

Neutral Citation Number: [2024] ECC Exe 1

IN THE CONSISTORY COURT OF THE DIOCESE OF EXETER

Date: 9th December 2024

Parish: [details confidential]

JUDGMENT

1. By a Petition lodged in May 2024, the mother ['M'] of a baby girl ['X'] who died at, or shortly after, her birth in the summer of 2022, seeks a Faculty permitting the exhumation and reinterment of her child's remains. The baby is survived by a twin sister. The mother's account is that the children were conceived within a highly abusive relationship that she endured for some two years with their father ['F']. Indeed, she describes being assaulted by him on a number of occasions during her pregnancy with the result that the children were born prematurely at 23 weeks.
2. Considering the underlying circumstances, and the need to protect the privacy of the parties, particularly M and X, this judgment does not contain any detail that may identify the parties or the locations involved.
3. Baby X was buried some three months after her death in the churchyard of the village ['Village A'] in Devon where the couple were then living. Village A is the home-base not only of F but also of his parents and other members of his family.
4. Six months after the burial M managed to free herself from the relationship and sought help from local domestic abuse professionals and the police. She subsequently returned to live near to her own parents in Village B, which is a considerable distance from Village A.

5. F was subsequently prosecuted for offences arising from his abuse of M. He pleaded guilty at the Crown Court to one count of intentional suffocation and one count of controlling and coercive behaviour within an intimate relationship. He was sentenced to a total of 2½ years imprisonment for these offences.

6. Domestic abuse, and in particular coercive and controlling behaviour, is raised as an issue in the majority of disputes between parents that reach the Family Court. The circumstances described in these cases sit upon a very broad spectrum, from relatively minor isolated episodes within an otherwise non-abusive relationship, to, at the other end, the most serious abuse, including sexual and/or physical abuse, within an all pervasive and unremitting environment of coercion and control, which, in addition to any physical injury, inflicts significant and lasting harm on the victim's psychological and emotional wellbeing. Against the large number of cases before the Family Court, few cases of coercive and controlling behaviour are prosecuted as crimes before the criminal court, and a smaller proportion still result in a lengthy prison sentence. In the present case, F's sentence of 2½ years will have been calculated after awarding him a discount in length to reflect his guilty pleas. Although this court has not seen any material that was before the criminal court, and has not seen a transcript of the judge's sentencing remarks, it is clear that F's abusive behaviour during his relationship with M was regarded by the criminal court as being at the serious and sustained end of the spectrum of such abuse.

7. As a result of these traumatic events, M, who is suffering from post-traumatic stress symptoms, is very fearful of F and his family and does not want to revisit the scene of her abuse. She cannot contemplate going to Village A. She is thus unable to visit X's grave. In a statement in support of her Petition, she says that her heart aches every day

that she is not near to X and cannot visit the grave. Her application is, therefore, for X's remains to be exhumed from the churchyard in Village A and for them to be reinterred in the churchyard of Village B. The priests in charge of each of the two parishes have given consent for this move to take place.

8. F is named on X's birth certificate and, therefore, had parental responsibility for her during her very short life. Although M did not wish F to be given any notice of this application, I held that the Petition could not proceed without notice being given to him and, indeed, not to give notice would, in addition to denying him access to justice and a fair process, simply store up difficulties if an exhumation were to take place.

9. In a letter from prison to the Registrar F says:

‘I DO NOT give my consent to have my daughter [X] to be exhumed and relocated to [Village B] churchyard.

My feelings are that my daughter [X] has been laid to rest and I believe strongly that she should stay where she is buried.

Not only has the mother, my former partner, [M], put an order in place so that I can no longer have contact with my other daughter, but having X moved to Village B will mean I will no longer be able to visit her grave. As I am not allowed to go to that location.’

10. The Petition is supported by the Archdeacon who has spoken to M and her family in detail about these events. The Archdeacon has been told that F exerted control over the funeral arrangements for X and was insistent that burial should be in Village A. Their understanding is that M was in a vulnerable situation and was unable to express her own wishes, or to contest his decision, at the time due to the abusive dynamic in the relationship. The Archdeacon describes the location of the churchyard in Village A as being ‘isolated’ and that this is a source of ‘significant anxiety’ for M were she contemplating making a visit to the current grave. The churchyard in Village B is situated near to where M and her daughter are now living and, in the Archdeacon's

opinion, it ‘offers a much-needed solution’ where ‘proximity to family provides M with a safe space to grieve and allows X’s twin sister to connect with her sibling in a peaceful environment’. The Archdeacon considers that the location further alleviates concerns over M’s safety. In the Archdeacon’s considered opinion, permitting the move ‘would be a profoundly Christian act, allowing M and her daughter to find a measure of peace and allowing X’s sister a permanent place to connect with her departed sibling.’

11. The decision of the Court of Arches in the case of *Re Blagdon Cemetery* [2002] Fam 299 continues to be the guiding authority on the approach to be taken to exhumation. It is unnecessary to quote extensively from the judgment. Ecclesiastical law proceeds on the basis a general presumption of permanence which arises from the initial act of burial. Disturbance of remains that have been buried in consecrated ground will only be permitted as an exception to that principle. None of the examples of exceptions that are described in *Re Blagdon* readily fit the facts of this application, although the court did contemplate that, where there has been a genuine mistake made at the time of burial, this might be a sufficient exception to justify permitting exhumation.
12. In the present case, whilst there was no ‘mistake’ made as to the choice of burial site, the material before the court demonstrates that it is probable that M’s ability to put forward a contrary proposal will have been wholly suborned by F’s coercive and controlling influence on her at that time to the extent that she will have lacked sufficient freedom or autonomy to do other than accept his choice. That this was so is not only borne out by what she has said, both directly in her statement, but through the Archdeacon, it is supported by the account given by her family, by the domestic abuse worker who supported her at the time of separation and, most tellingly, by F’s guilty plea to the offence of coercive and controlling behaviour.

13. Secondly, in addition to the inability of M to express any contrary view at the time, there is a pressing pastoral need for M and her daughter to be able to attend at X's grave on a regular basis, in circumstances where they may feel at peace and not in fear. The case in this regard is strongly made by the Archdeacon. I accept that it will simply not be possible for M to go to Village A to visit the grave there. That is so even during the current period of F's imprisonment, due to the presence of his family there and, more generally, due to the highly negative feelings that returning to that village will generate for M.
14. Account must be taken of F's clear opinion that X's remains should not be disturbed. In his own words, he understandably asserts the general principle, which is protected by the law, that, once committed to burial in consecrated ground, remains should be left alone and not removed. Further, he does not wish the current situation to be reversed so that it is he, once he is free to do so, who will be prevented from visiting his daughter's grave if she is re-buried in Village B.
15. Whilst I do take account of F's views, they can only be afforded limited weight in the circumstances of this case. The fact that his relationship with M was highly abusive is established, beyond doubt, by his guilty pleas and the substantial prison sentence that has been imposed. The need for M to have continued protection from him, and hence the risk to her were she to visit his home village of A, is established by the fact that he is now subject to a restraining order preventing him from visiting M's home area. An additional indicator of the degree to which M and her daughter need protection is the fact that the Family Court has apparently ordered that he should not have any contact with his other daughter, X's twin.

16. Taking all of these matters into account, I am satisfied that the circumstances around X's burial, and the subsequent inability of M or her daughter to visit the grave, are more than sufficient to establish an exception to the general principle against exhumation. If a genuine mistake might be regarded as exceptional, it must surely be the case that a 'choice' of burial site made by a mother, where her ability to choose any site other than that dictated by her abuser in a long-term violent, coercive and controlling relationship, must also be capable of being regarded as exceptional. Each case will turn on its own facts, but I have no hesitation in holding that an exception is established here in the light of F's criminal conviction and prison sentence. Whilst the inability of a parent, sibling or, in another case, partner/spouse to visit a current grave site cannot be an exception in itself, in this case the exceptional nature of the circumstances is compounded by the continuing impact of F's abuse which prevents, as I find is the case, M or her daughter from visiting Village A and X's grave. I accept the Archdeacon's opinion that there are strong pastoral grounds for granting this application; that opinion is another way of acknowledging the exceptional nature of this case as providing justification for removing X's remains from Village A and allowing them to be reinterred in the churchyard of Village B.

17. I therefore direct that a Faculty be issued in the terms of the mother's Petition. I direct that the Registrar is to inform F that M's application has been granted and to inform him of the appeal process as set out in the Faculty Jurisdiction Rules 2015 (as amended). The Registrar is to inform the Archdeacon, and the priests in charge of the churches in Village A and Village B that the Faculty has been granted. I direct that, save for giving a copy of the Faculty to M, F, the Archdeacon, the priests in charge in Villages A & B and the undertakers instructed to undertake the exhumation and reinterment, the Registrar is to keep the Petition, the Faculty and all of the papers filed in support of the

Petition, in a confidential file which is not to be disclosed to any person without further order of this court. Once the exhumation and reinterment has taken place, a copy of this anonymised judgment may be made public and reported.

The Rt. Hon. Sir Andrew McFarlane

Chancellor of the Diocese of Exeter