

IN THE CONSISTORY COURT OF THE DIOCESE OF LICHFIELD

EDGMOND: ST. PETER

THE PETITION OF PETER NEATE

IN THE MATTER OF THE REMAINS OF IRMGARD MIMI ALMA NEATE

JUDGMENT

- 1) On 30th June 1993 an oak casket containing the cremated remains of Irmgard Neate was interred in the churchyard of St. Peter, Edgmond. The casket was interred in the Garden of Remembrance being an area set aside for the interment of cremated remains.
- 2) Mrs. Neate had been married to William Neate for forty-five years. The couple had met when Mr. Neate was serving in Germany at or shortly after the end of the Second World War.
- 3) William Neate died in May 2016. He had wished to be buried but had also wished his remains to be together with those of his wife. His children caused William Neate to be buried in the churchyard of St. Peter but inevitably his interment had to be in the main body of the churchyard rather than in the area set aside for the interment of cremated remains. It follows that although the remains of William and Irmgard Neate are in the same churchyard they are in different sections of that churchyard. This has caused distress to members of their family who believe that they would have wished their remains to be together.
- 4) David Neate is the son of William and Irmgard Neate. He petitions with the support of his sisters (the only other children of Mr. & Mrs. Neate) seeking a faculty for the exhumation of the cremated remains of Irmgard Neate and their re-interment in the grave of William Neate. The undertakers who carried out the interment of Irmgard Neate's remains have confirmed that the casket is likely to have remained sufficiently intact for such exhumation to be practicable.
- 5) The petition has the support of the incumbent and the Parochial Church Council of St. Peter's. I have been supplied with a copy of the minutes of the Parochial Church Council meeting. From that it is apparent that the decision to support the petition was only made after careful reflection in which the Council took account both of the presumption that Christian burial will be permanent and of the circumstances of this particular case. It is also apparent from the letter which the Petitioner has submitted in support of the petition that neither he nor his sisters have taken the step of seeking exhumation lightly.

The Applicable Principles.

- 6) 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.

- 7) 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 theological 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.
- 8) 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 Court of Arches said in *Blagdon* that the creation of a family grave is capable of amounting to an exceptional circumstance such as to justify exhumation. However, whether exhumation is justified in a particular case will depend on the actual circumstances of that case. Even where a family grave is to be created exhumation does not follow automatically. Rather the creation of a family grave is a circumstance which can in an appropriate case mean that exhumation is permissible.

The Position in this Case.

- 9) In this case I am satisfied that exhumation is appropriate and I have directed the issue of a faculty authorising the proposed exhumation and re-interment.
- 10) I can well understand how it was that when Irmgard Neate died attention was focused on giving effect to her wish that her remains should be cremated. That decision having been taken it was again understandable that those remains should be interred in the area for burial of such remains. Those steps were taken at a time when William Neate and his children were mourning the loss of Irmgard Neate and in circumstances where little thought was given as to what would become of William Neate's remains in due course.
- 11) This is not a case where a mistake was made in relation to the interment of Irmgard Neate's remains. There was a deliberate decision to inter those remains in a particular part of the churchyard of St. Peter's. Nonetheless, I am satisfied that it is a case where reflection would have been highly likely to have led to a different approach being taken at the time. It is not surprising that thought was not given to reserving a gravespace for William Neate and then interring Irmgard Neate's cremated remains in that gravespace to await being joined by Mr. Neate's body in due course. However, if proper thought had been given to the matter that or similar course would have been adopted.
- 12) The effect of the proposed exhumation and re-interment will be for the remains of Irmgard and William Neate to be in the same grave. That would be a family grave containing the remains of both husband and wife. The creation of a family grave is a circumstance capable of justifying exhumation in an appropriate case. I am satisfied that this is such a case and that exhumation is justified. There are two features of particular significance here. The first is that it is apparent that exhumation is not sought lightly by the family of Irmgard Neate. The second is that the re-interment is to be in the same churchyard as that in which the remains were originally interred. This is not a case where the remains of Irmgard Neate are being treated as being in some way "portable" or in which the permanence of Christian burial is being challenged. Rather it is one where there is a proper and

understandable proposal to reunite the remains of husband and wife in one plot in the same churchyard as currently contains those remains in separate plots. In those circumstances the grant of the faculty is justified.

STEPHEN EYRE
HIS HONOUR JUDGE EYRE QC
CHANCELLOR
10th July 2017