

In the Consistory Court of the Diocese of Bristol

In re the exhumation of William Nooney

JUDGMENT

1. This case, as far as I am aware, involved the first use of 'Zoom' technology in a Consistory court hearing, and I am grateful to the Registrar of Bristol for facilitating it so smoothly. It was impossible to convene a court in the traditional sense for reasons of public health as the Covid 19 pandemic is still a feature of life and the Petitioner falls within the Government guidelines of vulnerability due to her age. I was of the opinion that Rule 12 of the Faculty Jurisdiction Rules (as amended) and the overriding objecting gave me that power.
2. I granted the petitioner's petition orally at the end of a short hearing and ordered Bristol Funeral Directors to pay the costs of the petition. They graciously offered also to pay for the exhumation and re-interment as well. This is my written Judgment setting out my reasoning.
3. William Nooney was born in 1926 into a Roman Catholic family and was a member of the congregation of St Patrick's Roman Catholic Church in Redfield for more than 60 years. He married Margaret Nooney in St Patrick's Church. Mrs Nooney is the petitioner in this case. The nearest Cemetery to St Patrick's Church is Avonview Cemetery, and many members of the Nooney's family are buried there.
4. William Nooney died on 20th October 1995. Messrs Thomas Davis, funeral directors, were employed to conduct the funeral. It was his family's desire that he should be buried in Avonview Cemetery. In 1995 however, no graves were being sold in Avonview. The petitioner has investigated why this is so, but Bristol City Bereavement Services who run the Cemetery, whilst accepting that no graves were sold that year, have no records indicating the reason for this. Messrs Thomas Davis were of the view during the hearing that the cemetery was 'closed' to new burials as it had become full.
5. Accordingly, and to the family's deep regret, after a vigil in St Patrick's Church and a Requiem Mass, Mr Nooney was interred in Filton Cemetery on the 27th October 1995.

It was intended that when the petitioner died she should be interred with him. The grave space had been organised by the funeral directors. It is plain that neither the Priest who carried out the funeral, nor the family had any input into the selection of the grave space. It should be pointed out that, according to a plan exhibited in the hearing, Filton Cemetery is divided roughly 50:50 into consecrated and unconsecrated ground. I was told during the hearing, and I accept, that there were spaces in both the consecrated and unconsecrated parts of the cemetery in October 1995.

6. On an unknown date in 2018 the petitioner was made aware that grave spaces had become available in Avonview Cemetery. According to evidence given at the hearing, this is because the cemetery has recently decided to use certain paths and other hitherto unused areas for interments. Having learned this information Mrs Nooney decided that she would arrange to have her late husband exhumed from Filton Cemetery and re-interred in Avonview Cemetery. Accordingly she approached South Gloucestershire Council and Bristol City Council who are responsible for Filton Cemetery and Avonview Cemetery respectively. She also contacted Bristol Funeral Directors, who trade as Thomas Davis and Co. There was some urgency as there are only a very few grave spaces available in Avonview Cemetery and they cannot be reserved.
7. The petitioner was then told for the first time that her husband had been interred in an area consecrated according to the rites of the Church of England. Unbeknown to her, her late husband was interred in what was an Anglican grave. An application for an exhumation therefore fell within the Faculty jurisdiction rather than the secular law.
8. Between July 2018 and September 2019 the petitioner asked Steven Alderwick from Bristol Funeral Directors to assist in the proposed exhumation. In September 2019, unhappy at the lack of progress of the matter, the petitioner engaged an independent funeral consultant. It was only then that she was made aware of the faculty jurisdiction in relation to exhumations from consecrated ground and the requirement for her to petition for her late husband's exhumation.
9. She tells me in her statement, and I accept, that it is standard practice for cemeteries to have areas of unconsecrated ground for use by Roman Catholics and those of different, or no faiths. It is her submission that a mistake was made when her husband was interred in the 'incorrect' part of the cemetery.
10. A petition was submitted in November 2019. I issued a series of directions which established the majority of the facts set out above. By special citation I directed that E C Alderwick and Son be added as a party as I was of the view that, if a mistake had been made with the position of the interment, it was possible that the responsibility lay with them, or their predecessors Messrs Thomas Davis. They were alerted to the possibility of a costs order being made.

11. The Court was convened via the Zoom streaming service. The petitioner was present, assisted by her daughter (to whom I am very grateful), E C Alderwick were represented by Austin Williams and Stephen Alderwick.
12. The petitioner had prepared and served a full bundle setting out the background to the case. The petition had contained permissions from South Gloucester council for a re-interment, from Bristol City Council for an exhumation, an agreement by Thomas Davis funeral directors to conduct the exhumation and re-interment and agreements from all the relevant relatives of the petitioner for the exhumation to go ahead.
13. The party specially cited produced two pages of paperwork that dealt with the arrangements for the funeral. Neither of the people who filled in the paperwork currently work for E C Alderwick.
14. I was of the opinion that hearing evidence on oath was unnecessary. The hearing was deliberately informal and I am grateful to all parties for participating so helpfully.
15. It became clear that whoever at Thomas Davis organised the funeral had made an assumption that an interment after a Church service should occur in consecrated ground regardless of the denomination of the deceased.
16. Having read the papers and heard evidence from all the parties I am satisfied that;
 - a. It was always Mr Nooney's wish to be buried in Avonview cemetery,
 - b. It was always the petitioner's desire to be buried with him when she died,
 - c. Mr Nooney and the petitioner are Roman Catholics,
 - d. Absent a cemetery or graveyard consecrated in the rites of the Roman Catholic church, Mr Nooney should have been buried in an unconsecrated grave,
 - e. Burial in Avonview cemetery was impossible in 1995,
 - f. Burial in Avonview Cemetery is now possible, although there are a very limited number of grave spaces available,
 - g. Mr Nooney was interred in an area of Filton Cemetery consecrated according to the rites of the Anglican Church,
 - h. Neither the priest who conducted the funeral nor the Nooney family were aware of the consecration of the area at the time of the funeral,
 - i. The grave space was either chosen or accepted as being appropriate by an employee of Messrs Thomas Davis,
 - j. To chose or accept that grave space was a mistake,
 - k. As soon as the petitioner learned of the true position she did all she could to attempt to rectify it,
 - l. Any delay in the petition is not her fault.

17. In my opinion this case falls squarely within the 'mistake' exception to the permanence of burials as identified in *Re Blagdon Cemetery* [2002] 3 WLR 603. Had Mr Nooney been Anglican I would not have allowed the exhumation.
18. I allow the exhumation of the late Mr Nooney from Filton Cemetery and his re-interment in Avonview Cemetery.
19. I am satisfied that the mistake was made by a former employee of Messrs Thomas Davis (now Bristol Funeral Directors, owned by CE Alderwick). Had Mr Nooney been interred in an unconsecrated grave there would have been no need for a petition to be applied for nor for a hearing to occur. The representatives of CE Alderwick were frank enough to accept this during the hearing.
20. I direct that C E Alderwick pay the costs of this petition and hearing including the costs of the petitioner and of the Registry.

31st July 2020

The Reverend and Worshipful Justin Gau,
Chancellor