

In re Rowner St Mary the Virgin

And in re Valerie Jean Haine, deceased

His Honour Philip Waller CBE, Chancellor

20 December 2021

## JUDGMENT

### Introduction

1. By a petition dated 31 August Mrs Wendy Dearlove seeks the approval of the court for the exhumation of the cremated remains of her late mother, Valerie Jean Haine, from their present place of rest in the churchyard of St Mary the Virgin, Rowner, for the purpose of re-interment in another grave in the same churchyard where the remains of her late father Mr Malcolm Edward Haine are interred.
2. Valerie Jean Haine died on 24 August 2016, aged 74 years, and her cremated remains were interred in the churchyard, in Plot no. 84, on 23 November 2016. The plot was intended as a double grave, allowing for the interment of Mr Haine's remains in due course, but following Mr Haine's death in January 2021 it transpired that the plot was not sufficiently deep and his remains were interred in a separate plot (Plot no.301), to which it was hoped the remains of the late Mrs Haine could be removed.
3. This situation, and the events surrounding the interment of Mr & Mrs Haine's remains, have understandably been a source of immense distress to Mrs Dearlove and her siblings and they wish to ensure that their parents can now be reunited in burial and they had both wished and intended.
4. The petition is brought with the consent of Mrs Dearlove's sister and brother (the remaining next of kin) and of the incumbent of the parish and no objection has been raised by any interested party.
5. In view of the need for a swift resolution of the matter, I directed on 13 September 2021 that a faculty should issue for the proposed exhumation and re-interment. The purpose of this judgment is to set out, shortly, the reasons for my decision.

### The background

6. The unhappy circumstances leading to the respective interments of Mr & Mrs Haine in separate graves are set out in the supporting statement by Mrs Dearlove. I am grateful to her for the clear and concise account which she has given; the facts she relates are not in dispute.

7. At the time of the late Mrs Haine's death, Mr Haine purchased a double family plot intending that his remains would be interred with those of his late wife when the time came. The family were not aware at the time that the selected plot was not sufficiently deep to take Mr Haine's remains. A headstone was placed in memory of the late Mrs Haine, with space left for Mr Haine's details to be added in due course.
8. Malcolm Edward Haine died on 8 January 2021 and arrangements were made for his cremated remains to be interred in the churchyard on 25 June 2021. Shortly before the ceremony, Mrs Dearlove was informed, for the first time, that her mother's grave was not deep enough for her father's remains to be interred there and that it could not be enlarged as it was obstructed by concrete. She was advised that a new plot would be prepared that day and that her mother's and father's remains would be interred there together. Her father's details had already been inscribed on the headstone bearing his late wife's inscription, in anticipation of their interment in the same plot.
9. However, when the time came for the ceremony, the family were informed (correctly of course) that their mother's remains could not be removed from the existing plot without formal approval, with the result that only their father's remains were interred in the new plot (Plot no. 301). It is not difficult to imagine the distress which this must have caused the family.
10. In subsequent discussions it was suggested to the family that Mr & Mrs Haine's remains might be left in separate plots, but the family are clear that that is not an acceptable situation either emotionally or practically. Most importantly, it would be contrary to their parents' clear wish to be reunited in burial and at peace together; and it would, incidentally, mean making a new headstone for each of them.

### **The principles**

11. The principles underlying the exercise of the court's powers in relation to exhumation are set out in the judgment of the Court of Arches in *In re Blagdon Cemetery* [2002] Fam 299. At [35] the Dean of the Arches, delivering the judgment of the court, 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, 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."*

12. However, the court recognised at [36] that the situation may be different in the case of a genuine mistake:

*"Sometimes genuine mistakes do occur, for example, a burial may take place in the wrong burial plot in a cemetery or in a space reserved for someone else in a churchyard. In such cases it may be those responsible for the cemetery or churchyard who apply for a faculty to exhume the remains from the wrong burial plot or grave. Faculties can in these circumstances readily be granted, because they amount to correction of an error in*

*administration rather than being an exception to the presumption of permanence, which is predicated upon disposal of remains in the intended not an unintended plot or grave.”*

13. Accordingly, in determining the present petition, the court must consider whether the evidence points to a genuine mistake or, if not, whether there are special circumstances which justify a departure from the presumption of finality.

#### **Discussion and conclusion**

14. I have considered carefully the undisputed history given by Mrs Dearlove. In my judgment, it is clear that an error was made when Plot no. 84 was allocated for the interment of Mrs Haine’s cremated remains. It was known that Mr Haine has requested a double plot and it should have been apparent to those who prepared the plot that it was not suitable as a double grave. It has not been necessary to consider how this error occurred, but the family were certainly unaware of it until June 2021 and erected a headstone in the belief that Mr Haine’s remains could be interred there in due course.
15. The events of 25 June 2021, when the family were informed of the true situation, were deeply distressing for them. It was acknowledged that Mrs Haine’s remains should be removed to the new plot, in which Mr Haine’s remains were interred, but the lack of formal approval meant that was not possible.
16. This has been an extremely sad and unfortunate series of events for the family and I am quite satisfied that the removal of Mrs Haine’s remains from the present plot to be reinterred with those of her late husband in Plot no. 301 is not only justified, but essential, to give effect to their clearly expressed intentions.
17. In my judgment, this is a case of genuine mistake: the reason Mr & Mrs Haine’s remains could not be placed together in Plot no. 84 was that an error was made in allocating that plot for the interment of Mrs Haine’s remains; the proposed reinterment in Plot no. 301 would rectify that error. But in any event, I am satisfied that the circumstances in which the family discovered the true situation and the apparent acceptance, on the day of the ceremony for Mr Haine, that Mrs Haine’s remains should be removed to the new plot are sufficient to justify the exhumation and reinterment of her remains now.
18. In some circumstances, the lapse of time since the interment of the deceased’s remains may count against their exhumation. However, I am satisfied that is not a factor in the present case. The family have taken steps to remedy the situation as soon as they became aware of the true facts and there is nothing to suggest that the removal of the casket containing Mrs Haine’s remains will present any practical difficulty.
19. Accordingly, I have directed that a faculty should issue for the exhumation of the remains of the late Valerie Jean Haine from Plot no. 84 in the churchyard and their reinterment in Plot no. 301. I hope the resolution of this unhappy episode will offer some comfort for the family in their grief and distress.