

IN THE CONSISTORY COURT OF THE DIOCESE OF ROCHESTER

IN THE MATTER OF: GRAVESEND CEMETERY

**AND IN THE MATTER OF THE PROPOSED EXHUMATION OF
ALBERT LEONARD TUCKERMAN, DECEASED**

J U D G M E N T

1. By a petition dated 24th September 2019, and presented on 27th September 2019, the petitioners, Mrs June Pauline Everest, and her husband, Mr John Edward Everest, apply to exhume the cremated remains of Albert Leonard Tuckerman, the late father of Mrs Everest, who died in 1982, aged 63 years. The petitioners seek to exhume the cremated remains of Mr Tuckerman from the consecrated part of Gravesend Cemetery, and, if so permitted, intend to scatter the remains in the Thames View Crematorium along with the cremated remains of his late wife, who has recently died.
2. On 10th October 2019, I gave directions, and indicated that provided that the petitioners agreed in writing to such a course being taken, I was prepared to deal with the petition on written submissions. By letter dated 16th October 2019 the petitioners indicated their agreement to what was suggested, and further stated that; “We will not have any further information [for the Court] to take into account.” This must have been in response to the preamble to my directions when I noted that the petitioners had made no attempt to deal with the matters raised in the Registrar’s letter of 1st October 2019. I will have more to say about this below. Having reconsidered the matter, I am of the view that it is expedient and appropriate for me to deal with the petition on written submissions.
3. Mr Tuckerman died after a heart attack. On 20th December 1982, his cremated remains were interred in Gravesend Cemetery. I have no evidence before me why, or on whose instructions it was that he was cremated, ie whether he had left directions in a will, or had expressed his wishes to his family before he died; nor do I know whether there was any conversation between him and his wife as to what she wanted after her death.

4. I have a letter before me, dated 29th August 2019, from TS Horlock & Son Ltd, whom I take to have been the funeral directors at the time of the funeral. This indicates that the petitioners believe Mr Tuckerman's ashes to have been interred in an aluminium urn. However, the author of the letter cannot confirm this because the funeral directors are now under different ownership and/or control.
5. I have a further letter before me, dated 24th September 2019, from Gravesham Borough Council consenting to the proposed exhumation, together with written confirmation from the Thames View Crematorium & Cemetery authorities that they are willing to accept the exhumed ashes of the late Mr Tuckerman.
6. The petitioners have given their reasons for seeking the exhumation of the cremated remains of the late Mr Tuckerman in paragraph 12 of the petition as follows; "Upon death, my mother, Irene, wished to be reunited with her husband Albert Leonard Tuckerman. She did not want to be buried as she suffered with claustrophobia. She wanted her ashes scattered with her husband's ashes in the open air. If permission is not granted Mum will be on her own which she would not have liked. This would leave us in turmoil as we would not know what to do with her ashes." There is no further evidence before me beyond that which I have set out above.
7. The Registrar, upon receipt of the petition, wrote the letter referred to above, dated 1st October 2019 to the petitioners. In it he set out, at some length, the principles upon which the Consistory Court acts when dealing with petitions to exhume. Because the petitioners had failed to deal the issues raised by the Registrar, I gave the preamble to my directions order. Unfortunately, the petitioners have not sought to address those issues.
8. I am wholly satisfied that there has been no sort of mistake here, nor is such suggested. Moreover, there is nothing at all to indicate that the late Mr and Mrs Tuckerman discussed having their ashes jointly scattered "in the open air." There is nothing at all about what the late Mr Tuckerman's wishes might have been. I am bound to say that even if there was, it is highly unlikely that such would cause me to change my decision. That said, the absence of evidence about the late Mr Tuckerman's views undoubtedly reinforces what I have to say below.
9. There are no medical reasons advanced to support the petition.

10. It is clear that the petitioners feel strongly about the course they are pursuing, albeit that they have not taken up the option fully to engage in the legal process. I emphasise that I have no reason at all to question their sincerity. That said, the principles which I have to apply when dealing with an application for an exhumation from consecrated ground, are well known (and were adverted to by the Registrar in his letter of 1st October 2019), having been laid down by the Court of Arches in **Re Blagdon Cemetery 2002 Fam 299**. They are the same whether the Court is concerned with the potential exhumation of mortal or of cremated remains.
11. 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 considering whether to exercise the discretion. The presumption arises from the ancient Christian theological 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.
12. Thus, it is that the Court can only depart from the principle of permanence if the petitioners, on whom the burden of proof lies, can establish, on balance of probabilities, special circumstances to allow an exception to that principle.
13. 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. These include medical reasons, which do not apply here; lapse of time, mistake, precedent, and the desirability of encouraging family graves. 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 exhaustive. They are guidelines rather than tramlines as to how the Court should exercise its discretion.
14. I have said that medical reasons do not arise here, nor has there been any sort of mistake.
15. The question of a family grave does not arise in the present case, and so I have no need to address it.
16. There has been very substantial delay, and whilst it was made clear in **Blagdon** (supra) that this is not automatically fatal to the prospects of success of a petition, in the present case I consider the delay, of itself, to be decisive. The cremated remains of the late Mr Tuckerman were interred in 1982, nearly 37 years ago, and there is no suggestion that

there has been any attempt by the present petitioners, or by the late Mrs Tuckerman in the intervening years to do anything about the situation, nor, I may add, is there positive evidence about the likely state of the cremated remains.

17. Precedent, in my judgement, is of importance here. I have set out the principles on which the Court acts, and whilst it may be true that over time, a slightly more permissive approach has been adopted by the Courts in exercising discretion towards exhumation, nevertheless the law is clear and has to be applied. Allowing an exhumation on the instant facts would be to risk setting an undesirable precedent. Indeed, thereafter there would be problems in the extreme in disallowing any exhumation.
18. I am bound to say that the impression I have gained from reading the petition and surrounding papers, such as they are, is that the petitioners are trying to do what they think the late Mrs Tuckerman might have wanted. Laudable and indeed understandable though that might be, the petitioners have failed to demonstrate that they have considered, let alone taken into account, what the late Mr Tuckerman's views might have been, and have further failed to consider or engage with the legal tests to be applied and to be complied with, despite having been given two opportunities to do so.
19. Accordingly, and for the reasons set out above, I refuse the prayer in the petition. The petitioners have not discharged the burden on them to show that there are exceptional or special circumstances in this case so as to justify the exhumation of the cremated remains of the late Mr Tuckerman.
20. The petitioners must pay the Registry and Court costs of and incidental to the petition, in the usual way. There shall be a correspondence fee to the Registrar as I direct.

John Gallagher
Chancellor
30th October 2019