

Re Magdalen Cemetery, Gorleston

Judgment

1. The husband and daughter of Mrs Jacqueline Joan Czykieta have petitioned for the exhumation of her cremated remains from grave number 123 in section R of Magdalen Cemetery, Gorleston for their reburial in grave number 182 of section FF of the same cemetery. Plot FF182 has already been purchased jointly by Mr Czykieta and two of his daughters. All four of Mrs Czykieta's children support the Petition.
2. Mrs Czykieta appears to have died very suddenly and unexpectedly on 28 March 2014. Her remains were interred in plot R123 the following month. Plot R123 is a cremated remains plot. Mr Czykieta explains how he approached the burial authority following his wife's death with a view to identifying a plot to purchase for burial of the remains. During that conversation Mr Czykieta was asked whether his wife was to be cremated. He confirmed that she was and he then went on to purchase the suggested cremated remains plot. He says he did this without realizing that this would cause difficulties when the time came for his remains to join those of his wife.
3. The difficulty became apparent twelve months later when Mr Czykieta says that he realized that he, as a Roman Catholic, would need to be buried without cremation such that his remains could not join those of his wife in her cremation plot. He says that it had always been intended that he and his wife should have their remains interred together. He seeks to remedy this situation by exhuming his wife's remains and interring them in a full body plot in the same cemetery. It is intended that his remains will be buried there when his time comes.
4. The leading authority on the issue of exhumation in this Province is the decision of the Court of Arches in *Re Blagdon Cemetery* [2002] Fam 299. That case restates the presumption against exhumation and in favour of the permanence of Christian burial in consecrated ground. This presumption arises from the Christian theology of burial reflected in a paper from the then Bishop of Stafford which the Court in *Blagdon* considered. The Bishop of Stafford wrote:

“The funeral itself articulates very clearly that its purpose is to remember before God the departed; to give thanks

for their life; to commend them to God the merciful redeemer and judge; to commit their body to burial/cremation and finally to comfort one another.”

He went on to explain:

“The permanent burial of the physical body/the burial of the cremated remains should be seen as a symbol of our entrusting the person to God for resurrection. We are commending the person to God, saying farewell to them (for their ‘journey’), entrusting them in peace for their ultimate destination, with us, to the heavenly Jerusalem. The commending, entrusting, resting in peace does not sit easily with ‘portable remains’ which suggests the opposite: reclaiming, possession, and restlessness; a holding onto the ‘symbol’ of human life rather than a giving back to God.”

5. Special reasons must exist before an exception to the principle of permanence can be justified. The Court of the Arches in *Blagdon* identified various factors which, whilst not exhaustive, might be relevant to whether special reasons exist. In determining a petition the Chancellor must weigh up any relevant factors in order to decide whether special reasons have been established. Not all of the factors referred to in *Blagdon* are relevant in this case, but one which is relevant is the question of whether a mistake was made at the time of burial.
6. There was no ordinary administrative mistake made in this case which the petitioners are seeking to correct, such as in those cases where remains have mistakenly been buried in a plot reserved for someone else. Mr Czykieta does, however, say that he made a mistake in allowing his wife’s remains to be buried in a cremated remains plot. That burial was mistaken because he had not then appreciated that it meant that the common intention of Mr Czykieta and his wife that their remains should be buried together would thereby be frustrated. It is not absolutely clear from the evidence before me why that mistake was made, but I am driven to the conclusion that the apparently sudden and unexpected nature of Mrs Czykieta’s death meant that Mr Czykieta found himself having to make difficult and distressing decisions about the interment of his wife’s remains rather abruptly at a time when he had not had cause fully to consider the manner in which his own remains might ultimately be disposed of.
7. Mr Czykieta clearly holds a strong desire to be buried rather than cremated. That desire is linked to his Roman Catholic faith. He has said that he “understand[s] that [his] Roman Catholic faith requires a full body burial” and that he is “a Roman Catholic and ha[s] got to be buried”. When pressed on this issue he accepted that “in the last few

years the Roman Catholic faith did allow the cremation by choice of the individuals [sic]", but is firm that he and all of his family and his Roman Catholic friends have always believed that a full body burial should take place. Although cremation is clearly not prohibited in Roman Catholicism, I accept that Mr Czykieta's desire for a full body burial is both strongly held and born from a genuine desire to honour a tradition linked to his faith by which he feels bound. It is that desire which means that an exhumation is required if Mr and Mrs Czykieta's remains are to be interred together.

8. Another relevant factor in *Blagdon* is the lapse of time since interment: a long period of interment militates against the granting of permission to exhume. In this case Mr Czykieta issued his Petition at the beginning of June 2016. It is clear from the correspondence that there had been some enquiries and efforts by Mr Czykieta prior to this date in order to ascertain the method of seeking the relevant permission. In short, Mr Czykieta took steps towards seeking permission to exhume within about a year of his realisation that he had made a mistake in interring his wife's remains in plot R123. The remains have only been interred for approximately two years and I find that Mr Czykieta has acted reasonably promptly in the circumstances.
9. The *Blagdon* decision also makes clear that the establishment of a family grave may be relevant to the Court's consideration. Such a step is something to be encouraged as expressive of family unity and an environmentally friendly use of space. In this case, Mr Czykieta is clear that he and his wife had always intended to establish a family grave. Two of their daughters are co-owners of plot FF182, although I do not know whether it is intended that their remains should also be interred with those of their parents. This is not a case of 'portable remains' as contemplated by the Bishop of Stafford in his evidence to the Court of Arches, but rather an attempt to put right a mistaken decision.
10. A relevant factor, though one of only limited weight, is the fact that the granting of this Petition will release a space at Magdalen Cemetery which would otherwise not be available.
11. And so I must weigh up all of the above in order to determine whether the Petitioners have satisfied me that special reasons exist sufficient to set aside the presumption of the permanence of Christian burial. Whereas I do not think that Mr Czykieta's decision to inter his wife's remains in plot R123 can properly be characterized as a mistake in the sense anticipated by the Court of Arches in the *Blagdon* decision, in that, at the time, Mr Czykieta intended that the burial should take place in plot R123. I am nevertheless satisfied that he has not simply changed

his mind about the burial plot. Rather, having been required unexpectedly and in traumatic circumstances to make a sudden decision about the interment of his wife's remains, he failed to appreciate the impact of his decision upon their desire to be interred together. I am mindful of the decision of Deputy Chancellor Ellis in *Re Mortlake Cemetery* [2016] ECC Swk 6 where a faculty for exhumation was granted more than 35 years after interment in circumstances where, although no mistake as to burial had been made, a much-regretted decision about burial had been made in a state of shock at a time of crisis such that the case could not be seen as one of "a mere change of mind".

12. I have considered carefully whether special circumstances exist in this case. I do not think that Mr Czykieta's "mistake" alone would amount to special circumstances, but when weighed together with the intention to establish a family grave in a plot which has already been purchased, the relatively short lapse of time since the interment and the unanimous family support for the Petition, I am just persuaded that special circumstances have been shown here. These unique circumstances should not be taken as a precedent indicating that exhumation will readily be granted. Exhumation is exceptional and each case must be decided on its own facts.

13. In the circumstances I direct that a faculty shall pass the seal in this case.

A handwritten signature in black ink, appearing to read 'RJA', with a stylized flourish at the end.

The Worshipful Ruth Arlow  
Diocesan Chancellor

23 February 2017