

**Neutral Citation No. [2019] ECC SEI 2**

**IN THE CONSISTORY COURT**

**DIOCESE OF ST. EDMUNDSBURY & IPSWICH**

**In the matter of**

**FELIXSTOWE, ST. JOHN THE BAPTIST**

**-and-**

**In the matter of**

**A PROPOSED EXHUMATION OF THE REMAINS OF THE LATE  
SERGE ERNEST ZEHNDER**

**-and-**

**In the matter of**

**A PETITION OF MRS VANHEFFEN DIANE HELEN MALVINA  
ZEHNDER**

**Judgment of the Chancellor**

**February 19, 2019**

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**JUDGMENT**

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**Etherington Ch:**

1. By Petition, Mrs Zehnder, the wife of the late Serge Ernest Zehnder petitions me to allow the exhumation of the cremated remains from Felixstowe Cemetery of her late husband so that at her death they may be scattered with hers at the seashore of a favourite location of theirs at Felixstowe, within this Diocese. Since her husband's

cremated remains were interred in this cemetery in 1992, at first blush the application may seem to be one that would be very difficult to grant. However, on closer examination of the facts, I have found there are a number of exceptions, including a particular and justified sense of expectation for this lady, that explain this otherwise unusual course. She is herself nearly 98 years old, but her ability to write a coherent, impassioned and determined letter to me has not been dimmed by the years.

2. The permanence of Christian burial in an Anglican churchyard is the norm and I am familiar both with the case law, from *In Re Blagdon Cemetery* [2002 Fam 299]; [2002] 4 All ER 482 Ct of Arches onwards and the decisions of other Chancellors, and, of course, my own in which various factors have been categorised which may tend to urge exercise of a discretion in one direction or the application of the law in the other. I do not think this judgment will benefit from rehearsing these cases because it stands on its own unusual facts.
3. The Zehnders resided in Brussels but visited the United Kingdom to visit Mrs Zehnder's mother. She, her mother, had resided originally in Cambridgeshire but had moved to Kettering, Northamptonshire to be nearer to her son. Mr and Mrs Zehnder crossed by way of the ferry from Zeebrugge to Felixstowe until this ferry service was discontinued. They used Felixstowe as a place to stop over and greatly loved the area around the seashore promenade. When the ferry service no longer operated, they nevertheless took a route that permitted them to visit Felixstowe as before. In her letter to me Mrs Zehnder tells of how much her husband loved these trips in general and Felixstowe in particular. He had been wheelchair-bound since 1942 as a result of wartime injuries.
4. Both in her original petition and in the subsequent enquiries I made about some outstanding points it became clear that both had conceived a particular plan for what would happen to their remains after death. This was that, in the event of his death first, he would be interred in Felixstowe Cemetery and that after her death they would be reunited by having their ashes scattered on the shore of the place they had both loved so much.
5. As it happens, Mr Zehnder held no religious views at all. They were married in church, Mrs Zehnder's grandfather having been a Baptist minister. But Mr. Zehnder's funeral took place in a crematorium and, I am told, had no religious element. Her husband, had he lived, would now be over 100 years old and she knows of no other

living relations of his. Her son, sadly, is also now dead (June 2018) and he is buried in Cheshire. As she says to me in her letter “my two most precious persons gone.”

6. A wholesale confusion seems to have set in over a number of matters. Her husband’s ashes were indeed buried in Plot 90, Block J of the cemetery. For reasons I cannot identify at this remove, it appears that there was a belief that only part of the cemetery was consecrated in 1992 although it is agreed that all of it had been by 2005. The part containing Mr Zehnder’s remains was thought both by Mrs Zehnder, the funeral director and some public officials to have been unconsecrated at the time of the interment. The researches of the Registry suggest it was always consecrated ground during the entire period in question, but I accept that this was not Mrs Zehnder’s state of mind. In her letter she says, at its conclusion, that it is “written in all truthfulness by a 97 ½ year old”. I believe all she told me without a moment’s hesitation and the confusion about the status of the ground was not hers alone.
7. Indeed, as part of the joint plan between herself and her husband she applied in 1993 for a Home Office licence to have her husband’s casket exhumed and returned to Belgium. The request was granted. Although this permission was time-limited to 1995, Mrs Zehnder elected to let the permission elapse and deferred the moment planned for the exhumation.
8. However, in 2005, she revisited the plan and sought permission of the Town Council to have her husband’s remains exhumed at the time of her death until such time as his ashes could be reunited with hers in a scattering of their ashes as previously described. The Town Clerk of Felixstowe Council agreed to this proposal even though by now (but unknown to Mrs Zehnder) the ground was agreed to be consecrated on any view and a Faculty would have been required. Suffolk Coastal District Council would also have to permit the scattering and apparently will not decide the matter prospectively.
9. It appears to have been agreed by everybody (except this Court which had not been consulted) that all that was required would be a Home Office Licence and that this should be obtained much nearer the time when the proposal was to be effected, because, as Mrs Zehnder already knew, those licences are of relatively short duration. Felixstowe Town Council is content to carry out the exhumation.
10. When I first saw the papers, I was touched and moved by the petition, especially Mrs. Zehnder’s letter. However, I did have some concerns. First, I wished the issue of consecration to be resolved. I am satisfied now that the ground was consecrated at all

relevant times. Equally, I am also sure that this fact was neither known nor taken into account by Mrs Zehnder, or apparently anyone else, until very recently. Second, I wished to ascertain whether Mr Zehnder had held any religious belief or had views about his own memorial. I am satisfied from enquiries here in England and in Belgium that Mr Zehnder held no religious beliefs and wished to have his ashes scattered with those of his wife when the moment came.

11. I have reached the decision firmly that this is a case where the usual rule that Christian burial in a churchyard or cemetery that is consecrated and under the jurisdiction of the Consistory Court is permanent should not apply here. Apart from the fact that what I am going to permit to happen is what both husband and wife always wanted to happen, and that Mrs Zehnder was acting under a genuine misapprehension as to the true position both in fact and in law (as were others) it would in my judgment be wholly wrong to frustrate a project both she and her husband formulated many years ago and which she thought had been approved appropriately by authority, when she is now nearly 98 years old and wishes to complete something she cherishes as her final duty to her late husband and to have peace in her mind about this before she herself passes away.
12. Prior to the decision in *Re Blagdon Cemetery*, there had been a case from the Chancery Court of York which propounded this test: “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?”<sup>1</sup> Although this test was not favoured in *Blagdon* and became perhaps of more academic interest in a separate jurisdictional question, I did find the words echoing in my head. I decided the case of course applying the principles in *Blagdon* and succeeding authority but, as it happens, I do think that most right-thinking members of the Church would see this as I do: namely a very touching and lifelong story of a very precious marriage and the duty owed by one person to another whom she has outlived.
13. Accordingly, I grant this Petition and order that a Faculty permitting the exhumation should pass the Seal.
14. I cannot myself give permission for the scattering of the ashes of this couple where they wished and she still wishes them to be scattered, although I hope the District Council will take a view permitting it in this very unusual case. However, the

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<sup>1</sup> *Re Christ Church, Alsager* [1999] Fam 142; [1999] 1 All ER 117.

intermingling of their ashes in death, as both wished, will be possible wherever it occurs.

15. A Home Office licence will be required. And I make the Order in these specific terms.

*“that the cask and ashes of the deceased be exhumed as soon as is practicable in a dignified and seemly manner with appropriate sensitivity to others using the cemetery at that time and then returned to the Petitioner according to her directions (or those of her servants or agents) as soon as is practicable thereafter or given to an appropriate person and place to hold them according to her wishes.”*