

Neutral Citation Number: [2024] ECC Nor 5

**IN THE CONSISTORY COURT OF THE DIOCESE OF NORWICH
CASE NUMBER 47/2024**

**RE: ST MARGARETS ORMESBY
IN THE MATTER OF AN APPLICATION FOR THE EXHUMATION AND RE-INTERMENT OF THE
MORTAL REMAINS OF A STILLBORN CHILD**

**ANONYMISED JUDGMENT
DELIVERED ON 20 SEPTEMBER 2024**

1. This is a very sensitive case involving the remains of a stillborn baby, 'Baby A', buried in the churchyard of St Margaret Ormesby over 10 years ago. Baby A was buried in a small blue casket in the grave of his paternal grandfather.
2. Baby A's mother, 'B' has applied for permission to exhume Baby A's remains and either cremate them or rebury them in the churchyard of St Michael Ormesby. The ground relied upon under *Re Blagdon Cemetery* [2002] Fam 299 is the medical harm caused to B when visiting the grave, by way of psychological harm and distress including nightmares and flashbacks to extremely distressing incidents. This is evidenced by a letter from her GP dated 09.09.2024. It is not necessary for me to determine the reasons for the psychological harm suffered by B, or set them out in this judgment. It is sufficient to note that I accept the medical evidence as true and accurate. It shows a clear link between that medical condition suffered by B and the location of the grave of Baby A and therefore is capable of providing grounds to make an exception to the presumption of permanence of Christian burial as set out in *Re Blagdon Cemetery*.
3. Baby A's father, 'C', was a joint applicant for this petition, perhaps surprisingly as B and C separated many years ago. B and C themselves describe their former relationship as respectively 'abusive' and 'toxic'. In those circumstances the former Chancellor directed that the Registry make contact with C to confirm he did indeed consent to this application. That has now been done and he has confirmed his consent, subject to knowing where Baby A is to be reburied.
4. B is unhappy that C will know where Baby A is to be reburied. However, not only does C have a right to know where his child is buried, the record of burials in a churchyard is public information. This is not information that can be kept secret from anyone.

Furthermore, this judgment is a public decision, that will be reported, hence the anonymisation of the parties involved. As a joint applicant C is entitled to a copy of it. As a joint applicant C would be aware that St Michael's Ormesby was the proposed location for the reburial of the remains of Baby A (if the request to cremate was not permitted).

5. This application comes now, because C's mother has recently died, and C and his brother wish to bury their mother's remains in the grave presently containing the remains of their father and Baby A. They have delayed doing so until this petition was resolved, so that, if approved, Baby's A's remains may be removed when the grave is opened in advance of the interment of the remains of C's mother.
6. B has asked for Baby A's remains, once exhumed, to be cremated and a service of remembrance held. She does not indicate what she would plan to do with the cremated remains thereafter and the implication is that they would not be reburied anywhere but rather retained by B. In the alternative the petition asks for reburial at St Michael's Churchyard.
7. In my view the law does not permit these remains, that were buried in consecrated ground over 10 years ago to now be cremated and then left unburied. Burial of human remains in consecrated grounds carries an intention of permanence. Exhumation is the exception. Generally, reburial of those remains in other consecrated ground is required so that permanence is also intended in the new location. Only rarely is exhumation permitted for reburial in un-consecrated ground. But reburial somewhere is almost always required. There is nothing in the circumstances of the case to suggest reburial is not appropriate. Here, that is suggested by B as one of two alternatives. It is also clear that that is the alternative not only preferred by C, but an implied condition of his consent to the exhumation on the basis of knowing where Baby A is reburied.
8. Consent of relevant parties is the other important factor in this case, under the test set out in *Re Blagdon Cemetery*. The consent of all relevant parties does not alone provide grounds to make an exhumation lawful – other substantive grounds must be proven. But if there are relevant parties that do not consent, that would be a reason to refuse the petition. Here B, C and Baby A's other living relatives do consent. C's consent, as set out above, is conditional upon knowing where Baby A is to be reburied. However, even if C had consented to the cremation, I would not have permitted it. Under the law as it presently stands, reburial in consecrated ground is required in the circumstances of this case.
9. Therefore, whilst I will grant this petition, I will require Baby A's remains to be reburied in St Michael's Church Ormesby at the direction of the minister of that church. This will form part of the conditions of granting a petition for the exhumation. The Rev'd Jo Wood is the Team Rector of both St Michael's and St Margaret's. She has discussed

this petition with both PCCs who consent to it, with some members also expressing the desirability of reburial immediately in consecrated ground.

10. Nothing in this judgment prevents B (or C for that matter) holding a form of memorial service for Baby A, at the time of reburial or afterwards although a joint one for both sides of the family together is clearly not appropriate. If any such memorial service takes place at St Michael's, it must be under the direction of the minister in the usual way.

11. I therefore grant this petition subject to the following conditions:

- a. The undertakers Arthur Jary and Sons Ltd of 213-214 Northgate Street, Great Yarmouth shall exhume the remains of Baby A from the grave of Baby A's paternal grandfather and retain those remains in their possession at all times until they are reburied in the churchyard of St Michael's Church Ormesby.
- b. Arthur Jary and Sons shall liaise with those responsible for the opening the grave of Baby A's grandfather at St Margaret's Church Ormesby to remove the remains of Baby A prior to the burial of the remains of Baby A's paternal grandmother.
- c. The remains of Baby A shall be reverently and discretely reburied in the churchyard of St Michael Ormesby at the direction of the minister of that church as soon as practicable after they have been exhumed.
- d. Any application for a memorial to Baby A to be erected over the grave of Baby A in St Michael's Ormesby must **either**:
 - i. Be compliant with the relevant Churchyard regulations AND have the consent of both B and C; **or**
 - ii. Be subject to a faculty application to this court.

**THE WORSHIPFUL JACQUELINE HUMPHREYS
CHANCELLOR OF THE DIOCESE NORWICH
20 SEPTEMBER 2024**