

Neutral Citation Number: [2023] ECC Chd 4

IN THE CONSISTORY COURT OF THE DIOCESE OF CHELMSFORD

IN THE MATTER OF STAMBOURNE, ST. PETER AND ST. THOMAS

PETITION NO. 3405

JUDGMENT

The Petition

1. This is a Petition for a Faculty for the exhumation of the mortal remains of the late Mr. William Lee Mizon, to whom I shall refer as Mr. Billy Mizon. The Petitioner is Mrs. Julie Mizon, Mr. Billy Mizon's mother.
2. The Petition is dated 30 June 2022, although it was not received by the Registrar until 16 August 2022. However, subsequent developments, to which I refer below, have meant that there has been significant delay in my determination of it.
3. Mr. Billy Mizon died on 9 February 2022. He had been suffering from bowel cancer for two years and it was this that caused his death.
4. At the time he died, Mr. Billy Mizon was living in Stambourne with his partner, Ms Victoria Mizon, and their three young children, who were, at the time, aged nine, seven and five. He had moved from London in 2018 for financial reasons. He also had two daughters, then aged 15 and 13, from a previous relationship.
5. Mr. Billy Mizon's funeral took place in the church of St. Peter and St. Thomas in Stambourne. He was buried in the churchyard in consecrated ground.
6. Mrs. Carly Coles, who is the Petitioner's daughter and the sister of the deceased, has written a letter in support of the Petition in which she explains that the decision was taken for her brother to be buried in the churchyard because it was thought that Ms Victoria Mizon and her children would be remaining in the locality, and that it would be a comfort to them if they were able to visit the grave.
7. Mrs Coles' letter also states that Ms Victoria Mizon and her children have moved away from Stambourne, and that their whereabouts are not known. She makes what is, I accept, a heartfelt plea for her brother's remains to be exhumed and reinterred in consecrated ground in Northwood Cemetery, Middlesex. The cemetery is close to the Petitioner's home and to that of her sister, who has also written in support of the Petition. The Petition is further supported by a number of other family members, including the deceased's two older daughters.
8. It is said by the Petitioner and by Mrs Coles that Mr Billy Mizon wished to be buried but gave no indication as to where his grave should be. As I explain below, however, the position is not altogether clear.

9. The reasons given for seeking the exhumation are as follows. First, it is said that the family made a mistake in deciding to bury Mr. Billy Mizon in Stambourne in circumstances where Ms Victoria Mizon has (it is said) not remained in the area. Secondly, it is said that, but for this error, Mr. Billy Mizon would have been buried in Northwood, that being his family home. Thirdly, Mrs Coles states that her mother's health is poor and that she has been suffering from depression. This is made worse, she suggests, by her mother's driving the long distance between Northwood and Stambourne to visit her son's grave and refusing to return, meaning that other family members have to drive to Stambourne and persuade her to return. This situation, Mrs Coles says, is (not surprisingly) impacting on the wellbeing of the rest of the family.
10. It is also necessary to record that Mrs Coles, and other members of the family, make a number of serious personal accusations against Ms Victoria Mizon which it is not necessary to detail in this judgment.
11. The (former) Incumbent, Rev. Elizabeth Paxton, indicated in June 2022 that for pastoral reasons she supported the Petition. She stated that she had become aware that the family's decision to request a burial in Stambourne was a mistake, and that the decision was based on Ms Victoria Mizon and her children remaining in the area. She noted that although Stambourne is isolated, and far from Northwood, she had seen the Petitioner, her sisters and Mr. Billy Mizon's older daughters at the grave on many occasions; she expressed the concern that it is difficult for them to make the journey. She did, however, express two concerns. The first was that, in accordance with general Christian principles, Mr Billy Mizon's burial should be regarded as permanent; she said that she had discussed this with the family. The second does not in fact arise: she was concerned that Mr. Billy Mizon's remains might be removed to non-consecrated ground, but the Petition makes clear that the intention is to reinter them in consecrated ground.
12. Public Notices were displayed in the usual way. On 21 September 2022, the Registry received an email, forwarded by the DAC Secretary, from Ms Victoria Mizon, objecting strongly to the Petition. Given that, as I explain below, the objection was later withdrawn, I do not consider it appropriate to set out in full the details given. However, it is pertinent to note that Ms Victoria Mizon suggested that it had been Mr Billy Mizon's wish to be buried in Stambourne. It is also right to record that she denied the personal allegations made against her in the materials submitted with the Petition, and cast some doubt on the conduct of the Petitioner and her family, again in respects which it is not necessary to detail here.
13. In the light of the communications which she had had with Ms Victoria Mizon, the Incumbent wrote to the Registry indicating that her support for the Petition was withdrawn: she said, "the PCC and myself would prefer that there NOT be an exhumation".
14. The Registrar wrote to Ms Victoria Mizon on 23 September 2022 (letter sent by email) setting out her options. On 27 September the Registrar received another e-mail from Ms Victoria Mizon. She stated that she was withdrawing her objection to the Petition. The reasons which she gave, I do not, again, rehearse in this judgment; but it is sufficient to say that, although she continued to express unhappiness about the proposed exhumation, she made it absolutely clear that her objection was "revoked".

15. I do, however, draw the conclusion from the matters set out above that there has been, unfortunately, a serious estrangement between the different parts of Mr Billy Mizon's family. I also conclude that there is disagreement between those involved as to the reasons for that estrangement. I have not set out the various allegations, which are no doubt extremely painful to all those involved, since I have concluded that it is not for me to decide whose account is right.
16. Since the withdrawal by Ms Victoria Mizon of her objection, the Registry has been in further communication with the Incumbent. In the light of a discussion between the Registrar and the Incumbent, it was concluded that the views of Mr William Mizon senior, Mr Billy Mizon's father, should be sought in relation to the Petition. He was not one of the family members who had written in support of the Petition, and my understanding is that he no longer lives with the Petitioner. He was, however, reported to have been visiting his son's grave. Mr Mizon had previously been unavailable and was understood to be seriously ill in hospital.
17. Following efforts to obtain contact details for Mr William Mizon senior, the Registrar wrote to him in March this year, and he responded indicating that he supported the Petition. He said that whilst he was presently living near Stambourne, he would soon be moving back to Northwood, because he is reliant on his family to take him to hospital appointments, something that Mr Billy Mizon did when alive. He indicated that he never agreed to the burial in Stambourne and was in agreement that his son should be buried in "our Hometown".
18. In the light of this communication, the Registry sought the further views of the Incumbent in April 2023. Unfortunately, there was no reply and in June 2023 she retired from her post. A response was, however, received in July 2023, in which she expressed no further view of her own but indicated that the PCC were aware of the matter and, so she suggested, had passed a resolution in relation to the Petition. Whilst I was far from certain that the PCC would have been justified in so doing, I considered it appropriate to ascertain the position, and the Registry therefore made inquiries of the PCC. It transpired that there was no resolution and no minute; and there matters rest.

The principles to be applied

19. The principles to be applied to a petition for an exhumation are laid down in the judgment of the Court of the Arches in *Re Blagdon Cemetery* [2002] Fam 299. The starting point is that there is to be no disturbance of consecrated ground except for good reason: see the judgment at [34]. Christian burial in consecrated ground treats burial as a symbol of entrusting the person to God for resurrection. There is therefore a presumption against exhumation, and "a faculty for exhumation will only be exceptionally granted" (see *Re Blagdon* at [33]).
20. It is for a petitioner to satisfy the Court that there are special circumstances in his/her case which justify the making of an exception from the norm that Christian burial is final, as the judgment states at [35].
21. Whether a case is an exceptional one is for the Chancellor to determine on the facts of that case and on the balance of probabilities, and is ultimately a matter for the Chancellor's discretion (*Re Blagdon*, [35], [41]).

22. Factors which might be sufficient to justify an exhumation may include (but are not limited to) the following:
- (i) Medical reasons, but these must be “very powerful indeed to create an exception to the norm of permanence, for example, serious psychiatric or psychological problems where medical evidence demonstrates a link between that medical condition and the question of location of the grave of a deceased person to whom the petitioner had a special attachment”. Blagdon makes clear that difficulties in visiting a grave by reason of poor health or advancing years are not sufficient;
 - (ii) Where the deceased has died suddenly and unnaturally, having left no indication as to his own wishes as to burial, and where he has no link with the community in which he is buried, this may go towards justifying exhumation, as it did in Blagdon itself;
 - (iii) Where there has been a mistake in relation to the burial – for example, the deceased has been buried in the wrong grave;
 - (iv) Where the application is to rebury the deceased in a family grave, this may militate in favour of exhumation.
23. In contrast, the Court of the Arches made clear that the following are not sufficiently exceptional reasons to justify exhumation:
- (i) A change of mind by the deceased’s relatives as regards the place of burial;
 - (ii) Difficulties in visiting a grave, bearing in mind that many people move house over the course of a lifetime;
 - (iii) Medical reasons that do not fall into the category of exceptionality identified above.
24. Blagdon also makes clear that support for a petition from close relatives is likely to be highly relevant, but that other local support, whether lay or clerical, is not.

Application of the relevant principles

25. I have not found the present case at all easy. However, applying the Blagdon principles, I have concluded that sufficiently exceptional circumstances to justify the exhumation of the late Mr Billy Mizon’s mortal remains are not made out. My reasoning is as follows.
26. The starting-point is, as I have said, a presumption against exhumation. So I must be satisfied that the circumstances are sufficiently exceptional, in order to displace that presumption.
27. There has been no relevant “mistake” in relation to Mr Billy Mizon’s resting place. There was a deliberate decision to bury him in Stambourne, and I do not consider that I can conclude that there has been the sort of mistake that the Court of the Arches

regarded as relevant in Blagdon. Mrs Coles suggests that no explanation was given to the family as to the nature of Christian burial at the time of the burial. Be that as it may, the family must have been aware that they were choosing burial in a churchyard and not in a municipal cemetery.

28. There is no suggestion that, if the remains of Mr Billy Mizon were to be exhumed, they would be buried in a family grave, as opposed simply to in the wider Mizon family's "hometown".
29. There is evidence before me (albeit not medical evidence, but evidence from Mrs Coles and other family members, as well as the Incumbent's original letter) that the location of the grave is causing some members of the family very real stress and sadness, and that the Petitioner, in particular, is depressed. I do not belittle those feelings in any way. At the same time, it does seem to me that the causes of the stress and sadness may have more to do with the loss of Mr Billy Mizon and with the family breakdown to which I have referred above, than the location of the grave itself. Whilst I sympathise greatly with the Petitioner, and with all the family, in relation to Mr Billy Mizon's untimely death, I do not consider that the circumstances detailed in the letters supplied in support of the Petition are sufficiently exceptional to displace the Blagdon presumption.
30. What is more, whilst Ms Victoria Mizon has, as I have said above, withdrawn her objection to the Petition, I do consider it relevant that she and her children do not positively support it. Further, there is some evidence, in the form of her exchanges with the Registry, that Mr Billy Mizon did indeed wish to be buried in Stambourne, where he had made his home for the preceding four years. Whether or not that is true, I cannot determine; but the case seems to me to differ from Blagdon where it was absolutely clear that the deceased had expressed no wish whatsoever in relation to his burial.
31. I therefore refuse the Faculty that is sought. I do so even though, to adopt language from the recent judgment of HHJ Sarah Whitehouse KC (Dep. Ch.) in *Re St. Barnabas, Ranmore* [2023] ECC Gui 6, I accept that the Petitioner's request for exhumation arises from a genuine sense that the trauma suffered by her will be heightened by continuing difficulties in visiting her son's grave. However, the principle that burial in a particular space in a Christian churchyard, attended by the Church's funeral rites, is to be permanent is a principle that, as the *Ranmore* judgment rightly records, must be honoured. It can be set aside only in exceptional circumstances, and I cannot find that the circumstances of this case, unhappy as they are, are sufficiently exceptional.

Philippa Hopkins K.C.
Chancellor
6 December 2023