

In the matter of SMF (deceased)
And in the matter of a cemetery in the Diocese of Leeds

Judgment

1. This judgment has been anonymised to protect the privacy of the family concerned. Any reporting of this matter which identifies the petitioner, her family, the deceased or the cemetery in which his remains lie buried, will be treated as a contempt of court and dealt with accordingly.
2. The petitioner is the widow of SMF who died at the age of 38 some 16 years ago, and whose cremated remains were interred in the consecrated portion of the municipal cemetery with which these proceedings are concerned. Although no documentation has been lodged in this regard, I proceed on the basis that the cemetery owners are in agreement with what is proposed, or at least do not object.
3. The petition, as originally presented, was somewhat thin in detail. I directed that the petitioner be afforded 28 days within which to make further representations, in the absence of which the petition would stand dismissed. The petitioner was alerted to the strong legal and doctrinal presumption against exhumation of human remains consigned to God's keeping in consecrated ground and the need for an exceptional case to be demonstrated if permission were to be granted.
4. Further documentation was duly provided. The petitioner having requested that the petition be determined in writing on the basis of the information supplied, I did not consider it appropriate – pastorally or proportionately – to direct a hearing. The Court must determine the matter on the material that has been provided by the petitioner and not get drawn into speculation about what else might have been placed before the Court. I remind myself that the burden of proof in faculty cases lies on the petitioner.
5. The material now before the court comprises:
 - i. the petition, albeit somewhat thin on detail;
 - ii. a undated hand-written letter from the petitioner;
 - iii. a supportive hand-written note from the deceased's mother;
 - iv. a colour photograph of SMF and his daughter;
 - v. a further hand-written letter from the petitioner

6. The petitioner described SMF's untimely death shortly after the family had moved to what she describes as 'our dream house'. She says it was a terrible shock leaving her with two children to bring up on her own: a son aged 14 and a daughter, 7. She describes the intervening sixteen years as being extremely difficult for all of them.
7. In February of this year her father-in-law (SMF's father) died. He had been a father figure to both her children, particularly her daughter who is now aged 23. The petitioner writes:

"[My daughter] has asked to have a ring made from [SMF's] ashes from *Ashes to Glass* which started in 2006 so I rang them and was told it could be possible for us to use his ashes so my daughter could have a ring made. As her mother, I know this would mean so much to her."
8. SMF's mother supports the petitioner's request in the following terms:

"I am sure [SMF] would want us to do this for his beloved daughter who was only seven years old when her dad passed. She would love to have a memento made from his ashes in memory of her dad. This would make her very happy indeed."
9. The additional letter from the petitioner, sent in response to my invitation to lodge further representations, states:

"When [SMF] passed away over 16 years ago the technology to use the ashes was not there [...] My father-in-law recently passed away and my mother-in-law has saved some of his ashes for my daughter to have a beautiful ring made from them.

The Church instils in us the importance of family values: none more so that the loyalty of the child to the father and vice versa.

I implore you to reconsider, so a gift from one of the most loyal fathers to a then 7 year old child; a child who was absolutely devastated by the sudden loss of her father and who was absolutely devastated by the sudden loss of her father and who to this day has never really gotten over this. I am sure that kindness on your part would go a long way to helping her to heal."
10. The petitioner omitted to state in her written representation that she is not requesting a full exhumation. All she is doing is seeking permission to open the casket to take out a teaspoonful of her husband's ashes and then closing the casket and putting it back. She communicated this information to the registry clerk who forwarded it to me in a covering letter. I take it fully into account.
11. There is no statement from SMF's daughter, but for the purposes of this determination, I accept everything that is said on her behalf by her mother and grandmother. Similarly there is no documentation from those responsible for the cemetery, but I proceed on the basis that the petitioner's assertion is correct, namely that SMF's ashes were interred in a casket and that it would be physically possible to recover the casket, remove a portion of the ashes, and return the casket, with the remainder of the ashes, to the burial plot.
12. I carried out an internet search of *Ashes to Glass* which threw up a commercial undertaking trading from premises in Billericay, Essex, as 'Ashes Into Glass'. This may or may not be the venture identified by the petitioner. The text accompanying what is being marketed as a tribute ring reads:

“The Tribute Ring symbolises eternal love and togetherness. It holds a lifetime of special memories and tells a story that is deeply personal to you.”

13. The stone in the ring is offered in a variety of colours. The process of manufacture is described in the following extracts.

“We require one spoonful of the ashes per item ordered and will return the unused ashes together with your completed order. [...] We use traditional techniques combined with our own unique, patented processes to create a beautiful, lasting tribute to the one you hold dear.

Your loved one’s ashes, coloured glass crystals and molten glass are skilfully layered together to create the rough stone. [...] Once cooled, it is expertly cut, polished and toughened before being set.”

14. I assume that this process, or something broadly similar, is what the petitioner proposes for SMF’s cremated remains.

15. The notes accompanying the pro-forma petition remind those contemplating seeking a faculty for exhumation of the relevant legal and doctrinal principles, conveniently summarised in *Re Blagdon Cemetery* [2002] Fam 299. In particular, paragraph 33 contains the following:

“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. [...] 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.”

16. The judgment addresses certain classes of case, identified under the following headings: medical reasons, lapse of time, mistake, local support, precedent, and family grave. None of those fact-specific categories seems be of relevance here, still less might it be determinative of the outcome of petition. The distress of grieving is not advanced as a medical reason; the passage of time would not preclude the grant of a faculty, if the case were otherwise exceptional; there is no direct evidence of local support but there are no reported concerns on the part of the cemetery owner or other family members; nor is it intended to create a family grave.

17. As to precedent, whilst the population at large will not have a nuanced understanding of the common law doctrine of *stare decisis* and its historic inapplicability in the ecclesiastical courts, the principle of equal treatment requires consistency in decision making: like cases should be determined alike. I am mindful that allowing this petition could lead to a flood of such cases in the future both in the Diocese of Leeds and elsewhere in the Church of England. However, I do not consider it appropriate or pastorally sensitive to refuse an otherwise meritorious petition solely because it might open the floodgates to a high number of similar cases in the years ahead.

18. Instead I must determine this particular petition on its own merits and ask myself whether the petitioner has demonstrated that the facts of this case are such as to constitute an exception to the general principle of law and Christian doctrine that there should be no disturbance to cremated interred in consecrated ground. I make

every allowance for fact that the petitioner is not legally represented. She has expressed herself simply, clearly and impressively, sufficient for me to understand the full background and her particular reasons for seeking a faculty from the Court.

19. In short, the petitioner's case is that modern technology of the type I have summarised above, now makes possible the creation of a ring which can incorporate in its fabrication a portion of a person's cremated ashes. Some may find this practice distasteful. Some may think it does not sit easily with Christian teaching on the body, the soul and the hope of resurrection. Some may think wearing a burnt fragment of the remains of a loved one to be mawkish, whereas for others a genuine and abiding sense of comfort may be derived from the symbolism and personal connection.
20. I am satisfied that the petitioner is sincerely motivated in her wish to honour her late husband, a good and decent man, and to try and ease the burden of grief and sadness for her daughter who was aged seven when her father died. The hope is that the physical proximity of a tangible part of her late father will serve as an abiding memory of a man who she never really got to know.
21. Whilst I have the greatest of sympathy for the petitioner, her daughter and her mother-in-law, who have bravely borne the sad loss of SMF, I do not consider that the facts of this case are exceptional such as to rebut the strong legal and doctrinal presumption against the disturbance of human remains.
22. Advances in technology to allow something which was not possible at the date of the original interment cannot be considered to be exceptional. There will always be the possibility of fresh expressions of grief as societal practice and scientific know-how evolve. When SMF's ashes were interred sixteen years ago what is now proposed was not in the contemplation of his family, the undertaker, the cemetery owner or the church. But that does not detract from the concept of permanence being part, at least, of the intention of those committing the remains to a consecrated burial plot. Modern technology which gives new options to family members that were not available years before cannot be seen as exceptional: they are potentially limitless in extent. If changing fashions of mourning and the availability of alternative uses for cremated ashes were to justify the routine exhumation of human remains, the finality of Christian burial would be stripped of all its meaning.
23. In the rare cases where a faculty for an exhumation might be granted, it is almost invariably on the basis that the remains are re-interred in consecrated ground: see, by way of example my recent judgment in *Re Clayton Cemetery, Bradford* [2019] ECC Lee 2, particularly paragraph 16. Here, part at least of SMF's remains would not be re-interred in consecrated ground but would instead be incorporated through an industrial process into a piece of jewellery. Whilst others may take a different view, I tend to the traditional understanding that cremated ashes should be treated in like fashion to a human body and interred in one place, undivided. For the purposes of this petition, however, I expressly leave that matter undecided.

24. An imperfect analogy might be the line of cases concerning petitions for an exhumation so tissue or bone samples can be taken for DNA analysis or similar. Faculties were refused in *Re Holy Trinity, Bosham* [2004] Fam 125, Hill QC Ch, and in the appellate case of *Re St Nicholas, Sevenoaks* [2005] 1 WLR 1011, Ct of Arches. Whilst a faculty was granted in *Re St Mary, Sledmere* (2010) 10 January, unreported, Collier QC Ch, and in *Re London Road Cemetery, Mitcham* [2016] ECC Swk 12, Petchey Ch, in each of these cases the judgments emphasised the high hurdle set for petitioners in order to demonstrate exceptionality. The former was a rare opportunity to investigate the tissue of a victim of Spanish influenza in 1919 to inform current medical research; the latter was an essential means of conclusively resolving a disputed paternity suit.
25. Although the documentation in this case is limited, I have given the matter a great deal of care and thought, mindful of how strongly the petitioner feels and the degree to which she believes that what is proposed will provide real and enduring comfort to her daughter. I have considered each and every manner in which it might prove possible to accede to sincere wish of the petitioner. Regretfully, I can see no basis upon which an exhumation might be permitted. This case is admittedly unusual, but it is not exceptional. The law constrains me to refuse the petition and I so direct.
26. The petition is dismissed and the request for an exhumation is refused.

The Worshipful Mark Hill QC
Chancellor of the Diocese of Leeds

13 September 2019