

**IN THE CONSISTORY COURT OF THE DIOCESE OF LICHFIELD**

**RE: NEWCASTLE UNDER LYME CEMETERY**

**RE: THE REMAINS OF JOAN BRISTEIR AND ROLAND DURBER**

**ON THE PETITION OF HELEN BRISTEIR**

**JUDGMENT**

- 1) On 27<sup>th</sup> January 1995 Harold James Bristeir was buried in plot 15000 in the consecrated portion of Newcastle under Lyme cemetery. Mr. Bristeir was married to Joan Bristeir neé Durber. In March 1995 Mrs. Bristeir's brothers, Michael and Roland Durber, paid for burial rights in the adjoining plot number 14999. The intention was that Mrs. Bristeir would in the course of time be buried with her husband in plot 15000 and that her brothers would be buried in plot 14999.
- 2) Michael Durber died in January 2006 and on 23<sup>rd</sup> January 2006 he was buried in plot 14999. Roland Peter Durber died in 2011 and he was buried on 5<sup>th</sup> April 2011. The paperwork which was completed at that time directed that Roland Durber was to be buried in plot 14999. However, because of an error on the part of the Borough Council's Bereavement Services team Mr. Durber was in fact buried in plot 15000. This error was not discovered until 3<sup>rd</sup> October 2017. Joan Bristeir had died in the autumn of 2017 and her funeral was to take place on 4<sup>th</sup> October 2017. Her daughter, Helen Bristeir, had arranged for Joan Bristeir's body to be buried in plot 15000. When preparations were being made the day before the funeral the Bereavement Services team discovered that Roland Durber's body had been interred in plot 15000 by mistake.
- 3) Miss. Bristeir was told of this difficult news on 3<sup>rd</sup> October 2017. She was told that there were three options available. One was to inter Joan Bristeir's remains in plot 15000 but this would have to be a shallow burial with the grave then being slabbed and this would preclude the interment of cremated remains in the plot in the future. Another was to bury Joan Bristeir in plot 14999 with Michael Durber. The third option was to delay the funeral and to seek the exhumation of Roland Durber's remains from plot 15000.

- 4) Miss. Bristeir is the only child of Harold and Joan Bristeir and was required to address these options on 3<sup>rd</sup> October 2017 which was the day before that planned for her mother's funeral. Miss. Bristeir decided that she should not postpone her mother's funeral and took the view that the least bad option was for her mother to be buried in plot 14999. That was what was done.
- 5) Having reflected Miss. Bristeir came within a very short time to regret her decision. On 13<sup>th</sup> October 2017 she contacted the Bereavement Services team and put in train the steps leading to the current petition in which she seeks faculties for the exhumation of Roland Durber from plot 15000 with his reinterment in plot 14999 and for the exhumation of Joan Bristeir from plot 14999 and her reinterment in plot 15000.
- 6) I concluded that it was expedient for this matter to be determined on the basis of written representations and Miss. Bristeir consented to that course. I have considered Miss. Bristeir's submissions together with correspondence from the Bereavement Services team explaining the background to the matter and accepting responsibility for the interment of Roland Durber in plot 15000.

### **The Applicable Principles.**

- 7) I have to consider whether the proposed exhumation is justifiable as a matter of law and principle. 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) The Court of Arches in the *Blagdon* case set out a number of instances of matters which could be capable of amounting to special circumstances justifying exhumation. The Court referred to instances of mistake where a person's remains are interred in the wrong burial plot or in a grave reserved for another person. At paragraph 35 the Court 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*".

### **The Approach to be taken in this Case.**

- 9) The interment of Roland Durber's remains in plot 15000 in 2011 was a mistake of the kind mentioned in *Blagdon*. It is understandable why it was that the mistake was only discovered in 2017 and the petition for exhumation and reinterment has been brought promptly after discovery of the mistake. Standing alone the petition in relation to Roland Durber's remains would be in the category of those where the Court of Arches said that faculties can readily be granted.
- 10) The position is rather more complicated in respect of the remains of Joan Bristeir. The decision to bury her remains in plot 14999 was a deliberate one and was made at a time when Helen Bristeir knew the circumstances of the two plots. Although this was a deliberate decision it was a decision made by Miss. Bristeir at a time when she had just been told that her uncle had been buried in the wrong plot and that this would cause difficulties in respect of the interment of her mother's remains. Moreover, she was told this the day before that on which her mother's funeral was due to take place. Miss. Bristeir is the only child and the only surviving close relative of Harold and Joan Bristeir and so was unable to turn to close family members for their advice. Miss. Bristeir had to make her decision urgently at a time when she was bereaved. In those circumstances Miss. Bristeir is not to be criticised for taking the option which allowed her mother's funeral to go ahead on the date planned and which meant that Joan Bristeir's remains were interred at an appropriate depth in a way which did not preclude further interments.
- 11) Although Miss. Bristeir is not to be criticised for the decision she made on 3<sup>rd</sup> October 2017 there was a deliberate decision to bury Joan Bristeir in plot 14999. Are there nonetheless exceptional circumstances here justifying an exhumation of those remains? I am satisfied that there are exceptional circumstances in this case. The decision to inter Joan Bristeir in plot 14999 was made when an urgent decision was needed if the postponement of the funeral was to be avoided. The need for urgency and the need for a difficult decision to be made had come about because of the mistake which had been made when Roland Durber was interred and because of the fact that the mistake had only come to light on 3<sup>rd</sup> October 2017. If the mistake had been discovered before the death of Joan Bristeir I have

no doubt that an application would have been made and granted for the exhumation and reinterment of Roland Durber's remains with the consequence that it would have been possible for Joan Bristeir to have been interred in plot 15000. The proposed course will have the effect that the remains of Roland Durber and Michael Durber will be in plot 14999 as was intended and that the remains of Harold and Joan Bristeir will be together in plot 15000. I am satisfied that the circumstances are exceptional because what is proposed involves remedying the consequences of the mistaken interment of Roland Durber's remains in the incorrect plot. The fact that a deliberate decision was taken to inter Joan Bristeir in plot 14999 does not alter this analysis because that decision was taken in the circumstances I have set out and was itself a response to the mistaken interment of Roland Durber.

12) The faculties as sought will issue.

STEPHEN EYRE  
HIS HONOUR JUDGE EYRE QC  
CHANCELLOR  
27<sup>th</sup> December 2017