

SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTY

HON. ARLENE P. BLUTH  
J.S.C.

PRESENT: \_\_\_\_\_  
Justice

PART 32

Joan Green Cunningham  
Trustees of St. Patrick's Cathedral et al.

INDEX NO. 154933/2016  
MOTION DATE \_\_\_\_\_  
MOTION SEQ. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_, were read on this motion to for petition to disinter  
Notice of Motion/Order to Show Cause — Affidavits — Exhibits NYSCEF Docs | No(s). \_\_\_\_\_  
Answering Affidavits — Exhibits 1-37 | No(s). \_\_\_\_\_  
Replying Affidavits \_\_\_\_\_ | No(s). \_\_\_\_\_

Upon the foregoing papers, it is ordered that this motion is and after a hearing,

*Petition granted.  
See accompanying  
Declaras, Order and Judgment*

**FILED**

JUN 12 2018  
COUNTY CLERK'S OFFICE  
NEW YORK

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Dated: 6/8/18

  
J.S.C.

HON. ARLENE P. BLUTH

- 1. CHECK ONE: .....  CASE DISPOSED  FOR FINAL DISPOSITION
- 2. CHECK AS APPROPRIATE: ..... MOTION IS:  GRANTED  DENIED  GRANTED IN PART  OTHER
- 3. CHECK IF APPROPRIATE: .....  SETTLE ORDER  SUBMIT ORDER
- DO NOT POST  FIDUCIARY APPOINTMENT  REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK : PART 32

-----X  
JOAN SHEEN CUNNINGHAM,

Petitioner,

-against-

TRUSTEES OF ST. PATRICK'S CATHEDRAL,  
ARCHDIOCESE OF NEW YORK,

Respondents.

-----X

**DECISION, ORDER  
& JUDGMENT**  
Index No. 154933/2016

Mot. Seq. 001

ARLENE P. BLUTH, JSC

In this disinterment proceeding, petitioner Joan Sheen Cunningham seeks to move the remains of her uncle, Archbishop Fulton J. Sheen, from New York City to Peoria, Illinois because she believes that it will help him become a Saint of the Roman Catholic Church. The ultimate question for this Court is whether that justification provides a good and substantial reason to move remains that were interred nearly four decades ago. After an evidentiary hearing, this Court grants the petition for the reasons set forth below.

**Background**

Archbishop Sheen led a long and distinguished career as a teacher and preacher of the Roman Catholic faith. Although he grew up and was ordained in Illinois, he spent a great deal of his professional life in New York City, a place he deeply loved. Five days before he died in December 1979, Archbishop Sheen executed a will which instructed that he be buried in his plot in Calvary Cemetery in Queens, New York. After his death, Cardinal Cooke, of the Archdiocese

of New York, sought Mrs. Cunningham's permission to inter Archbishop Sheen in the crypt in St. Patrick's Cathedral in Manhattan instead of Calvary Cemetery. Mrs. Cunningham assented to this request and her uncle was interred in St. Patrick's Cathedral.

Many years after Archbishop Sheen's death, Bishop Jenky, of the diocese of Peoria, commenced the process of having Archbishop Sheen declared a saint (hereafter the "Cause"). At some point, Bishop Jenky sought to have the remains transferred to Peoria, and, after the New York Cardinal consulted with Mrs. Cunningham, who expressed a desire for the remains to stay in New York, the respondents declined Bishop Jenky's request. In response, Bishop Jenky stopped the Cause and has refused to proceed unless the remains are moved to Peoria. That is why Mrs. Cunningham believes moving her uncle's remains to Peoria is his best chance at becoming a saint: she contends that once the remains are transferred, Bishop Jenky of the Diocese of Peoria will continue the Cause. Mrs. Cunningham claims that the Archdiocese of New York has no interest in helping her uncle become a saint.

This Court initially granted the petition (*see* NYSCEF Doc. No. 44). On appeal, the Appellate Division, First Department reversed and found that "a hearing is required because there are disputed issues of material fact as to Archbishop Sheen's wishes" (NYSCEF Doc. No. 53 at 6). The First Department stressed that there were conflicting accounts provided by petitioner and Monsignor Franco regarding whether Archbishop Sheen would have wanted to remain buried at St. Patrick's Cathedral (*id.* at 6-8).

Therefore, an evidentiary hearing was held on April 19-20, 2018. Mrs. Cunningham, Monsignor Franco, and an archivist from the Archdiocese of New York testified.

### Discussion

“The quiet of the grave, the repose of the dead, are not lightly to be disturbed. Good and substantial reasons must be shown before disinterment is to be sanctioned” (*Currier v Woodlawn Cemetery*, 300 NY 162, 164, 21 ALR2d 465 [1949] [citations omitted]). “While the disposition of each case is dependent upon its own particular facts and circumstances and while no all-inclusive rule is possible, the courts, exercising a benevolent discretion, will be sensitive to all those promptings and emotions that men and women hold sacred in the disposition of the dead” (*id.* [internal quotations and citations omitted]). “And looming large among the factors to be weighed are the wishes of the decedent himself” (*id.*).

“Even without contract, sentiments and usages, devoutly held as sacred, may not be flouted for caprice. They must be weighed in the balance with the motives and feelings that sway the acts of the survivors. Removal at the instance of a wife or kinsmen near in blood to satisfy a longing that those united during life shall not be divided after death may seem praiseworthy and decorous when removal at the instance of distant relatives or strangers would be arbitrary or cruel” (*Yome v Gorman*, 242 NY 395, 403, 152 NE 126 [1926]).

The instant circumstances present a unique situation. Disinterment proceedings are often commenced to resolve disputes about a deceased’s intended final resting place or to ensure that family members are laid to rest together. That is not the case here. In this proceeding, Mrs. Cunningham wants to move Archbishop Sheen’s remains because she thinks it will help him become a Saint of the Roman Catholic Church. This Court must consider whether that reason is sufficient to move the remains of a legendary figure in the Catholic Church.

To be clear, this Court takes no position on whether Archbishop Sheen *should be a saint* or whether Archbishop Sheen actually becomes a saint. Those are issues for the Roman Catholic Church to consider. The only issue is whether Mrs. Cunningham's belief that moving Archbishop Sheen's remains will help him become a saint is a good and substantial reason to grant the petition.

#### **Petitioner's Good and Substantial Reason**

When petitioner was just ten years old, her parents sent her from Illinois to New York to live with her uncle. Mrs. Cunningham's relationship with her uncle remained close throughout Archbishop Sheen's life. She is not just a niece who saw her uncle on occasion; he raised her, educated her and was like a father to her. The record before this Court suggests that there was no relative-closer by blood or emotion to Archbishop Sheen.

At the hearing, petitioner admitted that up until at least 2014, she was against moving Archbishop Sheen's remains to Peoria. She testified that she changed her mind after concluding that the only way to keep the Cause going was to file the instant petition. Respondents attempted to characterize her change of heart as the work of Bishop Jenky (of the Diocese of Peoria) rather than Mrs. Cunningham's true beliefs. Respondents argue that Bishop Jenky pressured petitioner, who is now 90 years old, into bringing this lawsuit because he wants the remains for his diocese.

This Court had the opportunity to observe petitioner in both her direct testimony and vigorous cross-examination. Nobody bullied Joan Sheen Cunningham into this decision. Being caught in the middle of a fight between two dioceses, the Court finds that Mrs. Cunningham changed her mind on her own accord and brought this proceeding because she firmly believes

that she is fulfilling her uncle's wishes. This is a good and substantial reason to move Archbishop Sheen's remains.

Petitioner credibly testified that her uncle "prayed *for* the Pope" and "prayed *to* the saints." Both petitioner and Monsignor Franco testified that becoming a saint is the highest honor a member of the Catholic faith can achieve. For Catholics, it is the proof that he is in heaven with God. Monsignor Franco testified that becoming a saint would allow Archbishop Sheen to touch more lives— Catholics all around the world could pray to him— and it is an honor that Archbishop Sheen would have wanted so he could continue his work even after his death. The testimony made it abundantly clear that there is no doubt that Archbishop Sheen would be delighted to be named a saint.

The evidence adduced at the hearing and, specifically, the correspondence from Bishop Jenky to petitioner demonstrated the intense animosity engendered by this dispute about Archbishop Sheen's remains.

Mrs. Cunningham was not immune from this feud. During the time period that petitioner publicly opposed transfer of Archbishop Sheen's remains to Peoria, Bishop Jenky had no qualms about unleashing a disrespectful attack on petitioner. In a letter from Bishop Jenky to Mrs. Cunningham dated April 7, 2011 (respondents' exhibit 15), Bishop Jenky wrote: "I must know that you have written the Archbishop [of New York] to recant your previous position ... and that you now support the transfer of the body. Your letter to the Archbishop must also be shared with the other leaders of the Foundation and possibly for mass communication. I consider your actions of the past year to be publicly scandalous. Public repentance is now called for."

After receiving a letter like that, any ordinary person would never speak to Bishop Jenky again. But Joan Sheen Cunningham's love for her uncle, the Catholic Church and saints were greater than her distaste for Bishop Jenky and his insulting ways. Although it took a few years, once petitioner became convinced that her uncle's only chance to become a saint was if the remains were sent to Peoria, petitioner eventually contacted Bishop Jenky and decided to petition this Court.

In making this determination, the Court also finds respondent's witness, Monsignor Franco, credible. He had a close relationship with Archbishop Sheen during the early 1960s and kept in touch with him, mostly by letters, during the last dozen years of Archbishop Sheen's life. Monsignor Franco testified about his walks to work with then-Bishop Sheen, and how a ten minute walk often took much longer because so many people stopped them on the street. Many people would ask Bishop Sheen to pray for them; Monsignor Franco testified that Bishop Sheen always honored his promise to pray for them, and that it was his great joy to pray for people, to be an intermediary between man and God. It was clear to this Court – especially because all sides wholeheartedly agreed – that Archbishop Sheen's life's purpose was to serve God and man and particularly the poor. Monsignor Franco even admitted that he hoped Archbishop Sheen would eventually become a saint and even called him a "Saint on earth".

It is important to note that, despite being given ample opportunity, Monsignor Franco never contradicted petitioner's claim that Archbishop Sheen would have wanted his remains to leave New York if it would allow the Cause to continue. Although Monsignor Franco eloquently described how much Archbishop Sheen enjoyed being a New Yorker, he did not articulate a

reason why Archbishop Sheen's earthly remains should not be removed under the current circumstances.

**Changed Circumstances: Archbishop Sheen's Connection to New York**

There is no doubt that, during his life, Archbishop Sheen loved New York and New York loved him. There is also no doubt that he loved St. Patrick's Cathedral; when he preached there, crowds were overflowing and speakers had to be set up outside to accommodate worshippers who could not get a seat. In a letter dated July 3, 1979, he wrote to Cardinal Cooke that he wished to leave his Chalice to St. Patrick's Cathedral "I think it fitting that the most precious possession of my life and the only one that matters to me, be given to the Cathedral that has welcomed me and allowed me to express my life's passion - the Message of Jesus Christ, Our Lord and Savior" (respondent's exhibit 5).

Although he had a deep connection with New York and St. Patrick's Cathedral, that does not end the current inquiry. Instead, the Court must consider whether, after nearly four decades in New York, moving Archbishop Sheen's remains to help his chances of becoming a saint is a good and substantial reason for disinterment.

Respondents offered no reason why the Court should reject this justification. As set forth above, everyone at the hearing testified that Archbishop Sheen, a devout Catholic, would definitely want to be named a saint because it would help him continue to serve man and God and Catholics all around the globe for generations and generations.

At the hearing, Monsignor Franco never testified that Archbishop Sheen would have opposed moving his remains in order to advance the Cause. He never testified that his friend and



mentor, Archbishop Sheen, loved New York so much that he would give up this chance at sainthood. In fact, it was Monsignor Franco who distinguished the mere “earthly” remains from the soul, and that the earthly remains are left when the soul goes “home to God”. It follows that Archbishop Sheen would care much less about the location of his earthly remains than his ability, as a saint, to continue to serve man and God on a grand scale after his earthly demise.

And although respondents highlighted that it does not matter where the remains are for purposes of becoming a saint, that may be true in the abstract but it is not so in the record here: here, the Cause will not go forward until Bishop Jenky receives the remains. Unfortunately, the Diocese of Peoria and the Archdiocese of New York are both acting as if they care more about the location of the remains than actually advancing the Cause. Luckily, the Cause is more important than the location of the remains to Mrs. Cunningham and others who loved and believed in Archbishop Sheen. From all the evidence before this Court, the Cause also would have been more important than the location of the remains to Archbishop Sheen.

The Court recognizes that the arguments offered by both sides rely primarily on assumptions about Archbishop Sheen’s wishes. It is unsurprising that someone like Archbishop Sheen (known for his humility) failed to leave specific instructions regarding how he would want his remains handled if the issue arose in the process of making him a saint.

These types of assumptions, about the wishes of a decedent, are embodied in the Court of Appeals decision in *Currier v Woodlawn Cemetery* (300 NY 162, 90 NE2d 18 [1949]). There, a woman built a mausoleum, designed it so there was enough space for her family to join her when their time came, and was placed into that mausoleum when she died. Clearly, she wanted to be in that mausoleum. Her son brought a petition because he wanted to remove his mother’s

remains from that mausoleum to an “earthly grave” beside him (*id.* at 164). By the time her son brought the petition, nearly twenty years after she died, her daughters had moved away to Missouri and made arrangements to be buried there while her son (petitioner) intended to be buried in an adjacent lot in New York (*id.*). The Court concluded that petitioner’s mother would have prioritized burial alongside her son over remaining in the mausoleum without any family members (*id.* at 165).

In *Currier*, the Court evaluated what a decedent *would have wanted* nearly twenty years after her death under conditions that never occurred to her. Clearly, the deceased in *Currier* wanted to be in the mausoleum; during her life, she expended substantial resources for its construction. There was also no doubt that, during her life, she hoped to have her entire family laid to rest beside her in the mausoleum’s crypt. But circumstances had changed after her death and the Court agreed with her son that she would have preferred to be in the ground next to him rather than alone in the crypt.

Similarly, here, the Court finds that Archbishop Sheen’s primary calling was his faith rather than the location of his earthly remains. There is no basis whatsoever to conclude that Archbishop Sheen would have prioritized keeping his earthly remains in New York over the chance to become a saint and continue the joy of his life’s work even after his death.

### Summary

Rendering a decision in a disinterment proceeding is a solemn obligation of the Court. Above all, the Court must consider the wishes of the deceased. Here, the petition seeks to move remains that have been interred for nearly four decades. That is no ordinary request— but this is no ordinary proceeding. The Court must consider the fact that Archbishop Sheen dedicated his life to the Catholic Church and that becoming a saint would be the highest honor he could achieve. That possibility— to become a saint— is sufficient grounds to move Archbishop Sheen's remains.

This justification cannot be characterized as whim or caprice. Instead, Mrs. Cunningham, has offered a sound reason and a laudable purpose for her petition. And respondents offered nothing to suggest that Archbishop Sheen would have wished that his remains would stay in New York even if it would stop the process of making him a saint. The evidentiary hearing revealed that the *location* of Archbishop Sheen's final resting place would not have been his primary concern; his focus was on souls rather than the location of earthly remains. The testimony by both Mrs. Cunningham and Monsignor Franco suggested that becoming a saint would allow Archbishop Sheen to accomplish his highest calling— to reach as many believers as possible and to intercede on their behalf. It makes no sense, given his lifelong devotion to the Catholic Church, that he would choose a location (New York City) over the chance to become a saint.

Accordingly, it is hereby

ORDERED and ADJUDGED that the petition is granted and it is further

ORDERED that petitioner is granted the right to remove the remains of Archbishop Sheen from St. Patrick's Cathedral in New York, New York to St. Mary's Cathedral in Peoria, Illinois; and it is further

ORDERED that petitioner shall bear all reasonable costs for the removal and transportation of Archbishop Sheen's remains and shall obtain all necessary permits prior to such removal and transportation.

This is the Decision, Order and Judgment of the Court.

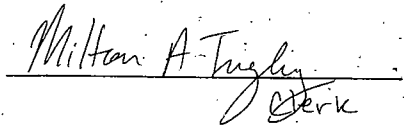
Dated: June 9, 2018  
New York, New York



ARLENE P. BLUTH, J.S.C.

**HON. ARLENE P. BLUTH  
J.S.C.**

**FILED**  
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