

Neutral Citation: [2020] ECC Lei 1

IN THE CONSISTORY COURT OF LEICESTER

IN THE MATTER of SAFFRON HILL CEMETERY

AND IN THE MATTER of a PETITION FOR THE EXHUMATION OF THE
REMAINS OF MARY ANN MADDEN

CHANCELLOR BLACKETT-ORD

The Feast of the Conversion of St Paul
25 January 2020

JUDGMENT

1. I have a Petition from Patricia Boycott as petitioner seeking the exhumation and re-interment of the remains of the late Mary Ann Madden (“the Deceased”) which now lie in the consecrated part of the municipal cemetery at Saffron Hill, Leicester.
2. Although Patricia Boycott is the Petitioner, she is in fact acting on behalf of an elderly gentleman resident in Ireland and not in good health called Paddy Cunningham.
3. I have seen a written and signed request from him that Patricia Boycott should act for him to apply for the faculty. In such a capacity, I consider that she is a person with “a sufficient interest in the matter” to justify her acting as

petitioner who may seek and obtain the faculty, under Rule 5.2 Faculty Jurisdiction Rules 2015 as amended.

4. My view that I can deal with the case in this way is supported by the fact that the background to the application is supplied in a fairly long statement signed by Paddy Cunningham himself.
5. That statement to some extent relies upon hearsay but I have no reason to doubt any of its contents.
6. Mr Cunningham produces a copy of his certificate of baptism which evidences that he was born on 16 November 1949 the son of "Maria Madden" (the Deceased), and that he was subsequently adopted.
7. The Deceased was not married when Paddy Cunningham was born, and indeed she never subsequently married. Paddy Cunningham was, and is, her only child. She had a brother and a mother who were unhappy at the stigma of an unmarried woman giving birth. She gave birth in a home for unmarried mothers in Ireland and (to quote Paddy Cunningham) "her mother and brother refused to have anything to do with her and they forced her to move away to England. She arrived in Leicester where she remained until her death".
8. He and his mother never saw one another after he was removed from her for adoption.
9. He was duly adopted, and that adoption seems to have been a success. He remained on his adopted parents' farm until they both passed away, and he still lives there now.

10. After his adopted parents had died, he commenced the task of seeking his birth mother. Unfortunately no information was forthcoming from anyone who was connected with the home at which he had been born in Tuan, County Galway. It closed in the early 1960s.
11. But in around 2016 he received a phone call from a woman in America whose elderly mother had been a friend of his mother in their village and remembered something of her. The information that was given in this and in ensuing telephone calls enabled him to piece together something of his mother's later life.
12. She had been sent to England shortly after giving birth. But in the late 1950s she returned to her home village in Ireland with the intention of looking for her boy. She found a friend in the village to help her. But her brother found out and took her to the railway station and left her there telling her not to come back and to stay in England. She never returned to Ireland.
13. In 1962, at the early age of 43, she died in the Cheshire Home at Staunton Harold Hall in Leicestershire. The cause of death was "(a) exhaustion and (b) disseminated sclerosis". The informant at the registration of her death was her brother Daniel Madden who had evidently come over from his home town in Ireland which he gives as his address.
14. In Leicester, the Deceased had made local friends, the Newman family. A Mr John Thomas Newman evidently paid for the plot in which she was buried; both he and his wife are now dead and were buried very close to her in the same cemetery. Their grandson, Michael Newman, has helpfully and generously assigned his rights of ownership in Mary Madden's grave plot to her son.

15. He seeks an order permitting exhumation and the re-interment of the remains of his mother in the churchyard of St Patrick's, Glenamaddy, County Roscommon, where he in turn intends to be buried.
16. Essentially he has three reasons for this:
 - (a) the Deceased was a practising Roman Catholic and it would have been her wish to be buried in a Roman Catholic rather than an Anglican churchyard or cemetery;
 - (b) she had come back to Ireland to try to find Paddy Cunningham and to be reunited with him; since he was, and is, her only child, and has always lived on Irish soil, she would have wanted to be buried with him, and
 - (c) she has no relatives, and now no friends, in Leicester, and her grave is untended accordingly.
17. Mr Cunningham states that he has paid and prepared the grave in his local churchyard which is consecrated ground, and I have seen the letter from St Patrick's Church stating that the Deceased "will receive a Christian burial here in Glenamaddy if and when her body is returned".
18. There is no doubt that I have authority and jurisdiction to permit the exhumation of the Deceased's remains if I regard the circumstances as so exceptional as to depart from the norm of permanence in relation to Christian burials.

19. I do regard the present case as exceptional, for the reasons that are put forward by the present Petitioner and Paddy Cunningham as I have stated above.
20. Under Rule 6.6 of the Faculty Jurisdiction Rules 2015 (as amended) the general requirement of a public notice being displayed at the Leicester Parish Church and the cemetery is qualified thus:
- “6.6(3) In the case of a petition which relates exclusively to exhumation, the Chancellor may dispense with the giving of public notice if satisfied that any near relatives of the deceased are still living and any other persons who are in the opinion of the Chancellor it is reasonable to regard as being concerned with the matter (a) are petitioners or (b) consent to the proposed faculty being granted.
- “(4) In any other case of a petition which relates exclusively to exhumation, the Chancellor may dispense with the giving of public notice and may direct that any of the persons in paragraph (3) who are not petitioners be given special notice”.
21. I see no purpose or desirability, in the public being advertised of this petition. That being so, I dispense with the giving of public notice. But because of one point which causes me slight concern, I direct that special notice be given to Daniel Madden if he is still alive.
22. The point is this. The information upon which I have relied is the information in the statement of Paddy Cunningham, the Deceased’s son. Possibly (although not certainly) the Deceased’s brother Daniel may still be alive. It is theoretically possible (although unlikely) that he might have something to say about the exhumation which would affect what I am now deciding.
23. I therefore require that he be given special notice by being sent a copy of the Petition and the documents with it that I have seen, and a copy of this Judgment, at whatever address might be known for him, and at the address given on the Deceased’s death certificate.

24. Then no faculty may issue until after 1 March 2020. If nothing has been heard by then in response to the letter that I have mentioned, then the faculty can be granted.
25. If any communication in relation to him is received (other than a simple consent from him) then I must be asked to reconsider the matter.
26. Some of the requirements of the standard form of petition in an exhumation case have not been fully complied with. On the other hand, I have had the benefit of rather more information about the background than is usual in such cases.
27. The following are defects in the documentation which in my view are immaterial and can be ignored:
 - (a) details of the casket/coffin;
 - (b) an opinion from the undertaker as to the likely state of the casket/coffin;
 - (c) a plan showing the proposed place of re-interment;
 - (d) written confirmation from the undertakers conducting the re-interment that it will be carried out with due care and decency.
28. Also, I consider that Paddy Cunningham has given sufficient details of the family, to satisfy the requirement that there should be a "family tree" for his mother, in evidence. I dispense with that obligation.
29. I do make it a condition of the faculty, however, that before the body is disturbed, the undertakers must give the Petitioner a written assurance that

all legal and practical obstacles have been dealt with for the removal of the body and its re-interment at Glenamaddy. Practical matters include consideration that the coffin and the body are likely to be in poor condition to say the least.

30. I do, however, require the written consent of the cemetery authority at Saffron Hill for the exhumation. I hope that this will merely be a formality.

31. Accordingly, I will allow the Petition as asked subject to these conditions:

- (a) a condition that the written consent of the burial authority is obtained;
- (b) a condition of special notification of Daniel Madden, and
- (c) a condition that no faculty shall be issued before 1st March 2020 at the earliest.

MARK BLACKETT-ORD
Chancellor
25 January 2020

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RE: A PETITION FOR THE EXHUMATION OF THE REMAINS OF MARY ANN
MADDEN

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JUDGMENT

The Registrar to Leicester Diocese