

IN THE CONSISTORY COURT OF THE DIOCESE OF ROCHESTER

Re: GRAVESEND CEMETERY

J U D G M E N T

1. By a petition presented on 9th August 2016, the petitioner, Antonio Ferrara, of Green Glade, Round Street, Cobham, Kent, applied to exhume the mortal remains of his late father, Enigio (Egidio) Orario (Orazio) Attilio Ferrara, to cremate them, and then to transport the cremated remains to Senerchia Cemetery, Campagnia, near Naples, Italy, for re-interment in an appropriate plot along with those of his widow, who died last year. The spelling of the Christian names in the death certificate and the petition are not the same. The petitioner informed me that spelling errors had occurred, and that the bracketed names listed above are the correct ones.
2. Initially I indicated on paper that I was not disposed to grant a faculty, and so it was that the petitioner exercised his right to have an oral hearing of the petition, at the Consistory Court, which was held on 24th January 2017. The petitioner was not legally represented at that hearing, but attended and gave oral evidence, as did his brother, Michael Ferrara.
3. I should state, at the outset, that I found both the petitioner and his brother to be honest and impressive witnesses. They had clearly thought about the issues which had been raised, and sought to address them sensitively and thoughtfully. I accept the factual evidence they gave me as being essentially true. Doubtless over the course of time, some details may have become less clear, but it was obvious to me, and I so find, that in all important respects they were both doing their best to tell me the truth, and were achieving their aims in such regard.
4. Egidio Ferrara died on 24th March 1992 of ischaemic heart and aortic valve disease. He was aged 67 years at the date of his death. His death was unexpected, and whilst he left a simple will, he left no instructions about his funeral arrangements, save those referred to below. Mr Ferrara, like his wife, was born and brought up in Italy. They both came from the village of Senerchia, south of Salerno, where they met and married. Their first son, Giovanni, also known as John, was born there in 1948.
5. In the early 1950s Mr Ferrara came to this country, to be followed a short time later by his wife and young son.

6. Mr Ferrara, and his wife settled in the Gravesend area, and ran a grocery store business. They acquired their own home, and in the fullness of time, had two more sons, Michael, born in 1960, and Antonio (or Tony) born in 1965. All three brothers still live in the Gravesend area, and are married with families. However, they were brought up to be bi-lingual in English and Italian, and their parents never forgot their Italian or village roots. Mrs Ferrara never became fluent in English.
7. The Ferrara family were practising Roman Catholics, and Mr and Mrs Ferrara were of that generation who put particular store on their church attendance, with Mrs Ferrara regularly going to Mass three or four times a week. They were described to me, and I accept that they were religious people who put faith and trust in their church. I take this to mean that their belief and church attendance were important to them
8. Mr Ferrara left a will, but it was not one made in the immediate contemplation of his death. It was drawn up by a local solicitor, and dealt solely with financial issues, leaving a sum of money to be divided between his sons, and the house and the rest of his estate to his wife. Mrs Ferrara made a "mirror" copy will to that of her husband. After her husband's death she continued to live in the matrimonial home until her death. That property is still lived in by the oldest son, John. In neither will was there any discussion of funeral arrangements, nor did either testator indicate where he/she wished to be buried or interred.
9. All the family were well aware that Mr Ferrara wished to be buried. In 1992 that was considered within the family as being the only appropriate choice. It was pointed out to me that in those days many Roman Catholics, and indeed the Roman Catholic Church generally, were opposed to cremation. Thus whilst Mr Ferrara left no specific instructions on the matter, the family were left in no doubt at all that his wish was for his remains to be buried. In evidence it emerged that Mr Ferrara had been very particular that after death he did not want to lie, as it were, surrounded by earth. Rather, he was insistent that there should be a brick lining in his grave surrounding his coffin, and keeping the earth away from it. This wish was expressed by him on a number of occasions to his wife. It, of course, indicates and confirms that he wanted, and expected, to be buried, which is what happened.
10. On 6th April 1992 Mr Ferrara's mortal remains were buried in Gravesend Cemetery, Gravesend, Kent in Plot No 2848/2849 GR11, which was and is consecrated ground. The plot was a double width grave, see the letter from Gravesham BC dated 29th April 2016, and according to the documentation before me, Michelina Ferrara, the widow of Mr Ferrara, is recorded as the purchaser and owner of the grave. The obvious inference to be drawn from these facts is that, at the time, Mrs Ferrara intended that, upon her death, she would be buried in the same double

plot as her husband. The funeral director was Gravesham Funeral Services, who is no longer trading.

11. The evidence I heard confirmed the above, but with this gloss, namely that because of her health and poor English, Mrs Ferrara, who, not surprisingly, was in a very emotional state, could not cope with making the funeral arrangements. She had been in poor health for much of her adult life, and in simple terms, thought that she would soon be following her husband to the grave. This was a view that was shared by the close family. In the circumstances prevailing the funeral arrangements were dealt with by the two oldest sons, John and Michael. The petitioner told me, and I accept, that he was not directly involved in these arrangements.
12. Mrs Ferrara though not in good health lived until 2015. She did not change her will, and left no written instructions about her funeral arrangements.
13. That said, over the years there were two significant changes of circumstances. In the first place, and by way of general change, the Roman Catholic Church became less hostile to cremation, and the practice became increasingly common among the Roman Catholic community. The second change was particular to the Ferrara family, and involved the availability of a family grave in Senerchia, Italy. This came about because the cemetery there was expanded, and so the already existing Ferrara family plot was capable of being, and was, increased by the acquisition of more land/space.
14. The upshot of all this was that Mrs Ferrara repeatedly told her sons that after her death she wanted her remains to be cremated, and interred in the family grave in Senerchia. It was her desire to be interred next to her late husband, from whom she had never been separated in life, and to this end she wanted his remains to be exhumed, cremated, and then taken to Italy to be re-interred with, and at the same time as, her remains. As she got older and became more frail, Mrs Ferrara repeated this wish, stressing that she wanted her cremated remains to be beside those of her late husband in the cemetery of the village in which they had both been born and raised, and where they had met and married. The petitioner put it thus, and I accept; "her heart was still in the village in Italy."
15. When Mrs Ferrara died she was cremated, and her ashes have been taken to Italy, to await interment in the cemetery at Senerchia, ideally with those of her late husband.
16. The petitioner has obtained permission from Gravesham BC for the proposed exhumation, subject to conditions, and from the Municipality of Senerchia in Italy for the re-interment of his father's remains in

Senerchia Cemetery. He has consulted TCS Exhumation Services about the proposed exhumation, and has obtained the consent of his brothers John (Giovanni) Ferrara and Michael Ferrara, and a letter of support for what he wishes to do from Mgr. Matthew Dickens, the Vicar General and Chancellor of the Roman Catholic Archdiocese of Southwark.

17. I proceed on the basis that the formalities have been complied with.
18. I accept, that Mrs Ferrara repeatedly expressed her wishes as set out above.
19. The principles which I have to apply when dealing with an application for an exhumation from consecrated ground are well known and were laid down by the Court of Arches in **Re Blagdon Cemetery 2002 Fam 299**.
20. I have a discretion, but the presumption is that the burial of human remains in consecrated ground is permanent. This is the starting point when dealing with the discretion. The presumption arises from the Christian theology and tradition that burial, or 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.
21. Thus it is that the Court can only depart from the principle of permanence if the petitioner, on whom the burden of proof lies, can establish special circumstances to allow an exception to that principle.
22. The Court of Arches in **Blagdon** (supra) helpfully identified certain factors which may assist in deciding whether exceptional circumstances have arisen such as to permit the remains to be exhumed. It is, though, important to bear in mind, that the factors identified by the Court of Arches are not determinative, nor are they of necessity exclusive. They are guidelines, rather than tramlines, as to how the Consistory Court should exercise its discretion.
23. The factors include medical reasons, which are not sought to be relied on here.
24. Lapse of time is important, but on this issue, whilst a considerable amount of time has passed, it is not such an amount as would of itself of necessity prove decisive. In other words in the instant case, this does not prevent me exercising my discretion in favour of the petitioner if other relevant factors are satisfied.
25. Mistake, does not apply here, and is not relied on.

26. Precedent; I am satisfied that were I to allow this petition no particular precedent would be set; the facts are highly unusual, and most unlikely to be repeated.
27. The desirability of encouraging family graves; this has become of importance in this case. I was unaware of the factual matrix in this regard until I heard evidence from the petitioner and his brother. I was told by them both, and accept, that the family plot had been increased in size at some time after the death of Mr Ferrara. The concept of a family grave, as was specifically pointed out in **Blagdon** (supra), is of long standing, and it was observed that; "In a less mobile society in the past, when generations of a family continued to live in the same community, it was accepted practice for several members of a family to be buried in one grave." The Court of Arches went on to commend the practice and to say that such should be encouraged.
28. The above list is not exhaustive, and to it, in this particular case, I add two further factors. The first of these is that I was told, and accept, that the wider family in Italy, and particularly those of the older generation, strongly support the petition, and would find it very hard to comprehend if the remains of Mrs Ferrara were to be separated from those of her late husband. In this context I was told, and accept that the remains of a close relative who had died and been buried in northern Italy had been exhumed, and reinterred in the family grave. Added to this is the support of Mgr Matthew Dickens, the Vicar General and Chancellor of the Roman Catholic Archdiocese of Southwark, which I have referred to in paragraph 16 above. The second additional factor is the change in circumstances, not so much in the family thinking, but in the practice of the Roman Catholic Church. Cremation was not a realistic option at the time of Mr Ferrara's death, and the cost of taking his body to Italy would have been difficult and unduly expensive in 1992. These are important factors in this case.
29. Accordingly, and for the reasons given above, I find, on the balance of probabilities (for such is the appropriate standard of proof), that the petitioner has established special circumstances such as to enable me to exercise my discretion in his favour.
30. I indicated to the petitioner that were I to allow the petition there would be certain conditions attached thereto. They are as follows;
 - the exhumation be carried out reverently, and with the utmost care so as not to damage, or disturb any other graves;
 - no mechanical digger is to be used or involved in the exhumation;
 - any fees due to Gravesham Borough Council in respect of the exhumation be paid in advance;

any conditions imposed by the environmental health department of the local authority be complied with;

upon exhumation the remains be cremated as soon as possible, in or after a Christian ceremony;

thereafter, the cremated remains, with all due care, be taken to Senerchia Cemetery, Campagnia, Italy, and be duly interred there in or after a Christian ceremony.

31. I direct that that a Faculty is to issue, as sought, but with the conditions set out in paragraph 30 above attached.
32. I further direct that the petitioner do pay the Court costs, including correspondence fees for the Registrar, and expenses incurred by the Court.

John Gallagher

Chancellor

25th January 2017