

Neutral Citation Number: [2021] ECC Lon 4

IN THE CONSISTORY COURT

Diocese of London

IN THE MATTER OF HOUNSLOW BOROUGH CEMETERY

-and-

IN THE MATTER OF FACULTY NO 4120

The proposed exhumation of the mortal remains of the late AJS from Plot No 555 C5 in consecrated ground at Hounslow Borough Cemetery

-and-

IN THE MATTER OF

A Petition of Mrs NS

Judgment of the Chancellor

December 1, 2021.

1. Mrs NS who presently lives in Hounslow wishes to exhume the mortal remains of her son, AJS who died, stillborn, on January 21, 1983 nearly 40 years ago. His remains were buried in consecrated ground at Hounslow Borough Cemetery on January 27, 1983. This will all have been extremely distressing for Mrs NS both at the time and since.
2. Mrs NS tells me in her petition that when her son was stillborn she was unable to participate in any meaningful way with the funeral arrangements because she was very unwell and in a state of extreme shock and grief. I accept that

without question. It must have been dreadful for her. She also says that her husband was unable to participate meaningfully in the arrangements because he too was in a state of shock and grief and had little fluency in English, having only arrived in England within the previous two years for the purpose of marrying Mrs NS. I accept that as well.

3. Mr and Mrs S gave permission for her brother and the family to make the necessary arrangements and she says that her brother was guided by their family in the appropriate way to arrange the funeral within the options offered by the hospital. I accept that.
4. She does not remember cremation being offered as an option. I do not know whether it was or was not. I cannot see any reason why it would not have been offered, but it may be that Mrs NS's recollection was affected by the circumstances at the time. She says that she only realised cremation would have been possible after her daughter tragically lost a child. She points out that, had her son been cremated, they could have taken his ashes to India to be scattered in the waters as, she says, her own husband's ashes were. She says that at the cemetery for her son, a small service was conducted by a Sikh priest.
5. Mrs NS has visited the graveside over the intervening years, but the grave is in a state of increasing disrepair and requires maintenance. She thinks it has an 'expiry' time of 60 years although I have seen no evidence of this and, in any event, his body could not be exhumed without the permission of this court. Usually at least 75 years must elapse before even any thought could be given to re-use of burial ground although it will often be much longer than that – if it happens at all.
6. The Funeral Service Arranger of the Funeral Directors (H. G. Brown & Sanders), Donna Sweeney, says that the body was buried in the consecrated section allocated to the Church of England because there was no section reserved for those of the Sikh or Hindu faiths.

7. Mrs NS says she has concerns to an extent that they are affecting her mental health that when she dies AJS will spend eternity on his own, away from those who treasured his memory. AJS was her only son. She understands Christian belief to be that his remains should not be disturbed and that he should rest in holy ground but, as I have already stated, she says this disturbance will happen when 60 years have elapsed in any event. This is based on a misunderstanding. Unless the court grants a petition for exhumation, his remains will never be removed from consecrated ground. It is possible, although not certain, that his remains may be buried at a deeper level to accommodate other burials but, even so, his name will always be memorialised and this could in any event only happen after at least 75 years (although in all likelihood much longer than that if at all) and only after consultation with any surviving relatives. Mrs NS also notes that she has been advised that it may be that there are little if any remains to be exhumed.
8. The London Borough of Hounslow has no objection to the petition. There is a letter of support from Mrs NS's brother, RC, who also confirms what Mrs S says about the circumstances surrounding the burial. There are also letters of support from Mrs NS's daughters, R and A.
9. I have not found this an easy case to decide. *In Re Blagdon Cemetery*, although a decision of some twenty years ago, is still good law and it emphasises that Christian burial is permanent and that exhumation can only ever be granted in exceptional circumstances.
10. I do not find the fact that it is difficult for Mrs NS to maintain the grave to be an exceptional circumstance. It is a difficulty that faces every family at some point. Likewise, I do not find that the fact that there may be reburial at a lower level at some point in the future is of relevance. That too is a circumstance common to many coffins and mortal remains. The coffin and remains do not leave consecrated ground. They remain there.
11. I have read with care what Mrs NS says about her mental health which I understand, but for mental health to be a ground on which I could consider

exhumation there would have to be proper psychiatric evidence to establish both the condition and the need for exhumation. Whilst what Mrs NS says to me about her medical condition is therefore not of itself a ground to justify exhumation, it is nevertheless a feature that I bear in mind as part of the background.

12. What is of concern to me, however, are the circumstances in which AJS came to be buried in consecrated ground in the first place.
13. It is ultimately a duty of those permitting and overseeing the burial to ensure that those seeking burial of their loved ones understand that the consequence of burial in consecrated ground will be that it must be a permanent and final resting place. In a case where this issue normally arises and the court is told that those closest to the deceased were never informed about the effect of a Christian burial in consecrated ground, there is little if anything the court can or will do about it.
14. This case is different, however. For both cultural reasons and those associated with the fragile condition of Mrs NS at the time, I accept that she had little or no say in the burial arrangements at all. Nor was there any way in which AJS could have been buried in a section of the cemetery reserved for people of the Sikh faith because no such section existed at that time.
15. What Mrs NS therefore wishes is to have her son's ashes scattered in an Indian river in accordance with the tenets of her faith (although burial is permitted within the Sikh tradition) as opposed to being left permanently in consecrated ground in accordance with Anglican religious belief and practice.
16. Against that is the fact that she has taken so long to make this request and, whilst delay is not necessarily a decisive factor in making such an application, it is nevertheless a significant issue – partly because it goes to the credibility of someone who says they did not want a deceased to remain buried where they lie. The court is entitled to say that a lengthy delay belies a Petitioner's contention that this is anything more than a late or a very late change of mind.

17. All cases turn on their own individual circumstances and whilst I have given 'delay' very serious consideration in this petition as I would in all such applications, the Petitioner has persuaded me on the balance of probabilities that it would be unfair to deploy this particular line of reasoning in the case of her petition.

18. In my judgment, what has happened here is that the Petitioner has in truth been haunted throughout her life by the death of her son and the fact that for understandable medical reasons as well as prevailing cultural attitudes at that time she was prevented from having her son's departure being commemorated in the way she would have wished. Although she has faithfully tended his grave during her own life, now that she feels her own mortality, these unresolved issues in her mind have come to the fore and she is having the peace of her final years increasingly upset by a tragedy of many years ago. Her own faith is not and never has been the Christian faith and there are compelling reasons to explain why she feels the wrong decision was made at the time of AJS' death.

19. In my judgment, these do provide exceptional circumstances to justify exhumation in this case. There are still some obstacles, however, that may prove difficult or even impossible to overcome. They are reflected in the Conditions I have felt it necessary to apply to the permission I am granting. If that is the case, I hope Mrs NS can draw comfort from the fact that in both our faiths we acknowledge that her son's spirit departed from the physical body at the point of his death and so he can never lie alone in the sense that she fears.

20. I therefore order that this Petition pass the Seal subject to the following conditions:

- i. Mrs NS must satisfy the court on the balance of probabilities that cremation is still viable at this remove of time and I give permission for disturbance of AJS' remains to the extent necessary for that fact to be established. If cremation is not viable then his coffin must be returned to where it lay. The court must be informed (via the Registry) of the findings of this preliminary examination.

- ii. If cremation is viable, then before it is undertaken Mrs NS must inform the Registry of where the proposed scattering of the ashes will occur and, if abroad, she must show that she has the permission of a carrier (e.g. an airline) to transport the cremated remains.

- iii. The faculty only gives the permission of the ecclesiastical court for the mortal remains of AJS to be exhumed from consecrated ground. It is for Mrs NS and the funeral director to establish whether or not a Home Office licence is also required as it is not proposed to re-bury the ashes in consecrated ground but to take them abroad. If a Home Office licence is required, then it must be obtained prior to the final exhumation (after viability has been established).

Chancellor David Etherington, Q.C.