

Neutral Citation Number: [2019] ECC Swk 6

IN THE CONSISTORY COURT OF THE DIOCESE OF SOUTHWARK

IN THE MATTER OF SUTTON CEMETERY

AND IN THE MATTER OF A PETITION TO EXHUME CREMATED REMAINS

JUDGMENT

Introduction

1. This petition discloses a sad family dispute. It is not necessary for the family names of the petitioner and his sisters in law to be mentioned in this judgment and I shall not do so. It will be appreciated that, by referring to them by their Christian or given names, I intend no discourtesy.
2. The petition is by Anthony to exhume the cremated remains of his wife, Linda, from consecrated ground in Sutton Cemetery in order to permit their re-interment in the consecrated part of the Gardens of Remembrance at the North East Surrey Crematorium, Morden.

The facts

3. The facts are as set out in paragraphs 4 to 12 below.
4. Anthony was married to Linda. Linda died in April 2000 and her remains were cremated. However they were not at that time committed to the ground.
5. Linda's grandmother was Elizabeth. She died in 1987 and her remains were buried in Sutton Cemetery.
6. Linda's mother was Margaret. Margaret was married to John but John was not Linda's father. Linda had two (half) sisters, Debbie and Sarah, who were Margaret and John's children.
7. Margaret died in July 2013. Her body was cremated and her remains interred in Elizabeth's grave.
8. In 2017, Debbie and Sarah suggested to Anthony that he agree to Linda's cremated remains being interred in the grave where now the remains of both Elizabeth and Margaret were interred. He did agree, although he tells me that he was very ill at the time. He also contributed towards the cost of a headstone. The headstone reads as follows:

Treasured Memories of
Elizabeth, Margaret, Linda
Nan, Mum, Sister.

9. Anthony was upset by the wording chosen because it did not mention him or his children. Also, he had hoped in due time for his cremated remains to be buried in the grave; the headstone did not make provision for this.
10. In 2018 he visited the grave. From his point of view, he tidied it up. A photograph shows it afterwards. He glued to the base of the headstone some heart shaped stones which his children and grandchildren had made, a statuette and some artificial flowers.
11. When Debbie subsequently visited the grave, she did not like what Anthony had done and she threw away the items which Anthony had glued to the base of the headstone. When Anthony complained Debbie was upset.
12. Sarah is the owner of the grave in Sutton Cemetery. When he dies, Anthony wants his remains interred with those of Linda. Neither Sarah nor Debbie agree to Anthony's ashes being interred with those of Linda and, without Sarah's consent, this cannot happen. On the other hand, Sarah and Debbie do agree to Linda's ashes being exhumed and re-interred in a plot at the North East Surrey Crematorium. Sarah has written to the Court as follows:

...under the circumstances we feel that this is only/better option for everyone, the family is completely divided and we cannot see it ever being reconciled. We really do not want Anthony's ashes interred with our Mum and Nan. We have fond memories of Linda and would be happy for her remains to be removed. No-one is visiting the grave, in fear of bumping into another family member, which is not right on so many levels for everyone.

Consideration

13. It appears to me that Anthony may well have given his consent to the interment of Linda's remains on the basis of a misunderstanding. That misunderstanding would have arisen because he thought that it would be possible for his remains to be interred in the grave in due course but, in fact, Sarah and Debbie were not agreeable to his remains being there interred. Whatever the position in 2017, they are certainly not now agreeable to his remains being there interred. Understandably, the knowledge that, as matters stand, his remains cannot be interred with those of his wife is causing Anthony great distress.
14. Permanence is the norm of Christian burial and permission to exhume remains from consecrated ground should be granted only exceptionally¹. It seems to me that there are exceptional circumstances in the present case and that it would not be right not to permit Linda's remains to be exhumed. In reaching this conclusion I appreciate that the situation is one of the parties' own making; and that, if they were reconciled, as one would hope they might be, the need for the exhumation of Linda's ashes would not arise. However, it seems to me that I have to take the situation as it is and not as I would wish it to be; it would be harsh not to give Anthony the comfort of knowing that in due course his remains can be interred with those of his beloved wife. Not to grant this permission would seem to me likely to perpetuate the family dispute; to grant it will at least prepare the ground for a reconciliation. It is my hope that there should be such a reconciliation.

¹ See the judgment of the Court of Arches in *In re Blagdon Cemetery* [2002] Fam 299.

Disposal

15. Upon Anthony's undertaking that Linda's remains are re-interred in a plot at the North East Surrey Crematorium, I direct that a faculty issue to permit the exhumation of Linda's remains.

PHILIP PETCHEY
Chancellor

30 October 2019