr Disson sets out the circumstances of the original burials as follows and without any discourtesy I shall refer to the deceased as Henry, Bridget and Winifred. Henry died in 1921, Bridget in 1951 and Winifred in 1954 and each of the deceased was buried a short time after his or her death. Henry died of tuberculosis, Bridget of pneumonia, anaemia and hypertension and Winifred of heart disease.
5. Mr Disson does not propose to re-inter their mortal remains but to scatter their ashes in Golders Green cemetery. This is entirely different from burial in consecrated ground as by definition, the ashes will not lie anywhere but will be blown wherever the wind takes them. This gives me an added concern but it is not the primary reason I am refusing the application. I do not know what evidence Mr Disson has that the ground is consecrated. I understand it to be a secular crematorium although I believe that the Jewish cemetery opposite is regarded as consecrated because it is separate and observes Jewish law with regard to burials. For the purposes of this judgment, however, I will presume that he is correct as my understanding may be wrong or I may have misunderstood the position about where it is proposed the ashes will be scattered.
6. Mr Disson makes it clear that each of the deceased was buried in the East Finchley cemetery because that was the appropriate cemetery then for where they lived. No written guidance as to the wishes of the deceased exists and whilst Mr Disson says no wishes were expressed by any of the deceased as to their burial, I do not see how he can know this. I agree, however, that there is no surviving written record of any wishes. In my experience, however, people usually do have views as to whether they should be buried or cremated and as to whether their remains should lie in the ground or be scattered upon it. Certainly, cremation has grown in popularity since the Second World War as have a number of alternative methods of disposing of remains which our forebears may well have considered unacceptable.
7. I entirely accept that life was difficult for many of those who emigrated from Ireland in the period to which he refers. Mr Disson tells me that Henry, who was his grandfather, was an accomplished organ builder in Ireland, left because of the Troubles, and tragically was unable to establish himself in England, having

to resort to work that did not reflect his talent or experience and which had a deleterious effect on his health. It being an era before vaccination for TB, this disease was then a scourge and no respecter of persons. Henry's early death at the age of 48 must have been an appalling tragedy for his family.

8. Bridget was Mr Disson's grandmother and Winifred his great or grand Aunt. I say to him very gently that whilst I understand the present proposal represents his and his brother's wishes now and that members of his family have increasingly opted for scattering of ashes (shortly after their deaths) I do not know whether the exhumation, cremation and scattering of his grandfather, grandmother and grand-aunt's remains after they had lain undisturbed for nearly a century in his grandfather's case and nearly three quarters of a century in the case of the ladies would be what *they* would have ever imagined or wanted.
9. The case of *Blagdon* before the Court of Arches (before the Dean of Arches, the Right Worshipful Sheila Cameron QC, Chancellor Christopher Clark QC and Chancellor Charles George QC) was handed down on April 16, 2002. It is a decision of a superior court and is accordingly binding on me to the extent that it lays down a rule of law.
10. The decision in most exhumation cases turns on the particular facts disclosed and the Chancellor has a measure of discretion. *Blagdon* sets out the position in law: "*it is for the Petitioner to satisfy the Court that there are special circumstances in his or her case which justify the making of an exception from the norm that Christian burial (that is the 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 or her.*"
11. Whilst the length of time between the burial and application for exhumation is not of itself determinative of the application, it is clearly an important consideration both in itself and in what it reveals of the thinking behind the application. No real explanation is given here for this very considerable delay and it may well be that it is an idea that has understandably grown as the Petitioner and his brother have grown older.
12. Likewise, the fact that an entirely different disposal of the remains (cremation followed by scattering) is proposed is not determinative of the application, it is a matter I shall take into account as a factor. I am not persuaded that the uniting of family remains is a sensible justification here, because by definition that simply cannot occur when ashes are scattered, save in a symbolic sense.
13. *Blagdon* posits various exceptions that may apply to the general rule but none of the circumstances of this case fall within those. Although not a 'change of mind' case, as the Petitioner and his brother never made the initial decision as to burial, I find that it is analogous to that situation. It is an idea that has occurred to the Petitioner and his brother many years after the burials and, whilst I understand their reasoning, it comes nowhere near forming a justified exception to the general rule. Indeed, I find that, whatever the views of the Petitioner and his brother, which I do not disrespect, this proposal is about *their* wishes – for

reasons I understand – and may be far away from what those buried would have wanted.

14. For all the above reasons, I regret that I have come to the firm conclusion that this Petition must be refused. Other than the cost incurred by applying for a Faculty I make no other order as to costs as I appreciate this decision will be difficult for the Petitioners and I have no doubt as to their genuine and well-meant intentions in making the proposal.
