

**Neutral Citation No. [2017] ECC SEI 2**

**IN THE CONSISTORY COURT**

**DIOCESE OF ST. EDMUNDSBURY & IPSWICH**

**In the matter of  
ST MARY'S, POLSTEAD**

**-and-**

**In the matter of  
THE PETITION OF EVELYN ANN JULIER, ROBERT MICHAEL  
HAYNES and DAVID EDWARD JULIER**

**Judgment of the Chancellor**

**February 14, 2017**

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**JUDGMENT**

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1. The Petitioners seek permission to exhume the remains of Joyce Edith King from a burial plot bearing the mortal remains of her parents, William and Mary Haynes and dedicated to them. Joyce King's cremated remains contained within a casket were buried in consecrated ground in the churchyard of St Mary's Polstead, within the diocese of St. Edmundsbury and Ipswich and thus within the jurisdiction of this court, on September 30, 2016. On any view, the case has singular features and has caused to distress to a number of family members.
2. I have the following papers before me:
  - a. The petition dated October 24, 2016. This petition attaches a certified copy of a memorandum of the High Court of Justice (Probate Division) dated February 25, 1983 confirming the grant of Letters of Administration to petitioner Evelyn Julier as personal representative of her deceased father, William Haynes. The petition also attaches a letter from petitioner Evelyn Julier, dated October 18, 2016.
  - b. A letter from Gloria Worman and Angela Munns dated November 6, 2016 in opposition to the Petition. This letter has nine attachments:
    - i. A letter from William Haynes to Joyce King dated 1982 and about two months before his death.
    - ii. As (i) above.

- iii. Receipts to Joyce King via a Mr Forster for purchase of a headstone for this plot bearing a memorial to William and Mary Haynes.
  - iv. As (iii) above.
  - v. A draft letter to L. J. Watts regarding this headstone and this company's response.
  - vi. As (v) above.
  - vii. Facebook messages from petitioner Robert Haynes to Ms Worman and Ms Munns.
  - viii. An email sent from Robert Haynes to Ms Worman and Ms Munns.
  - ix. Excerpts from a letter sent by Ms Worman and Ms Munns to the church about Robert Haynes' response.
- c. An undated letter from petitioner Evelyn Julier giving her response to (b) above.
  - d. An email from petitioner Robert Haynes dated November 7, 2016 with his response to (b) above.
  - e. A further email from petitioner Robert Haynes dated December 5, 2016 with further observations including upon the law.
  - f. A letter from the Diocesan Registrar to Ms Worman and Ms Munn explaining the options open to them, namely (a) to do nothing further but to have this court take into account her letter and attachments in deciding whether to grant the faculty being sought or (b) to become Parties Opponent to the petition.
  - g. An email from Ms Worman and Ms Munns dated November 27, 2016 choosing option (a).
  - h. Some emails from Robert Haynes sent in October and November 2016 setting out his concerns about the role of the clergy in what happened.
  - i. An email from Nicola Thorogood, parish and deanery administrator, dated November 8, 2016 detailing her involvement in these matters.
  - j. A letter from the Reverend Valri Armstrong, self-supporting minister and associate priest, dated November 21, 2016 explaining her involvement in what happened.
  - k. A letter from the Reverend Mark Woodrow, dated December 3, 2016, explaining his involvement.
  - l. A memorandum from the Diocesan Registrar, dated December 9, 2016 enclosing the petition and the other papers referred to above and giving me a brief synopsis of the circumstances.
3. It is necessary to understand something of the background and how the parties relate to one another. William and Mary Haynes were husband and wife. Evelyn Julier was one daughter and the now deceased Joyce King was the other. Evelyn Julier now lives in Spain. Robert Haynes is the son of Evelyn Julier and he and petitioner David Julier are grandchildren of William and Mary Haynes. Robert lives in Worcestershire now. Gloria Worman is the daughter of Joyce King and executor of her last will and testament and now lives in Canada. She is therefore the granddaughter of William and Mary Haynes. Angela Munns is her sister. Gloria Worman and Angela Munns have indicated that their children and one grandchild support their opposition to the petition, although no-one wishes to become a Party Opponent.
  4. William Haynes died on August 20, 1982. His wife, Mary, had predeceased him. There is a substantial conflict between the two sides of the family as to the circumstances of William Haynes' burial, his burial plot, the memorial stone and the upkeep of the grave. However, neither side has shown me any written evidence as to the terms of any reserved plot for either William Haynes or Mary Haynes or the

faculty granting it and in what terms. It is important to remember that what is being granted in the case of consecrated ground within a churchyard is simply the right to burial of the person(s) within the plot identified in the faculty and not the land itself. The grant is by faculty.

5. This church, until recently, did not have a stipendiary priest. Nicola Thorogood, the administrator, of this parish, has given me a chronology of her involvement with this matter. On May 9, 2016 she was contacted by Gloria Worman and her sister Angela Munns about the possibility of burying their mother's ashes, Joyce King's ashes, in the grave of her parents, and their grandparents, namely William and Mary Haynes in Polstead Churchyard.
6. During the next two months there were discussions about the siting of the grave, the necessary paperwork and the service to be conducted. On July 7, 2016 Gloria Worman made further contact by email and informed Ms Thorogood that there was objection to the proposal by her cousin Robert Haynes. She stated that her grandmother had purchased the plot and said that any member of the family could be buried in it. Ms Thorogood contacted the Reverend Mark Woodrow (who was to take the service) who told her to contact the Rural Dean, the Reverend Martin Thrower.
7. On July 9, 2016, the Ms Thorogood emailed the Reverend Martin Thrower and attached the relevant correspondence. On July 14, Ms Thorogood received oral advice from the Reverend Martin Thrower, who, I am told, said words to the effect that it was the decision of the "next of kin". Ms Thorogood took that to mean, as I understand her, the next of kin of the recently deceased, namely Joyce Evelyn King, as opposed to the next of kin of those already buried in the plot, namely William and Mary Haynes.
8. At some earlier point, Gloria Worman had told Ms Thorogood that Robert Haynes was very young when his grandparents died and that he had a sister who was living in Canada and who hoped to travel over for the interment. That "he" must be a typographical error for "she" and presumably is Gloria Worman referring to Angela Munns. Accordingly, she understood that Gloria Worman and Angela Munns were the next of kin.
9. The Reverend Valri Armstrong is the SSM and associate priest in the benefice. She contacted the Reverend Mark Woodrow on September 29, 2016 stating that she had herself had been contacted 'some months ago' by Robert Haynes who objected to the interment. Mark Woodrow's view was that this objection had been overruled by the Rural Dean.
10. The Reverend Valri Armstrong's memory of her contact with Robert Haynes was this: she says she had a conversation with him on July 7, 2016. She explained to him that there was an interregnum in the church at Polstead and that she knew nothing of the interment to which he was voicing objection. She told him, correctly in my judgment, that where there was an objection to a burial taking place, no burial would or, at least, should take place until the dispute was resolved.
11. The actual associate priest most nearly connected then with St Mary's Polstead was the Reverend Jackie Shepton who confirmed as correct this advice that had been given to Robert Haynes. Valri Armstrong mislaid Mr Haynes' telephone number and accordingly could not call him back. She has subsequently apologised to him for this but, since she thought that, in view of the dispute, the interment had been abandoned the fact that she did not call him back is irrelevant since it would not have advanced his true knowledge any further, at least until the events in September.
12. She confirms that on seeing the benefice pew sheet in late September and reading of the proposed interment of the same Joyce Edith King, whose name she remembered,

she contacted the Reverend Mark Woodrow, who told her of the Rural Dean's 'decision' and Mark Woodrow presided at the interment shortly afterwards.

13. Understandably, Mr Haynes was very angry and thought he had been deceived. In my judgment, and whilst understanding his feelings, that is not a correct interpretation of the events. Both Valri Armstrong and Jacki Shepton behaved properly. The loss of the phone number was unfortunate but, in my view, it would have made no material difference in the light of what happened and what she believed. The Reverend Mark Woodrow corroborates her account.
14. As I have already indicated, with the petition, Evelyn Julier submitted to me the order of the High Court granting her Letters of Administration in respect of her father's estate. I have already detailed the correspondence from Gloria Worman and Angela Munns in which they set out their side of the story and I have read Robert Haynes' correspondence setting out his. As already stated, Gloria Worman and Angela Munns do not wish to become Parties Opponent. I will take into account what they have said and have considered with particular care their central submission overall, namely that the now interred remains of their mother should not be exhumed.
15. The court has no intention of acting as a referee in a family rift. However, these seem to be these main issues between them: who purchased or reserved the ground in which William and Mary Haynes are buried? The petitioners claim it is William Haynes and Gloria Worman claims it is Mary Haynes. What, if anything, was said by William or Mary Haynes as to their wishes? Whether Gloria Worman acted improperly by applying to have the remains of her mother interred in her grandparents' plot. Whether Gloria Worman behaved improperly by proceeding with the interment when she knew there was objection from, at the least, Robert Haynes and whether Robert Haynes has behaved inconsistently in opposing the interment of Joyce King in his grandparents' plot.
16. There are then issues as to what the clergy should have done in this situation, what they did do and why. Finally, there is then the question of what, if anything, is to be done now.
17. Neither side of the family has produced any written evidence as to whether either William or Mary reserved or 'purchased', as it is put, the plot. I understand that the wife predeceased the husband so, if there was such a reservation, or 'purchase' as it is described, any rights vested in the wife, if any, are likely to have passed to the surviving spouse, namely William Haynes. I did not find the issue of who cared for the plot and provided the memorial of particular assistance. Both sides have their versions of this: neither bears much on the question of whether the plot was intended to be open to other family members, even if the court would have permitted that. There is no doubt, however, that Evelyn Julier was granted Letters of Administration by the High Court in respect of her father's estate: he having died intestate.
18. The petitioners say that Mary Haynes had originally wanted her ashes scattering, that she never 'purchased' the plot and accordingly could not have effectively invited its use by other family members. They say that William Haynes made it clear that the plot was for the use of himself and his wife only. Gloria Worman says that her mother jointly owned the plot and that William would not have expressed himself in that way. I am quite clear that neither William nor Mary Haynes ever expressed themselves in such a clear and settled way as would assist me now: for instance, by giving written instructions. Anecdotal accounts of historical family matters are notoriously prone to error and I am not going to give any weight to either version as to which of them wanted what use of the plot (if they ever did in any settled way) because it is unreliable at this length of time after their deaths.

19. I am sure that Gloria Worman did not act improperly by applying to have her mother's remains interred in her grandparents' plot. Indeed, her application through the church authorities was the proper course initially. She was unwise not to inform Evelyn Julier, her aunt, of this intention, because just as she, Gloria, had a right to apply, so her aunt had as much of a right to object. However, she did inform Robert Haynes, albeit by what was unfortunately seen as a rather tactless method, and I do not find it could conceivably be said that she was seeking to inter her mother in this plot secretly. Having discovered Robert Haynes very strongly objected, she was again unwise not to contact Evelyn Julier, as she must have guessed at that point that Evelyn might object also. There is, however, force in what Gloria Worman says: namely, that by the time of the interment she thought that the application had been decided in her favour. And, indeed, if she had pressed the point, it appears that she would have been told exactly that by the Reverend Mark Woodrow.
20. I reject the argument by Gloria Worman that Robert Haynes has given inconsistent reasons for not wanting the interment to take place. Mr Haynes has said that his objection was that the family did not want the grave of his grandparents to be disturbed by this interment. There is no contradiction between his not wanting the grave of his grandparents disturbed and subsequently wanting the casket that was disturbing it, in his view, to be removed. It is, in fact, an entirely logical extension of his primary wish.
21. I must necessarily make some judgment upon what happened from the point of view of the clergy to rule upon this petition.
22. When Gloria Worman first sought permission for her mother's cremated remains to be placed within the plot holding her (Gloria's) grandparents remains without specific reservation, it is my view that it behoved the incumbent or anyone acting in place of the incumbent, either to satisfy him or herself that Gloria Worman had established that all relevant next of kin had been contacted and either did not object, or did not require Gloria Worman by way of the faculty process to petition this court for that permission. The relevant next of kin were not just those of the deceased, Joyce King, but particularly those of the deceased William and Mary Haynes, in whose plot it was proposed to inter the remains of Joyce King.
23. In this case, all parties were aware of Robert Haynes' objections, which should have alerted the clergy to make proper inquiry. Instead, the following happened: Ms Thorogood contacted the Reverend Mark Woodrow who in turn told her to contact the Rural Dean, the Reverend Martin Thrower. She did so and received in a telephone call the advice that the decision was that of the next of kin. It was unfortunate that she did not see the potential ambiguity. It might mean the next of kin of Evelyn King or of William and Mary Haynes, or both.
24. This was in fact a situation involving a potential objection by the next of kin of William and Mary Haynes. Full details of family members should have been sought and the precise nature of the objection ascertained.
25. I accept what the Reverend Valri Armstrong says, namely that she had acted in good faith and was not herself dealing with the interment. Even if she had gone on to make enquiries, the result would have been that she would have received the advice of the Rural Dean as Ms Thorogood and the Reverend Mark Woodrow subsequently did and potentially interpreted it in the same way that they did.
26. The Reverend Mark Woodrow received the Rural Dean's advice via Ms Thorogood. It follows that he knew of the objection, but he apparently assumed the Rural Dean's advice had acted as some kind of ruling on the matter. It appears he too failed to notice the potential ambiguity.

27. What does surprise me is that it never entered anyone's mind that, first, that there was a potential legal question arising as to whether this proposed interment was lawful in the first place, particularly in the face of the objection, and, second, another potential legal question as to whether it was the next of kin of William and Mary Haynes who were the relevant next of kin or whether it was the next of kin of Joyce King or both.
28. Unfortunately, the benefice was in a state of interregnum and this led to an unstructured approach to this request to inter the remains of Joyce King in the plot where her parents lay. No proper analysis as to who should be consulted and why was ever undertaken. The effect was that Robert Haynes' objection was treated in an extremely cavalier way. No one informed him that his objection had apparently been dismissed by the Rural Dean (if that is the true meaning of what the Rural Dean said which I strongly doubt) and this meant he was not able to pursue any legal remedies to have his objection (and that of any other kin) heard and determined.
29. Somebody had a responsibility to inform him of the position and between Ms Thorogood, the Reverend Valri Atkinson and the Reverend Mark Woodruff this responsibility should have been allocated to one of them to deal with. I accept they may each have thought somebody else was doing it, or, more compellingly in Valri Atkinson's case, that nothing was going to happen at all whilst there was an objection, but this is exactly what can happen when an issue is not properly discussed, documented and the relevant steps identified and taken. At the final moment that Mr Haynes could have been informed, namely when the Reverend Valri Atkinson realised an interment was about to take place, it transpired she had lost his number and, whilst I accept this was a genuine mistake on her part for which she has wholeheartedly apologised, it was one more blow for Mr Haynes when he was informed of it and I am not remotely surprised that he was very annoyed and would be very surprised if anyone in his position had reacted differently.
30. Whilst I have read criticism of Gloria Worman, in the context of a family rift, and subject to my observation that it would have been prudent to have informed Evelyn Julier of the approach to the church authorities in Polstead, I do not criticise her for assuming the interment had been approved and any objection overruled. Indeed, that is what appeared to have happened.
31. The law on exhumation is clear. Christian burial in consecrated ground is final. In certain rare cases exhumation may be permitted as an exception: one such exception is that an important mistake was made in interring the body in the particular consecrated location and that the mistake has been raised speedily following discovery. The general principles are set out in *Re Blagdon Cemetery* [2002] Fam 299, [2002] 4 All ER 482 (Court of Arches) and have been followed in numerous decisions at first instance and I shall apply them here and use my discretion.
32. My decision is that once the application for interment had been made, proper inquiry should have been made both of the next of kin of Joyce King *and* William and Mary Haynes. Whereas the wishes of Joyce King's immediate next of kin, namely Gloria Worman and Angela Munns had been properly considered; that of William and Mary Haynes, namely Evelyn Julier, had not. The knowledge that a son of Evelyn Julier objected meant that also a next of kin of at least equal status, in respect of William and Mary Haynes, to Joyce King's daughters existed.
33. In my judgment, at that point, Gloria Worman should have applied for a faculty and the matter could then have been determined by this court in the proper way. The facts and circumstances known to those whom Gloria Worman contacted cried out for advice from the registry of this court, at the very least. I find that that no interment of Joyce Evelyn King should have taken place in the plot containing the remains of

William and Mary Haynes without faculty. This would have given Robert Haynes and, in fact, Evelyn Julier the opportunity to object formally. Accordingly, I find that interment without faculty in these circumstances was unlawful, albeit Gloria Worman cannot have been expected to know that and the clergy involved believed they were following some kind of ruling from the Rural Dean. It was a mistake, an important mistake, and one which has had consequences.

34. As a faculty for Joyce King's interment in her parents' plot had not been applied for or granted, I next consider what would have happened if there had been an application for a faculty. Having given the issues very careful thought, I have no doubt that I would have refused it. First, no proper provision was ever made for anyone to be interred in this plot other than William and Mary Haynes and there is no evidence of any faculty reserving the plot on particular terms or at all. Second, I am not satisfied that either William or Mary Haynes expressed in any separate or unified way any wish for other family members to be interred in the plot in which they lay. Anecdotal family memories which, in any event, differ are insufficient. Third, neither William nor Mary ever expressed such a wish in unambiguous and permanent form, such as a last will and testament or even a letter. The next of kin who was William Haynes' personal representative was Evelyn Julier. She objects to this interment and, in my judgment, would have done so beforehand had she been informed of it formally. Finally, the two sides of the family do not share the same view as to whether the remains of Joyce King should be interred in this plot and hold differing and strongly opposing views about it.
35. However, her remains were interred in this plot. I must then consider whether her remains should now be disturbed to give effect to the decision I would have reached had the application been made for a faculty prior to interment. I am satisfied that this should happen. Whilst I accept that this will be a distressing outcome for Gloria Worman and Angela Munns and their families, and I accept that they followed advice they were given, I have reached this clear conclusion for the following reasons: first, as already stated, the interment should not have occurred; second, the interment was a short time ago which is a relevant consideration; and third, that the right of Evelyn Julier, Robert Haynes and David Julier to object, and as it happens object successfully, was wrongfully denied and through no fault of their own.
36. Accordingly, this petition succeeds and a faculty is granted for the exhumation of the remains of Joyce King. Those remains shall be reverently and respectfully exhumed from the ground in which they presently lie, namely the plot bearing the remains William and Mary Haynes, on a day and at a time most conducive to the exhumation being carried out discreetly, within 56 days from the date the faculty passes the seal. Members of her immediate family must be afforded a reasonable opportunity to be present if they so wish. Her cremated remains shall be kept safely and privately within the church. Should her family wish them to be interred within the area set aside for cremated remains within the churchyard, then I understand that this can be achieved and it has my permission. Should the family wish the ashes to be returned to Canada, then the licence of the Ministry of Justice should be sought. I am hopeful that the clergy associated with St Mary's can assist with this, if the necessity arises.
37. Likewise, I am of the view, provisionally, that the Petitioners should not bear any costs for having had to bring these proceedings. I shall allow 56 days to see if agreement can be reached through the offices of the Registrar. If not, I shall consider special citation under the Faculty Jurisdiction Rules 2015 to add persons to the proceedings so as consider a costs' order against one or more of them and I direct that this judgment and particularly this paragraph is drawn to the attention of the Reverend

Mark Woodrow and the Parochial Church Council of St Mary's Polstead, as the likely candidates for citation. I very much expect, and hope, that such a step will not prove necessary in the particular and unfortunate circumstances of this case. However, the proceedings in this petition will not be concluded until the question of costs has been resolved to my satisfaction or has been the subject of order. The issue of any costs incurred by Gloria Worman or Angela Munns in making such lawful arrangements for the remains of their mother as they see fit is beyond my jurisdiction in this case.