

Neutral Citation Number: [2023] ECC Wor 1

Private Petition Number: 22/14

Judgment of the Chancellor of the Diocese of Worcester

Petition For Exhumation of Cremated Remains

Re: Astwood Cemetery, Worcester

Judgment

1. A petition dated 27 May 2022 was lodged by Gillian Rose Ramsey seeking permission for the exhumation of the cremated remains of the late Gerald Dainty, her father.
2. The deceased died in July 2013 and his cremated remains were interred in section 2A at Astwood Cemetery, Worcester. The petitioner sought permission to remove those remains and place them in unconsecrated, privately owned farmland in Bigsweir, Gloucestershire together with the removal of the existing grave and headstone.
3. The motivation for the application was that the petitioner's mother, the widow of the deceased subsequently died and her mortal remains were cremated. The petitioner wished to bury her remains together with those of the deceased but not in the location of the deceased's grave. At present these remains are located in the home of the petitioner's brother awaiting a decision as to how and where they are to be permanently laid to rest.
4. She also intends that her own remains and those of her brother will in due course be placed in the same intended grave site on the private land. Her brother, Malcolm Dainty provided an email dated 8 December 2022 confirming that he was in agreement with his sister's proposal.
5. This case is governed by the law relating to exhumation as set out in judgment in *Re Blagdon Cemetery* [2002] Fam 299. That case confirms a number of principles by which this court is bound when considering the current position.
6. The first principle is that if exhumation is permitted in should be conditional upon the remains being reburied in a suitable, permanent location. Land consecrated by the Church as a burial ground is clearly suitable for use for that purpose, being set apart from other use and under the protection of the Consistory Court to prevent the human remains laid to rest being disturbed. Until the creation of licenced burial grounds under the control of the Secretary of State in the 19th Century, the Consistory Court would habitually decline to permit the exhumation of human remains from consecrated ground to be reinterred in unconsecrated ground. Whilst it can now be assumed by the court that unconsecrated burial grounds maintained by a local authority are suitable for use for that purpose, it remains the case that no such assumption can be made as to the suitability of other unconsecrated ground.
7. The judgement in *Re Blagdon Cemetery* states that, "No general inference of the suitability for reinterment in such land can properly be drawn by the Consistory Court. Questions about proper care of the new grave in the future and the prospects for visiting access by future generations would need to be addressed by those involved in such cases, and in turn examined with care by

the Consistory Court in deciding whether or not to exercise its discretion to grant a faculty for exhumation.”

8. In this case the proposed site for the relocation of the remains of Gerald Dainty is upon land owned by Mrs Ramsey. I asked for more detail of what exactly was being proposed as I initially saw there was reference to a barn, and also I was provided with a photograph that showed the corner of a field with hedging, a freestanding young tree and a footpath. I was subsequently sent a screen shot from Google Maps with the proposed location indicated, which again appears to be the corner of a field adjacent to Stowe Road just off the A466. The site is close to the River Wye.
9. Unfortunately, I am not able to say that this location is suitable for burial such that remains entrusted to consecrated ground should be permitted to be relocated there. There is no suggestion that this location has previously been used as a private family burial ground and there is no existing tomb, grave marker or other indication that this land is set apart from ordinary use. I have also not been given evidence that this site forms part of a long-established family estate that is unlikely to pass out of family ownership or is subject to a trust limiting its use. It is therefore reasonably foreseeable that over the years that this land will pass into the ownership of people unrelated to the deceased, who may not know that it has been used as a burial site or who may be unwilling to take responsibility for maintaining it. I am told the field corner has now been ‘sectioned off’ and that ‘the farmer no longer grows crops there or on the rest of the field’. I have no further detail. I do not consider this is sufficient ‘setting aside’ or necessarily permanent.
10. I indicated I was willing to undertake a site visit with an informal hearing at the same time so that the petitioner could provide a clearer explanation of her plans but this was not pursued by the petitioner on grounds of cost. In April 2023 she indicated that she preferred for me to determine the matter on paper.
11. In light of this fundamental difficulty, I propose to consider the other principles in *Re Blagdon Cemetery* fairly briefly.
12. *Re Blagdon Cemetery* makes it clear that an order permitting exhumation is exceptional, that is, it makes ‘an exception to the general presumption of permanence arising from the initial act of interment’. Once a person’s mortal remains have been committed to consecrated ground this is regarded as permanent and final and the disturbance of this ‘final resting place’ may only take place exceptionally. This means in any application for faculty for exhumation a petitioner must set out the special circumstances in which an exception should be made to this presumption of permanence.
13. Factors that have previously been found to justify an exception in the particular circumstances of previous cases include the following.
 - a. Exceptional medical reasons relating to the petitioner or other living family member requiring a relocation of a grave.
 - b. A mistake being made as to the location of burial, in the sense of a body being placed in the wrong plot.
 - c. A mistake through lack of knowledge that the burial place selected was consecrated, which was not thought appropriate as a resting place by family members in the circumstances of the particular individual concerned (specific examples permitting exhumation on these grounds have included the remains of a humanist and an orthodox Jew).

- d. A mistake in not realising the burial was against the wishes of the deceased.
 - e. The intention to create a family grave.
14. However, factors that tell against exhumation have included family dispute about whether the exhumation should take place, local opposition, and the amount of time for which the remains have been interred.
 15. In the present case none of the exceptional factors set out above apply, save potentially for the intention to create a family grave. However, this remains possible as the cremated remains of the deceased widow can be interred into the existing grave. The difficulty with that is I am told that the late Mrs Dainty came to dislike the location of the grave and expressed a disinclination to be buried there. However, this ground is not strong enough to overcome the difficulty with the proposed unconsecrated location for an intended family grave.
 16. There does not appear to have been any mistake. The Cemetery plot was chosen at a time when the land where the proposed unconsecrated family grave is intended to be situated was already in family ownership, such that the ashes could have been buried or scattered there at the time of Mr Dainty's death if preferred. I am told that Mr Dainty did not express any particular views as to how he wanted his body to be laid to rest, either in terms of cremation or interment, or in terms of location for those remains. The decision to bury Mr Dainty's remains was taken whilst his widow was still alive, and was not against her wishes at the time. It was only later she came to dislike visiting the cemetery and expressed a wish not to have her own remains buried there.
 17. These categories of exception are not exhaustive. Other particular reasons can be and have been successfully advanced. However, I have been given no other reasons for permitting the exhumation requested that might amount to exceptional reasons in the present case.
 18. Fortunately, in this case the family is in agreement with the plans and there is no local opposition, although I am not told how widely known the plans to bury in the location in question are – nor how close the proposed site is to land owned by other people. There has however been quite significant delay of some 7 years between the burial and the petition.
 19. Nothing in this judgment prevents Mrs Ramsey burying or scattering her mother's ashes on her own land, subject to the observation of any applicable secular law. But the matter is different once someone's remains have been committed to consecrated ground where the presumption of permanence applies, as was the case with Mr Dainty's ashes. I have every sympathy with the petitioner and her brother who would prefer to lay their parents to rest together and who now have to determine where to lay their mother's ashes to rest in view of this decision. Nevertheless, in view of the law on exhumations I cannot grant Mrs Ramsey's request to permit the exhumation of the remains of Gerald Dainty in the circumstances as proposed.

JACQUELINE HUMPHREYS
Chancellor of the Diocese of Worcester
27 May 2023