

**Neutral Citation Number: [2023] ECC Nor 1**

**IN THE CONSISTORY COURT**

**DIOCESE OF NORWICH**

**In The Matter Of:  
SHERINGHAM TOWN CEMETERY**

**-and-**

**In The Matter Of:  
A PETITION OF GW, JT and MA**

**-and-**

**In The Matter Of:  
THE PROPOSED EXHUMATION OF THE MORTAL REMAINS OF PJW FROM  
SHERINGHAM TOWN CEMETERY IN ORDER THAT HIS ASHES MAY BE  
SCATTERED WITH THOSE OF HIS RECENTLY DECEASED WIFE**

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**JUDGMENT OF THE CHANCELLOR**

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1. I shall refer to the Petitioners by their initials, as I will the deceased father, in order to preserve a degree of privacy for the family and the council official. Their full names are known to me and appear on the Petition.
2. I am deciding this case on the papers, having given the Petitioners an opportunity for further representations which they have taken.
3. I have concluded that I must refuse this Petition. I realise this will cause distress to the family which I regret, but it is my judgment that ecclesiastical law clearly does not

allow for exhumation in these circumstances or that this proposal would be appropriate in any event.

4. PJW was the father of GW and JT who are his nearest relatives. He died, aged 72, on December 22, 2003. His ashes were interred in Sheringham Town Cemetery on February 12, 2004, some 19 years ago. The burial authority controlling the ground is Sheringham Town Council and MA is its representative. The burial authority has no objection to the exhumation and a funeral service is prepared to carry out the exhumation. The ground in which PJW's ashes were interred is consecrated and falls under the jurisdiction of this court.
5. GW and JT's mother died on March 30, 2023. She wished her ashes to be scattered and the family propose to comply with that wish. I am assuming (and have no doubt) that she was aware in expressing this desire that her husband's ashes had been interred in the cemetery.
6. GW and JT tell me, and I accept, that after their father's death their mother decided to have her husband's ashes interred in the cemetery and, indeed, reserved a plot for him and for herself when she died. They say, and I accept, that in later years she came to her decision because it became more difficult to visit the grave and she reflected that no-one visited the parental graves in London. This reflection is true in many cases and is one of the inevitabilities of life. She then wished she had scattered her husband's ashes where he had walked the dog. It appears that, prior to her husband's death, PJW and his wife had made no real funeral plans. She also subsequently decided that she did not want to be buried in the reserved plot at her own death and would like her ashes to be scattered where the dog had been walked.
7. I alerted the family to the difficulties in exhuming remains lying in consecrated ground generally and particularly on facts like these. There is a presumption that burial in consecrated ground is permanent. This can be rebutted, but the factors that the court would look for in an exhumation and permanent removal, such as genuine mistake on the part of the Petitioners or those controlling the burial ground or a very fast realisation that the original decision was mistaken, are not present here.

8. The Petitioners added to their representations with these observations. The point that their parents had not discussed their funeral plans is emphasised. I can well understand in light of PJW's medical condition that his approaching death will have been a very sad and difficult time. I also understand that the area in which the dog was walked was very special to both of them and I have looked at the lovely drawings. I accept that the Petitioners' mother had found the initial decision confusing.
9. The Petitioners told me in the additional representations a little more about their mother's changed intentions. I accept that she had expressed the view that she had wished she had put PJW's ashes where they had walked the dog. I observe though that if she had done that, then their ashes would not have been conjoined in any event. I also conclude that, whatever her second thoughts, she did not try to act on them in the period between PJW's interment in early 2004 and her own death.
10. The Petitioners say that whilst their mother became a little confused in her final year, she had a lucid conversation with her daughter (JT) in which she was adamant about wanting her ashes scattered in the place mentioned. I accept that.
11. The Petitioners say to me that they realise I will be governed by the law but that if a person like myself does not change things, they will always be the same.
12. There are two steps in the decision-making process for a Judge of this court. If the law or precedent is clear then I have to follow the law; if the position is less clear legally then I have a discretion to make the decision I believe to be the proper one, provided it is a reasonable decision. If I fail to follow the law or, alternatively, exercise a discretion unreasonably then an appeal lies to the appellate court (the Court of Arches) if it or I give permission.
13. Here, there is no basis in ecclesiastical law for permitting this exhumation. Not only is burial in consecrated ground generally considered permanent and final, but many people would expect wherever they were buried to be their final resting place. Delay in making such an application is not an insurmountable obstacle but it is a factor I have to take into account. The delay here is substantial. This is really a classic 'change of mind'

case and a change of mind is not a proper basis by itself for allowing an exhumation from consecrated ground.

14. If I were permitted to exercise my discretion, I would not exercise it in favour of this petition. This is not in any sense a criticism of the petition or the Petitioners. On the contrary, they have presented their petition with complete openness and courtesy and I understand entirely that they wish to do right by their mother's wishes. These situations are very difficult for families when parents die and many people, including Judges, have to wrestle with such decisions in their own lives and who want to do right by their parent or parents.

15. The problem is this, however. This petition is about the mortal remains of the Petitioners' *father*. Their mother is entitled to have her ashes scattered if that was her wish. She is entitled to decline to be buried in a plot with her husband if that was her wish. She does not, however, have the right to have her husband's remains disturbed and to deny him a permanent burial by the scattering of his ashes, having already committed his remains to consecrated ground, even if that was her considered wish.

16. I have no indication that this is how *he* would have wished his remains to be treated: whether he would have wanted his ashes exhumed and scattered 19 years after his burial leaving him no permanent burial place. I know many people who would not. However difficult matters were at the time of his death I am sure that reservation of a plot for him and his wife and the interment of his remains there was, at the time, what his wife believed was proper and most nearly accorded with his wishes.

17. I am afraid, with no disrespect to the Petitioners, that I must refuse this petition.

David Etherington, KC

Chancellor of the Diocese of Norwich

12<sup>th</sup> July 2023