

IN THE CONSISTORY COURT OF THE DIOCESE OF COVENTRY

In the matter of Allesley : All Saints

Petition to exhume the cremated remains
of Cyril Cowell

JUDGMENT

1. I am asked to make decision on the petition of David Cowell to permit the exhumation of the cremated remains of his Father, Cyril Cowell, so that re-interment may occur with the cremated remains of Cyril Cowell's relict, Enid Cowell. Consent has been given for this matter to be determined on the basis of written representations.
2. The Chancellor of the Diocese, HHJ Stephen Eyre QC, previously made judgment on this matter, but the judgment was set aside when it became apparent that there had been some confusion over the provision of further representations in accordance with directions that had been made. The Chancellor therefore made further directions and passed the matter to me for determination. Accordingly I have looked at this matter entirely anew and have not in any way been influenced by the previous judgment of the Chancellor.

Factual Background

3. In the 1960s Cyril and Enid Cowell moved to Allesley Park in the Coventry area and Enid remained there until the middle of 1996. Cyril died in early 1994

(26th January). He was cremated and the ashes remained uninterred until 3rd August 1994. David Cowell explains, “*Not wishing to be disrespectful to Father’s remains Mother decided to have them interred at All Saints Allesley, which fortunately was within walking distance of her home*”. At around that time Enid Cowell sought to sell her home so she could move closer to her only child, David, in the Stourbridge area. It seems she then moved to Willoughton in Lincolnshire when David and his Wife moved there ready for David’s retirement in about 2012 (the exact date is not given, but reference is made to ‘six years ago’ in a letter dated 1st August 2018).

4. In Willoughton David Cowell and his Wife became a part of local life, including he being appointed a Churchwarden and she becoming a Governor at the local school. It appears that Enid Cowell remained a part of family life until she died, shortly before her 93rd Birthday. Her cremated remains were interred in 2017 at St Andrew’s Willoughton in the Trent Cliff group of Parishes, Lincolnshire. David Cowell explains “*it was always Mother’s intention that once we were settled as a family Father’s ashes would be moved and re-interred in the family plot, and that in due time she would be buried by him in what would be the Family grave*”. Before Enid Cowell died there was discussion of where her own remains should be interred, including her ashes being interred with Cyril Cowell’s ashes at All Saints Allesley (I am informed that the plot at Allesley is large enough to accommodate the ashes of only two other people, but no more, and only by pouring, not within caskets). David Cowell states “*Mum was quite definite that she wanted to be buried at St Andrews because she didn’t want to move away from the Family, and she hoped that Father’s ashes could be exhumed and re-interred at St Andrews so the Family would be back together.*” He added “*We understand that Mother and Father are with God and we are not trying to reclaim them.*” The funeral plot at St Andrews Willoughton is, I am informed, large enough to accommodate the remains of David Cowell and his Wife, as well as those of Enid and Cyril Cowell.

Arrangements for exhumation and re-interment

5. As is required, David Cowell has obtained written consent from the Revd Canon Miles Baker at All Saints Allesley for disinterment. He has also been in detailed discussion with J.M.Smyth, Funeral Services Manager at The Co-operative Funeralcare from Holyhead Road in Coventry about the specifics of disinterment. David Cowell has also obtained consent from the Revd Mark Briscoe for re-interment of Cyril Cowell's remains in the same plot as Enid Cowell's remains at St Andrews Willoughton. Revd Briscoe has further written in support of the re-interment in Lincolnshire, adding that the members of the Parochial Church Council, the Churchwardens and the local Archdeacon are all also in favour. He also confirmed that the funeral plot at St Andrews is large enough to accommodate the remains of several generations of the Cowell family.

6. The correspondence from Co-operative Funeralcare confirms it is somewhat unlikely that a casket interred in 1994 will still be intact. It is possible the remains inside the casket were contained within a polythene bag, which could be removed if still intact and placed in a new casket. However, if the remains are not intact then exhumation would also involve excavation of an area of soil from the consecrated Churchyard. Co-operative Funeralcare have in their letter shown that considerable thought has been given to exhumation, but even given the undoubted experience of their gravedigger there remains a reasonable chance that it will not be possible to exhume the remains of Cyril Cowell in an entirely seemly manner.

Applicable principles in law

7. I have in particular had regard to guidance given by the Court of Arches in the leading judgment on exhumation, *In re Blagdon Cemetery [2002] Fam 299*. A copy of this judgment was provided to the Petitioner at the suggestion of the

Chancellor, so that David Cowell could understand the principles that would have to be applied in the Consistory Court.

8. Interment in consecrated ground is generally regarded as a permanent laying to rest of the deceased, especially as funerals and interment of ashes following cremation are given outward sanctity by the accompanying service led by a Priest, Deacon or Reader of the Church. The Right Reverend Christopher Hill (then Bishop of Stafford) in *The Theology of Christian Burial* 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’.

9. In *Blagdon* the Court of Arches explained 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.”

10. 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. Most importantly for the present application “*a change of mind as to the place of burial on the part of relatives or others responsible in the first place for the interment should not be treated as an acceptable ground for authorising exhumation*”. The judgment of the Court does not qualify that guidance, but there was reference to an earlier judgment, *In re Christ Church, Alsager* [1999] Fam 142. In *Alsager* the Chancery Court of York said “... *it will not normally be sufficient to show a change of mind on the part of relatives of the deceased ... Some other circumstance must usually be shown*”. It is therefore very difficult for relatives to justify a request for translocation of buried remains when the principle reason is that the family now resides in a different part of the Country.
11. As I explained above, the Petitioner has provided correspondence from the local Priest in Lincolnshire expressing strong support for the exhumation in Coventry and re-interment in Lincolnshire. This support was also said to come from several others within the local area. However, I remind myself that in *Blagdon* it was also said :
- “We do not regard it as persuasive that there is particular support for an unopposed petition any more than support for a contested petition of this nature would affect the decision on the merits of the petition. It is the duty of the Consistory Court to determine whether the evidence reveals special circumstances which justify the making of an exception from the norm of the finality of Christian burial, as we have already said earlier in this judgment. The amount of local support, whether clerical or lay, should not operate as a determining factor in this exercise and will normally be irrelevant.”*

12. The Petitioner has stated that it is an intention that the funeral plot where the remains of Enid Cowell is interred should become a Family Grave. As reported above, it has been confirmed the plot at St Andrews Willoughton is large enough to accommodate several generations of the Cowell Family. The wish to establish a Family Grave was one issue discussed in *Blagdon*. In particular it was said :

“The concept of a family grave is, of course, of long standing. In a less mobile society in the past, when generations of a family continued to live in the same community, it was accepted practice for several members of a family to be buried in one grave. Headstones give a vivid picture of family relationships and there are frequent examples of one or more children predeceasing their parents due to childhood illnesses, which were incurable. Burials in double or treble depth graves continue to take place at the present time. They are to be encouraged. They express family unity and they are environmentally friendly in demonstrating an economical use of land for burials.”

However, the Court also continued *“Normally the burial of family members in the family grave occurs immediately following the death of the particular member of the family.”* That comment arose because the *Blagdon* case concerned the buried remains of a young adult who had predeceased his parents at a time when they had no permanent home and no real connection with the community where their son was buried. The family then established a permanent home and purchased a triple-depth grave in the hope of re-interring their son in the grave that would ultimately also house their mortal remains.

Submissions and other considerations

13. Additionally to those matters reported above David Cowell has explained that when Enid Cowell moved to Stourbridge in 1996 it was thought best not to disturb Cyril Cowell’s ashes because *‘there was always a degree of uncertainty about my need to relocate for work’*. This situation led to Cyril’s ashes being undisturbed for the sixteen or so years Enid Cowell appears to have lived in Stourbridge. Following the move to Lincolnshire in or about 2012 a further six

years have passed without application for exhumation. I have already reported the explanation that it was a conscious decision to inter Enid Cowell in Lincolnshire rather than seeking to inter her remains in the same plot as Cyril Cowell in Allesley. David Cowell has stated *“there is no link between Father and the community where he is buried”*, which may seem an odd statement when considering that the information before the Court suggests that Cyril Cowell was buried in the local churchyard to where he lived for many years. The Petitioner also states *“Mother always knew that she would be with Father in heaven and it was her wish that they be reunited on earth by being buried together. Myself, my wife Sally and our three children are the only surviving close relatives of Cyril and Enid, and if Mother’s wish is granted we will be able to visit Ma and Pa, Granny and Grandpa and show our love as we tend the graves”*.

14. David Cowell also explains the following :

“Unfortunately, through the best of intentions of being respectful to Father’s ashes we have now found ourselves in the regrettable situation of not being able to abide by Mother’s wishes. If Mother had been aware at the time of interment of Father’s remains, the difficulties of disinterment she would not have gone ahead with the interment of Father’s ashes at All Saints, instead having Father’s remains interred in unconsecrated land where we now realise that the process of exhumation would have been relatively straight forward.”

Conclusion

15. There was no mistake or misunderstanding in 1994 that Cyril Cowell’s remains were being interred in consecrated ground. A deliberate decision was made over twenty-four years ago to bury his remains in the churchyard of All Saints Allesley, within walking distance of the home where he had lived for many years. When Enid Cowell moved from the area in 1996 no commitment was made to seeking exhumation of Cyril Cowell’s remains, nor when she seems to have moved even further away at a later date. When Enid Cowell died a

deliberate decision was made, as discussed with Mrs Cowell before her death, for her remains to be interred in Lincolnshire, rather than with Cyril Cowell's remains in Allesley. The Petitioner states that a Family Grave has now been commenced in Willoughton, where there is no information before the Court to suggest that Cyril Cowell had any personal connection. Although the contentions of David Cowell on behalf of his Family are clearly sincere, in reality this is a change of mind based upon a change in family circumstances. The Petitioner and his family now believe that, given their close location to St Andrews churchyard, Willoughton would be a more suitable location for Cyril Cowell's remains than Allesley, where he has laid interred for nearly one quarter of a Century. I have considerable sympathy for David Cowell and his family, who have acted with the best of intentions, but unfortunately those changes in their Family life do not amount to the exceptional circumstances that would be required to justify exhumation. For that reason the petition must be refused.

Glyn Samuel
Deputy Chancellor
15th September 2018.