

In the Consistory Court of the Diocese of Chichester

Petition No. 1649

In the matter of Bognor Regis Town Cemetery
And in the matter of the proposed exhumation of
the late Christopher Anthony Reid

Judgment

1. The issue raised in this petition is whether an ecclesiastical court can authorise the exhumation of the body of a lifelong atheist from the consecrated portion of a municipal cemetery.
2. Mindful of the guidance of the Court of Arches concerning the need to demonstrate an exception to the principle of the permanence of Christian burial, as set out in *Re Blagdon Cemetery* [2002] Fam 299, I issued directions on 7 December 2023 inviting the petitioners to file evidence in support of their petition. Having first solicited the views of the petitioners, I determined that it was expedient to deal with this matter on written representations.

Background

3. In March 2023, Christopher Anthony Reid died of pneumonia at the age of 63. He was buried in Bognor Regis Town Cemetery, in an area consecrated in accordance with the rites of the Church of England. For reasons which are not material, at the time of his death Mr Reid had lost contact with his immediate family. His carer informed the authorities that he had no details of Mr Reid's next of kin or other family.
4. Mr Reid's family learned of his death in September 2023. They were distressed that they had not had the opportunity of saying farewell. But they were particularly troubled by the choice of his final resting place. Mr Reid was an atheist, and resolutely opposed to the practice of burial. His three daughters, supported by his widow, decided that they owed it to their father to take steps to have his remains cremated and his ashes scattered, which is what they believe Mr Reid would have wanted. Accordingly, they petitioned this court for a faculty permitting his exhumation.

Evidence

5. I have had the advantage of reading witness statements from each of Mr Reid's daughters, Nicole, Emily and Alexandra, and from his widow, Sarah. They candidly refer to Mr Reid's mental health issues which place in context the lack of familial contact in his later years. I do not consider it appropriate or necessary to include details in this judgment.
6. The witness statements coalesce around one feature. While understandably shocked and saddened to learn of Mr Reid's death, they were deeply perturbed to learn that the local authority (of whom I make no criticism) made arrangements for his final resting place to be a Christian burial ground. They say Mr Reid would have been outraged by such an outcome, and cite his lifelong atheism, and, as one of them put it, his preference for

science over religion. Numerous examples are given of his hostility to religion, the strength of his views, and the vehement manner in which they were frequently expressed. It is unnecessary to rehearse them all in this judgment, but they are highly material to my decision. I simply quote from one:

There were three things Dad despised: the Monarchy, the Government and the Church of England.

7. I have no reason to question the honesty or sincerity of any of the witness statements, nor the motivation of the family bringing this petition. It has been a costly decision: not merely emotionally but also in relation to the fees which will be incurred for the exhumation, together with the court costs. Having been unaware, at the time, of Mr Reid's death, they now want to do the right thing.

The law

8. In order fully to understand the ecclesiastical law as it applies here, it is necessary to step back and consider the role and function of the Church of England in the nation's life. As I remarked in *Re St Mary, Woodkirk* [2020] ECC Lee 3, at paragraph 11:

One of the features of a Church by law established is that its civic functions are not confined to its members (howsoever defined) but extend to the population as a whole. This is particularly the case in relation to marriage and burial.

9. As a general proposition, the public, irrespective of their religious affiliations or lack thereof, have a legal right to be married in their parish church, and buried in its burial ground. It is implicit from the judgment of the House of Lords in *Aston Cantlow and Wilmcote with Billesley Parochial Church Council v Wallbank* [2004] 1 AC 546, that the solemnisation of marriage and the burial of the dead constitute acts of public authorities for the purposes of the Human Rights Act 1998, section 6(3)(b). Accordingly, it is unlawful to exercise those functions in a way which is incompatible with the rights contained in the European Convention on Human Rights. The Consistory Court is also a public authority, being a court or tribunal within the meaning of section 6(3) of the Act. This was recently reaffirmed in the judgment of the Court of Arches in *Re St Giles, Exhall* [2021] EACC 1, at paragraph 9.2, citing *Re Cranley Green Road Cemetery, Luton* [2001] Fam 308 at [6] and *Re Durrington Cemetery* [2001] Fam 33 at page 37A. It too must function in a manner compatible with Convention rights.

10. Article 9 of the European Convention on Human Rights provides as follows:

Article 9 – Freedom of thought, conscience and religion

- (1) *Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief and freedom, either alone or in community with others and in public or private, to manifest his religion or belief, in worship, teaching, practice and observance.*
- (2) *Freedom to manifest one's religion or beliefs shall be subject only to such limitations as are prescribed by law and are necessary in a democratic society in the interests of public safety, for the protection of public order, health or morals, or for the protection of the rights and freedoms of others. [emphases added]*

11. For convenience, many commentators (myself included) abbreviate this right to 'freedom of religion'. But as the inelegant acronym 'FoRB', makes explicit, the right extends

beyond religion to include all belief systems and world views. Thus, the right protects, amongst other things, atheism, agnosticism and humanism. Accordingly, those individuals or institutions within the Church of England who are responsible for the solemnisation of marriage or the burial of the dead must act in a manner which is compatible with the principle of freedom of religion or belief, and must not discriminate on the basis of their religion in people's enjoyment of their rights: see Article 14 of the Convention.

12. In *Re Durrington Cemetery* [2001] Fam 33, I directed the issue of a faculty for the exhumation of a Jew from a consecrated burial ground, commenting as follows at 37D:

... it seems to me that in the facts of the present petition, the court would be seriously at risk of acting unlawfully under the Human Rights Act 1998 were it to deny the freedom of the orthodox Jewish relatives of [the deceased] to manifest their religion in practice and observance by securing the reinterment of his cremated remains in a Jewish cemetery and in accordance with Jewish law.

13. This decision was followed by *Re Crawley Green Road Cemetery, Luton* [2001] Fam 308, concerning a humanist, where a faculty for exhumation was also granted. The Chancellor noted the petitioner's evidence that had she known that her late husband's remains were to be placed in ground that had 'church associations', the family would have regarded it as hypocritical and not proceeded: see paragraph [6].

14. In the seminal case on exhumation, *Re Blagdon Cemetery*, the Court of Arches stated at paragraph 33:

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.

15. The Court proceeded to consider various scenarios which might, or might not, constitute an exception to the presumption in favour of the permanence of Christian burial. One such was mistake, which was addressed at paragraph 36(iii).

*A mistake may also occur due to a lack of knowledge at the time of burial that it was taking place in consecrated ground with its significance as a Christian place of burial. For those without Christian beliefs it may be said that a fundamental mistake had been made in agreeing to a burial in consecrated ground. This could have been a sufficient ground for the grant of a faculty to a humanist in *Re Crawley Green Road Cemetery, Luton* and to orthodox Jews in *Re Durrington Cemetery* without the need for recourse to the Human Rights Act 1998.*

16. Whether there was an operative mistake in the *Durrington* case is open to debate. The Jewish relatives of the deceased, whilst perhaps not consulted prior to the burial, declined to take objection out of deference to his Christian widow, in what is described in the judgment as a display of 'dignified and principled restraint' (35G). Only when the widow had emigrated to Australia some years later did the Jewish relatives seek the exhumation, a course in which the widow acquiesced.

Discussion

17. I come therefore to consider the application of the legal principles which I have just outlined to the facts of this particular case.

18. First, I make no criticism of the local authority, the funeral directors or the cleric involved in the burial of Mr Reid and the choice of a plot in the consecrated part of the cemetery. They could not reasonably have been expected to have known of his atheistic beliefs. They acted entirely properly, and I would also wish to commend the care and sensitivity with which the local authority and the funeral directors responded, once Mr Reid's family learned of what had happened and enquired about exhumation.
19. Unquestionably the evidence here clearly establishes a mistake. Those who assumed responsibility for deciding Mr Reid's final resting place had no knowledge of his strong aversion to Christianity in general and the Church of England in particular. That is sufficient to be dispositive of the case, without recourse to the Human Rights Act. However, Article 9 of the Convention is both relevant and compelling. It reinforces and undergirds the need for an exception to be made allowing an exhumation to take place. The sincere and strongly held atheistic beliefs of Mr Reid are entitled to the same level of respect in death as they would in life.
20. For completeness I mention reburial. It is axiomatic that the requirement for reburial in consecrated ground is not applicable when the reason for the exhumation is that the Christian burial had been a mistake, incompatible with the important right to freedom of religion or belief. The family of Mr Reid are at liberty to have his body cremated and to deal with his ashes as they see fit. They may well need to take time for reflection before coming to a common mind.

Disposal

21. It follows that a faculty will be granted for the exhumation of Mr Reid, subject to the usual conditions. The costs of the petition are to be borne by the petitioners and are to be settled in full before the faculty is implemented.