

Neutral Citation Number: [2022] ECC Wor 10

IN THE CONSISTORY COURT OF THE DIOCESE OF WORCESTER

CASE NUMBER [Private Petition 22/19]

RE ST GEORGE, KIDDERMINSTER

**IN THE MATTER OF AN APPLICATION FOR THE EXHUMATION AND RE-INTERMENT OF THE
MORTAL REMAINS OF ARTHUR EDWARD WATKISS**

JUDGMENT

Background facts

1. Arthur Edward Watkiss died at the relatively young age of 64 in 1989. His body was cremated and his mortal remains were buried in a grave space at Area 1 M26 in the Churchyard of St George's Church, Kidderminster.
2. He was survived by his widow Phyliss Mary Watkiss, and 5 children, Jonathan Watkiss, Rosemary Donnan, Christopher Watkiss, Andrew Watkiss and Richard Watkiss. Phyliss Watkiss survived her late husband by many years and died within the last year or so (I am not told the exact date) and her body was buried in a grave space at Area 4 N W L13, also in the Churchyard of St Georges Church, Kidderminster.
3. It was the late Mrs Phyliss Watkiss's settled desire and intention for such period of her widowhood that she retained capacity, that her remains would be buried with those of her late husband. She understood this would be possible. However, in the event this was not possible due to the location at which the cremated remains of Mr Watkiss were interred.
4. In the later years before her death Mrs Watkiss suffered from dementia. However, according to the petitioner, for so long as she had the ability to express a view, she strongly wanted her remains to be buried with those of Mr Watkiss.
5. The petitioner Mr Jonathan Watkiss therefore on 15 August 2022 issued a petition seeking a faculty to exhume the cremated remains of Mr Watkiss and rebury them with the remains of Mrs Watkiss.

6. In his statement he confirms not only his parents' wishes to have their respective remains buried together, but his late mother's ongoing belief that this would be possible in the location at which Mr Watkiss had been buried, based on what she was told at the time of his death. Mr Jonathan Watkiss was not able to tell me the source of his mother's belief, but I have no reason to doubt his evidence that such a belief was nevertheless held.
7. Enquiries with the local undertaker suggests that Mr Watkiss's remains were likely to be in a wooden casket and the memory of Mr Jonathan Watkiss and other family members is that there was some kind of container at the time the remains were buried.
8. It is obviously now over 30 years since the cremated remains of Mr Watkiss were buried. This raises two issues, one of principle and one practical. The first is why there was such a long delay before asking for exhumation and relocation. The second, is whether if such relocation were attempted would there be anything remaining in the grave that would be recognisable as ashes.
9. All identified family members, specifically all 5 children of Mr and Mrs Watkiss, support this petition.

The law

10. 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:
 1. 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
 2. 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

¹ *Re Blagdon Cemetery*, para 23.

body or cremated remains in a consecrated churchyard or consecrated part of a local authority cemetery) is final.²

3. 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
4. Lapse of time may be relevant, particularly where there is a long delay with no credible explanation for it.⁴
5. 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
6. 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.
7. 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
8. 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

² *Re Blagdon Cemetery, para 35.*

³ *Re Blagdon Cemetery, para 36 (i).*

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

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).*

provision in advance by way of acquisition of a double grave space if they wish to be buried together.⁹

9. 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.

11. 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

12. There may be little or nothing remaining of the casket and the ashes contained within it in after over 30 years. If there was no casket then it is even less likely that recognisable ashes will persist.

Application of the law to the present case

13. 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 significant lapse of time, as the remains of Mr Watkiss were buried in around 1989, over 30 years ago.
 - c. There is some evidence of a form of mistake. I am told that the late Mrs Watkiss understood that it would be possible for her to be interred with the remains of her late husband in the location where his remains are buried. It is not known who told her this was the case but given the lapse of time and the second-hand nature of the evidence this is unsurprising. Nevertheless, I am told that she died in the belief this would be possible, in accordance with what I am told was her strong and unchanging wish.
 - 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 Watkiss's ashes in the grave of Mrs Watkiss within the same churchyard.

⁹ *Re Blagdon Cemetery*, para 40.

14. 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 decisions have been made.
15. In *Re St George New Mills* [2021] EC Der 2, *Re Tixhall Road Cemetery Stafford* [2021] ECC Lic 3, *Re St Giles Ashted* [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.
16. 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.
17. *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.
18. 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.
19. 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:

¹⁰ *Fairfield, St Mark* para 82-83

- 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.

20. 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

21. 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.

22. On balance then, I determine that the reasons in support of the desirability of ‘family graves’ as set out in *Blagdon Cemetery* apply where two family members are united in the same way

(if less forcefully) as where three or more family members are united. Therefore, a faculty can be granted to unite the remains of two people only if, in my discretion, I consider there are strong enough reasons for it.

23. In addition to the family grave justification the following reasons can be relied upon in support of this petition:

1. Mrs Watkiss had possessed a strong desire to be buried with her husband throughout her long widowhood;
2. Mrs Watkiss had held throughout the rest of her life the mistaken belief that this would be possible within the grave space where the remains of Mr Watkiss had been laid;
3. That mistake explains the long delay in making the application.

24. 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, is sufficient to enable a faculty to be issued, subject to the practical issues in respect of the condition of the cremated remains. As to that, the exhumation is to be undertaken in a reverent and discrete manner at the direction of the minister. If when the grave is opened there is, in that minister's opinion, no identifiable remains to transfer, then the empty gesture of transferring an undistinguished lump of earth should not take place, and sadly the family will have to come to terms with the fact that it is simply not possible to carry out the wishes of their late parents.

ORDER

25. Accordingly, I direct

1. That a faculty be issued permitting the exhumation of the cremated remains of Arthur Edward Watkiss from grave space number Area 1 M26 in the churchyard of St George, Kidderminster subject to the following conditions:
 - a. It is possible to distinguish the remains of Mr Watkiss from the surrounding earth.
 - b. The exhumation shall take place reverently and discretely at the direction of the minister of the parish, who shall also determine whether it is possible to distinguish the remains of Mr Watkiss from the surrounding earth sufficiently for those remains to be relocated.

- c. The cremated remains of Arthur Edward Watkiss shall be reverently and discretely re-interred into the grave of Phyliss Mary Watkiss in Area 4 N W L13 in the churchyard of St George, Kidderminster as soon as practicable thereafter.
 - d. The ground from which the remains of Arthur Edward Watkiss are removed shall be made good to the satisfaction of the minister of the parish, at the cost of the petitioner.
2. That the petitioner shall pay the costs of this application.

JACQUELINE HUMPHREYS
Chancellor of the Diocese of Worcester
2 December 2022