

Neutral Citation Number: [2021] ECC Der 2

IN THE CONSISTORY COURT OF THE DIOCESE OF DERBY

Re St George, New Mills

In the matter of John (Jack) Smith deceased

JUDGMENT

1. By a Petition dated 7th November 2020, Mr Jack Smith seeks a faculty authorising the exhumation of the cremated remains of his late father, John (Jack) Smith (“the Deceased”) from the churchyard of St George’s Church, New Mills and their re-interment in a plot at Thornsett Cemetery which Mr Smith has reserved. The Deceased died in 1986 at the age of 45 and his cremated remains were interred in a grave plot at St George’s Church, New Mills. Mr Smith’s mother, and the Deceased’s wife, Margaret Smith has recently died and, I am told, expressed a wish for her cremated remains to be buried in Thornsett Cemetery. Mr Smith’s petition seeks to respect his mother’s wishes and also unite his parents’ remains. He expresses the hope that he might also, ultimately, be interred in the same plot. Thornsett Cemetery is close to St George’s Church. It is not consecrated.
2. Subject to the grant of a faculty, Mr Smith has the consent of the PCC of St George’s and the cemetery superintendent of Thornsett Cemetery, on behalf of High Peak Borough Council and Staffordshire Moorlands District Council, to the exhumation and re-interment respectively of the Deceased’s remains. Mr Smith has also applied for the requisite MoJ Licence.
3. Upon receipt of the petition, I sought clarification on a number of points, namely (1) How the Deceased’s ashes were interred? Were they in an urn or a box and, if so, of what type? (2) Whether, after thirty-four years, it was considered likely that the container would still be capable of being exhumed and would still be intact? (3) Why were the Deceased’s ashes interred in New Mills churchyard in the first place? (4) Knowing that her husband’s ashes were in New Mills churchyard, why did Mrs Smith express the wish to be buried in

Thornsett Cemetery? Is there any documentary evidence of her wishes? (5) Could Mrs Smith's remains be interred with her husband's at St George's? Is there space? (6) Is there a reason for choosing un-consecrated ground? (7) Whether there was any other information on which Mr Smith wishes to rely in support of his Petition.

4. In response, by e-mail, Mr Smith said that: (1) "My father's ashes were interred in a wooden box"; (2) "the ashes were interred at St George's church in New Mills because they were married at the same church and at the time it was the local church for weddings and funerals in the village"; (3) "My mother expressed the wish to be buried at Thornsett Cemetery because it's well looked after and well maintained by the council since it became a cemetery in 1994, which can't be said for St George's churchyard which is extremely untidy, unlike in 1986, when my father died, when it was a well maintained and respected local Church", however Mrs Smith "didn't have her wish to be buried at Thornsett Cemetery in her Will"; (4) "The Cemetery at Thornsett is non-denominational for all religions and owned by the local Council in New Mills"; and (5) "My father died suddenly in 1986, unfortunately at the time of his death we didn't think ahead regarding family plots for other family members to be buried in the same grave plot." He added that if this application were to be approved, he and his sister would appoint a local funeral director to have their father's ashes exhumed and placed into a new wooden box along with their mother's ashes and for a small service at which they would be buried together at Thornsett Cemetery. Mr Smith added that he couldn't answer the question as to what condition the box would be in, it being 34 years since the Deceased's remains were buried. Mr Smith did not answer my fifth question, but I was informed by the vicar of St George's that there is sufficient space for Mrs Smith's cremated remains to be interred with those of her husband in the plot in the churchyard.
5. As result of these answers, on 10th February 2021 I gave the following directions: (1) Public Notices be dispensed with; (2) Special Notice of this petition and copies of this Order shall be served on any other children of John (Jack) Smith deceased by 4pm on 19th February 2021; (3) If the Petitioner, or anyone served with Special Notice of this Petition, wishes to express a view as to whether the case is suitable for determination on written

representations, they shall do so by no later than 4pm on 5th March 2021; (4) A copy of the decision of the Court of Arches in *Re Blagdon Cemetery* [2002] Fam 299 shall be appended to this Order; (5) The Petitioner, and anyone served with Special Notice of this Petition, shall file any witness statements and/or documentary evidence on which they wish to rely in support of this Petition, in particular addressing: a. the viability of exhuming the remains of John (Jack) Smith deceased, for which purpose permission is granted for a funeral director to investigate, in an appropriate manner, whether the casket containing the remains of John (Jack) Smith deceased is or may be intact, and b. why this is a case where exhumation should exceptionally be permitted, by no later than 4pm on 26th March 2021.

6. I received no expression of views in relation to the determination of this case by written representations. In accordance with Rule 14.1 of the Faculty Jurisdiction Rules 2015 (as amended), I therefore intend to determine this case on the basis of the written representations I have received, being of the view that it is expedient to do so.
7. I have received a witness statement from Mr Smith with a letter attached; a witness statement from Sally Kennedy, Mr Smith's sister and the daughter of the Deceased and Mrs Smith; and a letter from Wayne Brindley, Director of Last Wishes Funeral Services Limited of 36 Market Street, New Mills.
8. Mr Smith's witness statement dated 6 March 2021 repeats his request to exhume his father's remains and inter them along with those of his mother in Thornsett Cemetery. In his attached letter he says that the sudden passing of his father in 1986 at the young age of 45 was an emotional time for the family. At the time of his father's death, the acquisition of a family plot was not something that was considered. His mother's ashes remain in the care of his sister in the hope that both his mother's and his father's remains can be reunited in a family grave at Thornsett Cemetery. He recognises that exhumation is only exceptionally permitted, but feels it is right to make the request for his parents to be reunited and buried together after such a long time apart.

9. In her witness statement dated 4 March 2021, Mrs Sally Kennedy says that she is aware of and supports her brother's application to exhume her late father's ashes from St George's Cemetery. She states that her father's ashes will then be interred at Thornsett Cemetery in a family burial plot.
10. The undated letter from Wayne Brindley states that he visited the Deceased's ashes plot at St George's Churchyard, New Mills on 22 February 2021 and carried out a prod test. Upon carrying out the test he located a solid object approximately six inches below ground level. He cannot confirm the identity of the solid object without digging out the grave, but imagines that it could be the remains of a casket interred in 1986. He recommends that if the object located is the Deceased's ashes casket, the ground containing it should be carefully removed and placed directly into a double sized ashes casket for removal to Thornsett Cemetery.
11. The exhumation of cremated remains from a churchyard can only be authorised by faculty and is only permitted in exceptional circumstances. While each case must be determined on its own facts, it is for the petitioner to satisfy the court that there are special circumstances which justify the making of an exception from the norm that Christian burial is final. These principles, to be applied by the court when considering a petition for exhumation, are set out in the decision of the Court of Arches in *Re Blagdon Cemetery* [2002] Fam 299.
12. Examples of relevant factors were considered in *Re Blagdon Cemetery* at paragraph 36. They include medical reasons; lapse of time; mistake; local support; precedent and a family grave. These factors are ones which frequently arise in exhumation cases, but none is necessarily determinative.
13. Since each case will turn on its own facts, other decisions of consistory courts cannot be seen as precedents to be followed, nor as tramlines guiding the way forward, but only as indicators as to how similar, but not identical, cases have been determined where consideration is being given to whether an exception should be made to the underlying

principle of the permanence of Christian burial. This is to ensure that, so far as is possible, petitioners are treated equally and the outcomes of cases are reasonably predictable. The justification for this approach is helpfully set out at greater length in the judgments of Chancellor Hodge QC in *Re St Andrew, Leyland* [2021] ECC Bla 1 and *Re Burnley Cemetery* [2021] ECC Bla 2.

14. In addition, in this case, if exhumation of the Deceased's remains is permitted, they will be reinterred in un-consecrated ground. While, in my judgment, this is not something to be encouraged, neither is it a ground for refusing a petition, but simply another factor to be weighed in the balance: *In re Talbot* [1901] P 1.

15. In considering similar cases, I am assisted by the decision of Chancellor Ockelton in *Re Bingham Cemetery* [2018] ECC S&N 1. In that case the petitioner wished to exhume the remains of her child, who died in 1948, and her husband, who died in 1989, from Bingham Cemetery, close to her home in Gamston. At the times of the burials, Bingham had been the place where people from Gamston were normally buried. The petitioner and her daughter and son-in-law had purchased two plots in Wilford Hill Cemetery, also close to Gamston. The intention was for the petitioner's daughter and son-in-law eventually to be buried in one of the plots and for the remains of the petitioner's husband and infant child to be transferred to the other plot, in which the petitioner herself would, in due course, be interred. The Chancellor considered that there were no exceptional circumstances to justify the exhumations and refused to grant a faculty. He rejected arguments founded on the creation of a family grave and mistake. The usual case where exhumation was sought on the basis of the creation of a family grave involved the exhumation of the remains of one person to be re-interred in a place where other members of the family were, or would be, buried. The instant case was not one of wishing to move human remains to a family grave, but rather exhuming human remains from an existing family grave in which it was possible for the petitioner's remains to be interred in due course. Nor was there any question of mistake. There was no evidence that the petitioner would have chosen to have her child or husband buried elsewhere, if she had been better advised.

16. Further, with a view to ensuring equality and predictability, in the case of *Re St Mark, Winshill* [2020] ECC Der 4, I refused to grant a faculty for the exhumation of the cremated remains of the petitioner's father from the churchyard so that they could be re-interred in the cremated remains section of the nearby cemetery. The deceased's wife, who had died recently, had wanted her remains to be interred in the cemetery and the petitioner wished to unite the cremated remains of his parents in the same grave. I determined that there were no exceptional reasons to justify exhumation. I said, at paragraph 8, that the deceased "is buried in a churchyard which contains other members of his family and, in my judgment, it is entirely appropriate that he should remain there. The fact that his remains have been there for over twenty years is supportive of my decision, as is the fact that it is possible for Mrs Joyce's remains to be laid to rest alongside those of her husband, since her cremated remains have not yet been interred." As in *Re Bingham Cemetery* the proposal was to create a new family grave, but it was possible for the deceased's wife to be interred in the plot from which her son was seeking the exhumation of his father's remains.

17. In *Re Burnley Cemetery*, at paragraph 14, Chancellor Hodge QC concluded that that was "a case like *Re Bingham Cemetery* and *Re St Mark, Winshill* where the petitioner seeks to exhume her late husband's remains from an existing family grave, in which it would be perfectly possible for her remains to be laid to rest, in order to create a new family grave elsewhere. It would involve removing the deceased's cremated remains from the grave in which they have rested, with the remains of his parents, for the past six years. I do not consider that the wish to create a new family grave elsewhere justifies the disturbance of an existing family grave, at least where it is still capable of accommodating, in due course, the remains of the deceased's closest surviving relative."

18. Having considered the written evidence and the relevant legal principles, I am unable to find that Mr Smith has discharged the burden which falls on him to establish exceptional circumstances so as to justify the exhumation of his father's remains from the churchyard of St George, New Mills.

19. Further to the petition I asked questions and made directions specifically seeking evidence as to why, in this case, exceptionally, exhumation should be permitted. The only ground put forward which might provide a basis justifying exhumation is that of establishing a new family grave, but apart from those already deceased, only the petitioner has any intention of being interred in it. In *Re Blagdon Cemetery* it was observed at paragraph 38 that “Faculties have been granted in the past for the bringing together, or accumulation, of family members in a single grave after many years provided special reasons were put forward for the lapse of time since the date of burial.” In this case I am unable to detect any such special reasons.

20. By contrast, there is much evidence to support leaving the Deceased’s remains where they are. There is space for the remains of his wife, the petitioner’s mother, to be interred in the same plot. I am told that St George’s Church is the family church where the Deceased and his wife were married and where village weddings and funerals took place. The Deceased has been interred at St George’s for over thirty years. These are all, in my judgement, significant factors. While it is said that the family did not consider a family plot following the death of the Deceased at the age of 45 in 1986, that, of itself, is not evidence of mistake. Finally, I am told that the petitioner’s mother left no written evidence of her wish to be buried in Thornsett Cemetery rather than at St George’s, but that her reasons were only that the churchyard is untidy, whereas the cemetery is well maintained. That is not, in my judgment, a special reason which would justify the court in allowing exceptionally the exhumation of the Deceased’s remains.

21. In addition, I am satisfied that my decision is consistent with the cases I have cited and which are, in my judgment, similar in material respects. These decisions reinforce my view that this is not a case where exhumation should exceptionally be permitted. It seems to me that this is a case which is best described as resulting from a change of mind.

22. I am aware that my decision will be a disappointment to Mr Smith and Mrs Kennedy, however if their wish is truly to reunite the remains of their parents, I am assured that this

is possible in St George's churchyard. I will waive any fee to which I may be entitled for this judgment.

3 May 2021

Timothy Clarke
Chancellor.