

Neutral Citation Number: [2022] ECC Bri 2

IN THE CONSISTORY COURT OF THE DIOCESE OF BRISTOL

In re Stratton St Margaret and in re the late Jazeps Lipskis

JUDGMENT

1. This is a petition by Sandra Kelly to exhume a portion of the cremated remains of her late father, Jazeps Lipskis, in Lower Stratton Cemetery at St Margaret's church for reinterment in a sacred place, yet to be identified, in Latvia.
2. The petitioner is the only child of the deceased and her application form is accompanied by the consent of Stratton St Margaret Parish Council (being the burial authority for Lower Stratton Cemetery) the consent of Jazeps Lipskis's other immediate surviving relatives, Ross and Ryan Kelly, a family tree, a cemetery map and an email report on the state of the remains.
3. The petitioner requests the exhumation as her late father was born in Latvia and, after being captured and held in a German Prisoner of War Camp, was not allowed to return to Latvia and so settled in England. The application states that Jazeps Lipskis was unable to return to Latvia until 1991 and only managed to return to Latvia twice before his death in 1995.
4. The petitioner's mother, Elaine Lipskis (wife of Jazeps Lipskis) died in May of this year and a portion of her cremated remains have been interred in the plot with Jazeps Lipskis, so the grave is currently open.
5. The petitioner wishes to exhume a portion of the cremated remains of her father so she can reinter the remains in Latvia along with the portion of cremated remains she has kept of her mother, Elaine.
6. I asked a series of questions of the petitioner through the Registrar and am very grateful for the frank answers that I have received. These questions were:
 - a. Was the late Mr Lipskis a Roman Catholic, an Anglican or 'other'?

I was told that he was a non-practising Roman Catholic

- b. Did Mr Lipskis know that he was being interred in consecrated ground according to the rites of the Church of England?

"The only discussion we had was that Dad wanted to be cremated, he had no preference as to where his ashes would be interred. As I say he was not a practising Catholic and the Stratton St Margaret cemetery was the nearest one to where Mum and Dad lived."

- c. Were the family aware of the Church's views on the permanent interment of remains?

"No .We were not aware at all of the Church's views on permanent interment. No-one ever discussed this with us, but to be honest, why would they."

- d. Why was Mr Lipskis unable to return to Latvia until 1991?

"It was a terribly sad situation - Dad was a young man when war broke out and was forced to fight for the enemy of his Country. He was captured and taken to a Prisoner of War camp in Germany. When the war was over, Russia was occupying Latvia and they would not allow him and his fellow countrymen back home so he had to choose where to live when given limited options. Dad was unable to return (to re-visit) Latvia and his remaining family there until 1991 because Latvia did not gain independence from Russia until then and he (and all Latvian nationals living outside of Latvia (as far as I am aware) were banned by Russia from returning or even communicating with family members up until that point. He did write letters to his father but when it was discovered that they were communicating, his father got sent to Siberia so they were never in contact again. Tragic."

- e. Was returning any of his remains to Latvia ever mentioned by Mr Lipskis during his life? Was this something he had discussed with his wife? If not, why has she elected to split her remains?

"We didn't have the opportunity to discuss any of my Dad's wishes before he died. He passed quite suddenly. Regarding my mum – having spent most of her life in the company of the Latvian fraternity, she had a close affinity with Latvia, friends and family. Unfortunately she was estranged from her siblings. This is the reason why she chose two final resting places."

- f. Why is there no settled destination for his ashes?

"I have not yet got a final resting place for their ashes because I am awaiting the outcome of the application. I could see no point in arranging for this in Latvia if my request is denied and if I'm honest I am not optimistic about the outcome. If I do get a positive outcome, that is when I will make the arrangements".

7. The law on exhumation in the Church of England is not particularly straightforward. The starting point, as emphasised in *Re Blagdon Cemetery* [2002] Fam 299 is that Christian burial is permanent and the exhumation of remains are only exceptionally granted.

8. That authority also established the following principles:

a. Burial within a Churchyard, or other land consecrated under the rites of the Church of England, should be regarded as permanent – a *final* resting place. This is because it is symbolic of entrusting that person to God for resurrection. The Court of Arches quoted with approval the following theological formulation prepared by the Right Reverend Christopher Hill, then Bishop of Stafford:

"We are commending the person to God, saying farewell to them (for their "journey"), entrusting them in peace for their ultimate destination, with us, the heavenly Jerusalem. This commending, entrusting, resting in peace does not sit easily with "portable remains", which suggests the opposite: reclaiming, possession, and restlessness; a holding on to the 'symbol' of a human life rather than a giving back to God'."

b. Departure from that approach will only be permitted in exceptional circumstances. That is, the petitioner for an exhumation must satisfy the Consistory Court that there are special circumstances in his/her case which justify the making of an exception from the norm that Christian burial (that is, burial of a body or cremated remains in a consecrated churchyard or consecrated part of a local authority cemetery) is final.

c. Medical reasons causing difficulty for a bereaved relative to visit the grave would not be sufficient save for, perhaps in the most extreme cases.

d. Lapse of time may be relevant, particularly where there is a long delay with no credible explanation for it.

e. Mistake as to the location of a grave can be a ground upon which an exhumation may readily be granted, as that amounts to the correction of an administrative error, rather than an exception to the presumption of permanence. A mistake may also occur due to lack of knowledge that the burial is taking place in consecrated ground, and for those without Christian beliefs it may be said that a fundamental mistake had been made in agreeing to a burial in consecrated ground. But a change of mind as to the place of burial on the part of relatives or others responsible should not be treated as an acceptable ground for authorising exhumation.

f. The support of close relatives is a relevant factor, but not the support of other people.

g. There should be regard to precedent, so that cases on similar facts are decided in similar ways, because of the desirability of securing equality of treatment, so far as circumstances permit it, as between petitioners.

- h. Burial in a family grave is to be encouraged because such graves express family unity and are environmentally friendly in demonstrating an economical use of land for burials. However, it should not be assumed that whenever the possibility of a family grave is raised a petition for a faculty for exhumation will automatically be granted. As in this case it is to be expected that a husband and wife will make provision in advance by way of acquisition of a double grave space if they wish to be buried together.
- i. There is no particular difficulty, if the petition is otherwise justified within the exceptionality test, that a proposed transfer is proposed to be from consecrated to unconsecrated land that is part of a local authority cemetery.
9. In this case there appears to have been no discussion with the late Mr Lipskis as to being interred in Latvia, nor of being interred with his wife. Indeed, my interpretation of the answers I have been given, is that Mr Lipskis may well have had ambivalent feelings about Latvia. Plainly there was no discussion at the time of his funeral with anybody about the possibility of moving his remains if, and when, that might have been possible.
10. I note that Mr Lipskis died in 1995, and, whilst the death of his wife last year has clearly triggered this petition, there appears to have been no inquiries about exhumation made at any time before then. 27 years is a very lengthy gap between interment and exhumation. I also note that there is not, in fact, a desire to create a family grave, but to create two 'family graves', and that the petition is for only part of Mr Lipskis' remains to be exhumed.
11. The final matter I have to consider is where it is intended that these remains should be re-interred. There has clearly been no effort made to find a suitable final resting place for this part of Mr Lipskis' remains (and of his late wife's partial remains). This last matter is decisive in my view. Exhuming part of someone's remains on the basis that they are to be re-interred in an unknown destination appears to flatly contradict the idea of the norm of Christian burial being final.
12. In those circumstances I regret to say that I do not find there are exceptional reasons for allowing this petition.

12th September 2022

Justin Gau,
Chancellor of the Diocese of Bristol