

IN THE CONSISTORY COURT OF THE DIOCESE OF ROCHESTER

Re: Greatness Park Cemetery

J U D G M E N T

1. By a petition filed on 27th March 2017, the petitioners, Alison Riley O'Hara, and Janine Riley Barber, apply to exhume the cremated remains of their late father, Martin Charles John Barber from plot 3471 in Greatness Park Cemetery, Sevenoaks, Kent, and to reinter them in plot 3451 which contains the buried mortal remains of the latter's late wife, Ada Barbara Barber.
2. Mr Barber died on 23rd April 2006. He was cremated in accordance with his instructions and/or wishes, and his cremated remains were interred in plot 3471 in Greatness Cemetery. This was, and is, consecrated ground. I assume from the content of the letter from Mr Cave dated 16th March 2017 that the ashes were contained in a wooden casket.
3. Mrs Barber, after the death of her husband, purchased grave plot 3471 in February 2007. Shortly thereafter the ashes of the late Mr Barber were interred in that grave plot. Mr and Mrs Barber had lived in Sevenoaks since 1957, and were involved there in both community and church life. Mrs Barber, who wished in due course for her mortal remains to be buried beside or with the cremated remains of her late husband, purchased the grave plot with the intention that it should be in the nature of a family grave. Mrs Barber died on 14th February 2017. Prior to her death, she had caused to be erected a headstone commemorating the life of her late husband. I have seen a photograph of the stone, and it is clear that space was deliberately left for details of Mrs Barber's life to be recorded when the time came. Evidence to this effect is contained in the detailed statement accompanying the letter of 19th July 2017 from Mrs O'Hara. I have no hesitation in accepting it. No one was aware of any problems regarding the grave plot until after Mrs Barber had died.
4. Unfortunately, whilst the funeral arrangements were being made, it transpired that Mr Barber's ashes had been interred at a depth of 2 feet, and so Mrs Barber's remains could not be buried without disturbing those ashes. The petitioners tell me, and I accept, that they first became

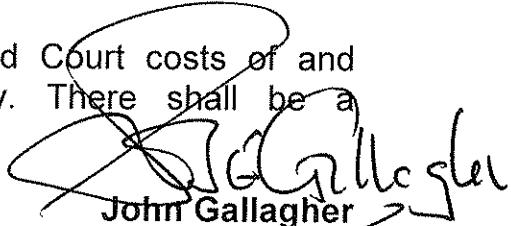
aware that something was wrong when they were told by the retained funeral directors that they should speak to the Cemetery Manager. This they did, to learn what I have recited above.

5. Faced with a situation which was not of their making, and which could not be resolved on the spot, the petitioners, who were also the executors of the estate of their late mother, took the only real course open to them; they purchased another grave plot in the Cemetery, number 3451, and had the mortal remains of their mother buried therein. That plot is also consecrated ground, and on the plan before me can be seen to be close to plot 3471.
6. Mr Cave, the Open Spaces and Cemetery Manager of Sevenoaks Town Council, in his letter of 16th March 2017, has written; "Sevenoaks Town Council have no objection to allowing the exhumation and reinternment (sic) of Mr Barber's ashes and would assist and undertake the exhumation in a dignified and discrete manner transferring the ashes to a new wood casket to aid their transfer to the new plot 3451."
7. Mr and Mrs Barber, as I have indicated above lived together as man and wife in Sevenoaks for many years. I accept that the intention and expectation of Mrs Barber was that she should be buried in the same grave plot that held the ashes of her late husband. In order to ensure that this occurred Mrs Barber purchased grave plot 3471; had her late husband's ashes interred therein; and caused to be erected a headstone, which had space for the commemoration of her life to be added in due course. I am told that none of the immediate family were aware of the need to ensure that the cremated remains were interred at a greater depth if there was intended to be a subsequent burial, and that no one mentioned the matter to them. It is thought that the late Mrs Barber was equally unaware, because, so I am told, and accept, she was a well organised individual who would have sought to resolve the problem had she known about it. She gave to her daughter, Miss Barber, the paperwork relating to the grave plot 3471, together with a copy of the Cemetery's Rules and Regulations which are silent about the matter in question.
8. Thus, I find that, as I have stated above, the problems that have arisen cannot in any way, shape, or form, be laid at the door of the late Mrs Barber or of any of her family.
9. What is clear from reading the various letters sent to me by members of the family, is that none of them objects to the petition. Quite the reverse is the case, each and every one of them supports what is being sought to be done.

10. On 19th May 2017 I gave directions, and indicated that I was prepared to deal with the petition on written submissions provided that all parties concerned agreed in writing to my doing so. The relevant consent has been sent to the Registrar by letter dated 5th July 2017. Having reconsidered the matter, I am of the view that it is expedient and appropriate to deal with the petition in this way, and I am satisfied that this is the proper course to adopt.
11. 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.
12. 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 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.
13. 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 special circumstances to allow an exception to that principle.
14. 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, on this issue I would merely observe that the petitioners have acted as speedily as they could, and that any lapse of time is not due to any neglect or default on their parts or on that of their late mother; 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 exclusive. They are guidelines rather than tramlines as to how the Court should exercise its discretion.
15. In my judgment mistake has occurred here. In the first place the mistake was on the part of the Cemetery authorities for failing to make clear that a later burial would not be possible in plot 3471 after the interment of the ashes of Mr Barber at about a depth of 2 feet. The Rules and Regulations are silent about the matter, and the authorities should have been alert to the fact that the widow of a recently deceased 83 year old was likely to want to be buried in the same plot as her husband when her time came. Accordingly, I find that there has been a mistake on the

part of the administration, not perhaps as in the case where a burial or interment has taken place in the wrong grave plot, but nevertheless one of sufficient gravity as to enable the petitioners to discharge the burden of proof that lies on them. That mistake, I am satisfied, was compounded in that the late Mrs Barber was under the impression to the end of her life that she had made appropriate arrangements to ensure that her mortal remains would be laid to rest in the same grave plot as contained her late husband's ashes, and that that plot would be in the nature of a family grave. I am further satisfied that the petitioners and/or executors faced with the problem that had arisen at short notice, and which, as I have found, was not of their or their mother's making, took the only practical course open to them, namely they purchased another grave plot, and caused their mother's mortal remains to be buried in a plot as close as possible to that in which her husband's ashes were interred.

16. In these very particular circumstances I am satisfied that this is a case where I can take an exceptional course, and authorise the exhumation of the cremated remains of the late Mr Barber so that they may be reinterred in the grave plot where the mortal remains of his more recently deceased wife have been interred. I further direct that the headstone may also be moved to plot 3451.
17. Accordingly, I direct that a Faculty is to issue as sought, but with the following conditions, namely that;
 - (1) The exhumation be carried out reverently and discretely, and in a dignified manner.
 - (2) The reinterment be in plot 3451 in Greatness Park Cemetery
 - (2) The undertaker can recover the casket and the ashes sufficiently for the exhumation to be effective.
 - (3) Any conditions imposed by the environmental health department are complied with.
 - (4) 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
14th August 2017