

IN THE CONSISTORY COURT OF THE DIOCESE OF ROCHESTER

Re: NORTHFLEET CEMETERY

J U D G M E N T

1. By a petition dated 24th October 2022 and submitted to the Registry on 2nd November the petitioners, EPLP and JOC, apply for a faculty authorising the exhumation and cremation of the mortal remains of their late daughter NMC, who was born on 21st June 2022, and died the same day of severe lung hypoplasia and bilateral multicystic dysplastic kidneys, about an hour after her birth.
2. The petition and supporting documentation set out the grounds relied upon in support of the application. I shall refer to them in more detail below. NMC was buried in consecrated ground in Section D, Grave No 677 in Northfleet Cemetery, on 21st July 2022.
3. I gave directions on 8th November 2022, and indicated that I was willing to determine the petition on the basis of written submissions under **Rule 14, Faculty Jurisdiction Rules**, as I am entitled to do after consultation. The petitioners agreed, and that is the course I now adopt.
4. In paragraph 3 of the petition the petitioners stated that the “family wish to have NMC cremated placed into an urn and she will be kept at home.” The intention as I understand it is for the ashes to be retained by EPLP and JOC until such time as they feel able to have them reinterred.
5. In her email dated 4th November 2022 EPLP elaborates on what is sought in the following terms; “My reasons for wanting my baby daughter NMC home is because I didn’t really think when I was planning her funeral and just thought a burial would be best instead of a cremation, but ever since the day I had to say goodbye for ever at her funeral I’ve regretted (it).... I’ve been getting worse every day with my mental health, I ended up trying to take my own life and am now on

strong antidepressants. I can't sleep or relax while she's at the cemetery. I sit there till late every night crying and am sitting with her everyday, also the foxes are destroying a lot of her stuff and flowers I know it's Mother Nature but I didn't think this far ahead, when it rains or as now it's cold I can't stop thinking about my little baby being in the cold."

6. I accept everything said by EPLP, and have no doubt about the sincerity of her motives. It would take the hardest of hearts not to be moved by what she has said.
7. Nonetheless, the petition raises important considerations. The Church has long held that the grave is to be the final resting place. That said, 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 Gravesham Borough Council makes no objection, and indeed supports the petition. I have received correspondence by email dated 2nd November and a letter dated 1st December and I am grateful to Mrs Mary Bobby, the Cemeteries and Allotments Manager for Gravesham Borough Council for the helpful information provided to the Court.
9. A further factor in favour of the petitioners is that they have acted without delay in presenting their petition. I also accept that insofar as EPLP is concerned, she realised immediately that she had made a mistake in proceeding to burial without considered thought.
10. Of greater importance, I have medical evidence before me from Ms Yvonne Morrison, the Lead Specialist Bereavement Midwife responsible for the care of EPLP. In a letter dated 15th October 2022, she has this to say; "Following the death of her daughter EPLP made the decision to have her daughter buried so she could visit the grave and spend time there. Unfortunately, following this decision it has become clear it is psychologically detrimental to EPLP, and that having her daughter exhumed and cremated would be more beneficial to EPLP's mental

health. This way she could keep the ashes at home and have her daughter with her.”

11. I accept this evidence from a medical specialist whose particular expertise is to assist those bereaved after child-birth, and has been assisting EPLP in this regard.
12. On these facts, and in particular bearing in mind the adverse effect the present situation is having on the mental health of EPLP, I have no hesitation in permitting the exhumation and subsequent immediate cremation of the remains of NMC. 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. 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 out and that, if necessary, the parents could be described as having made a mistake at a time when they were unable to think fully through what they were doing. In saying this I make clear that no criticism attaches to either of them or their families, or to those advising them.
13. I now turn to the more vexing question of what is to happen after the exhumation and cremation. Undoubtedly, immediate reinterment is the norm. Here, however, EPLP seeks to do something different. In her commendably honest email dated 14th December 2022 she says; “I know that having NMC cremated and her ashes then home with myself and her Dad will give us both much needed peace that she is with us, it will allow us to grieve for her and eventually in our own time be able to plan in detail the perfect way to lay her to rest. I will be honest I do not know when JOC and I will be ready to do that, but I do know that I can’t even begin to think about it until she is home with us, I just need to feel some peace and have some time. I know that when my time comes I want to be with her, so we are reunited together and then we will both be laid to rest together.”
14. I see no reason at all not to accept what EPLP has said, but consider that a degree of finality needs to be provided for. This I hope will give something for the petitioners and their families to work towards. I propose to allow what is asked for but to set a date by which time reinterment must have taken place.

15. In the exceptional circumstance as I have found them to be, and subject to the petitioners providing the Registrar with written undertakings (i) that they will each ensure that the cremated remains of NMC are reinterred in consecrated ground by 31st December 2032, (ii) that in the meanwhile they will use their best endeavours to ensure that those cremated remains are cared for in a respectful and careful manner, I dispense with the usual requirement for the display of public notices under **Rule 6.7(1)(b), Faculty Jurisdiction Rules**, and direct that there be permission to exhume and cremate the mortal remains of NMC as sought.

16. I attach the following conditions to the faculty that is to issue; (i) the exhumation must be carried out as soon as is practicable; (ii) the cremation must be carried out forthwith thereafter; (iii) Lewis Solomon Funeral Services are to be engaged to arrange and carry out the exhumation and cremation of the remains; (iv) insofar as Gravesham Borough Council are able to facilitate this, the exclusive right of burial with respect to the plot in question should remain in the names of EPLP and JOC for the remaining period of the 60 year term.

17. Let faculty issue accordingly.

John Gallagher
Chancellor
18th December 2022