

DIOCESE OF SHEFFIELD

In the Consistory Court

Her Honour Judge Sarah Singleton QC
Chancellor

In the Matter of St Peter and St Paul Barnby Dun – Exhumation of the Remains of Hazel Morris (and Removal of Memorial Stone)

Judgment

Introduction

1. The petitioner in this matter is Mr Barry Morris who is the widower of Mrs Hazel Morris who died in 2013. He seeks to arrange the exhumation of her cremated remains from the churchyard at St Peter's and St Paul's Barnby Dun in order for them to be reburied in the Littlehampton Cemetery on Horsham Road in Littlehampton in West Sussex. He also seeks permission to move the small memorial stone installed in the churchyard at Barnby Dun in order to reinstall it in the Littlehampton Cemetery.
2. Mrs Hazel Morris died on the 17th of September 2013 aged 67. She was the petitioner's wife and the mother of three sons: Richard, Philip and Stephen. Stephen is the youngest of the brothers; he is now 39 years old. Mr and Mrs Morris originally came from South Yorkshire where her two sisters still live. The family moved south to West Sussex and settled in Littlehampton in 1984.
3. Mr Morris says, in the letter he wrote to the Registrar to accompany his Petition, that he had still hoped that Mrs Morris would make a recovery from the cancer she was suffering up to only 2 weeks before her death. Her death came as a devastating shock to him. Although Mrs Morris was cremated in West Sussex, the family decided that her remains should be buried close to those of her parents in the churchyard at St Peter and St Paul Barnby Dun in Doncaster. That burial took place on 1st November 2013 with a thanksgiving service conducted by the incumbent then, the Reverend Janice Foden. (As I understand it both the present incumbent and the Reverend Foden support the Petitioner in this matter.) A fitting book shaped memorial stone marks the site of the burial. The memorial has space for more details and I gather it is intended for the Petitioner's details to be included; he wishes his remains to be laid to rest with his wife's wherever they may be. He would very much prefer this to be in Littlehampton.
4. Mr Morris, his son Richard and his son Stephen live in West Sussex. His son Philip is employed in the UAE but, when he returns to the UK, bases himself in the family's home area of West Sussex.

5. Stephen's situation is unusual and important in the context of this case. He was born with infantile hemiplegia and cerebral palsy. He still has focal seizures. He has a marked visual impairment. He has other significant physical impairments; his left leg is shorter than his right and he needs to wear a built-up heel on the left. His gait is unusual: he can easily trip or cause others to do so. He has a degree of learning difficulty and lacks social confidence. He lives independently in Littlehampton with professional support. He is unable to use public transport and in general is quite uncomfortable outside his home area. He is unable to visit the site of his mother's resting place without being transported there by someone else and supported during any visit. The distance between the two places is approximately 250 miles and the journey takes at least 4 hours by car. As the Petitioner has grown older and less able to travel, visits have become much less frequent. This is sad and difficult for Stephen who was very close to his mother. He was greatly affected by her loss and received counselling for 2 years afterwards. He continues to talk to a picture of her that he has on prominent display in his home. He has very fond memories of his life with his mother.
6. The Petitioner, his sons and Mrs Morris's surviving sisters all consider that the family made a serious error of judgment in the aftermath of Mrs Morris's death in deciding that she should be laid to rest in South Yorkshire. The family are very worried about the ongoing impact upon Stephen of being unable to visit his mother's resting place. They can only foresee that this will get worse with the progression of events and time if this Petition fails. Stephen would like to be able to visit the site of his mother's remains regularly and on foot. This would be possible if they were in the cemetery in Littlehampton.
7. When I first considered this Petition in December 2020 I was concerned that it might not be possible for the proposed exhumation to be undertaken with dignity and respect. I therefore asked for confirmation that it was the view of the funeral directors involved that the Petitioner's proposals could be implemented with propriety and respect. That confirmation has now been provided in the form of letters from Mr Richard Wright of B A Wright and Sons of Fishlake in South Yorkshire and from Mr Ashley Rendell, a manager and funeral director at H D Tribe Ltd of Rustington West Sussex who would take responsibility for the reburial of Mrs Morris's remains at Littlehampton cemetery and the installation of the memorial stone from Barnby Dun. The plan for Mrs Morris's remains would be for them to be placed in a larger container in the event that there were any deterioration or degradation of the solid oak casket in which they were buried in November 2013. That would permit a respectful and dignified transportation prior to the reburial of the remains in Chichester.

The Law

8. The key principles are set out in two cases of the higher ecclesiastical courts: The case of *Re Christ Church Alsager* [1998] 3 WLR 1394 is a decision of the Chancery Court of York where the Court dismissed an appeal against the refusal of the Chancellor to permit an exhumation and reburial within the same churchyard in order that a married couple's remains could be buried together. The case of *Re Blagdon Cemetery* [2002] 3 WLR 603 is a decision of the Court of Arches which overturned a first instance decision to refuse permission for exhumation apparently on the grounds of the passage of time alone.

The test to be derived from *Christ Church Alsager* is:-

Is there a good and proper reason for exhumation, that reason being likely to be regarded as acceptable by right thinking members of the Church at large?

[1401 D to E]

The crucial reasoning of the *Re Blagdon* decision is found at paragraphs 33 and 34 of the judgment :-

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. Exceptional means "forming an exception" (Concise Oxford Dictionary (8th Edition, 1990)) and guidelines can assist in identifying various categories of exception. 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.

34. The variety of wording that has been used in judgments demonstrates the difficulty in identifying appropriate wording for a general test in what is essentially a matter of discretion. We consider that it should always be made clear that it is for the petitioner to satisfy the consistory court that there are special circumstances in his/her case which justify the making of an exception from the norm that Christian burial (that is burial of a body or cremated remains in a consecrated churchyard or consecrated part of a local authority cemetery) is final. It will then be for the chancellor to decide whether the petitioner has so satisfied him/her.

9. I find it useful and proper and I consider, legally accurate, rather than ponder the technicalities of the principles of two different lines of authorities to look at exceptionality first and then, as a failsafe, to examine the emerging reason through the filtering prism of right thinking members of the church generally. There is rarely any difference in my experience and, I suppose, nor would there be, as a matter of logic.

Decision and reasons

10. I am quite satisfied that the circumstances in this case are exceptional and further that there is a good and proper reason for the petition to succeed which would be regarded as acceptable by right thinking members of the church at large for this petition to succeed. My reasons are as follows: –

- The decision by the family that Mrs Morris's remains should be buried in South Yorkshire was a mistake. That view is agreed by all members of the family. Although there is still a connection to South Yorkshire, the decision failed to consider that the family's home area had, at the time of Mrs Morris's passing, become West Sussex and remains West Sussex.
- The family's mistake in 2013 would not, on its own, justify the success of this Petition. However, I consider that the circumstances of Stephen Morris move the case into an exceptional bracket. Stephen is 39, he has acute vulnerabilities and needs because of his disability. He was deeply affected by his mother's loss. He has not been able to visit Barnby Dun for some considerable time and will never be able to do so without support. As his father becomes older and frailer it becomes increasingly less likely that such support will be available to Stephen. Not being able to visit his mother's resting place is likely to cause Stephen considerable distress. Conversely if Stephen could go to the site of his mother's remains regularly and without support, that would improve his situation and benefit him emotionally and generally. The desirability of such an outcome for a person with well documented acute needs moves this case into an exceptional bracket for reasons which I consider right thinking members of the church would approve.
- The Petitioner intends that his remains should be buried with those of his wife wherever that may be. His clear preference is that the location be West Sussex. That is not only because the family's home area is now there but also by reason of the vulnerability and needs of Stephen which are, no doubt an increasing cause of anxiety to the Petitioner as he grows older. That linked but separate consideration also takes this case into an exceptional bracket and constitutes a reason which right thinking members of the church would approve.

11. For these reasons I consider this Petition should succeed and attach directions accordingly. As is usual in an exhumation case: any requirement for public notice is discharged. The proposed course of action should take place as soon as practicable.

Sarah L Singleton QC

Chancellor of the Diocese of Sheffield

21st March 2021