

IN THE FAMILY COURT AT LEICESTER

In the matter of AE (a child)

In the matter of the Female Genital Mutilation Act 2003

Leicester County Court and Family Court
90 Wellington Street
Leicester
LE1 6HG

BEFORE:

THE HONOURABLE SIR JONATHAN COHEN

BETWEEN:

NOTTINGHAM COUNTY COUNCIL

APPLICANT

- and -

OA

(1) RESPONDENT

MN

(2) RESPONDENT

Legal Representation

Mr Jeffers (Counsel) on behalf of the Applicant Local Authority
The First Respondent Mother appeared in person from day 2 of the hearing
The Second Respondent Father appeared in person

Judgment

Judgment date: 17 August 2022

Reporting Restrictions Applied: Yes

“This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.”

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The Honourable Sir Jonathan Cohen:

1. This case concerns AE, a young girl now aged 17 months. Her mother is 37 years old. She is a highly educated Egyptian lawyer. She did a law degree, then left the law for about a decade before returning as a lecturer. The mother's family are largely professional people working in education or in science based areas.
2. The father is 50 years of age. He is a truck driver, but most of his siblings also have professional qualifications. The two families live in Northern Egypt in large towns about 30 miles from each other. I have had no chronology provided to me so I will be forgiven if dates are slightly out, but it will not be material.
3. The father had been married for the first time, but that marriage came to an end by 2016 when he was introduced to and swiftly married the mother. The father has been living in England since about 2000 and has acquired British nationality. The mother has, so far as I am aware, only lived in Egypt prior to the marriage and she is an Egyptian national. She entered the country following the marriage on a spousal visa. The couple lived in Lancashire in the father's rented property.
4. In the late summer of 2020, when the mother was in the early stages of pregnancy, she went to Egypt to see her family. She stayed for some months. The father, who did not go with her, was not enthusiastic about her going because of the Covid outbreak and because of her pregnancy. He was even less enthusiastic about her returning. He had felt that her role was by his side as he struggled with keeping his work afloat in Covid. He was not pleased about her absence and he pronounced Talaq by telephone.
5. When the mother announced her return, against the father's wishes, he became irrationally infuriated that she simply arrived at London Heathrow and got a taxi home, feeling that it was improper for her to be in the company of another man for those hours.
6. Upon her return they stayed under the same roof for a period of some weeks in a state of uncomfortable relations. The father had told the mother that he loved somebody else. She says that he kept her short of money. He said he did not have spare money and paid for everything he could. It is that behaviour, namely saying that he loved somebody else, which is said to constitute the emotional abuse, and the financial behaviour, the financial abuse.
7. On 10 December 2020 the mother left the home. She had previously made contact with the local social services and complained about what she regarded as the father's domestic abuse. She had been advised of the existence of Clare's Law and discovered that the father had a conviction for battery of his first wife in 2016 for which he was fined. That apparently was thought to put her at risk of physical abuse.
8. After one night the mother was taken on 11 December 2020 to a refuge in the Nottinghamshire area. She has lived in that area ever since, although in March 2021 she moved to another refuge where she still is, although apparently for not much longer.
9. Meanwhile, on 12 January 2021, a national FGM Centre standard assessment was completed by the Lancashire local authority children's social care department and

various risk factors were identified. The factors were identified solely from what the mother said. They included that:

- i) there is a strong level of influence on the family by pro FGM elders or relatives,
 - ii) there is a concern about flight risk,
 - iii) the parents or carers had limited understanding of FGM and the law in the UK,
 - iv) a trusted adult, be it a parent or otherwise, has stated that they wanted FGM to be performed on the as yet unborn child,
 - v) FGM is still actively practiced and expected in the parents' community or family,
 - vi) the family are claiming asylum and/or have had their asylum claim refused, and if returned to the home country the child may be at risk of FGM, and finally,
 - vii) the mother is pregnant with a female child.
10. Around the turn of the year, 2021, the mother's complaints had extended to a significant fear of FGM. It is clear to me that the complaints that were made by her of danger to the child were largely from the paternal family, but she also expressed the view that her own brother might be a risk. The mother herself had undergone the procedure, organised, as I accept it was, by her own father without consulting her mother, and that it happened whilst her mother was at work. It took place when she was ten, which places it in or about 1995.
 11. The mother made it very clear to those to whom she was expressing her fears that she did not want to go to Egypt. She was frightened of doing so because if she did, she felt that her daughter might be subject to FGM. She said that the father would not be able to stand up to his own relatives who would wish to see the procedure carried out. She also expressed an anxiety that the father might remove her daughter to Egypt at his family's behest. These fears were expressed to a large number of people including social workers from the two different Local Authorities, refuge workers, and domestic abuse charity workers, and her complaints were broadly all of the same nature.
 12. The mother said she was misused by social services to talk of her experiences for their own purposes, although it is impossible to imagine what the social services' own purposes might have been.
 13. By at least February the fear of FGM was the mother's principle cause of concern and domestic abuse had disappeared into the background. She told the social worker that the father's family believed in FGM and that his own nieces had been subject to FGM.
 14. It seems to me an oddity of the social services' approach that everything that the mother said was taken as gospel truth. No enquiries were made of the father or the extended family. I understand that the social services' starting point, and certainly the starting point of the refuge, should be to listen to the mother, but there is a difference between listening and assessing.
 15. I make no criticism at all of the Local Authority for issuing on 12 March 2021 an application for an FGM Protection Order, but, it was only after the institution of

proceedings that the father was approached for his views, and in my judgment that should have happened earlier.

16. In June 2021 the mother was granted indefinite leave to remain in the UK. In August 2021 the mother was saying that there was no risk of FGM and went on to explain, as she continues to state, that everything that she was alleged to have said was either mistranslated, miscommunicated by others, well meaning or not, on her behalf, or simply not said.
17. In these proceedings the father has always said that there is no risk from his family of FGM. His engagement in these proceedings has been inconsistent, it seems to me because he has always put his work first. Likewise, he has been passive in seeking contact which he says that he wants, and I accept that he does want. Not much turns on his position, but he has not been very proactive in taking steps in these proceedings or communicating his views to the Local Authority.
18. The mother's case has, since the summer 2021, gone through a 180 degree turn, from fear of domestic abuse and fear of FGM, to having no fears at all.
19. Mr Jeffers on behalf of the Local Authority is right to say that the mother's evidence has had a number of themes:
 - i) A misquoting or deliberate mistelling of the facts by the Local Authority,
 - ii) A simple case of misunderstanding with a significant language barrier, and
 - iii) Pressure from the Local Authority and others to speak of matters that were not true.

Indeed, even in her closing submissions today to me, the mother has not deviated from blaming everyone other than herself for the way that her views have been put forward. She has maintained that she was not supported with appropriate translation services.

20. Whilst it seems to me that at most, if not all, times the mother was provided with appropriate assistance, this mother speaks pretty good English. It is not perfect. But she is very good at making herself understood. I accept that her English is better now than it was 18 months ago, but during the course of the hearing before me if she thought that the court interpreter was getting it wrong she jumped in to say so. The mother speaks at great length, and I do not believe her that her case has been misunderstood.
21. I accept that there may have been occasions when there were mistakes in translation or in understanding what she was saying, but I do not accept the wholesale misinterpretation of her case as she asks me to do.
22. The mother says that the local authority case was built on wrong information, and she blames others, particularly the social worker, and HK, a support worker who she says told her that the best way to stay in the UK was to talk about FGM, and a friend of hers by the name of Sarah who she has never met and who has been sending messages in English to the social work team without her knowledge. She blames Sarah, whoever Sarah may be, for these events. Sarah is not a witness and the mother says that she did not call her because Sarah refused to be a witness.

23. There were two interesting events during the course of the trial which cast some light on the mother's understanding. Some three working days before the case was due to start, when I was sitting in Nottingham, it was drawn to my attention that an email had been received by the court which suggested that the mother was without representation for the trial that was about to begin. I called the case in for urgent directions, and counsel who had just been instructed attended on the mother's behalf. Over the next few days and weekend he worked extremely hard on preparing the mother's case. On the second day he was abruptly dismissed by the mother. She felt that she was better able to put the case herself.
24. In addition, the mother had asked for and been provided with the usual special measures, with a screen in court and a separate entrance. Those arrangements were all properly choreographed. But it quickly emerged that the mother had no anxiety about being seen by the father and was entirely happy for all the special measures to be removed. I was bemused as to why they were ever sought.
25. The irresistible feeling that I was left with, and which remains with me, and which I find, is that the mother had been advised to use the system and complain, first, of domestic abuse, and then of the risks of FGM for the purposes of advancing her settlement application. Her change of heart in the late summer of last year fits this timetable and I can see no other explanation of her change in case. That however does not absolve me from trying to find out what the truth of the situation is.
26. The mother is one of four girls born to her father. The eldest by his first wife, and the next three by his second wife, with the mother being the second eldest of the four. Her elder sister, who is about ten years older than the mother, and the mother herself are the only two who have been subjected to FGM. The mother had it imposed when she was aged ten and that was in about 1995. Ten is a prime time for children to have it, the main age bracket appearing to be between about nine and 12, just before puberty.
27. By the time her next sister came along to that age, the father had had a change of mind. His second wife, the mother's mother, was furious at what he had done. Indeed, he had done so not only without her permission but behind her back when she was at work. The mother's mother tells me, and I accept, that the father regretted his actions and he made no such effort in respect of his third and fourth daughters who did not undergo the procedure. The maternal grandfather died some years ago.
28. I accept the evidence of the maternal grandmother that no other family member has undergone the procedure, and that none of their circle of friends and neighbours have, so far as she knows, undergone such a procedure. The mother herself is rightly deeply upset at what her father inflicted upon her and says that she would never want to inflict that upon a child of her own. I accept that.
29. The father says that his family has no history at all of FGM, and it came as news to him that in her evidence yesterday his mother told the Court that she herself had suffered FGM what must have been about 60 years ago. He says that it is not a subject that ever had been raised in his family. I saw no reason to disbelieve the evidence of either grandmother, and Mr Jeffers on behalf of the Local Authority concurs with that view. I say that, notwithstanding that both were somewhat dismissive of the existence of FGM in Egypt now, and it is that to which I now turn.

30. There are two sets of statistics that have been provided and both are taken from the UNICEF report for Egypt dated February 2020. The first is the general statistics for the prevalence of FGM in Egypt in females in the age bracket of 15 to 49. The data which I am going to refer to in respect of both tables was gathered in 2015, so it is therefore seven years ancient.
31. The report for the age group 15 to 49 shows a high level of FGM of about 90%. But I regard those statistics of being relatively little value, as the older members of the cohort would have been going through the procedure about 45 years ago bearing in mind the prime time for when it happens and the historical age of the information. So the problem is obvious in the use of such statistics:
- i) They cover a very wide age range.
 - ii) All the evidence is that the risk is at its maximum in the years around ten, and so the statistics cover events taking place a very long time ago.
 - iii) The rate of FGM in industrial areas is far lower than for rural areas, and
 - iv) Professional families are far less likely to have their girls subjected to the procedure than poor or uneducated families.

Thus, the statistics are of limited help in any individual case.

32. Much more use is the second table of statistics derived from the same report and the same historical data. It covers the age group from six months up to the age of 15, and it does so by reference to geographical provinces of Egypt. 14% of the girls in the (region 1) area, that is the area from which the father's family come, have been subjected to FGM. 6% of girls in the (region 2), the area from which the mother's family comes, have suffered the same fate.
33. These statistics also need to be treated with caution because very few of the population are subject to the procedure in their early years, and that too has been the subject of a statistical table which I have found of use. Of those who have undergone the procedure:
- i) only 2% have undergone it under the age of five,
 - ii) 24% have it under the age of ten,
 - iii) 71% are in the bracket ten to 14, and
 - iv) only 1% are 15 or over.

In other words it is the few years immediately before the onset of puberty that is the peak time of danger.

34. A further and final interesting statistic was that whilst 70% of the procedures were carried out by medical practitioners, for those in the lower age bracket, and I think that means the under tens, the percentage carried out by medical practitioners rises to over 80%.

35. All these factors are relevant here. Both families live and come from industrial areas in the north of the country. Both sets of families are professional and well educated. AE is only one year old.
36. In addition, I put weight on the fact that there is no recent history of FGM in either family, certainly for the past 25 years. I have no evidence that any younger member of the family has undergone it. The mother, at age 37, is the youngest member of the extended family known to have been subjected to the procedure.
37. Since 2007 there has been law in place in Egypt forbidding FGM and carrying with it severe penalties of prison up to 15 years. Perhaps even more important in a country where the vast majority of FGMs are carried out at the hands of professionals, the loss of registration by the medical professionals if they breach the law would seem to me to be likely to be a powerful disincentive.
38. The mother wants to take her daughter at some identified time in the future to Egypt, and the father is also keen that this trip should occur. They would each like their respective mothers and no doubt extended families to have the opportunity of meeting her. I am not satisfied that there is any significant risk in the event that AE was to travel overseas that she would be subjected to the procedure. Insofar as concern has arisen, it has done so as a result of the mother crying wolf. In other words, her own creation of a suspicion which I do not believe is justified in fact.
39. I put no weight at all on the two lie detector tests which the mother commissioned, answering self written questions in circumstances of which I know little. But I am dealing with an infant, and it would be a sadness if she did not have the opportunity to see her grandmothers and they to see her.
40. I am satisfied that the risk to AE, as an infant, as the daughter of two intelligent, educated people, in families that have no recent history of FGM, is in fact minimal.
41. I think that the mother, having achieved the goal of residence in this country, has now come to realise the disadvantage of what she has created, namely, its potential for limiting the freedom of movement of her and her daughter. She has only herself to blame for this situation.
42. I have been very critical of the mother in this judgment, but it is important that I say one very positive thing about her. No one has challenged that she is other than a first rate mother to AE, and that she looks after her daughter extremely well. That too is a protective factor for AE when I consider the risk of FGM.
43. I need to be satisfied that it is necessary to make an order to protect AE. I do not make an order on a "just in case" basis. There has to be evidence that satisfies the Court that the risk is real. I bear in mind that the harm that would be done by the act, if carried out, would be very serious and have lifelong consequences. Thus a lesser risk of significant damage would justify an order in circumstances where, if the harm was to be less, the risk might be insufficient. But in this case I feel that the risk is extremely small and does not justify me in making orders.
44. I reach that conclusion having taken into account the very helpful checklist which Cobb J set out in *Re X* (FGMPO No 2) [2019] EWHC 1990 (Fam). I would add this: if later

when the child is at an age when the risks are greater, there were to be appropriate evidence, it is open either to the Local Authority or the father to make an application.

45. I want to make it clear that I make no criticism at all of the Local Authority taking these proceedings. On the information that they had, it was justified.
46. Therefore although I am going to dismiss the application and discharge the orders that are already made, I do intend to make a contact order. The parents agreed, somewhat to my surprise when the case was before me in May, that contact should start immediately. The father has never seen his daughter, but the agreed contact never happened. The Local Authority say that that was because the mother had second thoughts. I suspect there is something in that, but I think also that the father's determination to protect his job and not take time off midweek also played its part.
47. I am pleased to be told that over the lunchtime adjournment today an agreement has been reached between the parents as to contact, which will commence with a series of fortnightly contacts for two hours before increasing to a slightly longer period. It is unnecessary for me to lengthen this judgment by setting out the agreement, but I shall make an order in those terms.
48. I also make an order that the mother must inform the Local Authority, her GP, and the father, of her address as soon as she leaves the refuge, and any subsequent address she might later acquire. I want her address to be a matter of record and there is no reason at all why the father should not know where his daughter is living. I accept that refuge rules at the moment do not make that a practicality, but I have been assured that the mother is soon to be moving on, although quite where to seems to be another matter shrouded in uncertainty.
49. That concludes the judgment.

This Transcript has been approved by the Judge.

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