

IN THE ROYAL COURTS OF JUSTICE — FAMILY DIVISION

NEUTRAL CITATION NUMBER: [2018] EWHC 3862 (Fam)

The Royal Courts of Justice, London WC2A 2LL

Tuesday, 11th December 2018

Before:
THE HONOURABLE MRS JUSTICE KNOWLES

B E T W E E N:

GW

and

BBW

MR S BARTLET-JONES appeared on behalf of the Applicant
NO APPEARANCE by or on behalf of the Respondent

APPROVED JUDGMENT

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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.

MRS JUSTICE KNOWLES:

1. I am concerned this afternoon with an application issued on 10 December 2018 by a young woman called GW. GW was born on 9 December 1997; she is now 21 years old. The respondent to these proceedings is her stepmother, BBW.
2. GW was made the subject of a Female Genital Mutilation Protection Order by Jackson J(as he then was) on 13 December 2016. That order was expressed to expire when GW reached the age of 21. She did so on 9 December this year. The application before me today was originally configured as an application to extend the Female Genital Mutilation Protection Order made by Jackson J. For reasons which I will come to in a moment, I consider that this application was misconceived and so I am treating this application as also being an application to apply for a further Female Genital Mutilation Protection Order.
3. In coming to his decision in 2016, Jackson J said as follows [paragraph 32]: *'I return to consider all the circumstances including the need to secure the health, safety and wellbeing of [GW]. I do consider, in agreement with the submission made by the police,'* and I pause to interject that they were the then applicants for such an order, 'them' being the Metropolitan Police:

'...that [GW] is a young person who requires the protection of a Female Genital Mutilation Protection Order. She is someone who is in the middle of a family conflict that has proven very hard to penetrate. She has a mother and a stepmother who have, themselves, been subject to female genital mutilation. She has a father whose motives and ability to protect her are not known and her ability to remain in this country is similarly uncertain. I therefore consider that there is a risk and that an order is necessary for her protection'.
4. The circumstances set out in the statement of GW accompanying this application are essentially that, since the making of the Female Genital Mutilation Protection Order, she has continued to reside in this jurisdiction. She has been relatively free from pressure by her family to undergo the procedure and to that extent, as Mr Bartlet-Jones, who appears on her behalf acknowledges, the order has been effective. However, the circumstances set out by Jackson J in paragraph 32 of his judgment, remain essentially unchanged. First of all, GW remains a young person who requires protection. She is 21 and she currently has an

uncertain status in this jurisdiction, in that she has been refused her initial asylum claim by the Secretary of State for the Home Department, and refused by the first tier tribunal (immigration and asylum chamber). The decision by the first tier tribunal was successfully appealed to the upper tribunal and the matter has been remitted to a different judge in the first tier tribunal for rehearing. Her position within this jurisdiction remains unresolved.

5. GW continues to be a young person who is in the middle of a family conflict, who has a mother and stepmother who have themselves been subjected to female genital mutilation and a father whose ability to protect her is unknown. She tells me in her statement that she is fearful that if there is no order protecting her that her stepmother's family will get in touch with her once they understand the Female Genital Mutilation Protection Order made in 2016 has expired. Her stepmother is a proud woman who takes pride in her role as a 'cutter' in the Bondo Society and GW is afraid that she would be forced to go through the process and that it is dishonourable, shameful to her stepmother for her to refuse to have this process.
6. The stepmother travels between the United Kingdom and Sierra Leone on a frequent basis so GW has not had contact with her for some considerable time. She has had little or no contact with her father, who was supportive of her stepmother and she tells me that she is certain that her father would not be able to protect her if she returned to Sierra Leone. She is certain that, if she were to be forced to return to Sierra Leone by reason of decisions taken by the Secretary of State for the Home Department, she would have little or no protection there. All the girls in her community have gone through the process, which was a widely accepted practice against which the police would not offer any protection. She is concerned that unless this court were to make an order she would find herself unprotected both here and on any return to Sierra Leone. She tells me that, even though an order made by this court in Sierra Leone would not be capable of being enforced in Sierra Leone, she considers that it would have a considerable deterrent effect. Her stepmother travels between this jurisdiction and Sierra Leone on a regular basis and that she would know that if she forced GW to undergo female genital mutilation, this action would effectively debar her from entering the UK because of the risk of arrest should she be found to be in breach of the order, which this court is invited to make today. Therefore, those are the substantive matters in support of this application. They are, to a very significant extent, essentially

unchanged from the risk features, which were found by Jackson J to exist in December 2016.

7. The application for an extension of the order made in December 2016 was made pursuant to the provisions in Section 1(1), Schedule 2 of the Female Genital Mutilation Act 2003 [“the Act”]. This permits a court in England and Wales to make an order for the purposes of (a) protecting a girl against the commission of a genital mutilation offence or (b) protecting a girl against whom any such offence has been committed. “A girl” is defined by Section 6 of the Act as including a woman. An order pursuant to Schedule 2, Section 1 can apply to conduct which takes place outside England and Wales as well as within England and Wales [section 1(4)(a)] and covers not only respondents who commit or attempt to commit a genital mutilation offence but also respondents who aid, abet, counsel, procure, encourage or assist another to commit such an offence or who conspire to commit or attempt to commit such an offence (s.1(5)). The application for an extension of the order seems to me to have little justification. The order no longer is in effect (because it lapsed on 9th December 2018). There is no provision on the face of the statutory regime, for an order which has lapsed to be extended and it seems to me, on the clear wording of Schedule 2 section 6 (1)(4) that although the court has the power to vary or discharge an FGM Protection Order, the words “vary” and “discharge” in section 6(1) only apply to an order which remains in force at the date of the application for an extension (which application would constitute, on my reading of section 6, an application to vary and therefore fall within section 6 of the Act).
8. It seems to me that in those circumstances that the court lacks the jurisdiction today to extend the order as originally applied for by GW. However, I do have the power to make a further Female Genital Mutilation Protection Order on the application made by GW herself through counsel today. Schedule 2, section 2(2)(a) permits GW to make an application without the leave of the court. . Today I am thus entitled to consider her application afresh; to consider the matters that she advances in support of that application; and to consider whether it is appropriate for that application to be granted today. On the basis of the matters that I have already referred to in this short ruling, I am clear that it is necessary and proportionate for this court to make such an order to protect GW’s health, safety and wellbeing. I do so for a further period of two years.

9. I am also satisfied that it is appropriate to make such an order without notice as section 5(1) of the Act permits the court, in any case where it is just and convenient to do so, to make a female genital mutilation order even though the respondent has not been given such notice of the proceedings as would otherwise be required by rules of the court [S.5(1)]. GW is concerned that, if BBW were to learn of the order, this would have the effect of placing her at risk and I accept that submission in the particular circumstances of this case. Although I make an order today without notice to BBW, I make provision for her to be served with this order either via Facebook or via WhatsApp messaging. There will also be a return date hearing at 2 o'clock on 11 January 2019 before me with a time estimate of an hour at which BBW may choose to be present.
10. That is my decision.

End of Judgment

Transcript from a recording by Ubiquis
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