

IN THE CONSISTORY COURT OF THE DIOCESE OF LICHFIELD

WALSALL: ST GABRIEL

THE PETITION OF BERYL OSBORNE

IN THE MATTER OF THE REMAINS OF TERENCE JOHN OSBORNE

JUDGMENT

- 1) On 24th July 2012 the cremated remains of the late Terence Osborne were interred in the churchyard of St Gabriel's Walsall. His widow, Beryl Osborne, petitions for a faculty to permit the exhumation of those remains and their interment in the churchyard of the church of Our Lady of Lourdes in Hednesford.
- 2) Mr. and Mrs. Osborne had worshipped at St. Gabriel's from 2006. They had done so despite living in Hednesford throughout that time as Mrs. Osborne still does. The trip from Hednesford to Walsall and back involves a journey of approximately 35 miles.
- 3) Following her bereavement Mrs. Osborne continued to travel to St. Gabriel's but she has found the journey increasingly difficult. Mrs. Osborne now worships at Our Lady of Lourdes, a church which is within walking distance of her home. Mrs. Osborne wishes her late husband's remains to be reinterred in the churchyard of that church and intends, in the fullness of time, to be buried there herself. In her dignified written submissions to this court Mrs. Osborne explains that she accepts the general principle of the permanence of Christian burial. However, she contends that there are exceptional circumstances in this case. Mrs. Osborne explains that she is not in good health and that the loss of her husband has affected and continues to affect her. Mrs. Osborne adds that she and her husband shared their faith and love of God together and that she feels the "*need spiritually and emotionally to be near*" her late husband.
- 4) The Petition is supported by the four children of Mr. and Mrs. Osborne. Fr. Philip Newbold, the parish priest of Our Lady of Lourdes, has confirmed that Mr. Osborne's remains can be interred there. In addition Cooperative Funeral Care have confirmed that the exhumation can be undertaken although there will have been some deterioration of the original casket
- 5) The Parochial Church Council of St. Gabriel's voted to consent to the proposed exhumation. However, it is clear that there were considerable reservations in that regard. There were seventeen members of the Parochial Church Council present at the relevant meeting and of those five voted in favour while the other twelve abstained. The incumbent of St. Gabriel's, Prebendary Mark McIntyre, has set out the background and those reservations in two letters. He explains that he

ministered to Mr. Osborne in the latter's last days. Prebendary McIntyre says that Mr. Osborne wished to be buried in the churchyard of St. Gabriel's and that a particular plot had been identified since before the time that Prebendary McIntyre became the incumbent. He adds that the plot had been chosen in order that Mr. Osborne could be buried near to Mrs. Osborne's parents (Mrs. Osborne has confirmed this in her submissions to the Court) and that it was a plot in which Mrs. Osborne's remains could be placed in due course. Mr. Osborne had served as churchwarden of St. Gabriel's and had been on the Parochial Church Council for a number of years. It is apparent that the members of the Parochial Church Council were concerned that Mr. Osborne had wanted to be buried at St. Gabriel's and that the proposed course would be contrary to his wishes.

- 6) Mrs. Osborne has consented to the matter being determined on the basis of written representations and for the correspondence received to date to stand as those representations. I am satisfied that such a course is expedient.

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 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.
- 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 Court of Arches made it clear in *Blagdon* that the fact that those mourning the departed person are having difficulty in visiting the grave will not amount to an exceptional circumstance such as to justify exhumation. It is not open to the Court to authorise an exhumation and reinterment simply in order to make it easier for the bereaved to visit the grave of the deceased (see *Blagdon* at paragraph 35 (i)).

The Position in this Case.

- 10) The depth of Mrs. Osborne's feelings is apparent from her submissions and I have already referred to the impressive restraint and dignity shown in those submissions. However, the position here is clear. There was a deliberate decision to inter the remains of Terence Osborne in the churchyard of St. Gabriel's. That decision was, moreover, in accordance with Mr. Osborne's clear and express wishes. The reason why Mrs. Osborne seeks exhumation and reinterment of those remains is to move them to a location at which it will be easier for her to visit her husband's grave. That is not an exceptional circumstance capable of justifying exhumation. I have considered whether there is any other aspect of this matter which can amount to an exceptional circumstance but there is not. Accordingly, the petition must be refused.

11) The church at which Mrs. Osborne now worships and in whose churchyard the reinterment is proposed is a church in communion with the See of Rome rather than with that of Canterbury. For the sake of completeness I make it clear that in my assessment of this matter that is not a material consideration. The decision of the spouse of a departed person to move from worshipping in an Anglican church to worshipping in the church of a different denomination cannot, of itself, be an exceptional circumstance capable of justifying exhumation. In any event Mrs. Osborne does not suggest that there is any significance for the purposes of this petition in the fact that she is no longer worshipping in an Anglican church. Mrs. Osborne says that she is now worshipping at the church of Our Lady of Lourdes because it is within walking distance of her home and her arguments for exhumation and reinterment were similarly premised not on questions of change of denomination but on the difficulty of travelling to St Gabriel's and the ease of travelling to Our Lady of Lourdes.

STEPHEN EYRE
HIS HONOUR JUDGE EYRE QC
CHANCELLOR
3rd January 2016