

In the Consistory Court of the Diocese of Leeds

In the matter of Hemsworth Cemetery

Re Ronald Reeve (deceased)

Anne Reeve (Mrs)

Petitioner

JUDGMENT
(22-91C)

1. By a petition dated 14th October 2022 Anne Reeve, the relict of Ronald Reeve, seeks exhumation of his cremated remains to be re-interred in a separate part of the consecrated cemetery of Hemsworth, so ultimately she too can have her cremated remains buried with him. Ronald Reeve sadly developed dementia and Alzheimer's disease in 2004. By 2009 the petitioner could no longer care for him by herself so he moved to a nursing home in Shafton, Barnsley. There he died in October 2013 and following his cremation the petitioner chose a single plot under a granite slab for his interment. The interment occurred in July 2014.
2. The petitioner has been quite frank and admits that she had the option in 2014 to take a double plot, so she too could ultimately be interred with her husband's remains. She did not take up that option. She states that the funeral was stressful and upsetting for her, with which we can all sympathise. She adds that as she is now aged 80 years she wants a decent resting place for herself. She has seen that there are mini-graves at the cemetery that she likes very much. She states that she is now unhappy with her decision in 2014 and wishes to have her husband's ashes moved to a new plot where she too can then be interred.

3. It has been represented that bereavement services from Wakefield Council would carry out the planned exhumation and re-interment in a reverent manner. There has been no indication whether it is anticipated the original casket will still be intact and usable after over eight years, but I suspect an oak casket will be partially if not significantly disintegrated after this time.

The Law

4. There are a number of reported decisions on the issue of exhumation arising from Consistory Courts in both provinces (no doubt because the issue of exhumation is considered so important that a judgment will be required in almost every case). The guiding principles are set out in two cases of the ecclesiastical appellate courts. The case of *Re Christ Church Alsager* [1998] 3 WLR 1394 came from the Chancery Court of York. There the Court dismissed an appeal against the refusal of the Chancellor to permit an exhumation and reburial within the same churchyard in order that a married couple's remains could be buried together. The case of *Re Blagdon Cemetery* [2002] 3 WLR 603 is a decision of the Court of Arches. There the court overturned a first instance decision to refuse permission for exhumation apparently on the grounds of the passage of time alone.
5. It is of note that Chancellor Revd Rupert Bursell QC (as he then was) considered the application of appellate cases in the Consistory Court in the matter of *St Chad Bensham and the Petition of Sam Tai Chan* [2016] Ecc Dur 2. The Chancellor permitted an exhumation after applying the *Alsager* test (and coincidentally, of course, he was one of the three Judges sitting on that appeal in the Chancery Court of York). He also had in mind and referred to the *Blagdon* test and acknowledged that the *Alsager* test received quite some criticism from the Court of Arches. However, he also pointed out that although *Blagdon* is an important and influential decision, the binding authority for the Province of York (thus including the Diocese of Leeds) remains *Re Christ Church Alsager*. The test under *Alsager* is for the [Deputy] Chancellor to ask

the following question:- *Is there a good and proper reason for exhumation, that reason being likely to be regarded as acceptable by right thinking members of the Church at large?* [see page 1401 paragraphs D to E]. Notwithstanding the precedence of the *Alsager* judgment in the Northern Province I do note that the petition form for exhumation specifically refers the Petitioner to the *Blagdon* judgment and invites him/her to take legal advice on the principles espoused.

6. Under *Re Blagdon* the guiding principles are set out in paragraphs 33 and 34, as follows:-

33. We have concluded that there is much to be said for reverting to the straightforward principle that a faculty for exhumation will only be exceptionally granted. Exceptional means “forming an exception” (Concise Oxford Dictionary (8th Edition, 1990)) and guidelines can assist in identifying various categories of exception. Whether the facts in a particular case warrant a finding that the case is to be treated as an exception is for the chancellor to determine on the balance of probabilities.

34. The variety of wording that has been used in judgments demonstrates the difficulty in identifying appropriate wording for a general test in what is essentially a matter of discretion. We consider that it should always be made clear that it is for the petitioner to satisfy the consistory court that there are special circumstances in his/her case which justify the making of an exception from the norm that Christian burial (that is burial of a body or cremated remains in a consecrated churchyard or consecrated part of a local authority cemetery) is final. It will then be for the chancellor to decide whether the petitioner has so satisfied him/her.

The presumption is therefore that burial of human remains in consecrated ground is permanent save in exceptional circumstances.

7. In *Blagdon* the Court of Arches was greatly assisted by The Right Reverend Christopher Hill (then Bishop of Stafford) in *The Theology of Christian Burial*

(as quoted in paragraph 23 of the judgment) where he explained this permanency:

‘The funeral itself articulates very clearly that its purpose is to remember before God the departed; to give thanks for [his/her] life; to commend [him/her] to God the merciful redeemer and judge; to commit [his/her] body to burial/cremation and finally to comfort one another.’

He went on to explain more generally that :

‘The permanent burial of the physical body/the burial of 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, the heavenly Jerusalem. This commending, entrusting, resting in peace does not sit easily with “portable remains”, which suggests the opposite: reclaiming, possession, and restlessness; a holding on to the ‘symbol’ of a human life rather than a giving back to God’.

8. In *Blagdon* the Court of Arches then went on to explain the legal view of permanency thus :

“The general concept of permanence is reflected in the fact that it is a criminal offence to disturb a dead body without lawful permission. Moreover, the fact that there is no ownership of a dead body according to English law, and the absence of any legal right in English law or under the European Convention of Human Rights to exhume a body or cremated remains, reflects a culture in which the norm is that the remains of a dead person should not be disturbed once they have undergone the initial act of interment.”

9. The above comments do not mean that exhumation cannot occur, but in *Blagdon* the Court expressed that there has to be some exceptional circumstance before the norm of permanent burial is set aside. The Court gave some guidance as to what could constitute exceptional circumstances. These

factors include medical reasons supported by necessary psychiatric evidence (which do not apply here), or a mistake in the administration of the burial so that an important error in location had been made.

10. Another of the *Blagdon* categories of possible exception is exhumation in order to place a deceased person's remains within a family grave. The question of what does and does not constitute a justifiable family grave case has been exhaustively considered in a number of reported judgments. There is acknowledged to be a need to avoid permitting an approach which renders the remains of deceased persons "portable" and therefore offending against both the theological concept of a burial representing a final entrustment of the deceased to God and equally against the secular assumption of permanence. It is also clear that in this difficult and sensitive area the facts of each case must be carefully considered. The *Blagdon* judgment gave broad principles but it did not create any easily gleaned rules about particular situations.
11. It seems to me that under both *Alsager* and *Blagdon* the decision will depend upon the peculiar circumstances of each case, to which general principles can be applied. I therefore have regard to the *Blagdon* principles but will be guided by *Alsager* in my determination.
12. In this matter the circumstances are quite similar to those in *Alsager*, where both the petitioner and her late husband would be interred only a short distance apart in the same consecrated cemetery. There it was considered inappropriate to permit exhumation and reburial approximately 90 paces away so a married couple could be reunited in death. Of particular note the Petitioner concedes that she had the option to reserve a plot for herself beside her late husband's interment plot in 2014, approximately eight to nine months after his sad demise. She chose then not to seek such a reservation. Now she has changed her mind and wants to move his remains to what she considers a nicer plot. I have to consider the issue of 'portability' and the question of the presumption

of permanence of burial in consecrated ground after a Christian burial. I regret to say that the petitioner has not persuaded me that there is a good and proper reason in those circumstances to order an exhumation. The petition will be dismissed.

Glyn Samuel
Deputy Chancellor
1st November 2022.