

IN THE CONSISTORY COURT OF THE DIOCESE OF LICHFIELD

ST MICHAEL AND ALL ANGELS, PELSALL

ON THE PETITION OF DAWN MICHELLE HARRISON

JUDGMENT

- 1) On 30th November 2021 Ms Dawn Harrison petitioned for a faculty to authorise the introduction of a memorial at the site of the burial of her mother, Cynthia Betty O’Leary (born Craddock), in the graveyard at St Michael and All Angels, Pelsall. There have been two areas of controversy regarding the proposed memorial. The first is that the stone memorial does not conform to the published Churchyard Regulations for the diocese and the second is that the family wish to use the maiden name only on the memorial to the deceased. The close family comprise four children of the deceased, including Ms Harrison, and two others who have written in support. I am told a sister of the deceased has dementia and another daughter has not expressed an objection.
- 2) The proposed memorial is a headstone shaped as a heart and with two smaller adjunct hearts, measuring 10 inches high and wide, and 5 inches in depth. These smaller hearts contain vases. Public notice has been given of this application.
- 3) The Parochial Church Council (“PCC”) discussed the monument on 10th March 2022 and had no objection to the headstone being heart-shaped. The PCC objected to the separate smaller hearts, because that caused the overall size to exceed the limits in the Churchyard Regulations.
- 4) On 22nd April 2022 the Diocesan Advisory Committee (“DAC”) also considered the heart-shaped monument, but resolved that only a rectangular one would not adversely affect the specific churchyard setting. The adjunct hearts were considered to be duplicative in relation to the headstone, and would hinder churchyard maintenance at that location. The matter returned to the DAC on 31st May 2022. By then there was

evidence before it of heart-shaped monuments close to the location of the grave; indeed, including immediately next to it on one side. Such precedent caused the DAC to withdraw its objection to the headstone being heart-shaped. Its objection to the adjunct hearts remained.

- 5) Further evidence has been submitted regarding the adjunct hearts. These are vases for flowers and they are proposed to be located on the plinth of the monument and at right angles to the principal headstone it, hence not projecting over the stone base in any of its dimensions. A photograph was provided of a similar monument in the graveyard in question, and many other graves have vases of various sorts and sizes. I directed further inquiries and I am informed that the adjunct hearts can be fixed to the plinth. The overall dimensions would thus not breach the regulations.
- 6) Given the precedent of other heart shaped memorials in close proximity to the grave, I consider that the central, heart-shaped monument should be allowed. So long as the smaller hearts are fixed to the plinth of the monument then I will also permit these. I do so because fixing them means they will no more interfere with tending the graveyard than vases of other shapes and a precedent has already been set for this design in the graveyard. I hesitate to depart from the views of the DAC and PCC, but it seems that more information is available to me than was available to them, and I am grateful for their constructive considerations in this case. In all other respects the monument has been found by those considering it to be unobjectionable and I endorse that view.
- 7) The proposed use of the deceased's maiden name only is unusual and no precedent for it has been found. The circumstances are of great sensitivity. The children of the deceased describe their mother as being a victim of abuse within her marriage at the hands of her husband (their father). The deceased persisting in her marriage until the children were able to leave home. I am told that this was for the protection of the children. Their mother was then divorced from her husband. The mother did not formally return to her maiden name, but I am told by the three children who have participated in support of this faculty that her wish was to be buried under her maiden, and she made this very clear to them. I directed questions to the petitioner and she told me that, although not used on passbooks and the like, the deceased would use her maiden name on cards to family and friends.

- 8) The death certificate and burial register carry the married name of the deceased.
- 9) The DAC and PCC have deferred to me in a decision on the correct or acceptable usage of names.
- 10) The position in law is remarkable for its informality. Whilst an individual acquires her original name when her name is registered at birth, the law prescribes no rules limiting a person's liberty to change her name. Forename and surname can be changed by use and reputation, without any formality, and in addition or substitution for an original name. So much is set out in Halsbury's Laws of England, volume 88 (2019) at §329. That work also sets out the proposition that a surname in common law is simply the name by which a person is known, and names can be changed “at pleasure” (ibid. §330; these passages in a somewhat more dated form were cited with approval in Standard Property Investment plc v British Plastics Federation (1985) 53 P & CR 25 at 29 per Walton J). Hence, when marrying, a woman is not obliged to take her husband’s name, nor to abandon that name at dissolution of a marriage. A deed poll is no more than a means of authentication and to obviate doubt and confusion (op. cit. §331).
- 11) The complication in this case is that the deceased did not consistently use her maiden name, although she clearly wished to do so and did so on an informal basis. It seems to me, therefore, that the name Craddock was used supplementally to her married name and was her name by reputation to those she knew well. In these circumstances, the only real objection to it alone appearing on a monument would be one of risk of confusion. This is, however, highly unlikely to arise amongst those people likely to visit the grave. The risk of official confusion can be removed by adding an explanatory note to the burial register to inform anyone trying to trace details of a burial and making an enquiry that differing names were in use. The churchyard plan can also be annotated with an entry such as “[Married Name], nee [Maiden Name]”. By these means, her chosen name for her monument, and her name to her family and friends, may be employed as she and her children would wish.
- 12) It follows that I find that there is no legal or practical objection to the name of the deceased on her memorial being her maiden name, and without reference to her married name, and I will grant a faculty accordingly.

13) I wish to make it clear that my decision is in relation to a monument in respect of an adult and has no value as a precedent in relation to the names of children, for which the position may be very different.

Dr Anthony Verduyn

DEPUTY CHANCELLOR

12th July 2022