



Faculty — Churchyard — Exhumation — Burial of cremated remains of infant son following death from leukaemia in 1981 — Deceased's parents deciding in haste to have their son interred in the churchyard on the day he was cremated — Parents no longer living in area and gravespace sadly neglected — Parents wish to create a family grave in the churchyard of the church where they were married and several generations of the wife's family lie buried — Whether exceptional circumstances established for granting faculty for exhumation and reburial in family grave — Faculty granted

Petition No: 10933

IN THE CONSISTORY COURT
OF THE DIOCESE OF OXFORD

Date: Sunday, 27 November 2022

Before:

THE WORSHIPFUL DAVID HODGE KC, CHANCELLOR

In the matter of:

St Bartholomew, Arborfield

THE PETITION OF:

BARRY HUGH MORRIS and ELIZABETH ANNE MORRIS

This is an unopposed petition determined on the papers and without a hearing.

No objections have been received

The following case is referred to in the Judgment:

Re Blagdon Cemetery [2002] Fam. 299

JUDGMENT

Introduction and background

1. This is an unopposed petition, in the form of a letter dated 10 October 2022, by Mr Barry Hugh Morris and his wife, Mrs Elizabeth Anne Morris, who live in Stamford, Lincolnshire, to exhume the cremated remains of their infant son, Julian Barry Morris, who was born on 17 September 1974 and sadly passed away on 4 August 1981, aged only six years, from the churchyard of St Bartholomew, Arborfield, to a new family grave to be created in the churchyard of All Saints at North Cave in the Diocese of York. Mr Morris was born in 1943 and his wife in 1939.

2. In their letter, the petitioners explain that their decision to petition this court for a faculty has been taken over a long period of time and with much heartache. They say that they fully understand that Christian burial is deemed to be permanent and final. However, they also understand that a faculty to exhume interred human or cremated remains may be granted on the grounds of exceptional circumstances which, after some years of contemplation, they feel is the case here, those circumstances being as follows:-

3. The petitioners' only son, Julian Barry Morris, was born on 17 September 1974, at the John Radcliffe Hospital in Oxford, after the petitioners had spent a number of years trying, and praying, for a family. This was achieved in part with the assistance of the medical team at the hospital. Subsequently the petitioners found that they were unable to have any more family. Sadly, Julian passed away on 4 August 1981, just before his seventh birthday, from acute myeloid leukaemia, having undergone thirteen months of rigorous treatment, first in the Royal Berkshire Hospital in Reading, and then at the Royal Marsden Hospital in Sutton, with his mother constantly at his bedside. He was brought home to Arborfield for his last few days.

4. The petitioners explain that the loss of one's only child has a profound effect on one's mental well-being, and this is one of their main reasons for this petition. Decisions which have to be made under such circumstances, without close family members nearby, and without the support which would be available nowadays, led, in this case, to a hastily made decision to have him interred on that day he was cremated in the churchyard of St Bartholomew at Arborfield. The reason for this was that the petitioners' families had all travelled down from the north of England, and the petitioners thought that they needed to see him interred. In hindsight, the petitioners now recognise that this was wrong; and it gives rise to the second main reason for their petition.

5. Mr Morris's career has been in the construction industry, and this has taken Mr and Mrs Morris all over northern and mid-southern England, requiring them to move home eight times. Mr Morris's family, and previous generations, are from Merseyside and Cheshire, where they live. Mrs Morris comes from a farming family; and they, together with previous generations, have lived in and around North Cave, in the East Riding of Yorkshire. Mr and Mrs Morris were married on 8 January 1966 at All Saints Church at North Cave in the Diocese of York. It is there that they wish to have their only son re-interred, near members of Mrs Morris's family, several generations of whom rest in the churchyard, unlike Mr Morris's own late family members, who lie in various churchyard locations in Liverpool and Cheshire. Mr and Mrs Morris themselves are currently living in Lincolnshire, within reasonable travelling distance of both their families. They have no family or friends in the proximity of Arborfield, or any other connections with that place; and, for health reasons, the petitioners are no longer in any position to make regular visits

to Arborfield churchyard, nor have they done so for some three years. As a consequence, the petitioners are concerned that Julian's resting place has become neglected and anonymous. I attach an image of the grave at the end of this judgment. It is the petitioners' heartfelt wish that they and their infant son may eventually be reunited together in the churchyard at North Cave, with other family members, where they will all be remembered in the future. The petitioners' letter concludes: *"Forgiveness is a wonderful Christian principle and we hope and pray the court will consider and forgive a decision taken under exceptional circumstances."* Attached to the petition is an image of the petitioners' young son, and his dates of birth and death.

6. The petitioners have provided details of all of Julian's relatives (two aunts and four cousins on Mr Morris's side of the family, and one surviving aunt and four cousins on Mrs Morris's side). All three of the surviving aunts, and seven of Julian's eight cousins, have written letters supporting the proposed exhumation and reinterment. Some of these letters are expressed in the most moving terms, acknowledging the heartbreak suffered by the petitioners at the loss of their only child at such a tender age; and the petitioners' abiding wish that, in time, they should be re-united with Julian, to rest together in peace in the churchyard at All Saints, North Cave, where so many of Mrs Morris's own relations already lie buried.

7. The petitioners have supplied a letter from the Rector of St Bartholomew's, Arborfield, which reads:

At St Bartholomew's, Arborfield we continue to teach and take funerals on the presumption that burial is permanent, and agree that the exhumation of remains does not sit well with the church's teaching of a final resting place.

However, we are of course sympathetic to this request and recognise that Mr and Mrs Morris are fully entitled to pursue a faculty in this matter. Were they to be granted permission by the consistory court on the grounds of exceptional circumstance, then we would have no objection to this and imagine it would have little to no unsettling effect on the local neighbourhood.

There is also a letter from the priest in charge of All Saints Church, North Cave, giving his permission for Julian's remains to be interred in their churchyard.

8. When I first received this petition, I was concerned that it provided insufficient information for me properly to consider Mr and Mrs Morris's request. I asked the Registry to inquire:

(1) What arrangements were proposed for the re-interment of Julian's cremated remains in the churchyard at All Saints, North Cave? Was there to be a plot sufficient to create a family grave to contain the remains of Mr and Mrs Morris as well as their late son? Would this be the subject of a gravespace reservation there?

(2) Julian had been laid to rest some 41 years ago. Would it be practicable, after this lapse of time, to exhume his cremated remains and re-bury them elsewhere? How was this to be done? I indicated that the petitioners would need to obtain the expert views of a funeral director, who would probably need the details of how Julian had been interred back in 1981.

(3) I also invited the Registry to ask the petitioners, and also the minister at St Bartholomew, whether there was any possibility of the petitioners being buried with the remains of their late son.

(4) Once this further information should have been provided, were the petitioners content for me to deal with the matter on the papers, or would they wish for there to be a remote hearing (by Zoom or Teams). Were there any further documents they would wish to submit to the court?

9. In response to these inquiries, the court has been informed of the following:

(1) The priest in charge of All Saints Church, North Cave has confirmed that there is sufficient burial space in the churchyard for the petitioners as well as their son, Julian. Mr Morris has produced three photographs showing the proposed location for the re-interment of Julian's ashes and, in due time, the interment of the petitioners' own ashes. This will be in the ashes area below the church tower, near to the space occupied by the cremated remains of Julian's late maternal aunt, Mrs Joyce Towse.

(2) Mr Morris has been in contact with David Greedy, funeral directors of Crowthorne in Berkshire, who arranged for the funeral, and subsequent interment of Julian's ashes, in September 1981. Having visited the churchyard at Arborfield, and located Julian's resting place, these funeral directors are happy to assist in the exhumation of his cremated remains, and they would endeavour to proceed as quickly as possible. They report that the small memorial to Julian rests on a 18" x 12" base, which was easily moveable without dismantling it. The ground below is very soft earth, and a small test dig showed that locating the cremated remain would not be an issue. The plot itself is located away from other graves and so would not in any way impinge on them. To exhume the cremated remain, the funeral directors would prepare the ground to the dimensions of the base so as not to disturb them; once located the remains would be removed to a new wooden urn; this would also contain a small amount of earth which, sadly, would be unavoidable. On completion, the ground would be returned to lawn by means of seeding or turf. If permission for the exhumation were to be granted, the funeral directors would approach the church office asking for this to take place on a Sunday, in the early morning or late evening; this should take no longer than one hour.

(3) The associate minister considers that, in order to know for certain whether there is sufficient room below to accommodate any further cremated remains, the existing memorial would need to be lifted and the ground rodded for depth. That is something he is unable to do. His guess is that there would be sufficient room, especially if any further ashes were to be buried loose, but he cannot guarantee that; hence his suggestion of rodding the ground.

(4) By email dated 4 November 2022, Mr Morris has confirmed that the petitioners are content for their petition to be dealt with on the papers.

10. Since this is an unopposed faculty petition, and the petitioners agree to this course, I am satisfied that it is expedient, in the interests of justice, and in furtherance of the overriding objective of the Faculty Jurisdiction Rules (as amended), for me to determine this petition without a hearing, and on the basis of the written and other illustrative material that has been submitted in support of the petition.

The legal framework

11. It is convenient for me to begin by setting out the legal framework by reference to which this faculty petition falls to be determined. The leading authority is the decision of the Court of Arches, the appeal court for the southern province of Canterbury, comprising Cameron QC (the Dean of the Arches) and Chancellors Clark QC and George QC, in the case of *Re Blagdon Cemetery* [2002] Fam. 299. In that case, as recorded in the head-note to the official law report, the

petitioners' son had died in an industrial accident in 1978, and his remains had been buried in consecrated ground in a cemetery in Somerset, near to where the petitioners (but not their son) had lived at the time. The petitioners subsequently moved home on several occasions before retiring to Suffolk. In 1999 they petitioned for a faculty authorising the exhumation of their son's remains so that they could be reburied in a cemetery in the community which they had chosen for their retirement, in a triple burial plot in which the petitioners wished their remains also to be buried after their deaths. In the consistory court, the chancellor had refused a faculty on the grounds that there was no good and proper reason for exhumation, which was likely to be regarded as acceptable by right-thinking members of the Church at large, since there had been too great a lapse of time since the burial, and it was not a sufficient reason that the purpose of the petition was to enable the petitioners to visit their son's grave more easily.

12. The petitioners' appeal was allowed. The Court of Arches held that since there was a presumption that Christian burial was permanent, and that human remains should not be portable, a faculty for exhumation would only exceptionally be granted; that it was for the petitioners to satisfy the court, on the balance of probabilities, that there were special circumstances which constituted good and proper reason for making an exception to the norm that Christian burial was final; that in deciding whether such good and proper reason had been made out, it was not practicable to consider whether that reason was likely to be regarded as acceptable by right-thinking members of the Church at large; that advancing years, deteriorating health, and moving to a new area were not, in themselves, adequate reasons for permitting exhumation; that the passage of a substantial period of time since the burial was not, in itself, fatal to the petition, although it might be of potential relevance in assessing the genuineness of the petitioner's case; that since double and triple graves, in which the remains of members of the same family could be buried together, were to be encouraged, the bringing together of family members' remains in a single grave could provide special reasons for permitting exhumation despite the lapse of a long period of time since the burial, although where no burial had yet occurred in a family grave, clear evidence as to the existence of a legal right to such a grave would be required to justify exhumation of the remains of a child who had predeceased his parents; that, although mistake as to the location of the grave or, in certain circumstances, as to the significance of burial in consecrated ground, could be good and proper reason, mere change of mind as to the place of burial by those responsible for the interment could not; that, although the views of close relatives were a very significant factor, the amount of local support for the petition would normally be irrelevant; that, in view of the desirability of securing equality of treatment between petitioners, so far as circumstances permitted, the court had to take into account the impact its decision was likely to have on other similar petitions; and that, in view of the sudden and unnatural death of the petitioners' son at an age when he had expressed no view about his place of burial, the absence of any link between him and the community in which his remains were buried, the petitioners' lack of any permanent home at the time of the burial, the fact that they had inquired of solicitors shortly after their son's death about the possibility of moving his remains once they had acquired a permanent home, and the petitioners' purchase of a triple depth burial plot in the community in which they had settled, good and proper reason had been shown for granting the petition.

13. The appeal court directed that a faculty should issue out of the consistory court for the diocese, on the usual terms, for the exhumation of the human remains from the cemetery and for their transportation to, and reinterment in, their new resting place, on condition that the

exhumation should not take place unless and until a Home Office licence had been obtained authorising the reinterment as proposed in the new cemetery.

14. The general principles laid down in the *Blagdon* case have been the subject of much judicial discussion in later cases; but since the actual decision in any particular case is highly fact-sensitive, and will depend upon the actual circumstances of that case, it is not necessary for me to refer to any further case law authority.

Analysis and conclusions

15. In the present case, the petitioners have satisfied me, on the balance of probabilities, that special circumstances exist which constitute good and proper reasons for making an exception to the normal rule that Christian burial is final, despite the passage of some 41 years since the original interment of Julian's cremated remains. Those special circumstances consist in the combination of the following:

- (1) the sad death of the petitioners' only son after a long and debilitating illness at the young age of not quite seven years, at a time when Julian had been in no position to form or express any considered view about the place of his interment;
- (2) the absence of any real connection between Julian and the community in which his cremated remains were laid to rest;
- (3) the petitioners' lack of any settled, permanent home at the time of the interment;
- (4) the incredible grief experienced by the petitioners at the loss of their only son at such a young age, and the pressure they had felt, without any real support, to arrange the swift interment of their son's cremated remains;
- (5) the petitioners' heartfelt, genuine, understandable, and realistic wish to create a family grave in a churchyard where the remains of many of Julian's mother's own relations have already been laid to rest.

16. These circumstances are reinforced by:

- (6) The positive, considered support for the proposed exhumation and reinterment from virtually all of Julian's surviving relations;
- (7) The lack of any opposition or objection to this proposal;
- (8) The perception of the Rector of the churchyard in which Julian's cremated remains presently rest that the proposed exhumation will have little or no unsettling effect on the parish.
- (9) The fact that granting this petition will have no undesirable precedential effect; and
- (10) The consideration that to refuse this petition would hardly be consistent with the vision of this Diocese to be a more Christ-like Church, contemplative, compassionate and courageous for the sake of God's world.

17. I emphasise that this is not a case of mere (a) advancing years, (b) deteriorating health, (c) moving to a new area, or (d) change of mind as to the place of burial by those responsible for the original interment of Julian's cremated remains. I have also considered whether it might be possible for the petitioners to achieve their wish of creating a family grave by making arrangements for their own cremated remains to be interred within Julian's grave space when

their own time should come but I do not consider this to be either a practicable or a sensible option in view of their lack of any personal or family connection with the churchyard at Arborfield.

18. For these reasons, the court will grant a faculty for the exhumation of Julian's cremated remains from the churchyard of St Bartholomew, Arborfield, and their transportation to, and reinterment in, a new family grave to be created in the churchyard of All Saints at North Cave in the Diocese of York on condition: (1) that the exhumation should not take place unless and until satisfactory proof is provided to the Registry that the petitioners have duly secured a faculty from that Diocese authorising the reservation of such a new family grave capable of accommodating the cremated remains of the petitioners and their only son, Julian; and (2) that following the exhumation, the petitioners arrange for the removal of the existing memorial to their son and release the grave space back to the parish for re-use in due course.

19. The petitioners must pay the costs of this petition; but, in the usual way, I charge no fee for this written judgment.

David R. Hodge

The Worshipful Chancellor Hodge KC

Advent Sunday

27 November 2022

The existing grave

