

IN THE CONSISTORY COURT OF THE DIOCESE OF LICHFIELD

LILLESHALL: ST MICHAEL AND ALL ANGELS

RE: THE REMAINS OF Dr ERNESTO PANIAGUA

JUDGMENT

1. Ms Rachel Paniagua petitioned on 31st March 2024 for the exhumation of the mortal remains of her father, Dr Ernesto Paniagua (“the Deceased”) from the churchyard of St Michael and All Angels, Lilleshall. He had been interred on 3rd April 2012. Ms Paniagua wishes to have the remains cremated, flown to El Salvador and re-interred in the family plot at St. Isabel Cemetery (a consecrated Roman Catholic cemetery serving the town of Santa Ana).
2. For the purposes of the exhumation, Ms Paniagua has liaised with L. Tranter and Son Funeral Directors. The Funeral Directors were responsible for the original interment and know well the ground conditions of the churchyard. The grave lies between others and is marked by a flat granite memorial. The Funeral Directors have written indicating that they are satisfied that they can exhume the remains without adversely affecting any neighbouring memorials or graves. An exhumation will not be simple, but can be carried out appropriately.
3. By letter of 2nd April 2024, Telford & Wrekin Council (the relevant local burial authority for the churchyard) confirmed that its Health Protection Department had checked the contaminated land records and undertaken a site visit. The Council conclude that there are no public health concerns, so long as the exhumation is carried out properly, as proposed by the Funeral Directors.
4. Ms Paniagua has obtained the support of the other immediate members of the Deceased’s family, particularly Dr Hilary Catherine Critcher, the widow of the Deceased, and, Mauricio Roberto Paniagua Berganza, surviving brother of the Deceased.
5. Ms Paniagua gave her signed consent for the petition to be decided on written representations on 31st March 2024.

PAROCHIAL CHURCH COUNCIL CONSIDERATION

6. The Parochial Church Council (“the PCC”) met on 11th March 2024 and resolved against exhumation by a majority of members, six to five (the latter comprising three abstentions and two supporting the petition). The PCC considered the petition carefully and discussed the following matters: whether it is right – including theologically – to exhume a body which has been laid to rest and is under the protection of the church; the burial having taken place a significant time ago in 2012, and the consequences of lapse of time for exhumation; the risk of setting a precedent for future requests; sympathy for the family; and the dependence on evidence from the UK perspective. In discussing these points a major concern was that the Deceased is at peace and has been for a considerable number of years.

THE EVIDENCE IN SUPPORT

7. Ms Paniagua has provided a full statement in support of her petition. She also, at my direction, provided additional biographical details.
8. The Deceased was born on 24th January 1945 in the town of Santa Ana in El Salvador. He was one of four brothers and had a large extended family. He excelled in his studies and qualified as a doctor; operating a clinic in his home town, which has continued with several family members entering the medical profession. In 1974 the Deceased was offered a placement in New Cross hospital in Wolverhampton and, seeing it as an opportunity to further his medical career, he came to the UK. It was a temporary contract, and the plan had always been for him to return to El Salvador, but then he met his future, British wife. In 1976 they travelled to El Salvador together, with a view to settling there, but visa difficulties precluded this and they returned to Britain. In the late 1980s another attempt was made to return, but civil war made this unsustainable. In 1991, the Deceased began working at Wordsley Hospital, and was employed there as a Gynaecologist and Obstetrician until his final illness meant that he could no longer continue. For many of these years he made regular visits to El Salvador.
9. Ms Paniagua states that it was always her father’s wish to return home to El Salvador. He spoke about it often, and in his final diary entry he wrote, “*necesito tranquilidad y eso solo lo voy a obtener en mi pais*” (which she translates as “I need peace, and I can only obtain that in my country”). Ms Paniagua states that she believes it was a mistake for her father to be buried in the churchyard at St Michael and All Angels, Lilleshall. He had no particular connection with the community there. He was raised a Roman Catholic and was not a member of the Church of England.
10. Why then the delay for 12 years before this petition was made?

11. Ms Paniagua states: “It has always been my intention to seek to exhume and repatriate his remains as soon as I was able to, but circumstances have hitherto prevented me from doing so. My first child was born not long after his death, and my second soon after, and I was not able to manage the necessary arrangements with two small children to look after. Subsequently, the COVID19 pandemic prevented travel – El Salvador had some of the most restrictive lockdown measures in the world.” Cost was also a factor, but funds are now available. Ms Paniagua made enquiries and discovered that the Deceased was buried in consecrated ground. She had previously been unaware of the legal significance.
12. At this point in her evidence, Ms Paniagua becomes very expressive: “I know that his soul would not be at rest in one of its churchyards; it was not his church, and it is not where he would have wanted to be.” She justified this by reference to his wider family in El Salvador and suggests that “in Latin culture [family] is arguably the centre of one’s sense of identity.” Ms Paniagua is the Deceased’s only “blood relative” in the UK, whereas his family in El Salvador is extensive. She anticipates his repatriation as a significant family event. The family is “eager to have him back with them also, to be able to pay their respects and to tend his grave accordingly. Honouring the dead is a central part of Latin American culture, and physical graves are an important part of this, as a site for paying respects and of familial congregation, particularly during the Day of the Dead, and other religious festivals. Graveyards are an important site of family unity in El Salvador.”
13. In respect of the intended burial, in 1958 the Deceased’s father and his two aunts purchased a plot in perpetuity in St. Isabel cemetery as a final resting place for their and future generations of the Paniagua family. All three were buried there, and brothers and a nephew of the Deceased. There is a space for him also, as has been confirmed by letter from Mr Vides, head of cemetery and funeral services there, dated 19th February 2024.
14. I directed that inquiries be made of Ms Critcher, the widow of the Deceased. She had indicated her consent in writing on 18th February 2024, but without comment. She responded by email of 16th April 2024, confirming the family history of attempts to move to El Salvador. She also enlarged slightly on events in 2012: “I chose Lilleshall church as the place for his burial because it was close to where we lived at the time of his death, making arrangements easier, and it is near to where I grew up, so has an emotional connection for me. It is correct that it had no such connection for Ernesto. I knew that Ernesto would have wanted to be buried in El Salvador, but this was not something that I was able to arrange for him at the time ... I know of no reason for Ernesto's remains to stay in the UK and strongly support the exhumation. It is what Ernesto would

have wanted and I know that it would bring great comfort to Rachel, and the family.”

15. Ms Critcher remarried in 2016 and has now chosen that her ashes should, in due course, be interred with those of her husband. The grave of the Deceased will not become a family grave.

THE RELEVANT LAW CONSIDERED

16. 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 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. Exhumation is to be exceptional 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 case in question). I note that the PCC had regard to the presumption (and theology) of permanence of burial. Ms Paniagua impliedly accepts the same by focusing on special circumstances.

17. The Court of the Arches in Re Blagdon identified various factors which may support a submission that special circumstances have arisen which permit the remains to be exhumed. These factors are:

- (i) medical reasons.

18. There are no such reasons advanced in this case.

- (ii) lapse of time.

19. The Court held that the passage of a substantial period of time before an application for exhumation was made could not be determinative of the application in itself. It would be a factor, however, in assessing the genuineness of the Petitioners case and long delays without credible explanation may well “tip the balance” against the grant of a faculty.

20. The PCC were plainly concerned at the passage of time as a factor in its own right, but Ms Paniagua has directed me to the case of Re Spalding Cemetery (Consecrated Area) [2023] ECC Lin 3 where Mark Bishop Ch did not consider 10 years excessive in a context with similarities to the current one (and reinterment in Poland). Longer periods have also been arisen between interment and exhumation (for example, from 1978 to 2016 in Re Mortlake Cemetery [2016] ECC Swk 6 and over 50 years in Re St James's Churchyard, Hampton Hill (1982) 4 Consistory and Commissary Court Cases, 25, referred to in Re Blagdon). As noted

from Re Blagdon, lapse of time is not determinative and as other cases show, the period in question is not exceptionally long. The Funeral Directors are not of the view that there is any practical impediment.

21. In this case I am entirely satisfied on the evidence that the petition is made in good faith and for genuinely held reasons. The delay, though significant, has been appropriately explained.

(iii) mistake.

22. Where there has been a simple error in administration, such as burial in the wrong grave, the Court held that faculties for exhumations could readily be granted. Of more difficulty is where there is a failure to understand or appreciate the significance of burial in consecrated ground.

23. There has been no mistake in the burial place, or the status of the churchyard, here: specific Christian denomination was known at the time and does not appear to be a serious factor militating towards exhumation in this case. The choice of burial location was intentional at the time, but the context of the Deceased's desire to return to his homeland in life to some extent qualifies that intentionality on the part of the family. There were substantial elements of force of circumstances. The burial location may not have been a mistake at the time of interment, which is when the operative mistake should arise, but it was inconsistent with the wishes of the Deceased.

(iv) precedent.

24. The Court held that consideration of the effect of precedent by the grant of the application is properly made because of the desirability of securing equality of treatment, so far as circumstances permit, between petitioners.

25. I take this issue into account, especially given the concerns of the PCC that an exhumation may start a trend. The principle of exhumation being exceptional offers protection in this regard, but cannot be decisive in all circumstances.

(v) family grave

26. The Court held that the use of family graves is to be encouraged because they both express family unity and they are environmentally friendly in demonstrating an economical use of the land for burials. As a factor it is not decisive, but it is important. This is the basis of Ms Paniagua's application (as it was in the case of Re Spalding Cemetery to which she referred). She wishes to inter the Deceased's remains with those of his family in a grave in El Salvador. She has compellingly outlined the familial, social and cultural importance of honouring such a family grave. She has also explained why that was not done in 2012.

CONCLUSION

27. I will grant the faculty sought by Ms Paniagua.

28. I do not consider that the list of exceptional circumstances set out in Re Blagdon is closed and, even were I to be wrong in this, I consider that the desire of Ms Paniagua to inter the Deceased's ashes in the family grave in El Salvador is a matter within the scope of exceptions identified in that decision. The circumstances are unusual in terms of international repatriation of remains, and I do not consider that a faculty granted in this case would set a precedent in future. In particular, I note that this is not a case of a petition to make visiting a grave merely more convenient (quite the opposite for Ms Paniagua), but reflects the honouring of a family grave in its full cultural context. Nor is this a decision made, or to be made, on the basis of sympathy with the family of the Deceased (although, like the PCC, I am sympathetic to them). It is important to have regard to force of circumstances having over-ridden the wishes of the Deceased and, indeed, having caused delay in bringing this matter to the Consistory Court. Force of circumstances is not the same as an operative, decisive mistake being made and now being corrected, but such circumstances can be a factor to be taken into account.

29. I have the greatest of respect for the view of the majority of the PCC. I acknowledge their careful consideration of the material before them, but I consider that the test in Re Blagdon have been met and passed evidentially. Further, the conditions of the Faculty will provide for this to be an orderly and discrete exhumation (the latter encompassing exhumation at an appropriate time, without undue attention being drawn and such shielding of the works as may be possible), and this Court will not permit this case to be a precedent for a generally permissive treatment of applications for exhumation at Lilleshall or elsewhere.

Dr Anthony Verduyn

Chancellor

3rd June 2024