

IN THE CONSISTORY COURT AT LINCOLN

In the matter of Spalding Cemetery (consecrated area)

And a Petition for the exhumation of the cremated remains of Adela Dolata deceased

Judgment

1. The applicant Ms Bozena Dolata seeks the exhumation of her late mother Adela Dolata's remains which are interred at Spalding cemetery in a consecrated plot. Ms Dolata died on 5 October 2013. She seeks a faculty to permit the exhumation and reinterment at a cemetery in Poland where her late father is interred. Her father died in January 2023 and lived with his wife until her death in 2013 in Spalding. The Polish cemetery is Cmentarz rzymsko-katolicki, Ulica Tylna 97-413 Belchatow Poland. The cremated remains of Mr Dolata have been interred in grave Z2/O:110 and it is proposed that the cremated remains of Mrs Dolata should be exhumed and then reinterred with her late husband in this grave.
2. Ms Bozena Dolata explains that her late father's wish was that his ashes should be interred in Poland and that his late wife's remains should join his in the same grave in Poland. Their daughter, Ms Bozena Dolata, has lived in Lincolnshire and has tended her mother's grave. She is now intending to move back permanently to Poland in November. She applies for a Faculty to exhume her late mother's ashes so that they be reinterred with her father's ashes. The rest of the family live in Poland and they join with her in seeking this exhumation so they can have both of her parents interred together in Poland close to where they all live. I have a document dated 28 September 2023 from Mgr Boguslaw Starus who has responsibility for the cemetery in Poland who gives his consent for the reinterment to take place and urges positive consideration of the request for exhumation. He confirms that this request is on behalf of the Polish family too.

3. Revd John Bennett, Vicar of Spalding has confirmed in his letter dated 29 September 2023 that in his view exceptional circumstances exist in this case and therefore supports the application for a Faculty to exhume.
4. The undertaker in UK has confirmed that although there may be some practical difficulties given the passage of time, they are confident they can transfer the remains into a new casket and recover them if exhumation is permitted.

Discussion

5. The principles by which an exhumation from consecrated ground is permitted are well known and set out in the case of In Re Blagdon Cemetery 2002 Fam p299.
6. The presumption is that burial of human remains in consecrated ground is permanent. This presumption arises from the Christian theology of burial which was set out at para 23 of the judgment in Blagdon in the quotation from The Bishop of Stafford's paper on the 'Theology of Burial'. He wrote

"The funeral itself articulates very clearly that its purpose is to remember before God the departed; to give thanks for their life; to commend them to God the merciful redeemer and judge; to commit their body to burial/cremation and finally to comfort one another."

He went on to explain:

"The permanent burial of the physical body/ the burial of the cremated remains should be seen as a symbol of our entrusting the person to God for resurrection. We are commending the person to God, saying farewell to them (for their 'journey'), entrusting them in peace for their ultimate destination, with us, to the heavenly Jerusalem. The commending, entrusting, resting in peace does not sit easily with 'portable remains' which suggests the opposite: reclaiming, possession, and restlessness; a holding onto the 'symbol' of human life rather than a giving back to God."

7. The principle of permanence can only be departed from if there are special circumstances which justify an exception to the principle that Adela Dolata was laid to rest in 2013 and her remains should not now be disturbed.

8. The Court of the Arches in Blagdon identified various factors which may support a submission that special circumstances have arisen which permit the remains to be exhumed. These factors are:

(i) medical reasons.

The Court made it clear that the only medical reasons which could assist a petitioner in these circumstances would be those which showed quite clearly that a serious psychiatric or psychological problem had arisen caused by the location of the grave to whom the petitioner had a special attachment. The Court made it clear mere decline in health and mobility due to advancing years could not be a reason which would displace the presumption of permanence.

There are no such reasons present in this case.

(ii) lapse of time.

The Court held that the passage of a substantial period of time before an application for exhumation was made could not be determinative of the application in itself. However, it would be a factor in assessing the genuineness of the Petitioners case. In this case I am entirely satisfied that the application is made in good faith and for genuinely held reasons.

(iii) mistake.

Where there has been a simple error in administration, such as burial in the wrong grave, the Court held that faculties for exhumations could readily be granted. Of more difficulty is where there is a failure to understand or appreciate the significance of burial in consecrated ground in a municipal cemetery.

There has been no mistake in the burial place here.

(iv) precedent.

The Court held that consideration of the effect of precedent by the grant of the application is properly made because of the desirability of

securing equality of treatment, so far as circumstances permit between Petitioners.

I take this issue into account.

(v) family grave

The Court held that the use of family graves is to be encouraged because they both express family unity and they are environmentally friendly in demonstrating an economical use of the land for burials.

This is the basis of Ms Dolata's application. She wishes to inter her mother's remains with those of her father in a family grave in Poland so that family members in Poland will be able to visit the grave as part of their family life whereby family unity may be expressed and lived out.

Decision.

9. It is always exceptional to grant an exhumation, however I am satisfied that exceptional reasons do exist in this case for an exhumation to be permitted. The reinterment with her late husband's remains will be an expression of their family unity and I take into account that Ms Dolata has cared for her mother's grave in Spalding over the last 10 years and is returning permanently to Poland. Thus, the whole family will now be in Poland.
10. The exhumation must be carried out discreetly with appropriate screening so as not to alarm those visiting the cemetery and at a time when there will be minimal risk of visitors being aware of the exhumation. Notice must be given to the environmental health department of the relevant District Council. The reinterment in Poland must take place within 14 days of the exhumation.
11. In the circumstances I waive my fee.

HH Judge Mark Bishop, Chancellor.

26/11/23