Neutral citation number: [2016] ECC Swk 7

IN THE CONSISTORY COURT OF THE DIOCESE OF SOUTHWARK

IN THE MATTER OF WEST NORWOOD CEMETERY

AND IN THE MATTER OF A PETITION BY MRS MARY RHEAD

JUDGMENT

1. This is a petition dated 8 December 2015 by Mrs Mary Rhead for a faculty to permit the exhumation of the remains of her late father, Edward Tarrant, from the consecrated part of West Norwood Cemetery in order that they may be cremated and re-interred in Murrisk Abbey Cemetery in County Mayo, Ireland. Father Charles McDonnell of the parish of Westport in County Mayo tells me that the cemetery is consecrated.

2. Mr Tarrant died aged 57 in 1985. He had not made a will and did not in the period immediately before his death express any views about the arrangements to made after his death in respect of his remains. On a few occasions when the matter had been discussed, he had expressed the wish, perhaps with a degree of jocularity, that he just wanted to be cremated, his ashes put in an urn on the mantelpiece and interred in the family grave in Murrisk Abbey when his widow visited.

3. This suggestion did not commend itself to his widow, Mrs Annie Tarrant (Mrs Rhead's mother). She was a Roman Catholic very much of the old tradition and did not believe that cremation was appropriate. Accordingly since at that time she could not afford to have her husband's remains taken to Ireland, she purchased a double plot in the consecrated part of West Norwood Cemetery with the intention of her own remains being buried there when the time came. Mrs Rhead tells me that in this decision she was supported by both her local priest and the undertaker as being the best way forward. Moreover she derived comfort from visiting the grave, initially on a weekly basis but on a monthly basis after her health deteriorated in 2003.

4. In 2007, Mrs Tarrant suffered a severe stroke. She began to think again about her own circumstances and decided that what she wanted to happen to her own remains is that they should be buried in the family grave in Murrisk Abbey Cemetery. There was now no financial impediment to this. As regards the remains of her husband, she desired that they should be exhumed, cremated and also interred in the family grave in Murrisk Abbey. As Mrs Rhead explains, her mother had changed her mind about the appropriateness of cremation and of course this did accord with the view that her late husband had expressed. She made Mrs Rhead and her husband promise that they would comply with her wishes (not appreciating that there might be any objection to what she envisaged). On this basis, she did not address the question of whether, if permission to exhume her late husband's remains were not forthcoming, she would prefer her remains to be interred in West Norwood or separately in Ireland. Mrs Tarrant died in 2014 and, in accordance with her wishes, her remains were buried in Murrisk Abbey Cemetery.

5. Permission to exhume remains that have once been interred in consecrated ground should be granted only exceptionally[1], the norm of Christian burial being permanence[2]. Accordingly I have to ask myself whether there are reasons in the present case for making an exception to the general rule.

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[1] See the judgment of the Court of Arches in *In re Blagdon Cemetery* [2002] Fam 299 at paragraph 33.
[2] Ibid at paragraph 28.

6. It is well known that historically the Roman Catholic Church was opposed to cremation. Even today, Canon Law (C1176) commends burial; putting the matter simply, cremation was forbidden until 1963[3]. Accordingly I can well understand that in 1985, Mrs Tarrant may have viewed cremation as unacceptable. Thirty years later, one can understand that her views may have changed in the light of the change generally in attitudes to cremation in the Roman Catholic Church.

7. I am conscious that "change of mind" is not of itself an acceptable justification for an exception to the norm of permanence: see paragraph 36 (iii) of the judgment in *In re Blagdon Cemetery*. However this change of mind came about in the light of a change in objective circumstances, namely the changing attitude of the Roman Catholic Church to cremation. Thus all other things being equal, I would be sympathetic to a petition to permit exhumation exceptionally in these circumstances on the basis that, but for the general attitude to cremation then prevailing in the Roman Catholic Church, Mr Tarrant's remains would have been cremated and taken to Ireland, as is now proposed. The matter is not that simple however. Mrs Tarrant's view about cremation cannot have changed completely since she herself did not wish her remains to be cremated; nor were they. When I raised this point with Mrs Rhead she said that her mother had been influenced by her father's expressed wish that he be cremated; and the fact that it would be the most simple and most convenient way for his remains to be taken to Murrisk Abbey Cemetery. This raises the possibility that the true foundation for the petition is not so much changed attitudes to cremation but the fact that in 1985 Mrs Tarrant could not afford the expense of her late husband's body being taken to Ireland for burial.

8. It seems to me that on no view is this the strongest case for making an exception to the norm of permanence, particularly since during her lifetime Mrs Tarrant did enjoy the benefit of being readily able to visit her late husband's grave; and that now the reason for exhumation is not so much for any benefit it will confer on the living as honouring a promise given to the dead. Nonetheless I do understand that Mrs Rhead naturally does want to honour her mother's last wishes. I also take into account the fact that the exhumation will be to a family grave. In *In re Blagdon Cemetery*, the Court of Arches encouraged family graves as expressive of family unity[4]. Moreover they also encourage the economical use of grave space[5]. In the present case if the petition is granted it will free up two grave spaces. As is well known, grave space is at present at a premium in South London. I do not think that of itself the fact that the proposed re-interment is to a family grave would be capable of being a sufficient justification since, if it were, it would severely undermine the ability of the Court to maintain the norm of permanence[6]. (In this view I know I differ from the views of some of my fellow Chancellors). Nonetheless this does not mean that it is not a factor to be taken into account in a case like the present in support of the petition.

9. Taking all matters into account as set out above, I think this is properly a case where an exception may be made to the norm of Christian burial and accordingly I direct that a faculty should issue. As to whether Mr Tarrant's remains are cremated, this is a matter I am content to leave to the judgment of Mrs Rhead.

10. Finally I should note for completeness that the fact that a petitioner had arranged for his mother's remains not to be cremated and for her body to be buried in accordance with his

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[3] The position before 1963 was that there were certain circumstances in which it was permissible.
[4] See paragraph 36 (vi).
[5] As is recognised as a relevant matter at paragraph 36 (vi) of In re Blagdon Cemetery.
[6] See my judgment in *In re Peters's Petition* [2013] PTSR 420 at paragraph 52.

(mis)understanding of Roman Catholic belief was apparently considered not to be relevant by the Chancery Court of York in *In re Christ Church, Alsager*[7]. The authority of *In re Christ Church, Alsager* was dented in *In re Blagdon Cemetery* and I do not think that in any event I can derive assistance from the Court's treatment of a matter which it did not specifically address.

PHILIP PETCHEY
Chancellor
31 March 2016

[7] [1999] Fam 142 at p150D. See also the unreported judgment of Lomas Ch (3 September 1997) and my (extra-judicial) comments on the case in 6 EccLJ 122 at pp122 – 124.