

In the Consistory Court of the Diocese of Chichester

In the matter of a Burial Ground in the Diocese of Chichester

Judgment

1. On 27 November 2023 I directed that a faculty should issue in this matter for reasons to be handed down later. These are the reasons. This judgment is not to be made public until the faculty has been carried into effect.
2. The petition raised matters of unusual sensitivity and this judgment has therefore been anonymised. Any identification in the media of the individuals or burial grounds concerned will be treated as a contempt of court.
3. The petition is brought on behalf of a woman (to whom I shall refer hereafter as the petitioner) who seeks the exhumation of her mother's body from a consecrated burial ground within the diocese of Chichester where she was recently buried. It is intended that her mother's body be re-interred in another consecrated burial ground, also within the diocese.
4. The grounds on which the petition is brought concern the proximity of the mother's grave to those of close family members of the petitioner's ex-husband who was violent and abusive towards the petitioner and her children.

The law

5. The legal principles upon which an exhumation may be permitted are contained in a decision of the Court of Arches in *Re Blagdon Cemetery*, [2002] Fam 299, which concludes that a faculty for exhumation will only be exceptionally granted. It is for a petitioner to satisfy the court that there are special circumstances which justify the making of an exception from the theological norm that Christian burial is final.
6. The original petition was inaccurate and insufficiently detailed and the Court directed that it be corrected and particularised and that adequate supporting evidence be lodged. I am conscious that this is likely to have caused additional distress to the petitioner but the Court can only act on evidence, not mere assertion. I sought to keep to a minimum the intrusive nature of the Court's enquiries.

The background

7. The petitioner's ex-husband was abusive to both her and their children over a period of some eight years. I need not rehearse the incidents of physical violence, some very serious. There were occasional reports to the police but it would seem that no action was taken. The full history is documented on the Court file.

8. Neither the petitioner nor her children can visit her mother's grave because it causes flashbacks. It would appear that at the time of the burial the grave site was in a poor condition, and this has caused additional distress. It is unclear how the grave was chosen, and the petitioner suggests that it was the wrong plot, a matter which I have not investigated. The petitioner's mother apparently prepared detailed written instructions for her burial but these were mislaid.
9. The petitioner is having nightmares. She has panic attacks. She suffers from anxiety and depression. The petitioner feels her mother is not at peace and that she has let her mother down. She cannot mourn her mother and her children cannot mourn their grandmother. The full impact on the petitioner is recorded in her statement on the Court file.
10. I have seen a short letter from the petitioner's general practitioner making a diagnosis of anxiety and depression, and shortly stating the narrative which the petitioner has now set out fully in her statement. This has been supplemented by evidence from a therapist within the local NHS mental health team which records that the petitioner showing signs of post-traumatic stress in accordance with DSM-5 criteria.

Discussion

11. Although a number of specific situations are discussed in *Blagdon*, they are not exhaustive, and the categories of exceptionality are not closed. Each case turns on its own facts, hence the requirement for evidence to be filed.
12. In the case of *Re St Mark Worsley Churchyard* (31 July 2006, unreported, Manchester Consistory Court), the incumbent became a party opponent to give effect to the strong presumption against exhumation (para 6). It is not necessary for exhumation petitions to be formally opposed: the presumption arises as a matter of law and will always be at the forefront of the Court's consideration. In this instance, and rightly in my view, the incumbent and PCC have taken a neutral stance, leaving the Court to come to its own determination.
13. The question of exceptionality can arise in a wide variety of circumstances and is fact sensitive: see the thorough overview of Fookes Dep Ch in *Re St Laurence, Alvechurch* [2016] ECC Wor 3. However, judicial consistency is a well-established principal of canon law: like cases should generally be determined alike.
14. In *Re St Mark Worsley* the Court afforded due weight to the fact that the petitioner was caused considerable distress and unable to visit a family grave due to the interment within that grave of the remains of her husband who, unbeknown to her at the time, had been conducting an adulterous affair during much of their married life. Chancellor Tattersall QC found judicial support in the decision of *Exhumation of Mr X* (9 October 2002, unreported, Liverpool Consistory Court), in which it became known that a father had abused his daughter. Both had been buried in a family grave, which surviving relatives were too distressed and traumatised to visit.
15. I also have regard to *Re Allwood (minors), deceased* (1999) 5 Ecc LJ 389, Southwark Cons Ct, where the Court took into account trauma which made it too upsetting to visit a grave; and to *Re St Mary the Virgin, Stansted* (17 October 2013, unreported) Rochester Cons Ct, where distress

was caused by having to pass the site of fatal accident in order to reach the burial ground of a family member.

16. I note that all surviving relatives agree with the exhumation and that the proposed place of reinterment is also in ground consecrated according to the rite of the Church of England. The petition was brought promptly and there are no countervailing considerations.

Outcome

17. On the evidence placed before the Court by and on behalf of the petitioner, I am satisfied on the balance of probabilities that there are special circumstances which justify the making of an exception from the theological norm that Christian burial is final. The impact upon the petitioner's mental health and well-being, and the distress to other family members is overwhelming. In the circumstances, it is unnecessary to examine whether the burial was in the wrong grave.
18. I propose waiving additional fees for determining this matter, and am pleased to record that the registry has generously agreed to do likewise. I trust that the petitioner can find solace, secure in the knowledge that she has done what was necessary for the sake of her mother, and that the process of grieving and remembering can now begin for the petitioner and her family. May her mother rest in peace and rise in glory.

The Worshipful Mark Hill KC
Chancellor of the Diocese of Chichester

8 December 2023