

Neutral citation number: [2024] ECC Oxf 2



Faculty – Grade I listed medieval village church – Application for the reservation of a space for cremated remains in an existing churchyard grave – Petition by two sisters for the cremated remains of their late brother to be interred in the existing grave of his former wife – Objections received from the couple’s son, the sister of the former wife, and another two sisters of the former husband – Objections advanced on the basis that the former wife had been subjected to domestic abuse by her late husband – None of the objectors electing to become a party opponent – Faculty refused

Petition No: 11043

IN THE CONSISTORY COURT
OF THE DIOCESE OF OXFORD

Date: Sunday, 16 June 2024

Before:

THE WORSHIPFUL CHANCELLOR HODGE KC

In the matter of: An Application for the Reservation of a Space for Cremated Remains in an Existing Churchyard Grave

This is an unopposed faculty petition determined on the papers and without a hearing

Objections were received from four family members but they did not elect to become a party opponent.

The following cases are referred to in the Judgment:

Re The Cremated Remains of AA [2018] ECC Lic 7, (2019) 21 Ecc LJ 260

Sen v Headley [1990] Ch 728

JUDGMENT

Introduction

1. This faculty petition for the reservation of an ashes space in an existing grave raises the difficult, and apparently novel, question of how the consistory court should respond to an application by two family members of a recently deceased man to inter his cremated remains in the existing grave of his former wife when this is opposed by members of her family, including the couple's son, on the grounds that she was the victim of alleged domestic abuse from her former husband.

2. In order to protect the right to respect for the private and family life of anyone who may be affected by this judgment, I am handing it down in anonymized form so that the names of those who feature in it, the name and location of the parish, and any details which might lead to their identification, are omitted. I recognise the importance of justice being done in the public eye. Nonetheless such anonymization is appropriate in the circumstances of the present case in the light of the nature of the matters relating to persons both alive and dead which have to be addressed in this judgment. These render anonymization necessary to protect the respect due to the private and family lives of those mentioned in this judgment and thus to secure the proper administration of justice. I shall refer to the recently deceased man as **AB** and to his former wife as **CD**; to the two petitioners, who are sisters of AB, and sisters-in-law of CD, as **EF** and **GH**; and to the objectors by their first names.

Background

3. In February 2024 I received an email from the Registry alerting me to a query from the Associate Archdeacon of Berkshire concerning a request from family members of a recently deceased man (AB) to inter his ashes into an existing family grave plot where the human remains of his former wife had been interred in July 2001. Those family members were said to be following AB's last wishes. The incumbent minister had received an objection from another family member saying that AB had "*caused her so much pain in life*". (At that time, it was not clear whether the '*her*' referred to that family member or to CD.) The Registry had advised that a faculty should be sought to facilitate any objection rather than putting the incumbent of this Grade I listed medieval church in the place of judge and jury when exercising their discretion whether or not to permit the interment. On the footing (as proved to be the case) that there was no existing relevant reservation for AB's ashes to be interred in the grave of his late wife, I indicated that proceedings by way of a reservation petition would be the appropriate way forward to resolve this difficult situation. It seemed to me that tasking the consistory court with the resolution of this difficult pastoral situation was preferable to leaving it to the minister to take a view. I suggested that the petition should also address the form of the memorial inscription that was to commemorate AB since that might also prove to be contentious. I directed that the usual public notices should be displayed for 28 days. I also directed, pursuant to rule 9.1 of the Faculty Jurisdiction Rules 2015, as amended (the **FJR**), that special notice should

be given to the owner of the existing memorial, to the close relatives (any surviving parent, spouse, children or siblings) of CD, and to the family member who had raised the objection.

4. EF presented her petition on 8 April 2024. She is AB's sister and CD's sister-in-law. As the sole executrix of her late brother's will, EF states that she is carrying out his dearest wish that his cremated remains should be interred with his late wife. EF recounts that AB and CD moved to the parish in 1993, and were active members of the congregation. AB was also a churchwarden. The proposed additional inscription on the headstone, to be inserted underneath CD's inscription, and using the same font, would simply comprise AB's name and years of birth and death. EF explains that AB was the eldest in the family, following the death of their sister at the age of three. AB was always supportive of their parents and his five other siblings, despite having joined the army at the early age of 15. AB was hardworking, strong, loving, and thoughtful. Sadly, their father's sudden death at the age of 51, when AB was just 23 years old, and married to CD, with a two-year-old son, proved a difficult time. AB loved his family and was supportive of his mother and five siblings. Although he was no saint, and had his faults, he was a loving son and brother who helped the family, if asked, as they navigated the challenges of life. Through hard work and dedication, AB was successful both in his army career, achieving the rank of Warrant Officer, and in his civilian career; but was always very modest about his achievements. Life provided yet another blow to AB when he lost his beloved wife, CD, to cancer in 2001; she was just 52 years old. They had both been due to retire that year to enjoy the many trips they had planned. However, with the love and support of his family, AB continued to make a life for himself. Over the next decade AB retrained to become a counsellor, giving support through a charitable organization to those with substance misuse. He also volunteered on a regular basis with the Samaritans. Sadly, in later years, AB and his son became estranged, which was always a great sorrow to him and to the wider family. However, AB's Christian faith gave him much comfort during this difficult period in his life. AB's dearest wish was to have his ashes interred with CD, whom he had lost too soon; and, despite trying to make a life for himself, he never recovered from her sudden passing. AB spent the remaining six years of his life as a Chelsea Pensioner at the Royal Hospital Chelsea; and he continued to help his fellow Pensioners until his health began to fail as a result of cancer.

5. The minister and the churchwarden have consented to the petition, and they have certified that this reservation will not interfere with the rights of parishioners to be buried in the churchyard. The petition also has the full support of the Parochial Church Council. The relevant PCC minutes record: *"Although it is understood there are and will be objections to this application of a sensitive nature, the PCC agreed that it should allow the faculty to move forward to the diocesan chancellor for them to consider both the application and the objections more fully. The PCC would then follow and take the advice given by the chancellor. To this end, the faculty was supported."*

6. A former churchwarden has told the vicar that it was AB who purchased the existing memorial to CD. Since AB's death, the 'owner' of the memorial would appear to be their only surviving child, Nicholas, as AB's immediate next-of-kin.

Objections

7. No objections have been received to the petition in response to the usual public notices, which were duly displayed between 23 April and 21 May 2024. Four objections have been

received in response to the special notices which I directed to be served upon family members: from the only son and adult of AB and CD; from CD's sister; and from the elder two of AB's four surviving sisters.

8. Christine, one of AB's sisters has written a letter supporting the other three objectors' request to stop the ashes of her late brother, AB, from being interred in the grave of his late wife, CD. She acknowledges that, sadly, this has divided two of AB's sisters from their younger sisters because the latter appear to have dismissed the dreadful way in which AB treated both CD and their son; and they cannot accept the reasons why both he, and CD's sister, object to the interment of AB's ashes in CD's grave. Christine writes of AB:

I witnessed firsthand his abusing CD, when me, my husband and son stayed overnight with CD and AB on the way to our holiday. We had gone to bed and were woken by a lot of shouting and could hear CD screaming. What we witnessed has stayed with me to this day: he was hitting and kicking CD and when my husband tried to intervene, he knocked him unconscious. I should really have called the police, but I was so shocked by what had happened, and the fact that my 12 year old son had witnessed the shocking event, that we left as soon as we could the next day. I begged CD to come with us, but she refused, saying that she would be OK. I was so distressed by what we had witnessed that I called my sister Jenny because I knew that she would be able to confront AB about his behaviour and would support CD to ensure she was safe.

AB could be very kind and along with my other siblings supported me and my husband financially after my son died suddenly from kidney disease and we were unable to work because my husband and I were both suffering with shock. Even then his selfish nature came to the fore because we had fixed a date for my son's funeral but because AB had a holiday booked for when the funeral was to take place he asked us to delay the funeral until his return. At the time we were in shock so agreed to rearrange the funeral in order for him to attend.

There were many more incidents which showed his abusive character and I severed all ties with him 15 years ago because he refused to attend our mother's funeral and accused me and my other three sisters of killing our mother, when the four of us nursed our mother in hospital until she passed away. He again decided to go on holiday rather than attend her funeral, his reason for not attending was because he wouldn't be able to hold off verbally berating us for what we had done to our mother. I also received a very abusive letter from him where he accused me of the above.

Many years later when his two relationships after CD's death had broken down as a result of his abuse and he was residing in the Chelsea hospital, he asked EF to ask me and Jenny if we would consider a reconciliation with him but emphasised that he would not apologise and still stood by everything he had previously accused us of doing. I felt I was unable to connect with him again.

We are all very sad that we find ourselves in this position and over the years I tried very hard to forgive him for his behaviour but I just could not come to terms with what he had said and done.

I feel that a solution to this very difficult situation would be for his ashes to be interred in the family grave with our parents and brother and sister in Wales and it would appear that EF

and GH would reluctantly accept that arrangement as an alternative solution to this dreadful situation.

By a later email, Christine has confirmed that she wishes her letter to be left on file for the Chancellor to take into account rather than becoming a formal party to the proceedings.

9. Another of AB's sisters, Jenny, has written in support of her nephew, Nicholas, who has objected to the interment of his father's ashes in the grave of his late mother. Jenny feels that it is appropriate to give the court some background information on her relationship with her brother, as follows:

AB became the eldest sibling of seven following the death of our sister Elizabeth who sadly was drowned at the age of three years. We were a very close family growing up, and as the second eldest, I was always particularly close to AB and as a child he was very caring and loving. He was very bright and intelligent and extremely academic. We both attended the local grammar school and he would always wait for me at the school gate to walk home together. Sadly, as a teenager his behaviour changed and he started to abscond from school and refused to return. My father attended a meeting with him and the headmaster, who advised my father that if AB returned to school, despite missing a lot of schooling, he was intelligent enough to sit and gain excellent grades in the GCEs as it was at that time.

AB refused and said that he would not attend; at that time the only alternative was for him to take up an apprenticeship or join the forces. My father advised him that it would be easy to get an apprenticeship, but AB was adamant that he wanted to join the army. At the age of 15 he became a 'boy' soldier, much to the distress of my parents and myself. He had a very successful army career and reached the highest rank as a non-commissioned officer until he resigned in his mid-30s. He then became very successful working for an American company, rising to become the company's HR director after several years, until his early retirement in his early 50s.

On the surface he and CD appeared to have a good marriage, but we didn't see them often and it was easy for the abuse to go unnoticed. It was only in later years that the abuse became apparent, when my sister, CD, her husband and son, who were staying overnight, were woken by screams and witnessed him beating CD. When my brother-in-law tried to intervene, AB knocked him unconscious. I confronted AB when I received a phone call from my sister who was in a very distressed and shocked state. AB told me to mind my own business. I contacted CD to make sure she was OK, and a few days later I received a telephone call from AB apologising for his atrocious behaviour; and after being reassured by CD that she was OK, they informed me that they were going to reconcile. Unbeknown to me, he continued with his abusive behaviour, and it wasn't until many years after CD's death did Nick confide in me about how abusive his father had been towards both him and CD, and it wasn't a one-off occasion, as I believed, when we found out about his constant abuse of them both.

This behaviour continued, he met L a few years after CD's death and although initially they were very happy and planned to marry, he started to abuse both L and her son. The police were called on one occasion and after that their relationship broke down and they eventually parted. His second wife J also had to call the police because of his abusive behaviour; he was arrested and she eventually divorced him as a result of his abuse.

My sister EF has put in supporting evidence that my brother was a churchwarden and trained as a counsellor, which is true. What she doesn't know is that whilst he held the position of churchwarden, he fell out with the vicar, who so obviously had a mental health issue, and attempted to get him removed from his position. AB moved away from the village, and he did not pursue it further. Again, when he took up with his next long-term partner L, he did the same with the vicar of A church, which was her local church; and much to her embarrassment, he caused upset because he objected to the way the vicar was conducting church matters.

I was quite concerned when he decided to train as a counsellor because I truly believed he was not suitable to undertake this position. He had proved that he was very volatile and emotionally unstable, and proved this later by constantly ringing me up to discuss the clients he was dealing with. I asked him why he was not using his supervision sessions to debrief with his supervisor because I was concerned that he was not coping with the trauma. His response was that he wanted to discuss it with me. I advised him to give it up because he obviously was not coping with the role, and he did so shortly after.

I was constantly trying to 'mop up' after my brother's appalling behaviour and he even agreed to attend a week long anger management course but sadly he did not change as a person.

I cut all ties with my brother 15 years ago, I had challenged him many times over the years about his behaviour and was on the receiving end of his abuse. The final straw for me was when he accused me and my husband of killing our son, who sadly took his own life, because we put our careers before the welfare of our children. My daughters were incensed and although we knew it was not true, it still hurt that he could be so cruel. He also decided not to attend our mother's funeral but decided to go on holiday after accusing us four daughters of killing our mother, when in fact we had nursed her until the end.

We were an extremely close family but sadly this situation has divided us because my sisters EF and GH do not acknowledge that AB was abusive to Nick and CD and simplify the situation by believing that Nick was indulged by his father and mother and that CD had a choice to leave AB rather than remain in an abusive marriage. It is a known fact that it's extremely difficult to leave an abuser because of their coercive and controlling behaviour.

Nick managed to move away from his father's control 15 years ago and with the support of family and friends he has made a good life for himself, and I am extremely proud of him. Although the years of abuse have left him with severe mental health issues and this latest situation has had a profound effect on him.

AB never visited CD's grave once he moved from the village and did not pay for it to be maintained. My husband and I visited the grave on numerous occasions but it was too big a task to undertake plus it was a five hour round trip from our home, so we were only able to visit when we were passing on the way for holidays. I did ask EF to discuss with AB the state of the grave, which I am sure she did but nothing happened. He has left instructions for the grave to be attended to, in preparation for his ashes to be interred.

I am so sad to write the above because it goes against everything that we were taught by our parents but AB became a different person when he joined the army and he once told me that he had to become a bully rather than be bullied.

There is a solution to this situation to which we are all agreed and that is for his ashes to be interred in the family grave alongside our parents, sister and brother.

I hope that you will view my statement as an honest and true account of my brother and explains why I, Nick, Steph (CD's sister), and my sister Chris, do not want his ashes interred with CD.

By a later email Jenny has also confirmed that she wishes her letter to be left on file for the Chancellor to take into account rather than becoming a formal party to the proceedings.

10. Nicholas, the son of AB and CD, has written to the Registry as follows:

My father would be described in today's language as both a psychopath and a narcissist, and his abusive behaviour to both my mother and I made both our lives a misery. I have an extreme eating disorder as a result and have attempted suicide several times. My mother would have liked to have left him, we talked about this many times as I was growing up, but she felt unable to do so for financial reasons.

Despite acting like the victim following my mother's death, he was dating again within a matter of weeks, not the behaviour of someone supposedly bereft by her passing. Not long in to his first relationship he arrived on my doorstep with a van full of absolutely everything my mother had owned which was extremely upsetting. I suspect his new girlfriend suggested he get rid of her things and he used me to do this without any consideration for my feelings. He had three subsequent relationships, and in each case the women contacted me to tell me how much he had destroyed their lives, both emotionally and financially.

I severed all connection with my father fifteen years ago as his constant abusive messages became intolerable.

I would like to strongly object to the planned interment and any alteration to my mother's grave; this is most certainly not what she would have wanted, it is merely a final selfish act on my father's part. It would be extremely upsetting for both myself and other family members if my mother's grave was disturbed and altered in any way to accommodate him.

My aunt, EF, no doubt believes herself to be doing the right thing in carrying out my father's wishes but she is not related to my mother and my father was only related to her by (an unhappy) marriage.

I hope you can understand why I and other members of the family feel so strongly about this and that our feelings will very much be taken into consideration.

By a later email, Nicholas has confirmed that he only wishes for his letter to remain on file for the Chancellor to take into account when considering the application, and not to become a party to the proceedings.

11. CD's sister, Stefanie, confirms that there is great objection to this application from part of AB's own family, from herself, and from her nephew, Nick. Stefanie confirms that her contact with AB was occasional, but she knew that her nephew and her sister were suffering at his hands in some way over the years. CD would appear on Stefanie's doorstep with an overnight bag, needing comfort and support, clearly at the end of what she could bear. She never went into much detail: she just needed to know she was safe and to sleep. Stefanie has since learned that

AB was a cruel and violent man, no doubt with his own problems, who could manipulate with threats and fear. She states that:

The idea that he should be placed with CD in her grave is absolutely unthinkable to me, and totally inappropriate. I very much hope that you will be able to decide on other options - the thought that he should be placed with his mother in Wales seems to be a reasonable idea.

In a later email Stefanie has confirmed that she wishes for her letter only to remain on the file for the Chancellor to take into account when considering the application and not to become a party to the proceedings.

Response to the objections

12. When I received these objections, I directed the Registry to forward all of them to EF and to invite her comments (if any) upon each of them, within 21 days, in accordance with FJR 10.5. I also invited the Registry to ask EF whether she was content for this petition to be determined upon consideration of written representations rather than by way of a hearing, in accordance with FJR 14.1. If so, EF was to be invited to submit her written representations within the same 21 day period. I also observed that it would appear from the objections of Christine and Jenny that there is a fourth surviving sister who might wish to support the petition. The Registry was directed to ask the petitioner whether this sister would wish to submit any evidence, or to make any representations, in relation to the petition, or to become a formal party to the petition.

13. In response to the Registry's letter, the fourth surviving sister indicated that she wished to become a formal party to the proceedings. I shall treat her as a joint petitioner; and I shall refer to her as GH. I received a joint statement from EF and GH, in response to the objection letters, as well as a separate statement from GH in support of the petition. In separate emails, both EF and GH have confirmed that they wish the Chancellor to consider this matter based on the written representations as opposed to holding a hearing.

14. Having regard to the overriding objective of dealing with this case justly, I am satisfied, pursuant to FJR 14.1, that it is expedient to determine this petition on consideration of written representations instead of by way of a hearing. By doing so, the parties will be on an equal footing, the case will be dealt with expeditiously and fairly, expense will be saved, and the case will be dealt with in ways that are proportionate to the importance of the case and the complexity of the issues. I note that in one of her recent emails to the Registry, EF has stated that *"this whole situation and experience has been very upsetting and stressful for my sister GH and I in trying to fulfil our dear departed brother's dying wish"*. A hearing would only delay matters, and might serve to exacerbate the present disharmony within the wider family. Further, in the absence of the principal actors (AB and CD), a hearing would be unlikely to assist in resolving the issue of the nature, and the extent, of any domestic abuse that CD may have suffered at AB's hands. As the petitioners observe in their joint response to the objections: *"... it is really only those in a marriage who can judge the state of their marriage and really know the true state of their relationship"*.

15. In her separate statement in support of the petition, GH states that she is AB's youngest sister, and sister-in-law to CD. She wholly supports her sister, EF, who is carrying out the dearest wish of their late brother, AB, to have his cremated remains interred with his late wife, CD. She

also fully supports the factual information provided in the petition submitted by EF. GH states that this was made clear during her discussions with the vicar, when the initial objections were raised by their son, Nicholas. GH apologises for any confusion caused on her part, as she did not realise that she should have also signed the petition submitted by EF.

16. In their joint response to the objections, EF and GH state that they have read the four separate objection letters with both sadness and incredulity that such vitriolic objections have only now been raised following the death of their late brother, AB, and over 20 years since the death of their late sister-in-law, CD. They continue:

One has to ask the question why they did not raise such concerns before our brother's death, so that he, and we, could have at least been given the opportunity to defend AB's wish to be interred with his late wife, in the joint plot they secured, after moving to the parish in 1993.

We also note that there is no mention from any of the four objectors that our late sister-in-law, CD, did not wish AB's remains to be interred in the same plot. I, GH, understand from discussions with the vicar that the plot had been 'double dug', to use his words, to accommodate both AB and CD's remains.

Therefore, we can only draw the conclusion that they each have their own reasons to have raised such objections at this stage, and we are saddened by both their actions and the character assassination of our late brother, AB, when he is not here to defend himself.

We are more than aware of our brother's faults, and the many mistakes he made during his lifetime, much of which he reflected upon during his final few years. We are also more than aware of the volatile relationship that existed between both AB and CD, and the many challenges they both faced during their marriage. However, despite the staunch defence of CD by the four objectors, there was fault on both sides in terms of their married life and its issues. There were also many happy times, and celebrations of the achievements they had both made during their marriage, which was witnessed by the wider family, and myself, GH, when I lived with them during a six-month period in the 1980s. They stayed with my husband and I on many occasions when they came to Wales to visit the family. My brother also stayed with my husband and I on numerous occasions, following the death of CD, including the first Christmas, which was especially difficult for AB. I, along with my husband, also spent many weekends at their beautiful home in the parish, and on their narrow boat 'Mitzzi' which was moored on the Avon and Kennet Canal. Indeed, CD's final active days were spent with AB on their beloved narrowboat as they took one of the many trips away together on their narrowboat.

We are also aware that they tried to overcome the many challenges that soured some of the remaining years of their marriage, such as an unexpected contact from the illegitimate daughter that CD had, shortly before meeting our late brother AB. CD had been forced to put her daughter up for adoption by CD's father, which was a very harrowing time for her. CD made AB aware of this during their courtship, and he supported her, and they married in 1967. This unexpected contact from CD's daughter in her later life led to a lot of unhappiness and guilt which also impacted their son Nicholas, who was naturally unaware of his half-sister's birth, and who was already dealing with his own challenges by this time. However CD's daughter was welcomed into the family along with her own children, and both CD and AB tried to support her as she was dealing with a lot of the emotional damage she

had suffered from being adopted. Sadly her daughter died a few years later, following CD's death, from medical complications.

However, in the absence of a professional review and support, we believe that it is really only those in a marriage who can judge the state of their marriage and really know the true state of their relationship.

Therefore, regardless of the objections raised, which are based on how the four objectors viewed their relationship with both AB and CD, the basis on which their objections have been raised are one-sided without either the input of our late brother, AB, or our late sister-in-law, CD. They clearly have a polarised view which assumes all guilt lies with our brother, AB, whilst we have tried to simply reflect the facts.

We strongly urge a decision that allows our brother's dying wish to be carried out. The option to inter our brother's remains in the churchyard in Wales is not one that we support as it flies in the face of our brother's expressed wish. We would add that there is no evidence that CD did not wish our late brother's remains to be interred with her remains and, therefore, we believe our late brother's dearest wish should be allowed, as only the Lord our God will judge our brother, as shall we all be judged when we pass.

The applicable law

17. The reservation of a grave space is entirely within the discretion of the consistory court, to be exercised having regard to the particular circumstances of the case. The court will be more inclined to grant a faculty for such a reservation to a petitioner who has the right to be buried in the churchyard than to one without such an entitlement. Those who have such a right are the persons living within the parish, and those on the electoral roll of the parish church. But the court may nevertheless grant a reservation faculty to a petitioner who has no right to be buried in the churchyard where they can demonstrate a personal, or a substantial family, connection to the church and/or its churchyard, or some other some good and sufficient reason to be buried there. In such a case, provided there is sufficient space within the churchyard, the incumbent minister gives their consent, and the churchwardens and the PCC support the petition, the court may well grant a faculty to reserve a grave space in the churchyard.

18. In the present case, a faculty has been applied for so that the court, rather than the incumbent minister, can determine whether the cremated remains of AB should be laid to rest with the human remains of his former wife, CD, given the objections from other members of the families of both AB and CD. That is a sensible, and appropriate, way of resolving such a dispute, which avoids the minister being drawn into an internal family dispute.

19. I have been unable to find any previous decided authority which assists me as to how the consistory court should respond to an application by some family members of a recently deceased man who wish to inter his cremated remains in the existing grave of his former wife when this is opposed by members of her family on the grounds that she was the victim of alleged domestic abuse from her former husband. The nearest authority I have been able to find to the situation in the present case is a case from the diocese of Lichfield, although this concerned an exhumation rather than a grave reservation.

20. In an anonymised judgment in Re the Cremated Remains of AA [2018] ECC Lic 7, (2019) 21 Ecc LJ 260, the petitioner had wished to be buried in the same grave as her late sister and her

parents. However, when her sister's husband died, his cremated remains were interred in the same grave, notwithstanding that a granddaughter of the late sister had specifically asked the parish priest not to inter the husband's remains in that grave, alleging that the husband had subjected her to repeated sexual abuse when she was young, and that it would cause great distress to the family to have his remains in the same grave where the remains of some members of the family were already interred, and where other members of the family wished their remains to be interred. Chancellor Eyre QC decided that the continuing family distress which would be caused by allowing the husband's remains to be left in the grave amounted to exceptional circumstances which justified their exhumation. He therefore granted a faculty for the exhumation of the husband's cremated remains, and for reinterment of those remains in another churchyard.

21. At paragraph 3 of his judgment, the Chancellor made it clear that he was in no position to make any determination as to what had happened between the husband and the granddaughter, and he was not purporting to do so. The husband had not faced any criminal proceedings in relation to these matters during his lifetime, and he was no longer alive to answer the allegations. Moreover, his children had questioned some aspects of the granddaughter's assertions, and they rejected the allegations. However, the Chancellor had no reason to doubt that the granddaughter was setting out the truth as she genuinely believed it to be. She had set out an account of prolonged and repeated sexual abuse, which had had a lasting and harmful effect upon her. It was sufficient for present purposes to note that the granddaughter's account was put forward in good faith, and that it was accepted as truthful by her parents (the sister's daughter and son-in-law) and by her great-aunts and uncles (the sister's siblings).

22. At paragraph 13 of his judgment, the Chancellor expressed himself as *"satisfied that in rare cases the fact that the presence of particular remains in a grave has become the cause of distress or conflict is capable of being an exceptional circumstance justifying exhumation"*. At paragraph 14, the Chancellor referred to an earlier authority in the same diocese where he had authorised exhumation because *"the interment meant that the parents' grave had become a focus of disquiet and grievance between members of the family"*. At paragraphs 17 and 18, the Chancellor noted that there had been a deliberate decision to inter the remains of the husband in the same grave as those of his wife of forty years and her parents. Moreover, he had to be conscious that the allegations against the husband, although put forward in good faith, and genuinely believed by the granddaughter and her family, were not accepted by the husband's children. Against those considerations, Chancellor Eyre QC took account of the very real distress which was felt by the sister's descendants and her siblings at the presence of her husband's remains in the same grave as herself and her parents. The grave had become *"a focus of distress and grievance"*. In that regard, it was particularly significant that the grave contained the remains, not just of the sister, but also of her parents. It followed that the presence of the husband's remains impacted not only upon the sister's descendants, but also upon her siblings attending to mourn their parents. It was also of particular note that if the position had been fully set out in advance of the interment, and, in particular, if the views of the petitioner and her siblings had been known (as they would have been if the court had been told all the circumstances), then it was almost inconceivable that permission would have been given for the interment in the first place. Taken together, the Chancellor was satisfied that those matters amount to exceptional circumstances such as to be capable of justifying exhumation. The

Chancellor was also satisfied that the proposed exhumation and reinterment were justified and appropriate in that case.

23. That was a case where interment had already taken place, and what was sought was an exhumation where, because of the presumption of the permanence of Christian burial, the petitioner bears the burden of establishing the existence of special circumstances justifying the taking of that exceptional course in the particular case. I am satisfied that the fact that the presence of particular human or cremated remains in a grave would become a cause of distress or conflict, or a focus of grievance, between family members, and those attending to mourn at the graveside, constitutes a good and sufficient reason to refuse a faculty the effect of which would be to authorise the interment of such remains within an existing grave.

Analysis and conclusions

24. Applying the principle I have stated at paragraph 23 above, I have no doubt that this faculty petition should be refused. I am satisfied that the introduction of AB's cremated remains into CD's grave would become a cause of distress or conflict, or a focus of grievance, between family members, and those attending to mourn at CD's graveside. In reaching this decision, I bear firmly in mind all of the points so forcefully made by the petitioners in response to the objections.

25. I bear in mind that these assertions of domestic abuse are being raised after AB's death, and thus at a time when he is unable to defend himself against them. I recognise that, in civil cases generally, the courts will always scrutinise with care the evidence in a claim made against the estate of a deceased person, and supported only by the uncorroborated evidence of the claimant: compare, for example, *Sen v Headley* [1990] Ch 728 at 735 per Mummery J. However, like Chancellor Eyre QC in the case that came before him in 2018, I am in no position to make any determination as to what had happened between AB and CD, and I do not purport to do so. I am satisfied that the consistory court should not accept the mere assertion of domestic abuse unless there is some credible evidence, put forward in good faith, to support the existence of such abuse. However, I am satisfied that here there is cogent evidence of such abuse. This comes from CD's own sister, from two of her sisters-in-law – who are sisters of AB and the petitioners – and, most importantly, from the only child of the marriage, who is now an adult. The Church of England in general, and this Diocese in particular, takes abuse in any form, most seriously. Such credible evidence, put forward in good faith, cannot be ignored.

26. The petitioners themselves recognise that they are more than aware of their brother's faults, and the many mistakes which he made during his lifetime. Even if he reflected upon these during his final few years, this clearly cannot eradicate, or dispel, the effect which they have created in the minds of the objectors. The petitioners also recognise the volatile relationship that existed between both AB and CD, and the many challenges they both faced during their marriage. As the petitioners acknowledge, there may well have been fault on both sides, in terms of the couple's married life and its issues. In most marriage, there generally are. There may also have been many happy times, and celebrations of the achievements both parties had made during their marriage. But, again, none of this has clearly operated to dispel the objectors' genuinely held perception of an abusive marriage. In such circumstances, it would not be just to compel the objectors to mourn for CD at a graveside containing the cremated remains of her

former husband and perceived abuser; and this diocese could not condone such a situation, still less participate actively in bringing it about.

27. The petitioners point out that there is no mention from any of the four objectors that CD did not wish AB's remains to be interred in the same burial plot. Indeed, GH understands, from discussions with the vicar, that the plot had been *'double dug'* to accommodate both AB and CD's remains. However, it was AB who apparently commissioned the grave, so its double depth constitutes no evidence that CD wished her husband to be interred with her. The petitioners are to be commended for seeking to give effect to their late brother's wish for his cremated remains to be interred in his former wife's grave. But for the reasons that I have given, this court cannot give effect to those wishes.

28. In the usual way I charge no fee for this written judgment; but the petitioners must pay the proper costs of this petition.

David R. Hodge

The Worshipful Chancellor Hodge KC

The Third Sunday after Trinity

16 June 2024