

Neutral Citation Number: [2020] ECC Der 4

IN THE CONSISTORY COURT OF THE DIOCESE OF DERBY

Re St Mark's, Winshill and Stanley James Joyce deceased

JUDGMENT

1. By a Petition dated 6th August 2020, Philip James Joyce ("Mr Joyce") seeks a Faculty authorising the exhumation of the cremated remains of his father, Stanley James Joyce ("the Deceased"), from the churchyard of St Mark's Church, Winshill. The Petition states that it is proposed to re-inter the Deceased's remains in the cremated remains section of Stapenhill Cemetery. Winshill and Stapenhill are very close to each other and just to the east of Burton-on-Trent. The reasons given in the Petition by Mr Joyce for wanting to relocate the Deceased's remains are that his mother, the Deceased's wife, Jean, died on 9th July 2020. She had expressed a desire to have her cremated remains interred in Stapenhill Cemetery. Mr Joyce says that since his parents were married for thirty-seven years, he wishes to reunite them in Stapenhill Cemetery. With the Petition were included the consent of the Vicar of St Mark's, to the exhumation of the Deceased's remains and the consent of East Staffordshire Borough Council to the re-interment of the Deceased's remains in Stapenhill Cemetery.
2. Upon receipt of the Petition, I sought clarification: (1) As to how the Deceased's ashes had been interred? Were they in an urn or a box and of what type? (2) Whether, after twenty years, it was considered likely that the container would still be capable of being exhumed and would still be intact? (3) Why were the Deceased's ashes interred in Winshill churchyard in the first place? (4) Knowing that her husband's ashes were in Winshill churchyard, why did Mrs Joyce express the wish to be buried in Stapenhill Cemetery? (5) Whether there was any other information on which Mr Joyce wished to rely in support of his Petition.
3. A response was received from Timothy J Parry, Funeral Director on behalf of Mr Joyce. In response to the questions asked, I was told that (1) The Deceased's remains were interred in an old style cremation plastic container. (2) With the style of the container, Mr Parry

was very confident there would be ashes to exhume. Mr Parry had spoken to the grave digger, who has many years' experience, who agreed with him. (3) The Deceased's ashes were interred in Winshill Churchyard because his family members are buried there and he grew up nearby. (4) Mr Joyce reports that Mrs Joyce always felt that Winshill was a bleak place for the family to come and pay their respects. Since the Deceased was born in November and died in January, the main anniversaries always fell at times when the churchyard is bleak. Stapenhill Cemetery is close to where Mrs Joyce lived and is much more picturesque. The Deceased and his wife's main hobby was walking, so they always enjoyed parkland, such as there is at Stapenhill. When the Deceased's remains were interred, Mrs Joyce was grieving. The Deceased was only sixty-five when he died and Mrs Joyce was not thinking of the future. How could she and her family know what they would want to do in twenty years' time? (5) Mr Joyce comments that Mrs Joyce was a widow for a long time. When the Deceased was alive, he and his wife did everything together. Mrs Joyce was on her own long enough and it is the family's most sincere wish that they can be together now, in their final resting place. Mr Joyce considers his request to be the final act of a loving family, reflecting the life the Deceased and his wife shared. He believes that the request hurts no one. He hopes that in these very uncertain times, when family is more important than ever, that the diocese can show some common humanity. In addition, I was told that the Vicar of St Mark's had confirmed that there was space available in Winshill Churchyard for Mrs Joyce's remains to be interred in the same plot as the Deceased.

4. As a result of this additional information, I issued directions on 8th October 2020 indicating that I proposed to deal with this petition on the basis of written representations, but inviting Mr Joyce to give his views; I dispensed with Public Notices; I ordered that a copy of *Re Blagdon Cemetery* [2002] Fam 299 be provided to Mr Joyce; and I ordered Mr Joyce to provide a witness statement and/or documentary evidence on which he wished to rely in support of his Petition, in particular addressing why this is a case where exhumation should exceptionally be permitted. I also sought confirmation that Mr Joyce was the only child of the Deceased.

5. Mr Joyce has agreed to the determination of his petition on the basis of written representations, confirmed that he is the only child of the Deceased and provided a witness statement dated 13th October 2020 to which is attached the eulogy from Mrs Joyce's funeral. There is no written evidence confirming Mrs Joyce's wishes.

6. In his witness statement, which I have considered carefully, Mr Joyce confirms that the Deceased "was buried in Winshill Church because his family members are buried there and he grew up nearby". He sets out the changes in circumstances since the Deceased's death, some twenty years ago, which have led to this Petition which is based on "a most sincere wish that they (his parents, the Deceased and his wife) can be together now, in their final resting place". The attached eulogy tells me much about the Deceased and his wife's lives and the many challenges that they faced together. Mr Joyce says that he brings this Petition to try "to fulfil Mum's last wish; for her & Dad to be together in Stapenhill". Mr Joyce requests that, in this case, exhumation of the Deceased's cremated remains should exceptionally be permitted due to the changes in family circumstances since the Deceased's death and in order to reunite close family members. He asks that his request is viewed sympathetically since it is made out of feelings of love and duty towards his parents. He contends that no one will be disadvantaged and there will be minimal inconvenience. Finally, he recounts the circumstances of his mother's death at a time when restrictions due to the coronavirus pandemic meant that he was unable to visit her in hospital during the last three weeks of her life. This was undoubtedly extremely distressing and has made Mr Joyce's desire to fulfil his mother's last wishes more acute.

7. The exhumation of cremated remains from a churchyard can only be authorised by faculty and is only permitted in exceptional circumstances. While each case must be determined on its own facts, it is for the petitioner to satisfy the court that there are special circumstances which justify the making of an exception from the norm that Christian burial is final. Examples of circumstances which may or may not be sufficient were considered by the Court of Arches in *Re Blagdon Cemetery* [2002] Fam 299 at paragraph 36. In this case there are no medical reasons advanced and there is no suggestion that the Deceased's interment in Winshill churchyard was a mistake. There has been a considerable lapse of

time since the Deceased's burial and this is a factor which I take into account, although it is not determinative. The main reasons advanced are changes in circumstances and a desire to unite the Deceased and his wife in the place in which Mrs Joyce wished to be buried. It is not, however, said that a family grave plot has been purchased. It is simply that Mr Joyce wishes the Deceased and Mrs Joyce to be interred together in the cremated remains section of Stapenhill Cemetery.

8. While it will be upsetting for Mr Joyce, having considered the facts of this case and the guidance to be found in *Re Blagdon Cemetery, supra*, it is my judgment there are no exceptional reasons to justify the exhumation of the Deceased's remains. He is buried in a churchyard which contains other members of his family and, in my judgment, it is entirely appropriate that he should remain there. The fact that his remains have been there for over twenty years is supportive of my decision, as is the fact that it is possible for Mrs Joyce's remains to be laid to rest alongside those of her husband, since her cremated remains have not yet been interred. The changes in family circumstances are not sufficiently significant, in my judgment, to justify moving the Deceased's remains what is, in reality, a very short distance. Neither has Mr Joyce demonstrated an intention to establish a family grave in Stapenhill Cemetery.
9. While Winshill Churchyard may appear bleak in November and January, if Mrs Joyce is interred alongside her husband, the family will have cause to visit in May and July, to mark the anniversaries of her birth and death, when the Churchyard will be in full leaf.
10. I do not consider that article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms is engaged in this case. There is no right to exhumation. I have determined this case on the facts and in the light of established principles.
11. For the reasons given, therefore, this Petition is dismissed.

26th October 2020

Timothy Clarke
Deputy Chancellor