

IN THE CONSISTORY COURT OF THE DIOCESE OF LIVERPOOL

IN THE MATTER OF ST HELENS CEMETERY

**AND IN THE MATTER OF THE EXHUMATION OF THE CREMATED REMAINS OF
THE LATE JANET PAMELA KELLY**

BEFORE THE CHANCELLOR OF THE DIOCESE OF LIVERPOOL,

HIS HONOUR JUDGE GRAHAM WOOD KC

JUDGMENT

Introduction

1. This petition seeks a faculty for the exhumation of the cremated remains of Janet Pamela Kelly who passed away in September 2006, and which were interred in the consecrated section of St Helens cemetery in grave number 917, row 61. At the time of the petition which was submitted in January of this year only a basic amount of information was provided. In section 5 of the petition of Sarah Kelly, the daughter of the late Janet Kelly, the reason was stated in these terms:

“To reunite husband-and-wife, Janet Pamela Kelly’s remains were buried in grave number 917 with her parents on a temporary basis with the intention of reuniting with her husband Stephen John Kelly who has now recently passed. It was the dying wishes of both Janet and Stephen to be buried together in the same grave. Due to this there is no mention of Janet on the headstone of the current grave she is in.”

2. Therefore, on the receipt of the petition, although the necessary consents were given from the burial authority and other family members and there was information relating to the nature of the casket, I considered that there was insufficient detail or explanation as to the background to enable an appropriate assessment to be made of the merits of the proposed exhumation. Accordingly, I directed the registrar to require the petitioner to provide a detailed statement, preferably with other family members directed to the exceptionality of exhumation from consecrated ground.

3. On 9th March this was provided in the form of a combined family statement from Sarah, Matthew and Emma, the adult children of the deceased Janet and Stephen Kelly. I have now had an opportunity to consider this statement in conjunction with the other available material. I understand that the petitioner and her siblings are content for me to deal with this matter on the papers, and accordingly I provide this short judgment.

The legal position

4. As in the case of all exhumation applications within this diocese, the registrar set out in a letter on receipt of the petition a summary of the legal position that applies where it is sought to exhume the mortal or cremated remains of a body buried in consecrated ground. This referred to the guiding authorities of **Re Christ Church Alsager [1999] Fam.142** and **Re Blagdon Cemetery [2002]** which emphasised the permanence of Christian burial whether in a churchyard or the consecrated section of a municipal cemetery. In simple terms there should be no interference with that burial save for a good and proper reason, and this is interpreted as requiring exceptionality of circumstances. It is clear from the very many published decisions of fellow chancellors over the past 25 years that the principle of exceptionality is followed rigorously and that circumstances which may appear significant to the loved ones of the deceased, such as a change of mind or a desire to implement the wishes of another do not usually qualify as a good and proper reason. As the registrar pointed out, a mistake in relation to the burial may qualify, although it would be expected that applications for exhumation pursued promptly once the mistake comes to light. In recent years good and proper reason has been found to exist in the context of the need to establish a family grave. However, it is clear that in every case all the circumstances must be taken into account, and there can be no assumption that uniting the mortal or cremated remains of loved ones post death in a family grave will result in the grant of an exhumation petition.

The stated reasons

5. In the combined family statement the three adult children have explained in helpful detail the background to the respective interments of their mother and father. Janet Kelly was only 42 when she passed away. She had been suffering from cancer and had been through a long and painful battle before her death. Her husband Stephen, who had recently lost his mother, then became the sole carer of the three children of the family, who were 14, 12 and 8 years of age respectively. This would have been not only a time of overwhelming sadness for the surviving family, but also one of great emotional pressure for Stephen to cope with the grief of himself and his children. It is said that Janet Kelly had expressed a wish that she should not be alone in death and at the time her cremated remains were placed in the grave 971 in row 61 where her parents were already interred. No headstone was put in place because the intention of Stephen and Janet had been that they would ultimately share a grave. Thus, it is said, this location had never been intended to be her permanent resting place.

6. The adult children also refer to the pressured circumstances in which Stephen found himself following his wife's death, having to look after a young family, manage the household finances and to support the children in grief. It is said that the decisions which he took in relation to the burial of his late wife should be considered in this context, and his belief that ultimately they would be reunited in death. It would seem that the grave had been owned by a sibling of Janet, and it was believed by the adult children that their father would not have been aware of the implications of the burial being in consecrated ground.

7. The adult children state how important it is that their parents' wishes are honoured, and in the grief which they are currently experiencing following the death of their father, whose ashes have been interred in grave 87 – 259 (unconsecrated ground) at present is compounded by having to visit two separate graves. Neither headstone has been engraved because of the uncertainty in respect of the present position.

8. The requirement for exceptionality has been addressed in their articulate and dignified statement:

“We understand and respect the Church’s principle that Christian burial is intended to be permanent. But we believe this case is exceptional:

- The original interment was made under extreme emotional and practical pressure.*
- It was never intended to be permanent, and this is reflected in the absence of a headstone inscription.*
- Our parents’ wish to be buried together is well known and deeply felt.*
- The current grave does not reflect our mother’s identity or intentions.*
- The proposed reinterment would allow them to be together, in a grave that honors (sic) their life and love.*

Determination

9. Whilst his court will always pay due regard to pastoral considerations, and the rigidity of the exhumation jurisdiction should not ignore factors such as the impact which unfulfilled wishes and misunderstandings in relation to burial permanence has on loved ones, it is important that sympathy for the family and the agreement of the relevant persons/authorities should not diminish the principles which must be applied.

10. It is clear that in the present instance there has been a significant passage of time between the original interment and the exhumation that is now sought. This is a factor which must be taken into account, as well as the explanation that is provided for the delay.

11. Having considered all the material that has been made available, I have come to the conclusion that despite the delay this is indeed an exceptional case. Unlike many situations in which reliance is placed upon a desire for burial together in death and the overlooking of the need for a suitable burial place to achieve this, for the Kelly family the death of their mother occurred at a time when the children were young, and Stephen Kelly found himself in the unenviable position of having not only come to terms with losing his wife after a battle with cancer but also to deal with alone all the administrative tasks associated with becoming the sole carer for the children. With his late wife’s expressed wish not to be alone in death, his decision that she should be interred

with her parents was entirely understandable. The absence of any inscription on the headstone affirms the understanding which he and other relatives probably had at the time that ultimately it would be possible for him to be laid to rest with his late wife in another grave. It is unlikely that he would have been giving any consideration to the processes involved during this period of unimaginable sadness.

12. I am also satisfied that the children of the deceased in pursuing this application have been sensitive to the significance of Christian burial and are respectful of the process of exhumation, without any expectation that they are automatically entitled to have their parent's wishes fulfilled. In my judgement this is an exceptional case and the exhumation is entirely justified. The reinterment of the cremated remains of the late Janet Kelly fulfils not only her wish but also her intention established when she was dying from cancer together with that of her husband Stephen Kelly who lost his wife at such a young age for their interment together in a family grave.

13. In the circumstances a faculty can issue on the usual terms.

***His Honour Judge Graham Wood KC,
Chancellor of the Diocese of Liverpool***

29th April 2026