

Neutral Citation Number: [2022] ECC Wor 5

IN THE CONSISTORY COURT OF THE DIOCESE OF WORCESTER

CASE NUMBER [Private Petition 21/21]

RE ST ANDREW, NETHERTON

**IN THE MATTER OF AN APPLICATION FOR THE EXHUMATION AND RE-INTERMENT OF THE
MORTAL REMAINS OF F H EDWARDS**

JUDGMENT

Delivered on 3 AUGUST 2022

Background facts

1. Frank Howard Edwards died suddenly in 2015. He left no will or other instructions as to his burial place. Prior to his death he and his wife Mary Edwards worshipped at Our Lady of Lourdes Roman Catholic Church on Halesowen Road in Cradley Heath. Unlike Mary Edwards who was Roman Catholic, Frank Edwards was apparently not baptised within the Roman Catholic Church nor formally received into that Church. Nevertheless, a funeral service with a full requiem Mass was held for Mr Edwards at Our Lady of Lourdes. Mary Edwards arranged for the cremation of his body and the interment of his ashes in the Churchyard of the Church of St Andrew, Netherton. Mr and Mrs Edwards lived in the parish of St Andrew, Netherton at the time of Mr Edwards death. St Andrews is approximately 1.5 miles from Our Lady of Lourdes.
2. In May 2021 Mary Edwards also died and she too left no will or written instructions as to her burial place. However, her daughters, Jane Fisher and Anne Kavanagh, who are also the daughters of Frank Edwards, understood her last wishes were for her remains to be buried in the town of Burry Port in South Wales, to be near where her parents and other close family relations are buried. They therefore made arrangements for the cremation of her body and the burial of her ashes in the local authority cemetery in Burry Port. This appears to have been in an unconsecrated part of the cemetery.
3. Mrs Fisher and Mrs Kavanagh understand that Mary Edwards also requested that the remains of her husband be buried with her in Burry Port. Accordingly, they have applied to the Consistory Court of the Diocese of Worcester for permission to exhume the cremated remains of Frank Edwards from the Churchyard of the Church of St Andrews, Netherton, and rebury them with those of Mary Edwards in the cemetery in Burry Port.

4. The application has the qualified support of the Rev'd Richard Hackett, the incumbent of the Church of St Andrew, Netherton and the full support of Father Martin Donnelly, a Roman Catholic priest in Burry Port who is willing to reinter the remains of Mr Edwards into the grave of Mrs Edwards with appropriate prayers. The reservations of Mr Hackett relate only to issues of practicality considered below, not to any issue of principle.

The law

5. The law which I am obliged to apply in considering this petition is set out in the leading case of *Re Blagdon Cemetery* [2002] Fam 299, Court of Arches. This 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’.”*¹
 - 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.²
 - 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.³
 - d. Lapse of time may be relevant, particularly where there is a long delay with no credible explanation for it.⁴

¹ *Re Blagdon Cemetery*, para 23.

² *Re Blagdon Cemetery*, para 35.

³ *Re Blagdon Cemetery*, para 36 (i).

⁴ *Re Blagdon Cemetery*, para 36 (ii).

- 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.⁵
- f. The support of close relatives is a relevant factor, but not the support of other people.⁶ I should add that in my view the support of close relatives for a petition that does not otherwise come within the exceptionality test would not thereby bring the case within the test, but if one or more close relatives object this would be a powerful argument against an exhumation that might otherwise have met the test.
- 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.⁷
- 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.⁸ 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.⁹
- 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. Local authorities can be presumed to properly undertake their legal responsibilities for the care and maintenance of their cemeteries, such that earlier authorities refusing removal from consecrated ground to unconsecrated ground do not apply in those circumstances.

⁵ *Re Blagdon Cemetery, para 36 (iii).*

⁶ *Re Blagdon Cemetery, para 36 (iv).*

⁷ *Re Blagdon Cemetery, para 36 (v).*

⁸ *Re Blagdon Cemetery, para 36 (vi).*

⁹ *Re Blagdon Cemetery, para 40.*

6. As has been pointed out in subsequent cases, it was not intended that this guidance is exhaustive – each case must be treated on the facts of its specific circumstances to consider whether the principal test of exceptionality is met.

Practical considerations

7. The Rev'd Richard Hackett quite rightly raised some practical considerations relevant to this this petition, as the remains of Mr Edwards have been interred in very close proximity to other burials of cremated remains, such that the memorial stones are only a few centimetres or less from each other. I shared his concern that the lifting of the memorial stone and removal of the ashes casket may disturb the memorials to the deceased persons whose cremated remain have been buried either side of Mr Edwards. I also share the concern that removing the memorial and ashes will leave an odd-looking gap in what is otherwise a close run of memorials.
8. However, following my making of further enquiries in this regard a meeting was held between Mrs Fisher, the Rev'd Richard Hackett and Neil Freeman, the undertaker. The undertaker confirmed at that meeting that the ashes are contained in an oak casket that would remain intact since burial in 2015 and that it would be possible to remove the memorial stone and casket without disturbing other burials. I also infer that the ground could be made good such that the space would then become available for the burial of other ashes in due course.
9. Similarly, I am informed that there is no practical difficulty in reinterring the ashes of Mr Edwards into the same grave in Barry Port as those of Mrs Edwards.
10. Accordingly, the practical concerns can be properly met by the sensible actions proposed by the undertaker supported by the imposing of relevant conditions on any faculty granted. Therefore, they do not in themselves provide any reason to either grant or refuse the petition.

Application of the law to the present case

11. Applying the tests set out in *Re Blagdon Cemetery* to the facts of this case the following can be determined.
 - a. There are no relevant medical conditions.
 - b. There is a modest lapse of time, as the remains of Mr Edwards were buried in around 2015, some 7 years ago. However, this should not be fatal to a petition that is otherwise justified.
 - c. There is no evidence of any administrative mistake. Whether the late Mary Edwards could be regarded as mistaken in a wider sense, rather than having a change of mind is considered further below.

- d. The petition has the support of all close relatives.
 - e. Precedent is also considered further below.
 - f. Here there is a clear intention (if a faculty is granted) to create a family grave, by the reburial of Mr Edwards ashes in the grave of Mrs Edwards which in turn was chosen for its proximity to the graves of other family members.
12. It has to be said that it is not particularly easy to find a clear path through the reported decisions of Chancellors who endeavour to balance the doctrine of the permanence of Christian burial with the understandable desires of petitioners in their various circumstances. Considering only 'family grave' authorities from the past two years the following apparently conflicting decision have been made.
13. In *Re St George New Mills* [2021] EC Der 2, *Re Tixhall Road Cemetery Stafford* [2021] ECC Lic 3, *Re St Giles Ashtead* [2021] ECC Gui 1 and *Re Burnley Cemetery* [2021] ECC Bla 2 the respective Chancellors determined that the desire to remove cremated remains to rebury in a family grave did not amount to special circumstances to warrant an exception to the rule of permanence.
14. However, in *Re Peel Cemetery* [2021] EC Sodor 2, *Re Lambeth Cemetery Tooting* [2021] ECC Swk 3, *Re St. Saviour's Cemetery Hungerford* [2021] ECC Oxf 3 and in *Re St. Peter & St. Paul Barnby Dun* [2021] ECC 52 relocation to a family grave was considered sufficient reason for exhumation.
15. *Re Blagdon Cemetery* emphasises the importance of precedent in promoting consistency of approach where possible. Perhaps the most important authorities for me to consider, therefore, in applying the test set out in that case are those taken by my predecessors in the Diocese of Worcester, so that there is consistency of approach for those living within the Diocese.
16. In *Re Fairfield, St Mark* (31st August 2012) the then Deputy Chancellor of this diocese, Robert Fookes, analysed the broad sweep of decisions relating to 'family grave' cases at that time and noted the apparent inconsistency of approach but concluded that 'exhumation and re-interment in a grave or graves containing more than one existing family member is capable of constituting an exceptional or special reason outweighing the presumption in favour of permanence of burial. Whether it does so, depends upon the strength of the justification being put forward and upon the credibility of the reasons for any delay in seeking exhumation.'¹⁰ On the facts of that case the proposed exhumation was for re-interment into a grave currently containing only one family member, although it was also intended to inter the remains of another, who had died recently and whose ashes had not yet been buried. He also found that there was a mistake in law that would give additional reason if required.

¹⁰ *Fairfield, St Mark* para 82-83

17. That decision was considered by my immediate predecessor Chancellor Charles Mynors in his case of *Re Astwood Cemetery* (14 April 2014). Whilst acknowledging his Deputy's decision as correct as it relates to exhumation for the purpose of reburial 'in a grave or graves containing *more than one* existing family member' he went on to identify 'situations which do not of themselves justify exhumation'. These are:

- that there has been a change of mind on the part of the relatives of the deceased who were responsible for the initial interment, or
- that some or all of those relatives are no longer able conveniently to visit the grave, either because of advancing years or deteriorating health, and a resulting change of residence, or for any other reason; or
- that a surviving spouse or other close relative has subsequently been buried elsewhere.

18. This approach was explained with the following reasoning:

54. Those factors, which are commonly argued, arise in many cases, and do not in themselves indicate that a faculty should be refused; but they are not sufficiently "exceptional" to justify setting aside the normal presumption against exhumation.¹⁹ In particular, in many cases petitioners rely on a chain of circumstances which, when analysed, in truth amount to no more than a realisation that they now wish they had made a different decision at the time of the initial interment. That will not on its own be sufficient; although the court will consider carefully the factual position in each case to see whether they are sufficiently unusual to justify the issue of a faculty.

55. Nor is it relevant to show that a surviving spouse or other close relative has subsequently been buried elsewhere, or wishes to be buried (in the future) in the same place as the deceased – but that a further burial at the same location as that which has already taken place is either for some reason now impossible or else considered to be undesirable.²⁰

56. It is sometimes argued that the refusal of a faculty for the exhumation of a spouse or parent will lead to great distress on the part of a surviving relative (often a widow or widower). However, this will only rarely justify the grant of a faculty in the absence of any other exceptional reason.²¹

19. I must confess that I struggle to understand the principle behind the difference in approach between a 'family grave' containing the remains of only one other person and that

containing the remains of 'more than one' family member. The desirability of expressing family unity and economic use of space for burials applies in both cases. And it is noted that in *Blagdon Cemetery* itself the deceased's remains were transferred to a plot in which the remains of no other person had yet been buried, although it was intended that his parents would be buried there in due course.

20. However, this is a matter I do not have to resolve in this case. Whilst it is intended that the ashes of Mr Edwards will be reinterred into the grave that currently contains the ashes of Mrs Edwards only, the location in Burry Port was chosen to be near to the graves of Mrs Edwards parents and other family members and therefore that grave forms part of a group of graves containing more than one family member. It therefore fits within the *Blagdon Cemetery* test as interpreted by my predecessors in the Diocese of Worcester and a faculty can be granted if, in my discretion, I consider there are strong enough reasons for it.
21. In addition to the family grave justification the following reasons are advanced in support of the petition:
 - a. Mrs Edwards was a Roman Catholic and that Mr Edwards also worshipped and served within the Roman Catholic Church;
 - b. The re-interment would be according to the rites of the Roman Catholic Church;
 - c. Mr and Mrs Edwards had no particular connection to the Church of England, save for living in the parish of St Andrew Netherton.
22. On balance, I do find that the above factors, taken together with the relocation to a grave containing the remains of one family member only, but with other family members buried nearby is sufficient to enable a faculty to be issued.
23. It has also been suggested that Mrs Edwards may have made a 'mistake' in arranging for the burial of the remains of Mr Edwards at St Andrews Netherton, in that she may not have been 'thinking straight' because of her bereavement. However, I do not have any evidence to support that suggestion, either in terms of medical evidence, nor in terms of Mrs Edwards herself having considered that she made a mistake. This potential factor therefore plays no part in this decision.
24. Further, I do not consider there has been any particular delay in this case that requires justification. The petitioners have applied promptly following the death of their mother and the burial of her ashes. I do not think 6-7 years since the burial of Frank Edward's remains, during which period his widow Mary Edwards was both elderly and bereaved, amounts to a particular 'delay' that requires justification. Further, as the ashes of Frank Edwards are contained in an oak casket that, I am assured by the undertaker, will remain intact, the time elapsed since 2015 does not cause any practical difficulty.

Determination

25. Accordingly, I direct that a faculty be issued permitting the exhumation of the cremated remains of Frank Edwards from the churchyard of St Andrews, Netherton subject to the following conditions:

- a. The exhumation shall take place reverently and discretely at the direction of the Rev'd Richard Hackett.
- b. The cremated remains of Frank Edwards shall be reverently re-interred into the grave of Mary Edwards at Burry Port Cemetery as soon as practicable thereafter. I am grateful to Father Martin Donnelly for offering to rebury the ashes of Frank Edwards with the rites and prayers appropriate to the Roman Catholic Church.
- c. The ground from which the remains of Frank Edwards are removed shall be made good, either by grassing over, or by the placing of a blank memorial slab, or otherwise at the direction of the Rev'd Richard Hackett and any costs shall be met by the petitioners. In the event of any dispute between the petitioners and Mr Hackett as to what is appropriate, that dispute shall be referred back to me for determination.

JACQUELINE HUMPHREYS
Chancellor of the Diocese of Worcester
3 August 2022