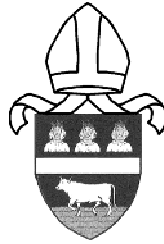


Neutral Citation Number: [2022] ECC Oxf 1



Faculty – Exhumation – Temporary removal and immediate re-burial of cremated remains to facilitate second burial in existing family grave – Faculty granted

Petition No: 10892

IN THE CONSISTORY COURT
OF THE DIOCESE OF OXFORD

Date: Friday, 25 February 2022

Before:

THE WORSHIPFUL DAVID HODGE QC, CHANCELLOR

In the matter of:

Shinfield Cemetery, Grovelands Road, Spencers Wood, Berkshire

THE PETITION OF MS JUDITH DICKSON

Unopposed petition determined on the papers and without a hearing.

The following cases are referred to in the Judgment:

Re Blagdon Cemetery [2002] Fam 299

Re Christ Church, Alsager [1999] Fam 142

Re Mitcham Road Cemetery, Croydon [2021] ECC Swk 2

Re St Andrew, Leyland [2021] ECC Bla 1

Re St. Andrew, Longton [2021] ECC Bla 6 (also cited as *Re Mather, Deceased*)

Re St Mary, Beenham Valence [2022] ECC Oxf 4

Re St Saviour's Cemetery, Hungerford [2021] ECC Oxf 3

JUDGMENT

Introduction and background facts

1. This is an unopposed faculty petition, presented by Ms Judith Dickson on 24 February 2022, seeking permission to exhume the cremated remains of her grandfather, Mr Peter Alan Coombe (**‘the deceased’**), from grave space 951 (**‘the gravespace’**) in the consecrated section of Shinfield Cemetery, Grovelands Road, Spencers Wood, Berkshire so as to facilitate the interment of the body of her late mother, Mrs Angela Dickson (**‘Angela’**) in that grave space where the body of her own mother had been laid to rest in 2006. The deceased’s cremated remains will then immediately be re-buried in the same grave space.

2. The facts are clearly set out in the petition. The petitioner’s maternal grandparents were both laid to rest in the gravespace. Her grandmother was the first to pass away and be buried, in 2006. The deceased died on 29 December 2009, and his cremated remains were interred in the gravespace in January 2010. The petitioner’s mother, Angela, understood that the gravespace could accommodate two coffin burials and, as her father had been cremated, that another coffin burial could take place. After the deceased’s death, ownership of the gravespace passed to his daughter, Angela. Her elder sister (and the petitioner’s aunt), Mrs Barbara Crisp (who lives in Australia and has done so for almost forty years) was more than happy for Angela to have ownership. When the petitioner’s own father, Mr Thomas Dickson, passed away in May 2020, he was cremated, and his ashes were interred in the graveyard of the church of St Mary the Virgin, Hayes (where the petitioner lives) in accordance with his wishes. This graveyard is closed to new burials so Angela was unable to be buried there. Since June 2021, the month she received her diagnosis of terminal cancer, Angela had asked to be buried with her parents. The petitioner was more than happy to acquiesce in this request since she had no wish for her mother to be buried in a local cemetery amongst strangers. When Angela sadly passed away (on 8 February 2022), the petitioner advised the undertakers of Angela’s wish to be buried in the gravespace. Upon application to Wokingham Borough Council, the administrators of Shinfield Cemetery, the undertakers were advised that the deceased’s ashes had been buried at a depth of only two feet instead of the correct depth of four feet depth which is necessary to facilitate another coffin burial. This meant that the gravespace was presumed to be closed. Mrs Barbara Crisp has advised the petitioner that neither she, nor Angela, had been told of this at the time the deceased’s ashes were buried in the gravespace so Angela had always assumed that there would be sufficient space for another burial and that the gravespace would be able to serve as a family gravespace. Angela is the current registered owner of the gravespace, and she has the right to be buried there if there is the capacity for it to accommodate this. In order to facilitate this, the petitioner applies for the deceased’s ashes to be disinterred prior to her mother’s burial and then reinterred immediately afterwards. The petitioner undertakes that the disinterment, and subsequent reinterment of the deceased’s remains, will be conducted with all due reverence and decency.

3. The petitioner states that she has considered most carefully the legal and theological principles set out in the case of *Re Blagdon Cemetery* (cited below) and other similar cases. The petitions in those cases were, on the whole, requests for the exhumation, and subsequent reinterment, of human remains in circumstances where they would be removed from one cemetery to another cemetery (and sometimes from consecrated to unconsecrated ground) in a different county or even a different country. In contrast, the deceased's ashes would be temporarily exhumed and then immediately reinterred in the same grave, as soon as Angela's body has been laid to rest. The petitioner states that she is a practising Christian in the Church of England and, as such, she recognises, and understands, the importance of the Resurrection and the promise of Eternal Life. Her wish is for her mother's body to be laid to rest with her parents (the petitioner's grandparents). The petitioner says that she knows that, spiritually, they are already together in Heaven and that this is of great comfort to her.

4. The consent of Wokingham Borough Council has been given to the disinterment in a letter to the Registry from the cemetery administrator dated 21 February 2022, addressing the petitioner's request for her mother's body to be buried in the gravespace. So far as material, this letter reads as follows:

"To be able to comply with this request it is highly likely that the cremated remains [of the deceased], placed below the existing memorial headstone, will have to be removed. His cremated remains, contained in a metal urn, are to be re-interred back into the grave following Angela's full interment.

We have been advised that it was Angela's wish to be laid to rest with her parents and provision had been made to allow for this. Unfortunately, we cannot be sure that the cremated remains of [the deceased] will remain undisturbed when carrying out Angela's interment and have therefore agreed to his exhumation followed by re-interment into the same grave.

I can confirm that representatives from Wokingham Borough Council will be present on the day to ensure that these arrangements are carried out with the utmost dignity and respect for the deceased and their families."

5. The petitioner has produced a letter and an email (respectively dated 8 and 9 February 2022) from Mrs Crisp, Angela's elder sister, supporting Angela's wish to be buried in the same grave as their parents, and agreeing to the urn which contains the ashes of their late father, the deceased, being exhumed, and then reinterred, so as to enable this additional burial to take place. The letter reads:

"Our parents, who were residents in the Masonic Home at Sindlesham, were laid to rest in Shinfield Cemetery when they passed away in the late 2000s. My sister Angela became the owner of the grave, number 951. Our mother, Muriel Coombe, is buried in the grave as are the cremated ashes of our father, Peter Coombe, in an urn.

My sister's wishes were to be buried in our parents' grave. (This will not be my wish when I die.) Her own husband passed away in 2020. He was cremated and his ashes interred at his local church in accordance with his wishes.

I totally support my late sister's wish to be buried with her parents and therefore request exhumation of the urn and then re-burial so that the late Angela Elizabeth Dickson may be buried with her parents."

6. I am satisfied that all the near relatives of the deceased who are still living consent to the proposed faculty being granted, and I therefore dispense with the giving of public notice under FJR 6.6 (3). Having regard to the overriding objective, I consider that it is expedient to determine this petition on consideration of written representations instead of by way of a hearing.

The applicable law

7. The principles which the court has to apply when dealing with an application for an exhumation from consecrated ground are well known and were laid down by the Court of Arches in *Re Blagdon Cemetery* [2002] Fam 299. Last year, I reviewed some of the authorities that have followed on from that decision in my judgment (as the Chancellor of Blackburn) in *Re St Andrew, Leyland* [2021] ECC Bla 1, to which reference should be made for a fuller exposition of the law in this sensitive, and often emotionally charged, area. In summary, the court has a discretion to permit such an exhumation; but the presumption is that the burial of human remains in consecrated ground is permanent. This is the starting point when dealing with the discretion. The presumption arises from the Christian theological tradition that burial or, as here, the interment of cremated remains, is to be seen as the act of committing the mortal remains of the departed into the hands of God. Thus it is that the court can only depart from the principle of permanence if the petitioner, on whom the burden of proof lies, can establish, on the balance of probabilities, special circumstances which would allow an exception to that principle. The courts have helpfully identified certain factors which may assist in deciding whether exceptional circumstances exist which would enable the burden to be discharged so as to permit human or cremated remains to be exhumed. One such factor is whether there has been a mistake as to the place of burial, although it has also been said that a mere change of mind as to the place of burial on the part of the relatives, or others responsible for the interment, should not be treated as an acceptable ground for authorising exhumation. Another relevant factor is whether the proposed exhumation is to facilitate the re-interment of the remains in a family grave. This is something to be encouraged because family graves express family unity and are environmentally friendly in ensuring an economical use of land for interments.

8. In my judgment in *Re St Andrew, Leyland* [2021] ECC Bla 1, I explained (at paragraph 10) why I find it helpful to consider the decisions of consistory courts in earlier cases, not as precedents slavishly to be followed, or even as tramlines guiding my way forward, but as affording potentially helpful indications as to how the particular circumstances of other, similar, but not identical, cases have been viewed when considering whether it is right to make an exception to the principle of permanence. I reminded myself of the desirability of securing equality of treatment, so far as circumstances should permit, as between petitioners, and of treating similar cases in similar ways, avoiding over-fine distinctions; but also that, ultimately, the duty of this court is to determine whether the circumstances of the present case, properly considered and evaluated, are such as to justify making an exception to the presumption of the permanence of Christian burial.

9. In *Re Mitcham Road Cemetery, Croydon* [2021] ECC Swk 2, the petitioners had applied for the temporary exhumation of the cremated remains of their brother, Cedric, from their father's grave, so that their mother could be buried in the same grave. The brother's cremated remains would then be returned to the father's grave immediately after the mother's burial. Chancellor Petchey (in the Diocese of Southwark) granted a faculty permitting this. He explained that the petitioners had discovered that the position of the ashes within the grave obstructed the burial of their mother's remains. At paragraph 5, Chancellor Petchey said this:

“Permanence is the norm of Christian burial and permission for exhumation is granted only exceptionally. However this is a case where a mistake has occurred through no fault of the Petitioner or her family; I note moreover that Cedric’s ashes are to be removed only temporarily before being returned to the same grave from which they are to be exhumed. I rather doubt in these circumstances if the rigour of the inhibition on exhumation has application. If exceptional circumstances are required, I hold that they exist and accordingly I direct that a faculty should issue.”

10. In my judgments (in this Diocese) in *Re St Saviour’s Cemetery, Hungerford* [2021] ECC Oxf 3 and *Re St Mary, Beenham Valence* [2022] ECC Oxf 4 I stated that I had no doubt that the approach of Chancellor Petchey involved a principled application of the law governing exhumation from consecrated ground which I should be prepared to follow. I share Chancellor Petchey’s doubts as to whether, in such a case, the rigour of the inhibition on exhumation has any application; but if exceptional circumstances are required, they clearly exist in a case of temporary exhumation, with a view to facilitating a further burial, with the exhumed remains being returned immediately to the same grave from which they are to be exhumed. I followed this approach (in the Diocese of Blackburn) at paragraph 28 of my judgment in *Re St. Andrew, Longton* [2021] ECC Bla 6 (also cited as *Re Mather, Deceased*), where I added:

“I am not aware that it has ever been suggested that there is no requirement for an appropriate faculty in such a case, presumably because there is generally uncertainty about the precise location, and consequent degree of disturbance, of the existing cremated remains; but in such a case any necessary faculty should issue almost as a matter of course in order to further the Church’s policy of favouring the creation of family graves.”

That is particularly so in a case, such as the present, where, by mistake, the container enclosing the cremated remains has been buried at too shallow a depth to accommodate a second burial.

11. I therefore have no hesitation in granting a faculty permitting the temporary removal of the deceased’s ashes to facilitate Angela’s burial, on the basis that those ashes are immediately re-interred in the same grave. I do not consider that, by allowing this petition, any undesirable precedent will be, or will be at risk of being, created. For what it is worth, I also consider that the alternative test, formerly laid down and applied in *Re Christ Church, Alsager* [1999] Fam 142, of the existence of a good and proper reason for exhumation which most right-thinking members of the Anglican church would regard as acceptable, is also satisfied.

12. The cremated remains have been in the gravespace for only some 12 years; and, according to the cemetery administrator, they were buried there in a metal urn. She has expressed no concern that the deceased’s ashes may be incapable of being removed in a reverent and respectful manner. From the very fact of the purchase of a double grave plot, it was clearly contemplated that the gravespace would have to be disturbed to accommodate any second burial.

Conclusion

13. For all these reasons, the court grants a faculty for the removal of the deceased’s cremated remains from the gravespace in order to facilitate the burial of Angela’s remains, and their immediate re-burial in the same gravespace. The removal and the re-burial are to be conducted with all due reverence, and in a decent and seemly manner, by a qualified funeral

director at the same time as, and as part of, Angela's funeral. The re-burial is to be conducted in accordance with the rites and practices of the Church of England. The period allowed for the removal, and immediate re-burial, of the deceased's ashes will be six (6) weeks from the date of the grant of the faculty.

14. For pastoral reasons, I make no charge for this written judgment.

David R. Hodge

The Worshipful Chancellor Hodge QC

25 February 2022