

IN HER MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

BETWEEN:

CHRISTINE FORDE

Appellant;

THE ATTORNEY GENERAL

Respondent;

THE CORONER FOR NORTHERN IRELAND

Notice Party.

Before: Kerr LCJ, Girvan LJ and Coghlin LJ

GIRVAN LJ

Introduction

[1] This appeal raises an important question of coronial law, namely whether under existing Northern Ireland law a coroner has jurisdiction to hold an inquest into the death of a person who died abroad whose body has been returned to Northern Ireland for burial or cremation. The judge at first instance, Gillen J, concluded that he did not. The appellant in this appeal, the mother of the deceased, Cliff Michael Forde, challenges that conclusion. Mr O'Donoghue QC and Mr O'Connor appeared on behalf of the appellant. Mr Maguire QC appeared on behalf of the Attorney General. Ms Elliott appeared on behalf of the Senior Coroner. We are indebted to counsel for their helpful and clearly articulated submissions.

Factual background

[2] The deceased while on holiday in Ibiza with a group of friends died on 13 July 2006 as a result of a fall from a fourth floor balcony in the hotel where he was staying. An investigation was carried out by the Spanish authorities.

This concluded that the deceased committed suicide. The appellant cannot accept this conclusion. She believes that he may have been a victim of foul play. She is of the view that the Spanish investigation was inadequate in several respects. She alleges that the Spanish authorities failed to interview certain key witnesses including in particular the young man who shared the hotel room with the deceased and was present when the deceased fell. She alleges that there was a failure to obtain relevant information relating to her son's medical history and personal circumstances. In her view the objective facts of the deceased's life, his happy disposition, his good job and recent promotion negated any possible suicidal intent.

[3] The body of the deceased was returned to Northern Ireland on 24 July 2006 by air. When human remains are brought back to Northern Ireland by air they must be transported and sealed in a zinc lined coffin accompanied by a death certificate issued in the state where the death occurred, along with a document from the funeral director verifying that the coffin contains the remains of the deceased and nothing else. Spain and the United Kingdom, both being members of the Council of Europe, are subject to an agreement on the transfer of corpses signed at Strasbourg on 26 October 1973 ("the Strasbourg Agreement"). This agreement provided for a special document (a *laissez-passer*) to accompany the corpse issued by a competent authority of the state of departure. This is issued after the competent authority has ascertained that all the medical health, administrative and legal requirements of the regulations in force in the state of departure relating to the transfer of the corpse have been complied with. Following the return of the deceased's remains his body was shortly afterwards cremated in Northern Ireland.

[4] In accordance with normal practice, the Coroner's Office was not informed of the return of the body and did not become involved until the appellant's solicitor wrote to the Senior Coroner on 10 October 2006 asking him to conduct an inquest. The Senior Coroner replied on 12 October 2006 stating that he had no jurisdiction to do so.

[5] On 22 October 2006 the appellant's solicitors wrote to the Attorney General requesting that the Attorney General exercise the power under section 14 of the Coroners Act (Northern Ireland) 1959 ("the 1959 Act") to direct the coroner to conduct an inquest. On 19 September 2007 the Attorney General replied that she had no power to do so in the absence of any jurisdiction for the coroner to conduct an inquest under the 1959 Act.

The relevant statutory provisions

[6] The relevant provisions of the 1959 Act are as follows:

"2.-(1) The Lord Chancellor may appoint one, or more than one, coroner and deputy coroner for such district

or districts and on such condition as to numbers, . . .
as the Lord Chancellor . . . may determine

.....

6.-(1) Subject to the provisions of sub-section (2) and
or section 14 a coroner shall hold inquests only within
the district for which he is, or is deemed to have been
become appointed under this Act.

.....

7. Every medical practitioner, registrar of deaths or
funeral undertaker and every occupier of a house or
mobile dwelling and every person in charge of any
institution or premises in which a deceased person
was residing, who has reason to believe that the
deceased person died, either directly or indirectly, as
a result of violence or misadventure or any unfair
means, or as a result of negligence or misconduct or
malpractice on the part of others, or from any cause
other than natural illness or disease . . . shall
immediately notify the coroner within whose district
the body of such deceased person is of the facts and
circumstances relating to the death.

8. Whenever a dead body is found, or an unexpected
or unexplained death, or a death attended by
suspicious circumstances, occurs, the district
inspector within whose district the body is found, or
the death occurs, shall give or cause to be given
immediate notice in writing thereof to the coroner
within whose district the body is found or the death
occurs, together with such information also in writing
as he is able to obtain concerning the finding of the
body or concerning the death.

9. Where there is reason to believe that a deceased
person died in any of the circumstances mentioned in
section 7, the body of the deceased person shall not be
cremated or buried and no chemical shall be applied
to it externally or internally and no alteration of any
kind shall be made until the coroner so authorises.

.....

11.-(1) Where a coroner is informed that there is within his district the body of a deceased person and there is reason to believe that the deceased person died in any of the circumstances mentioned in section 7 or section 8 he shall instruct a constable to take possession of the body and shall make such investigation as may be required to enable him to determine whether or not an inquest is necessary.

.....

13.-(1) Subject to sub-section (2) a coroner within whose district -

- (a) a dead body is found; or
- (b) an unexpected or unexplained death or a death in suspicious circumstances or in any of the circumstances mentioned in section 7, occurred;

may hold an inquest either with a jury or, except in the cases in which a jury is required by sub-section (1) of section 18, without a jury.

...

14. Where the Attorney General has reason to believe that a deceased person has died in circumstances which in his opinion make the holding of an inquest advisable he may direct any coroner (whether or not he is the coroner for the district in which the death has occurred) to conduct an inquest into the death of that person and that coroner shall proceed to conduct an inquest in accordance with the provisions of this Act (and as if, not being the coroner for the district in which the death occurred, he were such coroner) whether or not he or any other coroner has viewed the body, made any enquiry or investigation, held any inquest or done any other act in connection with the death."

The Judge's reasoning

[7] In a careful, analytical judgment Gillen J reached the conclusion that under the 1959 Act the deliberate legislative choice of the word “found” in sections 8 and 13, rather than the choice of a word such as “lying” or more simply “is”, pointed to the finding of a body with an element of discovery or chance encounter. It could not be said of the body returned to Northern Ireland in the present instance that it had been “found” within the coroner’s jurisdiction. Since the death did not occur in Northern Ireland and since the body had not been “found” for the purposes of section 13, the coroner did not have jurisdiction to hold an inquest into the death of the deceased. The judge accepted the argument that the 1959 Act contained a structure providing for a predominantly jurisdictional emphasis on the role of the coroner. The jurisdiction of the coroner was essentially concerned with deaths occurring inside Northern Ireland subject only to the coroner having jurisdiction if a body was “found” in Northern Ireland. He concluded that the power of the Attorney General to direct an inquest outside the circumstances set out in section 13 would be incongruous. While the Attorney General had a supervisory function he could not in absence of clear wording confer on a coroner a jurisdiction which the coroner did not have to hold an inquest outside the framework of his statutory powers. He also found that there was no basis for the application of the Human Rights Act 1998 in circumstances where the United Kingdom had no extra-territorial jurisdiction or control over the place where the deceased died.

Conclusions

[8] As Gillen J correctly concluded, the Human Rights Act 1998 imposed no obligation on the United Kingdom to carry out an investigation into the circumstances of the death of the deceased in Spain. The delimitation of the coroner’s jurisdiction in relation to a death abroad is a matter of legislative choice under domestic law. As Mr Maguire QC pointed out, the choice was made in Scotland to spell out in clear terms in section 1 of the Fatal Accidents and Sudden Deaths Inquiry (Scotland) Act 1976 that the power to investigate a death applied to a death occurring in Scotland. In the case of England and Wales the power to carry out an inquest arises under section 8 of the Coroners Act 1988 where a coroner is informed “that the dead body of the deceased is lying within its jurisdiction and there is a reasonable cause to suspect that such person has died in such circumstances as require an inquest.” This provision has been interpreted as conferring a coronial jurisdiction where the body is physically present within the jurisdiction of the coroner *and* the circumstances demand an investigation. (See R v West Yorkshire Coroner ex parte Smith [1983] QB 335 (“Smith’s case”).

[9] In the present instance it is clear that the death of the deceased did not happen within the coroner’s jurisdiction. Thus, the relevant question is whether, for the purposes of section 13, it could be said that the deceased was “found” within the jurisdiction of the Coroner.

[10] Mr O'Donoghue argues that the word "found" should be interpreted as equivalent to the word "lying" in the English provision which in Smith's case led to the conclusion that the coroner had jurisdiction to hold an inquest whenever a body was physically present in his jurisdiction. While the words "is found" may in some circumstances be the equivalent of "can be found, is located or is" it is impossible to so construe them in the context of the 1959 Act. Such a wide interpretation would render section 13(1)(b) otiose. It would have the consequence that a coroner would have jurisdiction to hold an inquest in the case of any body in any circumstances provided the body is located within his jurisdiction. Section 8 makes clear that "found" cannot have such a wide meaning. If it did, whenever a deceased body is found to be located or lying in a police district, whatever the circumstances, the superintendent of police within the district would be bound to inform the coroner and provide such information as he is able to obtain concerning the finding of the body and concerning the death. It cannot have been the intention of the Act to require such an investigation simply because of the mere presence of a body within a police division particularly bearing in mind that historically the coroner's inquest is an investigation into deaths which result from other than natural causes. These considerations fully support the trial judge's approach to the interpretation of the word "found" which refers to the discovery of a body with an aspect of surprise or of the unexpected. (See also Mayo J in Abbott v Poolbrooke (1947) SASR 57). When one happens upon a body it is, of course, right that the police should investigate, as they are also bound to do in other circumstances when an unexpected or unexplained or suspicious death has occurred.

[11] The English legislation is significantly different from section 13. Section 8 of the English Act confers jurisdiction where the body of a person is lying within the coroner's jurisdiction *and* the death is in suspicious circumstances. Section 13 of the 1959 Act confers the jurisdiction when the body is found within the coroner's jurisdiction *or* the circumstances of a death within his jurisdiction are suspicious. The quite different way in which the two statutory provisions are drafted provides no support for Mr O'Donoghue's argument that section 13 should be interpreted as being an analogue of the English provision intended to produce the same outcome.

[12] We also conclude that Gillen J was correct in concluding that section 14 cannot be interpreted as investing the Attorney General with a power to effectively confer a jurisdiction on the coroner which he does not have under section 13. While section 14 does confer a power on the Attorney General to review the exercise of the discretionary element provided for in section 13 it does not confer upon the Attorney General a power to supplement the coroner's statutory jurisdiction.

Disposal of the appeal

[13] For these reasons we conclude that Gillen J was correct in dismissing the appellant's application. We dismiss the appeal.

[14] While there are proposals to amend the provisions of section 13 of the 1959 Act so as to widen the coroner's jurisdiction, this case falls to be determined under its existing provisions. It is thus unnecessary and inappropriate to comment on the effect of the proposed changes.