

Neutral Citation number [2016] ECC Swk 6

IN THE CONSISTORY COURT OF THE DIOCESE OF SOUTHWARK

IN THE MATTER OF MORTLAKE CEMETERY

JUDGMENT

1. This is a Petition for the exhumation and reinterment of the body of Lilian Agnes Carvill. The Petitioner is Mrs Carvill's daughter, Lilian May Noble. There are no other close surviving relatives.
2. Mrs Carvill died on 25 June 1978 and was buried in Mortlake Cemetery on 5 July 1978. There are no other interments in the grave.
3. Mortlake Cemetery is owned and managed by the Local Authority, the London Borough of Hammersmith and Fulham. The part of the cemetery where Mrs Carvill is buried is consecrated. Consent to the Petition was given by the Borough by letter dated 30 January 2015.
4. The proposal is for the body to be taken to the United States of America, where Mrs Noble lives, and reinterred in a reserved plot at Rose Hills Memorial Park, 3888 Workman Mill Road, PO Box 110, Whittier, California 90608, USA.
5. In the Petition Form, the reasons for the proposed removal of the body are stated as follows:

"The petitioner is the only surviving relative of the deceased and all her family are residents in USA as is she. One of her three daughters died in 2005 and is buried at Rose Hills Memorial Park. The family have four graves in a row which will allow for them all to be buried together. The petitioner wishes to be buried with her mother but this would mean her remaining daughters and grandchildren being unable to visit her grave if she were buried in Mortlake cemetery. The petitioner is also concerned that she will no longer be able to continue travelling to England due to her own age and the costs involved. The petitioner would like to exhume her mother's remains and transport them to the USA for burial in the grave next to her daughter so she can be close to both when she dies. This will then allow all the remaining family to visit regularly as they all live in the area near the cemetery."
6. After initial consideration of the matter, the Chancellor asked for some more information about family history, the circumstances of the Petitioner and her mother at the date of death, details about the location of the Memorial Park relative to Mrs Noble's home and where Mrs Carvill's remains would have been taken for interment in the US had Mrs Noble been able to afford to have done that in 1978 .

7. Mrs Noble replied in the following terms:

"My mother was born in Kensington on 29/9/1917 (Lilian Agnes Saunders) and after she left school her first job was as an apprentice at a hat design company. As was the norm in those days, she married at 17, a Frederick Charles Hurst and I was born on 23/3/1936. She separated from my father at the end of 1936 and later divorced him. She then married Joseph Carvill in 1953. They too were divorced in 1961, after which she did not remarry. At the time of her death she was living alone at 14 Auckland House, Shepherds Bush. I married an American serviceman when I was 17 and emigrated to America in 1953. When my mother died, I was raising my family of five children and both my husband and I worked, so had no way of affording the cost of bringing her to the States to be buried. As her only next of kin, I came back to Shepherds Bush to arrange for her burial in the 'local authority' cemetery, the nearest of which happens to be Hammersmith [Mortlake]. If I could have afforded the expense of taking my mother back with me to the USA for burial at Rose Hills Cemetery I would have, as this would have allowed me to be buried with my mother and my children. This is why I have applied for the faculty now. I have made as many repeated visits as finances would allow, explicitly to tend to her grave and I also made arrangements with a company called THE PETAL PUSHER, to put flowers on her grave on a monthly basis. I have no other relatives alive so all my trips to London have been specifically to visit my mother's grave. I am and have been settled in Cerritos since 1971 and although Rose Hills Cemetery is 13 miles away, it provides the only adequate cemetery in our area."

8. This reply gave rise to more questions from the Chancellor, focussing on trying to discern the deceased's intentions about her remains after death. Mrs Noble replied to these further questions in writing as follows:

"My mother never gave me any indication whether she wished to be buried or cremated. As she died unexpectedly at the young age of 60, I made that decision at the time of her death based on what I thought she would have wanted. I know that my mother would have wanted to be buried near me and now I have the opportunity through my improved financial situation to arrange for all my family to be buried close to each other. A wish that I'm certain my mother had and that the vast majority of people share. I also know that my mother would not be concerned that her remains will have to be disturbed in order to achieve this."

9. The Petitioner also requested, through the English undertaker Mr Andrew Lodge, who has assisted her throughout the Petition process, the opportunity of addressing the Court in person at a hearing. The Chancellor transferred the Petition to me for determination. Arrangements were duly made at the Registry for a Hearing to be held by telephone conference. The Hearing was "attended" by the Registrar and the Registry Clerk and by the Petitioner in California and Mr Lodge on the telephone in his office. In view of the unopposed nature of the Petition and the unusual form of proceedings, I did not take evidence on oath and the conversation was conducted in an ordered, though relatively informal fashion. I am satisfied that, subject to one matter which I shall describe below, this process enabled me to receive all the evidence which I needed to determine the Petition. It was a cost effective and proportionate means of giving effect to Mrs Noble's right to address the Court in person.
10. I found Mrs Noble to be a careful and clear witness and I accept her evidence as wholly truthful.
11. Mrs Noble confirmed that she had moved to the US in 1953 at the age of seventeen, upon her marriage. Thereafter, she returned to England from time to time as circumstances permitted. By the date of her mother's death Mr and Mrs Noble had five children ranging from the age of five, through the teens, to young adult.

12. Mrs Carvill did not have a telephone, so she and her daughter corresponded by letter on a more or less weekly basis. Mrs Noble had been unaware that her mother, who was aged only sixty at her death, was ill. Mrs Carvill died on a Sunday and Mrs Noble's details were found on a letter which her mother must have received the previous day. Mrs Noble was telephoned at work by Interpol with the news, which came as a terrible shock to her. Apparently Mrs Carvill had collapsed while crossing the road, neighbours had called an ambulance but she was dead on arrival at hospital. The cause of death was myocardial infarction – a heart attack.
13. Mrs Carvill immediately came to England, leaving her husband in America to look after their younger children. When she arrived, she had nobody to turn to for advice and support except the local publican, who put her in touch with an undertaker. There was a service in the chapel at Mortlake Cemetery, but Mrs Carvill never met or received advice or support from a minister of religion. Mr Lodge explained that at this time, the expectation was that bereaved families would follow the recommendation of the undertaker. Nobody explained the theology or law relating to burial to the Petitioner. No other family members attended the funeral. Mrs Noble stated clearly that she had wanted to bring her mother "*home*" to the US, but that it had not been feasible to do so.
14. I enquired about the deceased's beliefs and any wishes relating to the disposal of her mortal remains. She did not leave a will. Apparently she had told her daughter that she did not want to be cremated. Although her children had been baptised, Mrs Carvill was not a churchgoer and she and her daughter never discussed Christianity.
15. Rose Hills Cemetery is not consecrated ground. Mr and Mrs Noble own a family plot of four spaces, one of which is already occupied by their deceased daughter. A letter from the owners of the cemetery confirms that they would be prepared to make the necessary arrangements which would include a Burial Permit from the Los Angeles County authorities.
16. On my enquiring about proposed arrangements for reinterment, Mrs Noble said that she would wish to have a small blessing service. The details had not been thought through at that stage and I therefore asked to receive further information about potential arrangements. After the hearing, a letter was submitted from the Reverend Gary Bradley, Rector of the Church of Our Saviour, San Gabriel, California confirming that a clergy member of the Church's team would officiate at the proposed reinterment.
17. The relevant legal principles were set out by the Court of Arches in the case of In re Blagdon Cemetery [2002] Fam 299. Decisions of the Arches Court are binding on me.
18. In the recent decision In the matter of the Petition of Kathrine Tollis [2016] ECC Oxf2, McGregor Ch summarised the effect of Blagdon and I gratefully adopt his summary, as follows:
 - "12. In Blagdon the Court of Arches held that there was a presumption that Christian burial was permanent, that remains should not be portable, and that a faculty for exhumation would only exceptionally be granted. According to the Court of Arches, "Exceptional means 'forming an exception' (Concise Oxford Dictionary, 8th ed (1990)) and guidelines can assist in identifying various categories of exception. Whether the facts in a particular case warrant a finding that the case is to be treated as an exception is for the chancellor to determine on the balance of probabilities." It is for a petitioner to satisfy the court on the balance of probabilities that there are special circumstances which constitute good and proper reason for making an exception to the norm that Christian burial is final.
 13. The guidelines provided by the Court of Arches can be summarised as follows:
 - a. Advancing years, deteriorating health and moving to a new area are not in themselves adequate reasons for permitting exhumation. Any medical

reasons relied upon by a petitioner have to be very powerful indeed to create an exception to the norm of permanence, for example, serious psychiatric or psychological problems where medical evidence demonstrates a link between that medical condition and the question of location of the grave of a deceased person to whom the petitioner had a special attachment.

- b. The passage of a substantial period of time since burial will not in itself be fatal to a petition, although it might be potentially relevant in assessing the genuineness of the petitioner's case.
- c. Since double and triple graves in which the remains of members of the same family could be buried together were to be encouraged, the bringing together of family members' remains in a single grave can provide special reasons for permitting exhumation despite the lapse of a long period of time since burial. But where no burial had yet occurred in a family grave clear evidence as to the existence of a legal right to such a grave would be required to justify exhumation.
- d. Although mistake as to the location of the grave or, in certain circumstances, as to the significance of burial in consecrated ground could be a good and proper reason, mere change of mind as to the place of burial by those responsible for the interment could not.
- e. Although the views of close relatives were a very significant factor, the amount of local support for the petition would normally be irrelevant.
- f. In view of the desirability of securing equality of treatment between petitioners so far as circumstances permitted, the court has to take into account the impact its decision is likely to have on other similar petitions. The Court of Arches referred to "the desirability of securing equality of treatment, so far as circumstances permit it, as between petitioners." ..."

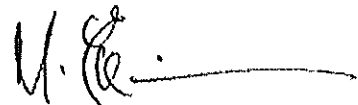
19. I only add that the Court of Arches, having considered the caselaw on the subject, said:

"The variety of wording which has been used in judgments demonstrates the difficulty in identifying appropriate wording for a general test in what is essentially a matter of discretion. 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, that is burial of a body or cremated remains in a consecrated churchyard or consecrated part of a local authority cemetery, is final. It will then be for the chancellor to decide whether the petitioner has so satisfied him/her."

20. On the facts of Mrs Tollis' case, the Chancellor decided that he must refuse her Petition because he was unable to hold that she had demonstrated exceptional circumstances. That decision is not binding on me, though I mention it as an example of the application of Blagdon in practice, particularly bearing in mind Principle (f). There are other Consistory Court decisions in which petitioners succeeded. Each case must be decided on its own facts in the light of the stringent principles laid down in Blagdon.
21. It is possible for a Faculty to be granted in an appropriate case to authorise the removal of a dead body from consecrated to unconsecrated ground and this happened in Blagdon. In Re Talbot [1901] PI, such a removal was authorised by Faculty, the Court pointing out that, since the enactment of s.25 Burial Act 1851, the removal of dead bodies from unconsecrated places has

been under the control of the Secretary of State, therefore the objection to the grant of a Faculty for the removal of remains to unconsecrated ground formerly arising from the absence of adequate protection against their disturbance no longer exists. The Faculty in that case was granted subject to a condition that it should not be acted upon until licence from the Secretary of State had been obtained.

22. Whilst the guidance in Blagdon on particular arguments is valuable, there is no suggestion that the scope of possible exceptions is limited to these categories. The facts of the current Petition do not fall exactly within all or any of the circumstances specifically addressed in Blagdon.
23. The evidence does not disclose any mistake as to burial. Mrs Noble was aware of the decision which she was making and her mother was not buried in Mortlake Cemetery in error. Having said that, I do not think that this can be classed as a case of a mere change of mind. Mrs Noble reached a decision in the absence of any indication from her mother, beyond the fact that she did not wish to be cremated. Her mother's death had come as a complete and severe shock. She had no family support in England, having rushed over alone from the US, leaving her husband to care for their children. Communication in the 1970s was far less straightforward than it is now, so she had to deal with matters without having the chance to talk about them to her husband and adult children, which would doubtless have helped her. She received no informed advice or any form of spiritual counsel about the consequences of burial in consecrated ground and had to rely on strangers to help her negotiate her way through the procedures. Her instinct was that she wanted to bring her mother "home" to the US, but she concluded that it was not feasible to do so. I find that her decision, made in a state of shock, at a time of crisis and without any meaningful support, was not one which was made freely and in an informed fashion, understanding the significance of burial in consecrated ground. She felt compelled by circumstances to do the usual thing and this conclusion is one which has troubled her in the intervening years. These facts are most unusual and, in principle, I find that they are sufficiently exceptional not to cause inequality to other petitioners.
24. The passage of time is a factor to which I must have regard. Mrs Noble is now in a financial position to do as she would have wished in 1978. The intervening years have also deprived her of a daughter and necessitated the establishment of a family plot or area at Rose Hill. Whilst arrangements in the American cemetery do not bring the space-saving advantage alluded to in Blagdon, it is clear that a place of family burial has been established and the necessary reservations made. The passage of time was not regarded by the Court of Arches as fatal to a Petition, rather as a guide to assessing its genuineness. For the reasons set out above, I am persuaded that this is a genuine and exceptional case and I do not regard the long delay since burial as a reason for refusing to exercise my discretion in favour of the Petitioner.
25. I direct that a Faculty to permit the removal of Mrs Carvill's remains be granted, subject to conditions that the necessary licences from the Ministry of Justice and the American authorities are obtained and that there is compliance with any of the requirements of the Borough's Environmental Health Department.



MORAG ELLIS QC

Deputy Chancellor

30 March 2016

