

Re X (A Child) (Female Genital Mutilation Protection Order) (Restrictions on Travel) (2017)

[2017] EWHC 2898 (Fam)

15/11/2017

Barristers

Alistair G Perkins

Court

Family Division

Practice Areas

International Children Law

A highly sensitive case concerning whether a travel ban should be imposed to prevent a child from visiting her father in Egypt, given the prevalence of FGM in Egypt and the risk that the practice might be carried out by the paternal family.

The case concerns X, a 14 month old child born in the UK on the 22nd August 2016. X's mother is British and lives in the UK, X's father is Egyptian and lives in Egypt. M and F met in Egypt in January 2013 and were married in May 2014, after M converted to Islam, although it is unclear whether this was a legal marriage.

The local authority issued proceedings for a Female Genital Mutilation Protection Order (FGMPO) with a ban on X travelling to Egypt following a report by the health visitor that M was planning to travel to Egypt of the 31st December 2016 and had raised concerns that X would be subject to FGM by the paternal family. They asked for the FGMPO with the travel ban to continue until X is 16 years old. The FGMPO was granted on an interim basis along with a passport order and M and X's passports were held by the Tipstaff. There were never any concerns about M's care of X, who continued to thrive.

M and F opposed the FGMPO. M was distressed at the idea of not being able to go to Egypt to see F or F not being able to see X. M stated that she was willing to consent to any orders that would protect X while they were in Egypt and reduce her planned visit from 6 months to 3 weeks. However, after consultation with experts on Egyptian law, it was found that the FGMPO would not be recognised in Egypt and there was no equivalent order that could protect X while she is over there. It was established the F had the power in Egyptian law to prevent M and X leaving Egypt.

Evidence

The paternal grandfather (PGF) denied that FGM had taken place within their family, despite the paternal grandmother giving evidence that she had been subject to it. It is unknown whether F's sisters or F's niece had been subject to FGM, though F and the paternal family indicated that they had not. A letter was produced stating F's sisters had been examined and no evidence of FGM was found. However,

a social worker specialising in FGM expressed concerns about this letter as it did not state what tests had been carried out or the professional qualifications of those conducting the examination, particularly in light of the fact that FGM in Egypt is often carried out by the medical professional. Ms Justice Russell shared her concerns in relation to this letter. The paternal family insisted FGM was no longer a problem in Egypt, despite unchallenged expert evidence that 9 out of 10 women have undergone FGM. Ms Justice Russell found that FGM had not been discussed within this family and that their monolithic responses in evidence made it impossible to explore their understanding of the negative effects of FGM or their reasons why FGM was not practiced in their family in contrast to the majority of families in Egypt.

F gave evidence that he understood the need for FGM to curtail the sexual desire of women and reduced the likelihood of their promiscuity. He was unable to give any example of the negative psychological and physical consequences of FGM and did not demonstrate any empathy for victims. His evidence contradicted the claim that he and his family were against the practice of FGM. Ms Justice Russell accepted M's evidence that F had told her that he thought FGM should be legalised and that this was part of his culture and had been undertaken within his family. In light of F's evidence, Ms Justice Russell did not share M's belief that F would not allow X to be harmed.

M gave evidence, consistent with her statement, that during their relationship F had assumed she had undergone FGM and was surprised that she was not familiar with this. They had discussed FGM and F had expressed the view that it should be legalised and carried out in hospitals. She stated that a few days before the health visitor's visit she had discussed FGM with F, though denied, as was the health visitor evidence, that in that conversation F stated the paternal family expected X to undergo FGM. M stated that she had explained to F that FGM is illegal in the UK and that she would be imprisoned should it be carried out. She said F did not respond immediately but later said that X did not have to undergo FGM then. Ms Justice Russell found M's evidence open and honest and that she genuinely wished to protect X. However, M admitted in evidence that she did not know how to protect X or assess the risk presented to X. She admitted it would be difficult to protect X as she did not speak Egyptian Arabic and therefore would not know if FGM was being discussed. This was compounded by the PGF's evidence that it is neither necessary or desirable to discuss decisions with the women of the family. Despite this, M was of the view that X could be protected through undertakings given by the F and that these could be enforced. However, expert evidence was that undertakings would be unenforceable as a UK court order would not be recognised and there was no mechanism for its enforcement. M and X would be subject to the will of F.

The Children's Guardian supported the LA application. She felt that the risk to X was high and had concerns about M's ability to protect her given her vulnerability and her implicit trust of F.

Law

Ms Justice Russell summarised the law in relation to FGM and that the court should assess the risks of FGM in each case on its own facts having regard to all the circumstances, including the need to secure the health, safety and well-being of the girl to be protected; consider the proportionality of making such an order in light of any risks assessed; and having regard to the Article 3 and 8 ECHR rights of the family members concerned. She made reference to Schedule 2 to the Female Genital Mutilation Act 2003 which states that an FGMP may contain "(a) such prohibitions, restrictions or requirements, and (b) such other terms, as the court considers appropriate for the purposes of the order. The schedule provides that the terms of an FGM protection order may, in particular, relate to conduct outside England and Wales as well as (or instead of) conduct within England and Wales" She stated that the emphasis must be on protecting the child from this type of harm.

Outcome

Ms Justice Russell ordered that that FGMPO remain in force until 22nd August 2032 when X turns 16. M's passport was returned but with an order preventing her from travelling out of the jurisdiction or out of the UK with X until 2032 to prevent onward travel to Egypt. X's passport was retained by the court and will be destroyed when it expires. M is forbidden from applying for a passport or any travel documents on behalf of or in the name of X and this extends to all other persons, including F. A copy of the order was served on the Home Office, Her Majesty's Passport Office, the FCO and the Egyptian Embassy.

The judge emphasised that this should not mean X is cut off from F or the paternal family and encouraged them to visit X in the UK. F applied for a visa during the proceedings but his application was rejected as it transpired he had applied for the wrong type of visa. There was no evidence after this of F trying to apply for the correct visa and he did not mention any plans for continuing his relationship with M and X, were the FGMPO to remain in force. He seemed to regard it as M's responsibility to ensure his relationship with X was maintained by bringing her to Egypt and the paternal family cited finances as a reason for not visiting the UK.

Permission

 Family Law Week