

IN THE CONSISTORY COURT OF THE DIOCESE OF ROCHESTER  
Re: CHATHAM CEMETERY

---

J U D G M E N T

---

1. By a petition dated 13<sup>th</sup> March 2023, the petitioners, FD and MCD, apply for a faculty authorising the exhumation and reinterment of the mortal remains of their late son, ASD, who was born on 13<sup>th</sup> February 2019 at Medway Maritime Hospital, Gillingham, and who died at King's College Hospital, London on 29<sup>th</sup> December 2019, having spent those ten and a half months in hospital. The causes of death recorded on the death certificate are; "I. (a) Liver Failure (b) Short Gut Syndrome (c) Necrotizing Enterocolitis II. Prematurity Dandy Walker Malformation Bronchopulmonary Dysplasia."
2. The petition and supporting documentation set out the grounds relied upon in support of the petition. I shall refer to them in more detail below. On 21<sup>st</sup> January 2020 ASD was buried in consecrated ground in Grave No 330, Section GG, in Chatham Cemetery.
3. There is no opposition to the grant of a faculty, and this is clearly a petition suitable to be dealt with on the basis of written submissions under **Rule 14, Faculty Jurisdiction Rules**, and which has been agreed by the petitioners.
4. FD and MCD, who are a Romanian married couple, came to this country in 2014 seeking a better future. They could never have foreseen the tragic circumstances surrounding the birth of their child which were to unfold.
5. At the time of ASD's death, the family were settled in this country, and not surprisingly elected to have their baby buried here. I have little doubt that in their grief they were not in the best frame of mind to understand the long-term consequences of their decision. As time has gone by, the family have realised that they want and need to return to their extended family in Romania. This does not surprise me. FD has put it this way;

“After all this great suffering, we realised that we wanted to return to Romania and resume our lives there. My wife went through some very difficult moments, and still suffers a lot because of him, she became very nervous and agitated...We really want to take ASD with us to Romania, we don't want to abandon him here, to stay alone.....Now for several months my wife has been living in Romania with the other boy who was born after ASD's death. I stayed here for the moment just to solve this problem.....We want the whole family to be together in Romania.”

6. I accept everything said by FD and have no doubt about the sincerity of his and his wife's motives.
7. That said, the petition raises important considerations. The Church has held that the grave is to be the final resting place. Nevertheless, in exceptional and appropriate circumstances exhumation, followed by reinterment, is permitted (see **Re Blagdon Cemetery [2002] Fam 299**). Obvious situations for allowing such include where a mistake has been made, an example being where the body has been buried in the wrong grave. Sometimes development of a site requires exhumation as, of course, may the investigation of a murder or other death. There is no absolute rule, and, subject to the presumption that there should be no disturbance of mortal remains, save in exceptional circumstances, the old adage that every case depends on its facts very much applies. In the instant case, decided case law is of little assistance; the decision is very much one for the Court's discretion on the facts as found.
8. An important, though not decisive, factor is that Chatham Cemetery makes no objection, and indeed its Cemetery Manager has sent an email supporting the petition.
9. In the particular circumstances of the case, I am satisfied that the petitioners have acted as speedily as might have been expected, and that there has been no disproportionate delay in presenting the petition.
10. Of particular importance, I have medical evidence before me in the form of a report dated 10<sup>th</sup> February 2023, from a clinical psychologist, Mariana Christina Andronie which states unequivocally that MCD is suffering from “an anxious depressive state and post-traumatic stress disorder.” I accept this evidence.
11. In addition, detailed and appropriate arrangements have been made for the reinterment of the mortal remains of ASD in an appropriate plot in Romania. In a letter dated 9<sup>th</sup> February 2023, the parish priest of Zorile Parish, Argeş County, Romania has confirmed there is a plot owned by

FD available in the local cemetery, whilst Mr Predescu, an undertaker, has confirmed that he will be responsible for the transport to, and funeral arrangements in Romania “in a respectful manner.”

12. On these facts, and in particular bearing in mind the adverse effect the present situation is having on the mental health of MCD I have no hesitation in permitting the exhumation of the remains of ASD. Anyone with any experience of the loss of a baby knows full well that bereaved parents in the situation the petitioners found themselves in can find it hard in the extreme to make rational decisions generally, but specifically about what arrangements should or should not be made surrounding the funeral and the burial provisions etc. In the instant case problems were compounded by the fact that this family are Romanian, but seemingly settled here. That all changed with the sad death of their firstborn son. I am satisfied that allowing the exhumation does not create precedent, and that the permission granted relates to the particular facts before me. I am satisfied that good reason and an exceptional case has been made, and that the parents could be described as not being in any position to make a rational decision at the time. In saying this I make clear that no criticism attaches to either of them or their families.
13. In the exceptional circumstance as I have found them to be, and subject to the petitioners providing the Deputy Registrar with written undertakings (i) that they will each ensure that the mortal remains of ASD are reinterred in consecrated ground by 31<sup>st</sup> July 2023 and (ii) that in the exhumation, transportation, and reinterment they will use their best endeavours to ensure that those mortal remains are cared for in a respectful and careful manner, I direct that there be permission to exhume the mortal remains of ASD as sought.
14. I attach the following condition to the faculty that is to issue: the exhumation must be carried out as soon as is practicable.
15. Let faculty issue accordingly.

**John Gallagher**  
**Chancellor**  
**17<sup>th</sup> April 2023**