

IN THE CONSISTORY COURT OF THE DIOCESE OF LICHFIELD

CODSALL: ST. NICHOLAS

ON THE PETITION OF JAMES HEWISON

RE: THE REMAINS OF BRENDA OWEN AND ANGELA OWEN

JUDGMENT

- 1) James Hewison is the Area Manager of L.M. Funerals Ltd. He petitions for the exhumation of the remains of Brenda Owen and of her daughter, Angela Owen. This petition is supported by the remaining family members of Brenda and Angela Owen.
- 2) Brenda Owen's remains were interred in the churchyard of St. Nicholas on 11th July 2012. Her daughter's remains were interred in the same grave on 23rd March 2013. It appears that Brenda Owen's coffin was not buried at a depth sufficient to allow a double burial. This meant that when Angela Owen's remains were interred the coffin was covered by only about 12" of soil. The natural settlement of the soil following the burial has meant that the top of Angela Owen's coffin has become exposed. Understandably this has been deeply distressing for her family even though as a temporary measure the coffin has been covered by further soil. Moreover, it is not consistent with the seemly interment of mortal remains.
- 3) The original intention of the undertakers and the Owen family had been to seek permission for the lifting and lowering of both coffins. This would have been an appropriate course. It would have amounted to the reordering of the site of the interment in order to achieve a seemly result for both coffins. Such a course would have been akin to that authorised by Bishop Ch in *Re Washingborough: St John* (Lincoln Consistory Court 2014).
- 4) Unfortunately the soil of the churchyard is sandy. There is believed to be a risk that such a lifting and lowering exercise could lead to the collapse of nearby graves. I am informed and accept that this nearly occurred when a similar exercise was undertaken in other graves in this churchyard last year. In those circumstances I accept that it is not practicable to undertake the lifting and lowering of these two coffins. Such an exercise cannot be justified given that

there is a real risk of disturbing other interments. I also accept that as a consequence it is not practicable to reorder the current plot so as to accommodate both coffins in a seemly manner.

- 5) In those circumstances the Petitioner seeks a faculty to exhume both coffins and to reinter them in another part of this churchyard. I have already directed that a faculty issue permitting this course and this judgment explains my reasons for doing so.
- 6) The Vicar and the Parochial Church Council of St. Nicholas have confirmed their consent to the exhumation and I have been provided with confirmation that the exhumation will be practicable in the light of the likely condition of the coffins.
- 7) The starting point is the presumption of the permanence of Christian burial. If exhumation is to be permitted there must be special circumstances justifying an exception from that starting point as explained by the Court of Arches in *Re Blagdon Cemetery* [2002] Fam 299.
- 8) Special circumstances clearly exist in the case of Angela Owen. In *Re Blagdon Cemetery* at paragraph 35 the Court of Arches said that “*faculties can in these circumstances readily be granted because they amount to the correction of an error in administration rather than being an exception to the presumption of permanence which is predicated upon disposal of the remains in the intended not an unintended plot or grave*”. Those words refer to instances where an interment has taken place in the wrong grave. However, they do indicate that the Court must look circumstances of the original interment to see if it is one to which the presumption of permanence can properly be said to apply. In my judgement just as the presumption does not apply to an interment in an unintended plot so it does not apply to an interment in a plot or grave where the remains cannot be preserved in a seemly manner. The presumption derives from the understanding that Christian burial is the once and for all delivery of the mortal remains into the hands of God as represented by His Church entrusting to the Church the safe and seemly protection of those remains. Accordingly, the presumption does not apply where the circumstances of the original interment were such as to preclude such safe and seemly protection. That was the position in respect of the

interment of Angela Owen's coffin. The condition of the ground and the position of the coffin of Brenda Owen meant that Angela Owen's coffin could not be interred at an appropriate depth and that seemly interment of that coffin in that plot is not possible. The removal of Angela Owen's coffin from its present location is not a departure from the presumption of permanence rather it is the moving of the remains to a location where they can be interred in a secure and seemly fashion and in which effect can be given to the intention that such interment should be permanent.

- 9) The position is not as straightforward in the case of Brenda Owen. There was no mistake in the decision to inter her remains in this plot. The plot is an appropriate one and Mrs. Owen's remains can be preserved in that plot in a secure and seemly manner. It would be perfectly practicable to remove Angela Owen's coffin while leaving that of Brenda Owen in place. Although Brenda Owen's coffin is not a depth which is sufficient to allow a further interment above it nonetheless it is at a depth at which it can be retained in a secure and seemly fashion. Despite those considerations I am satisfied that special circumstances justifying exhumation are present in the case of Brenda Owen. In *Re Blagdon Cemetery* the Court of Arches confirmed that family graves are to be encouraged. I need not address the debate between the decisions of different chancellors as to the circumstances in which the creation of a family grave can justify an exhumation. I need not address that debate in this judgment because I am satisfied that the circumstances here are very particular and unusual. The key features are as follows. The plot containing these two coffins is already a family grave consisting of the remains of a mother and her daughter and it has been such a grave since March 2013 when Angela's remains were interred. The condition of the ground coupled with the circumstances of the interment of Angela's remains is such that exhumation of those remains is necessary for them to be protected and disposed of in a seemly manner. Moreover, those remains will be interred elsewhere in the same churchyard. In the circumstances here for the Court to allow the exhumation of Angela's remains while refusing to permit the exhumation of those of Brenda would be for the Court to bring about the splitting up of an existing family grave. This is an unusual case and the circumstances justify the exhumation of Brenda Owen's remains. In effect the existing family grave is being

reconstituted in the same churchyard but in a location where the soil conditions allow the seemly and safe creation of a double-depth family grave. That does not in my judgement constitute a departure from the principle that once interred in an appropriate location, namely one where the remains can be properly safeguarded, then remains will not be exhumed or disturbed.

10) The Petitioner originally indicated that the Owen family members sought an order that the plot currently occupied by the remains of Brenda and Angela should remain unused in the future. This appears to have been on the footing that once having been used for the remains of Brenda and Angela Owen the plot should not be used for the interment of others even after the removal from that plot of the coffins of Brenda and Angela. I very much doubt whether I would have power to make such an order. Once the remains had been removed this would be an unoccupied plot. Parishioners and some others have a right of burial in the churchyard and the incumbent has the right to identify the sites at which future burials are to take place. An order prohibiting reuse of the plot would amount to a partial closure of the churchyard. Even if I do have such a power it would not be appropriate for me to exercise it to impose a permanent bar on the reuse of this plot. The fact that the remains of Brenda and Angela Owen were formerly in the plot does not provide any justification at all for preventing further interments taking place in this plot. It is to be remembered that the reuse of burial plots which have formerly been used and in respect of which there has been no exhumation is an accepted and appropriate course. It is necessary for there to have been an appropriate interval since the last interment before reuse is appropriate but provided there has been such an interval reuse is to be encouraged.

11) I can, however, appreciate the pastoral sensitivities of this particular case. I can understand that a degree of distress could be caused to the members of the Owen family if there were to be an interment of the remains of another person almost immediately after the removal of the remains of Brenda and Angela. I indicated through the Registrar that my provisional view was that a two year period of restraint in using this plot might be appropriate and the Owen family members confirmed that they regarded this as acceptable. In fact Revd Simon

Witcombe, the Vicar of Codsall, has explained that new interments are made in the next available space in the progression of burials. Moreover, there is to be an extension of the churchyard which is to be used for new burials. This means that there will not be a doubling back as it were to use the grave which formerly contained Brenda and Angela's remains and which will have become vacant. There is no likelihood of that plot being used in the foreseeable future. Indeed Mr. Witcombe's e-mail suggests that this plot will remain vacant until there is a general reburying across the churchyard. In those circumstances I do not make any order preventing the reuse of this plot (an order which I have doubt as to whether I could make it) but I do record Revd Simon Witcombe's explanation of the approach which will be followed. The consequence is that reuse of the plot is permissible but is unlikely to be needed in the foreseeable future.

STEPHEN EYRE
CHANCELLOR
5th February 2015