

**IN THE CONSISTORY COURT OF MANCHESTER**

**RE MICHAEL D NILES DECEASED**

**JUDGMENT**

*Introduction*

1. Michael D Niles [‘the Deceased’] died on 23 January 2022 and on 12 April 2022 his remains were interred in grave no F390 of Middleton Cemetery.
2. By her Petition dated 31 May 2022 the Deceased’s daughter Twana M Niles [‘the Petitioner’], who resides in Boston Massachusetts, seeks a faculty to exhume such remains, that they be cremated and sent back to the United States of America [‘USA’] where she and other relatives reside. It is not stated where they will be re-interred.
3. There are no other children of the Deceased.
4. The Deceased’s father, brothers and their children all support this application. I have been shown a very helpful family tree identifying the Deceased’s relatives.
5. For the purpose of this judgment it is not necessary to set out the contents of the very many witness statements, all of which I am satisfied are accurate.
6. Some brief explanation of the background facts is necessary.
7. It appears that the Deceased and his brothers Adrian and Tyrone were each born in the United Kingdom but when Adrian was aged 8 years, they all moved to reside in the USA. I suspect that Adrian was much younger than the Deceased. Probably about 10 years later when Adrian was in his teenage years, the Deceased was deported to the United Kingdom and by that time the Petitioner had been born. So it was that although the Deceased’s family all resided in Boston, Florida and Barbados, the Deceased was living alone in the United Kingdom, the place of his birth.
8. I do not know, and it is irrelevant to know, the precise circumstances which led to the Deceased residing in the United Kingdom but I am satisfied that, in the light of all the circumstances, none of this is material.
9. It seems that some of the Deceased’s relatives, particularly the Petitioner and Adrian, kept in touch with the Deceased and were last in contact with him in about late December 2021.

10. After the Deceased's death I assume that unsuccessful efforts were made to contact his family. I do not know the extent of such efforts but I note that no funeral took place for about 2½ months.

11. On 3 May 2022 the Deceased's father Emerson received a call through a social media platform that the Deceased had died and on the following day contact was made with the Greater Manchester Police Coroner's Office who confirmed that the Deceased had died and had been interred in Middleton Cemetery. The rest of the family were informed and thereafter, Adrian discovered from the manager of the flats in which the Deceased had resided that all of his belongings had been disposed of.

12. The Deceased's remains were interred in a casket made of wood in grave F390. Fortunately, there are no other interments in that grave and given that the burial was only just over two months ago I am satisfied that in principle any exhumation can be carried out without difficulty.

13. Rochdale Borough Council, which is responsible for Middleton Cemetery, consents to any exhumation taking place.

14. Rule 14(1) of the Faculty Jurisdiction Rules 2015, as amended by the Faculty Jurisdiction (Amendment) Rules 2019, provides that I may order that any proceedings should be determined on consideration of written representations instead of at a hearing if I consider it is expedient to do so. Given that the Petitioner and all other members of her family are abroad I have thought it unnecessary to inform the Petitioner that I was minded to determine this application on the basis of written representations as I am sure that she would have readily assented to my adopting such a procedure. Moreover, the conclusion I have reached in relation to this application makes it unnecessary to do so.

15. I thus determine this application on the basis of written representations.

16. I have no doubt that the discovery by the Petitioner and her family of the death of the Deceased and his subsequent interment in England has been very distressing and upsetting for them all. I thus propose to determine this application with all due expedition in order to attempt to mitigate such distress and upset so caused.

*The legal principles to be applied*

17. Having set out the factual background I turn to the legal principles which I must apply.

18. I have a discretion as to whether I should grant a faculty. The starting point for the exercise of such discretion was conveniently explained by Steel Ch in *Re Matheson (Decd)* [1958] 1 WLR 246, at 248, when he stated:

'From the earliest times it has been the natural desire of most men that after death their bodies shall be decently and reverently interred and should remain undisturbed. Burial in consecrated ground secured this natural desire, because no body so buried could lawfully be disturbed except in accordance with a faculty obtained from the church court. As all sorts of circumstances which cannot be foreseen may arise which make it desirable or imperative that a body should be disinterred, I feel that the court should

always be slow to place any fetter on its discretionary power or to hold that such fetter already exists. In my view there is no such fetter, each case must be considered on its merits and the chancellor must decide, as a matter of judicial discretion, whether a particular application should be granted or refused.'

19. However, there is a presumption against exhumation. This derives from the Christian theology of burial that the disposal of the dead, whether by way of burial or cremation, has an aura of permanence about it. So, in *'Theology of Burial'* the then Bishop of Stafford, the Rt Revd Christopher Hill, wrote:

'The permanent burial of the physical body / the burial of cremated remains should be seen as symbolic of our entrusting the person to God for resurrection. We are commending the person to God, saying farewell to them (for their 'journey'), entrusting them in peace for the ultimate destination, with us, in the heavenly Jerusalem. This commending, entrusting, resting in peace does not sit easily with 'portable remains', which suggests the opposite: reclaiming, possession, and restlessness; a holding on to the 'symbol' of a human life rather than a giving back to God. ... In general, therefore, the reluctance to agree to faculties for exhumation is well grounded in Christian theology and eschatology. It is also right generally from the point of view of the mourner, who must learn to let go for their psychological and spiritual health'.

20. This was cited in *In Re Blagdon Cemetery* [2002] 3 WLR 603, at 609: the revised text is at 7 Ecc LJ 447.

21. A similar approach appears in the *Guidance for best practice for treatment of human remains excavated from Christian burial grounds in England* [English Heritage / Church of England 2005] which states:

'In summary, it is central to Christian theology that, after death, the human body ceases to have any significance for the ongoing resurrected spiritual life of the individual. However, following death, the physical remains should be treated with respect and reverence, even though ultimately it is the fate of the soul, rather than of the physical remains, which matters.'

22. Such presumption also exists in English secular law which provides that there is no ownership of human remains, that it is a criminal offence to disturb human remains without lawful permission and that there is no legal right to exhume human remains. Such reflects a secular culture in which the norm is that the remains of a deceased person should not be disturbed once they have undergone the initial act of interment.

23. The question thus arises: in what circumstances should a court allow the disturbance of remains as an exception to such presumption of permanence.

24. In *Re Christ Church Alsager* [1999] 1 All ER 117 the Chancery Court of York concluded, at 122, that when determining an application to grant a faculty for an exhumation the critical question for a Chancellor is -

'Is there a good and proper reason for exhumation that reason being likely to be regarded as acceptable by right thinking members of the Church at large? If there is he should grant faculty. If not, he should not.'

25. In *In Re Blagdon Cemetery* the Arches Court of Canterbury observed that there were practical difficulties associated with the test formulated in *Re Christ Church Alsager* and, at 610, concluded thus:

33. We have concluded that there is much to be said for reverting to the straightforward principle that a faculty for exhumation will only be exceptionally granted. Exceptional means 'forming an exception' (Concise Oxford Dictionary (8<sup>th</sup> edn, 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.

...

35. The variety of wording that 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`.

26. The court went on to consider various factors which may be argued in support of an exhumation, including medical reasons, lapse of time and mistake.

27. The guidance confirmed in *Re Blagdon Cemetery* was confirmed in *In Re St Nicholas Sevenoaks* [2005] 1 WLR 1011.

### *Conclusions*

28. Applying the test in *Re Blagdon Cemetery*, I turn to consider the facts of this case. For me to grant this faculty I must be satisfied that it is established by the Petitioner, on a balance of probabilities, that the facts here justify an exception to the general presumption of the permanence of Christian burial.

29. I am wholly satisfied that there are exceptional circumstances why the general presumption of the permanence of Christian burial should not apply in this case. Had the Petitioner and her family known of the Deceased's death, they would have arranged for him to be cremated here and such cremated remains to be sent to the USA. They believe that such would have been his wish. That they did not know of his death is very unfortunate but in my judgment that should not lead to a conclusion in which the Deceased's mortal remains should continue to be in Middleton Cemetery, a place where in practical terms no one can visit or pay their respects.

30. I have considered whether I should impose a condition that the Deceased's remains having been interred in consecrated ground, they should in due course be re-interred in consecrated ground. I do not impose such a condition as I do not know what, if any, religious beliefs the Deceased had and it may not have been the choice of the Petitioner that such remains

should be interred in consecrated ground. I express the hope that they may be so interred but I do not make it a condition.

**31.** I thus grant the faculty sought for the exhumation of the Deceased at a time directed by the cemetery authority, that the Deceased be cremated and that his cremated remains shall be sent to the USA as the Petitioner directs.

**32.** In accordance with the practice of the court, the Petitioner must pay the court fees incurred in relation to the Petition.

**GEOFFREY TATTERSALL QC**

Chancellor of the Diocese of Manchester

13 June 2022