

IN THE CONSISTORY COURT OF THE DIOCESE OF PORTSMOUTH

Before the Worshipful Deputy Chancellor

District Judge Stewart

IN THE MATTER OF THE CONSECRATED PART OF  
THE CEMETERY AT KINGSTON CEMETERY, ST MARYS ROAD  
FRATTON, PORTSMOUTH IN THE COUNTY OF HAMPSHIRE

IN THE MATTER OF AN APPLICATION FOR THE EXHUMATION

---

JUDGMENT

---

1. This matter comes before me having been referred by the Chancellor, The Worshipful John Summers who of his own initiative set aside his judgment and subsequent order permitting the exhumation of a child, C, who tragically died of leukaemia at 8 years of age, on 14<sup>th</sup> January 2023. He was buried at Kingston Cemetery, Portsmouth. Having considered the petition by his mother, M, supported by his father, F, the Chancellor granted the order. The exhumation was due to take place on 24<sup>th</sup> April 2025 but F notified the Registry on 20<sup>th</sup> April 2025 withdrawing his consent. That is the context in which the matter comes before me, for rehearing.
2. I gave case management Directions for the sequential filings of witness statements and joined F as a Party Opponent. I specifically wanted to consider his reasons to resile from the consent that he had given previously which fortified the basis of the petition that there had been a fundamental mistake as to where C had been buried, and it was desired that his remains should be cremated. It was clearly an operative mistake.
3. I have received the Witness Statements including one from the maternal grandmother, G, which sets out her role in making the initial arrangements and her frank concession that she had not listened to the parents' wishes. I have decided that it is not necessary

or desirable to hold a court hearing for reasons which I shall expand upon in this judgment.

4. It is necessary to set out some of the background to this case but I say at once the level of acrimony and discord between the parents is immediately apparent and any hitherto agreement they once held is no longer a feature in this sad case. It is also apparent to me that they have been grieving for some time and it is clear that M has been traumatised not only by the loss of C but by the subsequent change of mind of F.
5. C was on holiday for Christmas in Barbados with M and other family members. He was taken ill and a diagnosis of a rare form of leukaemia was given. Sadly, as I have recorded, C later died on 14<sup>th</sup> January 2023. I should record that he was born on 5<sup>th</sup> March 2014. The parents had become estranged and had been separated for a considerable period of time. The Witness Statements reveal a great deal of unfinished business between them. For my part it is not necessary or desirable in the context of this jurisdiction to rehearse all of this and this is not the forum to resolve issues of fact that would be played out in a secular setting.
6. Once C's body was released by His Majesty's Coroner for the Portsmouth District, G took control of all arrangements for his burial. It appears to be common ground that the parents, more particularly M, were in deep grief. M records how she was heavily medicated and sedated by her General Practitioner and she sets out how pressure was placed upon her to have C buried in this cemetery. His interment was on 24<sup>th</sup> February 2023 and so his body has remained there since that time. It appears that two other family members are buried there, which clearly influenced G to elect that cemetery.
7. M says this

“I never wanted C to be buried and know that now for sure. In the right state of mind I would have always chosen a cremation for him as this is what feels right to me and F”.

Her strength of feeling over this issue is reinforced when she states

“I made an attempt on my own life due to the mental anguish it is causing me to visit C in Kingston Cemetery and I find it very hard to visit C’s grave because I know this is not where he should be”.

8. It is also common ground that both parents were not of the Christian faith and C was brought up as an Atheist. Indeed, the basis of the petition before the court is that C was never brought up in the Christian faith and he has been buried in the wrong place. It appears that it was only sometime later that M realised that he had been buried in this large cemetery, in a part which is consecrated. It is in this context that she feels C is in “the wrong place” as she puts it.

9. There is another factor at play here and that is the petition records that the parents wanted for his remains upon exhumation to be cremated. The overwhelming impression I have is that her grief was so intense she did not focus upon any details of his funeral and allowed herself to be dominated by G.

10. I have considered carefully the evidence of G dated 24<sup>th</sup> April 2025. I think with refreshing honesty she records as to her choice of venue:

“... My reasoning for this was selfish and for my own peace of mind”.

And she adds

“it is because I wanted C with my mother, which is why I shut down M’s thoughts on cremation down”.

11. M applied to the court by petition to have C’s remains exhumed. She stated that F was in complete agreement and I have seen the email he sent. M records that F gave his Consent within ten minutes of her request to him by email. There is no issue between the parents that he gave his consent. M states that he was indifferent to a burial or a cremation at the time but whatever else I am satisfied that, for different reasons, it suited both parents to devolve all of the arrangements to G.

12. On 20<sup>th</sup> April 2025 F sent an email to the Portsmouth Registry saying that he wanted to stop the exhumation – his reasoning was twofold. Firstly, he says he agreed initially for

the exhumation but was under emotional distress and he did so to keep the peace with M. Additionally for the first time he stated,

“I am a Christian and the situation does not feel right to me and I would like it stopped”.

13. The matter was immediately put before the Chancellor who set aside the faculty dated 19<sup>th</sup> March 2025 and applying *Allesley: All Saints* [2018] ECC COV. 10 remitted the matter to me for rehearing. As I have indicated I joined F as a Party Opponent and directed he should provide a Witness Statement setting out what his objections were and why he had effectively changed his mind, so proximate to the Exhumation taking place. It seemed to me that this really was the apex of the case – a change of mind – but F’s Witness Statement is very brief indeed.

14. In essence, F says that C is at peace and has been laid to rest for over two years now. He adds that it felt “unnatural” to disrupt that. F adds that he was pressurised to agree to the Exhumation but he does not expand upon this nor does he suggest any form of duress. I have already recorded that he gave his Consent within ten minutes of the request from M. He also adds that he is trying to

“Put my faith back in God”.

15. There are other documents that record his recent conversion to the Christian faith, which is very recent indeed and it is clear that M does not accept this is genuine. For the purpose of this Judgment it is not necessary for me to evaluate that since it is common ground and accepted that this was, at the time of C’s death, a family of no faith in the sense and in the way C was brought up by both his parents.

16. There are many examples in M’s Witness Statement as to the lifestyle of F, she alleges he has been imprisoned and that he is a drug user if not a dealer in illicit substances. She also indicates that F in fact showed little interest in C during his short life and in essence was hardly a father figure.

17. In my judgement the court needs to consider the change in circumstances advanced by F and to consider the wider background, but I do not need to have played out in a

Consistory Court setting the parents' evidence as to each other's character and lifestyle because it does not assist me in applying the legal principles that I must.

18. It was presented to the Chancellor at the outset that there had been a fundamental and mutual mistake for C to have been buried in consecrated ground and that there was a real and genuine wish for cremation. M put it in this way, that C is

“in the wrong place”.

19. The leading case in considering Exhumation is of course *Re Blagdon Cemetery* [2002] FAM 299 Court of Arches. Burial within a churchyard or indeed any land consecrated under the rites of the Church of England should be regarded as permanent, in other words a final resting place. We are, after all, entrusting that person to God for resurrection, we are entrusting them in peace for their ultimate destination.

20. It is only in exceptional circumstances that that approach can be departed from and one has to look for and to special circumstances, to illustrate an exception from the norm. Mistake as a conception is often cited and in this context it is a mistake that the parents had a lack of knowledge that the burial was taking place in consecrated ground and as here, for those without Christian beliefs it may be said with some force that it is a fundamental mistake. I am also assisted by the decision of Chancellor Petchey very recently in *Re In the Matter of Lambeth Cemetery* [2025] ECC Swk 2 particularly at paragraph 18 of his Judgment.

21. It seems to be in terms of mistake cases, the decision of Chancellor Hill KC in *Re Bognor Regis Town Cemetery* [2024] ECC Chi 3 illustrates another case where a fundamental mistake was realised where the deceased, a lifelong atheist was buried in a Christian burial ground. The Chancellor granted an exhumation having accepted the mistake was a genuine one.

22. Chancellor Hodge KC in *the Matter of Kidlington Parish Burial Ground* [2025] ECC Oxf 3 set out helpfully the three matters that fall to be considered in these cases at paragraph 18 of his Judgment, that is to look at firstly whether the threshold condition of whether the Court has the necessary Jurisdiction to order exhumation and secondly

whether the Court should exercise its discretion to order their exhumation and if so thirdly to consider if any conditions need to be attached.

23. M has demonstrated to me that it was and remains a fundamental mistake for C to have been buried where he now lies and how it came about has been amply demonstrated in the material evidence put forward by G and the concessions she makes that it was all her idea.
24. The intervening event is F's change of mind, here. If I acceded to his objections I would be compounding the original mistake which he had hitherto acknowledged. I entirely understand he has embraced the Christian faith during these proceedings, but the fact remains C was not brought up in the faith and he was an Atheist.
25. M has demonstrated special circumstances here that justify the making of an exception from the norm, that the burial in a consecrated cemetery is final. I accept her evidence she did not know it was in consecrated ground being part of a much larger local authority cemetery.
26. I have not overlooked the notion of a family grave: there is no family grave as such here, but as G has stated, he was buried there close to her own mother and another family member. Neither M or F have advanced any case that this is a family grave.
27. Nothing advanced by F in his Witness Statement has been raised that displaces the fact that the fundamental mistake as to the place of burial. His own outlook now is a change of mind for personal and understandable reasons. Anterior and superior to his own wishes, remains it seems to me the fundamental and mutual mistake as to the fact C is buried in the wrong place. I cannot allow those to override this and to leave C where he is compounds the mistake.
28. It is not challenged that M visits the grave regularly and now finds it incredibly difficult to go there because she has knowledge he is in consecrated ground when he should not be. I note the observations of the Deputy Chancellor in *Re Brookwood Cemetery* (no 1) [2023] ECC Gui 4

“A mistake must be distinguished from a case in which a family have simply changed their minds as to the preferred location of the remains”.

29. F's reasoning albeit briefly set out in his Statement is not enough to displace the greater issue of the fundamental mistake.

30. Accordingly, I direct that a Faculty be issued permitting the exhumation of the remains of C from the Kingston Cemetery, subject to the following conditions:

1. The exhumation shall take place reverently and discreetly at the direction of Portsmouth City Council;
2. The local authority shall first make an examination of the grave to ensure that the remains can be identified and be fully removed;
3. The ground from which the remains are removed shall be made good at the discretion of the local authority;
4. The remains shall thereafter be subject to cremation and I further direct the ashes shall be handed to the Mother.

Mark Stewart

Deputy Chancellor of the Diocese of Portsmouth

07 June 2025