

Neutral Citation Number: [2023] ECC Sal 1

In the Consistory Court of the Diocese of Salisbury

Re Fordington, St George

Introduction

1. This is a petition for the exhumation of ashes from a consecrated plot in the churchyard of the church of St George, Fordington. The intention, if the faculty is granted, is that they be re-interred in the churchyard of the church of All Saints, Dewlish, some eight miles away, in a plot which would subsequently become a family plot.

Procedural background

2. This matter has been allocated to me as deputy chancellor for decision because before they filed the petition, the petitioners sought and obtained advice on this matter from the Chancellor. It plainly would not be right, in those circumstances, for the Chancellor herself then to decide the matter; there would be a risk that she might appear to have already made her mind up before considering the petition. Although I am aware of the existence of that advice, I have not seen it, and I have no knowledge of its contents. I come to the matter with fresh and independent eyes.
3. It appeared to me to be expedient and appropriate to deal with this petition without a hearing. The petitioners were invited to submit any views on this that they wished to be taken into account, as well as any further evidence which they wished the court to consider. They indicated that they did not have anything further to put before the court, so I have considered the petition without a hearing on the basis of the material already before me.

Background

4. In July 1991, the petitioners' third child, whom they named Aimee, was stillborn due to trauma sustained by her mother in a car accident, for which she was blameless. Aimee was cremated, and her ashes were interred in the churchyard of what was then the petitioners' local church: St George's, in Fordington, Dorchester. They tell me their judgment was clouded with grief at the time, and they now feel that they made the wrong decision concerning her place of interment.

The Petition

5. The petitioners are now of an age when they are considering their own last resting place. They wish to have Aimee's ashes exhumed and re-interred in the churchyard in Dewlish, in a plot where their own ashes would in due time be interred. While they do not live in Dewlish, Aimee's father in particular has significant family links to the church and churchyard, where many of his family are buried, as far as three generations back. The petitioners express concern about leaving Aimee, as they see it, "on her own in

Dorchester”, where they fear there would be nobody to tend her grave and where she would eventually be forgotten.

6. I am told that Aimee’s three siblings have moved away from the area and have families of their own. They have, however, all indicated that they either support, or do not object to, their parents’ petition.
7. The incumbent in Dewlish has indicated her consent to the re-interment in the churchyard there. I infer from this that she would also consent to the interment of the petitioners’ ashes in due time. I am bound to note, however, that the petitioners currently have no legal right to interment in Dewlish; and I am told they have not taken any steps to secure that right, for example through reservation. In the circumstances as they now are, whether the petitioners are granted their wishes as to their own interment would be a matter for the discretion of the incumbent at the time.
8. I should also add that I have no information concerning the way in which Aimee’s ashes were interred, or whether any vessel in which they were contained could be expected to be in a sufficiently intact condition to make exhumation a practical possibility. I do note, however, that the petitioners are being supported through the faculty process by a local firm of funeral directors. I imagine that, subject to faculty, it is they who would carry out any works; I would expect them to do so with professionalism and expertise, and I would require them to exercise their professional judgment if it appeared to them that exhumation was not practically possible.

The law

9. The starting point for my consideration of this petition must be the Court of Arches decision in *Re Blagdon Cemetery* [2002] Fam 299. That decision is binding on me. It explains that there is a general presumption that Christian burial is permanent, and the necessary faculty for exhumation from consecrated ground will only be given in circumstances sufficiently compelling as to properly justify making an exception to that permanence. Ultimately, it is a matter for the exercise of the court’s discretion, albeit against the background of the clear presumption in favour of the permanence of burial. Any notion that remains are to be regarded or treated as in any way “portable” is to be resisted.
10. It is plainly desirable that, so far as is reasonably possible, there should be consistency in decisions: similar cases should generally be decided similarly. *Re Blagdon Cemetery* itself makes this point. However, as recently observed in *Re Kidderminster, St George* [2022] ECC Wor 10: “[i]t has to be said that it is not particularly easy to find a clear path through the reported decisions of Chancellors who endeavour to balance the doctrine of the permanence of Christian burial with the understandable desires of petitioners in their various circumstances.” In that case, the Chancellor identified several recent cases where exhumation was sought on grounds of creating a family grave; in some the factor was sufficient to permit exhumation, while in others, it was not. She rightly paid particular attention to reported decisions of the consistory court of her own diocese. However, I

have found no reported decisions from this diocese on exhumation for the purpose of creating a family grave on which I can put particular weight.

11. In exercising my discretion, therefore, I consider the following factors, among those identified in *re Blagdon Cemetery*, to be relevant. In doing so, I remind myself that those factors can operate cumulatively; that is, even though any single factor may not be sufficient to constitute an exception to the presumption of permanence, the combination of factors may nevertheless be sufficient.

Lapse of time

12. While Court of Arches in *re Blagdon Cemetery* said that lapse of time is not determinative, it can be a factor militating against the grant of such a faculty. In this case, some 32 years have passed since Aimee's ashes were interred in Fordington.
13. I do note that Aimee's mother required counselling to help with her grief after Aimee's death, and that she was unable to visit the grave for several years. However, the petitioners describe a family life where Aimee's memory has been kept alive through photographs and conversations, and it appears to me that for many years now the petitioners have reached a state where Aimee's loss has become in some sense normalised or accepted (these are my words, not theirs, and I hope I cause no upset by expressing my impression in this way).
14. Given that her father's family links to Dewlish are of very long standing, the only matter which could be relied on as having changed since that interment is the fact that the petitioners no longer live in Fordington (although I am not told when their move occurred). I am not persuaded that there is a good explanation for what, on any view, must be a significant passage of time within which this petition could have been brought.

Health

15. The court in *Re Blagdon Cemetery* countenanced the possibility that there could be medical reasons which might satisfy a court that an exception to the general principle of permanence should be made. But it was careful to say that those reasons would have to be "*very powerful indeed*", giving the example of serious psychiatric or psychological problems arising from the location of the grave of the deceased.
16. In the case before the court in *Re Blagdon Cemetery*, the petitioners' son had died in an industrial accident at the age of 21, more than 20 years earlier. Exhumation, with proposed reinterment near where the petitioners now lived in retirement, was sought on the grounds that advancing years and declining health made it difficult for the petitioners to travel to visit their son's grave. The Court of Arches agreed with the consistory court, saying:

In so far as Briden Ch. treated the petition of Mr and Mrs Whittle as one seeking exhumation of Steven simply in order to visit his grave more easily, we cannot fault his conclusion that this was not a sufficient reason for exhumation.

17. The court went on to observe:

If advancing years and deteriorating health, and change of place of residence due to this, were to be accepted as a reason for permitting exhumation then it would encourage applications on this basis.

It then considered the possibility that if this were permitted and encouraged, remains might be subject to multiple exhumations and moves for the convenience of the bereaved, and added:

Such a practice would make unacceptable inroads into the principle of permanence of Christian burial and needs to be firmly resisted.

18. In the present case, while the petitioners have moved away from the site of the grave, it has not been a significant move; both the current and the proposed place of burial are a short drive from the petitioners' current home. This factor, whether presented as one of health or one of convenience, does not assist the petitioners.

Mistake

19. Where there has been a mistake as to the intended location of an interment (such as, for example, interment in a grave reserved for another), or as to the nature of the interment (such as, for example, an interment in consecrated ground when due to the deceased's religious or other beliefs that was inappropriate), grounds for exhumation may readily be made out.
20. As noted above, the petitioners tell me that their judgment was clouded with grief at the time, and they now feel that they made the wrong decision concerning her place of interment. They may, therefore, hope that this factor will weigh positively in the court's mind as constituting the recognition of a historical mistake.
21. However, the court in *re Blagdon Cemetery* expressly said that:

... a change of mind as to the place of burial on the part of relatives or others responsible in the first place for the interment should not be treated as an acceptable ground for authorising exhumation.

The petitioners, in their understandable grief, chose to inter Aimee's ashes in the churchyard of what was then their local church. It does seem to me that the present petition comes about more through a change of mind than from anything that could be characterised as a mistake. This does not, therefore, assist them in their petition.

Family graves

22. The court in *re Blagdon Cemetery* recognised that family graves both express family unity and represent an economical use of land for burials; and it considered that the creation of a family grave might constitute sufficient reason to permit exhumation. (In both *ionere Blagdon Cemetery* and the present case, the exhumed remains of the child of the petitioners would be the first interment in the new, family grave.) However, the court affirmed:

... it should not be assumed that whenever the possibility of a family grave is raised a petition for a faculty for exhumation will automatically be granted. ... Where special circumstances are relied upon in respect of a child who has predeceased his or her parents, it will be insufficient if there is simply a possibility of establishing a family grave. As in this case there would have to be clear evidence as to the existence of the legal right to such a grave if no family member was already buried in it.

23. As I indicated earlier, the petitioners currently have no existing legal right to a grave in Dewlish which could become a family grave. This alone would be a compelling reason not to grant the faculty as sought. In any event, I am not told that there is any impediment to creating a family grave in Fordington, where Aimee is already interred. I appreciate that it would not meet the petitioners' hope for that family grave to be in the same churchyard as Aimee's father's family; but given the proximity of the two churchyards (as noted, they are only some eight miles apart) and the fact that the anticipated occupants of the family plot appear to be limited to Aimee and the petitioners (the decision not, therefore, directly affecting the place of burial of any other member of the family), it would seem to be a solution worthy of consideration. Once again, this factor does not significantly assist the petitioners.

Determination

24. I am not satisfied that the circumstances of the present case justify the grant of a faculty for the exhumation of Aimee's ashes. To do so on any of the grounds discussed above, or taking them in combination, would be to pay insufficient regard to the presumption of permanence. I must, therefore, dismiss the petition.
25. In the circumstances, I waive my fee for writing this judgment.

David Willink Dep. Ch.

28 December 2023