

R (on the application of Rudewicz and others) v Ministry of Justice

Divisional Court: Hallett LJ, McCombe J, October 2011

Exhumation – Secretary of State’s licence

The applicants sought a judicial review of the Home Secretary’s decision permitting the exhumation and re-interment of the remains of Father Jarzebowski, a Polish priest from the Marian Fathers’ foundation at Fawley Court. The priest had been instrumental in founding a school there for Polish students displaced by the Second World War. The applicants relied upon the presumption against exhumation without a proper reason and argued that the exhumation constituted disrespect for the priest’s wishes and for Polish heritage, and would cause stress to the Polish community. In addition, the fourth claimant argued that, as the priest’s nearest relative, the exhumation was an interference with her Article 8 right to family life and Article 9 right to manifest her religion. The Marian Fathers, supported by the local bishop, wanted the priest’s body reinterred at Fairmile Cemetery, along with fellow priests of his Order, allowing the many visitors to the priest’s grave to visit without obstacle. By contrast, at Fawley Court access would be restricted to annual visits on All Saints Day and exceptional visits at the discretion of the owners. The court upheld the decision to allow the exhumation. There was nothing in the decision incompatible with Article 9 of the ECHR, as permanence of burial is not a basic tenet of Roman Catholic faith and the hierarchy of the Catholic Church supported the exhumation. Further, the fourth claimant’s Article 8 rights were not engaged; she had never met the deceased priest so no family life was established nor can family life subsist after death. It was with the Marian Fathers that the priest lived the majority of his life and their constitution, at least when he entered religious life, treated the Head of the Order as next of kin with right to determine the site of burial. [Catherine Shelley]

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Re St Peter and St Paul, Over Stowey

Bath and Wells Consistory Court: Briden Ch, November 2011

Pipe organ – electronic replacement

A faculty was granted for the removal of a mid-nineteenth century pipe organ situated in the north chapel of the church and its replacement with an electronic instrument. Letters of objection had been received from the Victorian Society, the British Institute of Organ Studies and four individuals. The chancellor held that there was a strong presumption in favour of pipe organs, as opposed to electronic replacements, for use in parish churches. While not accepting certain claims by the Victorian Society as to the historic interest of

the instrument, the chancellor was of the view that, viewed musically, it would be hard to conclude that the petitioners had rebutted the presumption in favour of pipe organs. No specific shortcomings had been identified with the instrument, which had a 'most pleasant tone' and was of some local interest. The petition was nevertheless granted because the petitioners had made out a case for re-ordering the north chapel so that it could be used more flexibly, for meetings, social gatherings and discussion groups. The presence of the organ in the chapel was an obstacle to such use of the chapel and the instrument would have to be removed in order to facilitate the re-ordering. As there was nowhere in the church to relocate it, it would have to be disposed of and replaced by the proposed electronic organ, which would be installed where three pews currently stood. [Alexander McGregor]

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JGE v English Province of Our Lady of Charity and another

High Court, Queens Bench Division: MacDuff J, November 2011

Sexual abuse – vicarious liability

The claimant alleged that while resident between 1970 and 1972 in a children's home managed by the Sisters of Our Lady of Charity she was raped by the now deceased Father Baldwin. In these interlocutory proceedings the issue was whether or not the second defendants, the Trustees of the Portsmouth Roman Catholic Diocese, were vicariously liable for Baldwin's wrongful acts. The Trustees denied liability on the grounds that Baldwin was not their employee. Following the reasoning in *Maga v Trustees of the Birmingham Archdiocese of the Roman Catholic Church* [2010] EWCA Civ 256, the court concluded that, by 'appointing Father Baldwin as a priest' [*sic*] and thus clothing him with all the powers involved, the defendants created a risk of harm to others. At the time of writing an appeal was pending. [Frank Cranmer]

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Re Coultous, deceased

Bradford Consistory Court: Walford Ch, November 2011

Exhumation

The chancellor granted a faculty for the exhumation of the cremated remains of the deceased, which had been buried as long ago as 1977. Since the burial