

IN THE CONSISTORY COURT OF THE DIOCESE OF COVENTRY

IN THE MATTER OF KENILWORTH CEMETERY

PETITION OF LYN CAREY

RE: THE CREMATED REMAINS OF ALBERT CHRIMES

JUDGMENT

- 1) The late Albert Chrimes died on 20th October 2005 and on 4th November 2005 a casket containing his cremated remains was interred in the consecrated portion of the Kenilworth Cemetery, Oaks Road, Kenilworth. In April 2017 his widow, Joan Chrimes, died. Their daughter, Lyn Carey, petitions for the exhumation of the remains of Mr. Chrimes with a view to their reinterment in a different plot in that cemetery and for the remains of Mrs. Chrimes to be interred in the same plot. This petition is supported by Mrs. Carey's sisters who are the only other children of Mr. and Mrs. Chrimes.
- 2) It would be possible for the remains of Mrs. Chrimes to be interred in the plot currently containing those of her husband. However, in the period following her husband's death Mrs. Chrimes came to regret the decision which had been made as to the particular plot in which the remains of Albert Chrimes had been interred. This was because of difficulties of access to that plot. The section of the cemetery containing the grave of Mr. Chrimes contains a large number of other graves. The memorials are close together and there is no footpath in close proximity to the grave. This means that access to the grave is difficult particularly for those with a degree of impairment of their movement. Thus I am told that the need for Mrs. Chrimes to use a walking frame meant that she was not able to visit her husband's grave because of the lack of space between memorials.
- 3) As a consequence of her unhappiness about the access to the plot where her husband's remains were, Mrs. Chrimes explained to her daughters that she wished her remains to be interred in a different part of the cemetery. Mrs. Chrimes expressed the hope that her husband's remains could be exhumed and reinterred in the same plot as hers. This would have the effect that, in Mrs. Carey's words, they could be "together in a more organised well laid out area".

- 4) I gave directions on 30th July 2017. In those directions I set out my conclusion that it would be expedient for this matter to be determined on the basis of written representations. I invited the Petitioner to confirm her consent or otherwise to that course. I also explained in short terms that exhumation is an exceptional course. I said that the material then before me did not appear to justify exhumation and gave directions for the making of further representations.
- 5) There was no response from the Petitioner to those directions. Following chasing by the Registry there was a response from Pam Chilvers, the Bereavement Services Manager of Warwick District Council. Miss Chilvers had helpfully liaised with Mrs. Carey and explained her position. Miss Chilvers explained that Mrs. Carey did not wish to make any further submissions. Miss Chilvers said that Mrs. Carey and her sisters believed that they had done as much as they could to fulfil their mother's wishes and that they were "resigned" to receiving the decision of the court which they anticipated might well be a refusal. Miss Chilvers also explained that if the Petition were to be refused the Petitioner and her sisters would be in the position of having to make an unfortunate choice. One course would be to inter Mrs. Chrimes's remains in that part of the cemetery for which she had expressed a preference. This would have the consequence that her remains and those of her husband would be in different parts of the cemetery. The other course would be to inter Mrs. Chrimes's remains in the same grave as those of her husband even though she had said that she did not want her remains to be in that plot.
- 6) I have concluded that the correspondence from Miss Chilvers can and should be regarded as the Petitioner's agreement in writing to determination on the basis of written representations. The response was in writing. It was apparent that Miss Chilvers had liaised with the Petitioner and that she was putting forward the points which the Petitioner wished raised. Although the correspondence from Miss Chilvers did not expressly state that the Petitioner was consenting to the written representations procedure it did state that the Petitioner did not wish to make any further submissions and that she was content to receive the judgment of the court. In the circumstances that amounted to an agreement to the written representations procedure.

The Applicable Principles.

The approach which I am to take in considering this Petition was laid down by the Court of Arches in *Re Blagdon Cemetery* [2002] Fam 299.

I have a discretion but the starting point in exercising that discretion is the presumption of the permanence of Christian burial. That presumption flows from the theological understanding 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.

It must always be exceptional for exhumation to be allowed and the Consistory Court must determine whether there are special circumstances justifying the taking of that exceptional course in the particular case (the burden of establishing the existence of such circumstances being on the petitioner in the particular case).

In my judgment the kernel of the approach laid down in *Re Blagdon Cemetery* is found at paragraph 35 where the Court of Arches said:

“... We consider that it should always be made clear that it is for the petitioner to satisfy the consistory court that there are special circumstances in his/her case which justify the making of an exception from the norm that Christian burial ... is final. It will then be for the chancellor to decide whether the petitioner has so satisfied him/her.”

- 7) The Court in *Blagdon* identified a number of matters which are capable of being special circumstances. Those include instances where there was a mistake at the time of the initial interment and those where the purpose of the exhumation is to reinter remains in a family grave. In considering whether such circumstances exist a chancellor must take care to distinguish between cases of mistakes which occurred at the time of interment and those where there has been a subsequent change of mind. The fact that the relatives of a deceased person have subsequently changed their minds as to the appropriate location for interment does not mean that there was a mistake at the time of interment. Similarly, the Court must be vigilant to distinguish between cases where exhumation is genuinely sought to move remains to a family grave and those where this explanation is used to justify an exhumation which is, in truth, sought for other

reasons. In that regard it is relevant to consider whether the interment together of the remains of family members can be achieved at the site of the current interment. Even where matters which are potentially special circumstances exist it is for the Court to decide whether on the facts of any particular case the exceptional course of exhumation is justified.

Assessment in this Case.

- 8) I have concluded that this is not a case where there are special circumstances justifying exhumation. I wholly accept that Mrs. Chrimes genuinely came to regret the choice of the plot in which her husband's remains were interred. I also accept that Mrs. Chrimes expressed a wish that her remains should be interred in a different part of the cemetery and those of her husband exhumed to join her. Her daughters are commendably seeking to give effect to that desire. Nonetheless, this case is not one where there was a mistake at the time of the original interment. Instead it is one where Mrs. Chrimes changed her mind over the course of time as to the appropriateness of the original plot. That is not something which can amount to a special circumstance justifying exhumation. This is particularly so in a case such as the present where it is possible for the remains of Mrs. Chrimes to be placed in the original plot with the effect that her remains and those of her husband will be in the same grave. If during her lifetime Mrs. Chrimes had petitioned seeking exhumation of her husband's remains on the basis that she had come to believe that a different plot was a better resting place for those remains and for her own in due course such a petition would almost certainly have failed. The fact that the petition has been brought after the death of Mrs. Chrimes by her daughter cannot alter the underlying conclusion that there are no special circumstances such as to justify exhumation in this case.
- 9) It follows that the petition must be refused.

STEPHEN EYRE
HIS HONOUR JUDGE EYRE QC
CHANCELLOR
26th September 2017