

**IN THE CONSISTORY COURT OF THE DIOCESE OF COVENTRY**

**ALL SAINTS: ALLESLEY**

**RE: THE CREMATED REMAINS OF CYRIL COWELL**

**JUDGMENT**

- 1) In August 1994 a casket containing the cremated remains of the late Cyril Cowell was interred in the churchyard of All Saints, Allesley. Mr. Cowell's son, David Cowell, petitions for a faculty authorising the exhumation of those remains and their reinterment in the churchyard of St. Andrew's Willoughton in the diocese of Lincoln. The cremated remains of Cyril Cowell's widow, Enid Cowell, were interred in that churchyard in 2017 and it is intended that Cyril Cowell's remains should be interred in an adjoining plot.

**The Procedural History.**

- 2) I concluded that it would be expedient to determine this matter on the basis of written representations and Mr. Cowell consented to that course. I have received submissions from Mr. Cowell expressed in moderate and reasoned terms.
- 3) Revd Mark Briscoe is the incumbent of St. Andrew's Willoughton and he has confirmed his consent to the interment of Cyril Cowell's remains in that churchyard and also that there is space for those remains to be interred in a plot alongside the plot containing the remains of Enid Cowell.

**The Factual Background.**

- 4) Cyril Cowell's remains were interred in August 1994 (just over six months after his death). Cyril and Enid Cowell were living in Allesley at that time having moved to the area in the 1960's. About eighteen months later Mrs. Cowell moved away to be nearer to her son (who is the only child of Enid and Cyril Cowell) and his family. I will assume that this move was to Lincolnshire but it does not appear to have been to Willoughton itself because the Petitioner explains that he and his family only moved there about six years ago.

- 5) Enid Cowell and her family gave thought as to where she should be buried. Consideration was given to seeking to be buried in Allesley but Enid Cowell decided that she wished to be buried in Willoughton because that is where her son and his family live. Mrs. Cowell hoped that her husband's remains could be exhumed and brought to St. Andrew's and David Cowell is seeking to give effect to that wish.
- 6) Cooperative Funeralcare have provided a letter setting out the arrangements they would propose for an exhumation. It is unlikely that the casket will still be intact. Cooperative Funeralcare think it likely that the remains were enclosed in a polythene bag inside the casket. If that is the case then the bag will be removed and placed in a further casket. If the original casket is not intact and if the remains were not in such a bag then the exhumation would involve excavation of an area of soil around the site of interment. I conclude that although it is likely that it will be possible to conduct the exhumation in a seemly manner this might not be possible even with the expertise of Cooperative Funeralcare.

### **The Applicable Principles.**

- 7) The approach which I am to take in considering this Petition was laid down by the Court of Arches in *Re Blagdon Cemetery* [2002] Fam 299.
- 8) I have a discretion but the starting point in exercising that discretion is the presumption of the permanence of Christian burial. That presumption flows from the understanding that burial (or the interment of cremated remains) is to be seen as the act of committing the mortal remains of the departed into the hands of God as represented by His Holy Church.
- 9) It must always be exceptional for exhumation to be allowed and the Consistory Court must determine whether there are special circumstances justifying the taking of that exceptional course in the particular case (the burden of establishing the existence of such circumstances being on the petitioner in the case in question). The creation of a family grave can give rise to circumstances which are sufficiently exceptional to justify exhumation but whether it will do so will depend on the facts of the particular case. A change of mind on the part of family members as to the appropriate location for the remains in question will not

without more amount to a special circumstance capable of justifying an exhumation.

### **The Submissions.**

10) In support of the petition Mr. Cowell explains that he and his wife and children are the only family of Cyril and Enid Cowell. He and his wife intend to remain living in Willoughton. They are active in the life of the church and the local community there and intend to be buried there in due course. The proposed exhumation and reinterment would enable the remains of Cyril and Enid Cowell to be in the same churchyard and would enable the family to visit the site of their graves. In due course their son and his wife would be buried in the same churchyard.

### **Conclusion.**

11) I am satisfied that this is not a case in which the application for exhumation is made lightly. However, I have to conclude that this is case where there are no exceptional circumstances such as are capable of justifying exhumation. A deliberate decision was made twenty-four years ago to inter Cyril Cowell's remains in Allesley in the area where he had lived for many years. Enid Cowell made a deliberate decision not to seek to be buried in the same churchyard or the same plot. Given that no attempt was made to explore the possibility for interment of Enid Cowell's remains in Allesley I must assume that such interment would have been permitted and would have achieved a degree of reunion of the physical remains of the couple. It follows that the proposed exhumation and reinterment is not the only way in which it would have been possible for the remains of Cyril and Enid Cowell to be together. A family grave (or at least a proximity of graves) could have been created in Allesley without any exhumation of Cyril Cowell's remains. Sincere though the Petitioner's contentions clearly are, the reality is that this is a case where the change in family circumstances means that the family members now believe that Willoughton is a more suitable location for Cyril Cowell's remains than is Allesley. That change of mind and those altered circumstances do not amount to exceptional circumstances warranting exhumation and so the petition must be refused.

STEPHEN EYRE  
HIS HONOUR JUDGE EYRE QC  
CHANCELLOR  
8<sup>th</sup> August 2018