

Neutral Citation: [2020] EC Sodor 2

IN THE CONSISTORY COURT OF THE DIOCESE OF SODOR AND MAN

In the matter of an application to exhume the remains of Margaret Hawkins from Peel Cemetery and in the matter of a petition by Carmel Gubay.

JUDGMENT

Introduction

1. This case concerns the mortal remains of the late Margaret Hawkins (Mrs Hawkins). She was born in Ireland in 1900 and died in Glen Vine on the Isle of Man on 27th February 1986, and was buried in Peel Cemetery. Her daughter-in-law, Mrs Carmel Gubay, seeks an order of this court authorising the exhumation of her remains and their reinterment in The Chantry at Mrs Gubay's home, Crogga Mill, in Santon on the Isle of Man, where the remains of Mrs Hawkins' son and Mrs Gubay's late husband, Albert Gubay, are already interred. Mr Gubay was a prominent member of the Roman Catholic community on the Isle of Man and his interment at Crogga took place according to Roman Catholic canon law. He had also built the church of St. Anthony of Padua, in the parish of Onchan, as a memorial to his mother.

Manx burial grounds

2. In the Isle of Man, outside the Borough of Douglas, parish burial grounds in the island are maintained at public expense as a charge on the parish rates, the amount of the burial rate being fixed by the Department of Infrastructure of the Isle of Man Government under **section 14(1) of the Burials Act 1986** and recovered by the Isle of Man Treasury for onward transmission to the burial authority. The burial grounds for a civil parish are administered by the churchwardens for the corresponding Anglican ecclesiastical parish as the burial authority. For the purposes of this application, the relevant Anglican ecclesiastical parish is the Parish of the West Coast, which includes the whole of the ancient parish of German. Outside Douglas, all of the burial grounds maintained under section 14 have been consecrated to Anglican use, and thus fall within the jurisdiction of this court (a matter which was considered by my predecessor, Tattersall VG, in *Re Maughold, St Maughold* [2016] EC Sodor 1).

Support for the application

3. The incumbent of the Parish of the West Coast is the Very Reverend Nigel Godfrey, the Dean of St German's Cathedral, Peel and this application has his full support. It also has the support of Monsignor John Devine, the Roman Catholic Dean and Pastoral Area Leader for the Isle of Man in the Roman Catholic Archdiocese of Liverpool. Moreover, it is supported by all the members of Mrs Hawkins family or those empowered in law to act for them. Eliciting the evidence of that support to the satisfaction of the Diocesan Registrar took some little time: the original faculty application is dated 14th February 2018 and the final piece of evidence showing the family's views is dated 10th December 2019. However, satisfactory evidence of the views of all of the family is now available to me. No objection to the exhumation has been received from any other quarter.

Case-law

4. In *Re Blagdon Cemetery* [2002] Fam 299 the Court of Arches considered the question of exhumation and declared that Christian burial was intended to be permanent and that only exceptionally would a faculty be granted for exhumation. There is however a line of authority which has evolved since *Blagdon* recognising that the wish to create a family grave or a family plot is one of the exceptions to that presumption. This case falls clearly within that exception, although it is perhaps unusual that the reinterment is to take place in a private chapel rather than another graveyard.
5. To quote from the recent decision in Oxford diocese in *In the Petition of Mandy Ramshaw* [2016] ECC Oxf 1 (McGregor Ch.)—

“According to the Court of Arches, “Exceptional means ‘forming an exception’ (Concise Oxford Dictionary, 8th ed (1990)) and guidelines can assist in identifying various categories of exception. Whether the facts in a particular case warrant a finding that the case is to be treated as an exception is for the chancellor to determine on the balance of probabilities.” It is for a petitioner to satisfy the court on the balance of probabilities that there are special circumstances which constitute good and proper reason for making an exception to the norm that Christian burial is final.”.

6. Paragraph c of the guidelines adopted by the Court of Arches in *Blagdon* recognised that the creation of double and triple depth graves in cemeteries was to be encouraged in order

to enable the remains of families to be interred in a single plot, thus giving rise to a line of authorities on family graves.

7. Although this case is unusual, it is apparent from Mrs Gubay's application, and the letters in support from the family, that the desire is to create a group of family graves in the Chantry at the family home in Crogga. I am satisfied that this constitutes an exceptional circumstance justifying departure from the principle of permanence of burial articulated in *Blagdon*.

Consent for exhumation

8. Section 22(1) of the Burials Act 1986 precludes the removal of human remains from the land in which they have been buried without the consent of the Department of Environment, Food and Agriculture, subject to only two exceptions set out in subsection (2). They are that the exhumation is ordered by the coroner of inquests or involves a removal of remains from one piece of consecrated ground to another such piece on the authority of the ordinary (that is the Bishop or the Vicar General). Although "consecrated ground" is not defined, the context necessarily requires that this means "consecrated according to Anglican usage". Whilst Peel Cemetery is so consecrated, the land at Crogga, although blessed by the Roman Catholic Auxiliary Bishop of Liverpool and Monsignor Devine before Mr Gubay's remains were interred there, is not consecrated within the meaning of section 22(2).
9. Accordingly, although a faculty will pass the seal authorising the exhumation of Mrs Hawkins' remains from Peel, before they are exhumed the licence of the Department must be obtained. There will also be conditions to ensure that appropriate hygiene standards and decency are observed and that the reinterment at Crogga takes place expeditiously. The Dean of the Cathedral is to cause the burial registers for Peel cemetery to be annotated to reflect the exhumation and subsequent reinterment. Monsignor Devine has informed me that Mr Gubay's burial at Crogga was recorded in the registers for St Anthony's Onchan, that being the church where his funeral had taken place. Even though Crogga lies in the south of the Isle of Man, it would seem to me that it would be desirable to record Mrs Hawkins' reinterment in the same sequence of registers as that in which her son's burial is recorded. That is beyond my jurisdiction to order, but I exhort Mrs Gubay to use her best endeavours to secure that the reinterment is so recorded: I am already aware that Monsignor Devine is willing to see this done.

10. I conclude by recording my thanks to both the Dean of the Cathedral and Monsignor Devine for their assistance generally and for the provision of background information which was not apparent from the papers.

W. Howard Connell
Vicar General of the Diocese of Sodor and Man
22 February 2020