

IN THE CONSISTORY COURT OF THE DIOCESE OF ROCHESTER

Re: Tunbridge Wells Cemetery

J U D G M E N T

1. By a petition dated 10th June 2019, the petitioner, Stephen John Burgess, applies to exhume the mortal remains of his late mother, Eileen Myrtle Burgess, from a temporary grave in Section D1, Plot 2581, Consecrated, in the Tunbridge Wells Cemetery, Tunbridge Wells, Kent, and to reinter them in Section D1, Plot 2619a, Consecrated, of the same cemetery, which contains the mortal remains of his father, James Burgess. By a further petition dated 20th June 2019, the petitioner, Serena Smith, applies to exhume the mortal remains of her late father, Frederick Towner, from Section D1, Plot 2619a Consecrated, and to reinter them in Section D1, Plot 2620, Consecrated, of the same cemetery where there are interred the mortal remains of her late mother, Margaret Rose Towner, and her late brother, Gavin Nigel Towner. Serena Smith also seeks the court's permission, if need be, to lift the coffins containing the mortal remains of Margaret Towner and Gavin Towner, and to deepen the plot so as to allow for the re-interment of the mortal remains of Frederick Towner.
2. The petitions and supporting documentation set out the grounds relied upon in support of the applications. Both petitions arise out of the same set of facts. The registered owner of Plot 2619a, Consecrated, is Stephen Burgess. The grave plot is for two interments, and was purchased on 11th March 2013, with the mortal remains of the deceased James Burgess, being buried there on that day. The registered owner of Plot 2620 is Serena Smith. Purchase of this plot was on 19th March 2012, with the mortal remains of Gavin Towner and Margaret Towner being buried there on that day. They had died within a few days of each other.
3. For precise reasons that are not clear, but which must have involved human error, it has transpired that after his later death, the remains of Frederick Towner were buried in the Burgess plot, ie Plot 2619a, on 30th December 2013. I have seen a plan of the relevant part of the cemetery,

and it is clear that the two plots are very close to each other. Enquiries have been made by the cemetery authorities, but to no avail, in that the staff responsible for the cemetery at that time have left their employment, and not surprisingly, there are no records which might show how, or why, the mistake occurred. I am satisfied that all appropriate and proportionate enquiries have been made, and that the error was not deliberate, but can be ascribed, in the main, to human error, as I have indicated above.

4. Obviously, at the time, no one realised what had happened. The problem was compounded by the placing of a temporary wooden grave marker on Plot 2619a, commemorating Frederick, Margaret and Gavin Towner. It is not known who placed the marker, but I have little doubt that it was innocently done. This in turn led to a further error being made in April 2014, when a headstone commemorating the late James Burgess was erected on Plot 2620. Again, I am satisfied that this was an innocent mistake.
5. It was only in March 2019, after the death of Eileen Burgess, widow of James Burgess, that the problems and mistakes came to light. At that time in preparation for her funeral set for 29th March 2019, the headstone was removed from Plot 2620, so as to facilitate the excavation of the grave prior to the interment. The cemetery authorities naturally assumed that they were opening the correct grave plot. They realised their mistake on the morning of the funeral, when additional checks were made, and last minute clarification of the name on the coffin already in the grave plot was undertaken. This revealed the coffin to be that of the mortal remains of Margaret Towner. I suspect that those checks were made because of a suspicion that something was not right, as indeed was the case.
6. There immediately followed a discussion with Stephen Burgess, when he was told of the error that had occurred in respect of his late father's remains. At that stage, the full facts had not emerged, though they may well have been suspected. Very sensibly, agreement was reached that a new grave plot would be excavated close by so as to enable the burial service to go ahead. Thus it was that the mortal remains of Eileen Burgess were interred, on a temporary basis, in Plot 2581, which was and is nearby to Plot 2619a.
7. Subsequent investigation revealed that the mortal remains of Frederick Towner had erroneously been interred in Plot 2619a instead of Plot 2620.
8. Mr Dry, the Registrar of the cemetery properly accepts that the mistake was wholly on the part of the cemetery and/or its officials. Neither of the

petitioners has done anything to cause or contribute towards what has happened.

9. The situation now is that Serena Smith wants the remains of the late Frederick Towner to be exhumed from Plot 2619a and to be interred in Plot 2620, alongside the remains of the late Gavin Towner and the late Margaret Towner. This is what was always intended and what should have been done in December 2013. Stephen Burgess, for his part, also wants the remains of the late Frederick Towner to be exhumed and removed from Plot 2619a, and a check to be made so as to ensure that the remains of his late father, James Burgess, are in fact interred in that plot, to be followed by the exhumation of the remains of the late Eileen Burgess from Plot 2581 and re-interment in Plot 2619a.
10. All the parties involved agree to what is sought in the petitions. Mr Dry's letters of 7th and 28th June 2019 with attached statement make it clear that the cemetery authorities support the petitions.
11. On 23rd July 2019 I gave directions which, inter alia, indicated that I was prepared to deal with both petitions together, and on written submissions provided that all parties involved consented in writing to such a course being adopted. The relevant signed consents have been forthcoming. Accordingly, on 15th August 2019 I ordered that both petitions be heard together. Having reconsidered both matters, I am of the view that it is expedient and appropriate for me to deal with the petitions on written submissions.
12. In support of the petition of Stephen Burgess, I have letters dated 17th April 2019, from Mrs R.J. Hansen, daughter of the late Eileen Burgess, 20th April 2019, from Mrs R.M. Wilton, daughter of the late Eileen Burgess, 20th April 2019, from Mrs Helen Wilson, daughter of the late Eileen Burgess, 22nd April 2019, from Mrs Daphne Belsey, daughter of the late Eileen Burgess 27th April 2019, from Mrs Hazel Mason, daughter of the late Eileen Burgess, and 6th April 2019, from Mr Andrew Burgess, the son of the late Eileen Burgess.
13. In support of the petition of Serena Smith, I have a letter dated 13th June 2019 from Mrs Wendy Maddock, daughter of the late Frederick Towner.
14. Mr Dry stated in writing that there would be no costs implications for the petitioners, and Mr Gary Stevenson, Head of Housing, Health and Environment, in an email to my Registrar dated 13th August 2019, confirmed that the cemetery would bear the costs of and incidental to these proceedings.

15. The principles which I have to apply when dealing with an application for an exhumation from consecrated ground are well known and were laid down by the Court of Arches in **Re Blagdon Cemetery 2002 Fam 299**.
16. I have a discretion, but the presumption is that the burial of human remains in consecrated ground is permanent. This is the starting point when dealing with the discretion. The presumption arises from the Christian theological tradition that burial, is to be seen as the act of committing the mortal remains of the departed into the hands of God as represented by His Holy Church.
17. Thus it is that the Court can only depart from the principle of permanence if the petitioners, on whom the burden of proof lies, can establish special circumstances to allow an exception to that principle.
18. The Court of Arches in **Blagdon** (supra) helpfully identified certain factors which may assist in deciding whether exceptional circumstances have arisen such as to permit the remains to be exhumed. These include medical reasons, which do not apply here; lapse of time, on this issue it is clear that the petitioners have acted as speedily as they could; mistake, precedent, and the desirability of encouraging family graves. It is, though, important to bear in mind that the factors identified by the Court of Arches are not determinative, nor are they of necessity exhaustive. They are guidelines rather than tramlines as to how the Court should exercise its discretion.
19. In my judgment mistake has occurred here. As I have indicated above, the precise circumstances of the original mistake may never be known, but I am wholly satisfied that it was an innocent one. All that followed flowed from the original mistake. For the avoidance of doubt, I find that it is much more likely than not that the original mistake arose out of simple human error, ie a mistake as to the plot. The original mistake relating to the interment of the mortal remains of Frederick Towner meant that when it came to the funeral of the late Eileen Burgess, there was no option but for her mortal remains to be interred in a grave plot other than that which was intended. Accordingly, the decision taken at the time, which was the correct one, was brought about and infected by the original mistake.
20. There is nothing here, in my judgment, to lead to an undesirable precedent being created.
21. In these very particular and unusual, not to say distressing, circumstances, I am wholly satisfied that this is a case where I can and should take an exceptional course, and authorise (i) the exhumation of

the remains of the late Eileen Burgess from Plot 2581, so that they may be reinterred in Plot 2619a Consecrated, where the mortal remains of her deceased husband have been interred, and (ii) the exhumation of the remains of the late Frederick Towner from Plot 2619a, so that they may be reinterred in Plot 2620, Consecrated, where the mortal remains of his deceased wife, and of his deceased son have been interred.

22. Accordingly, I direct that faculties are to issue as sought, but with the following conditions, namely that;

(1) In respect of both petitions, the exhumations are to be effected with due care and attention to decency, early in the morning, and with the plots screened from the view of the public, and with a priest present.

(2) The reinterments are to be carried out forthwith thereafter;

(a) in Plot 2620 Consecrated, for the remains of the late Frederick Towner, with permission to check first that the coffin containing the remains of the late Margaret Towner is correctly buried in the same, and thereafter to enlarge the depth of that plot, if need be, so as to accommodate the coffin containing the remains of the late Frederick Towner;

(b) in Plot 2619a Consecrated, for the remains of the late Eileen Burgess, with permission to check first that the coffin containing the remains of the late James Burgess is correctly buried in the same.

(3) In respect of both petitions, no coffins are to be opened in the course of the exhumations and/or reinterments.

(4) Any headstones or markers which are in the wrong place after these exhumations and reinterments shall be removed and replaced on the correct plots.

(5) The Kent & Sussex and/or Tunbridge Wells Cemetery authority must pay the Registry and Court costs of and incidental to both petitions, in the usual way. There shall be a correspondence fee (or fees) to the Registrar as I direct.

John Gallagher
Chancellor
6th September 2019