

**RE B; RB v FB AND MA (FORCED MARRIAGE: WARDSHIP:
JURISDICTION)
[2008] EWHC 1436 (Fam)**

Family Division

Hogg J

15 April 2008

Marriage – Forced marriage – British national not resident in UK – Whether court had jurisdiction

Wardship – Jurisdiction – British national not resident in UK – Forced marriage – Whether court could assist and remove to England

The girl was born and raised in Pakistan, and was a Pakistani citizen. Through the father, who was a British citizen, she was also a British national holding a British passport, although she had never visited the UK. After the father's death the mother made arrangements for the girl, aged 15, to marry a man in Pakistan. The girl contacted the British High Commission in Islamabad asking to be rescued from what she complained was a forced marriage: she considered the man chosen by the mother to be too old, and had heard that he was an alcoholic. The Foreign and Commonwealth Office in Islamabad, having assessed the girl, wished to provide her with help, but needed the court's assistance to do so. The girl's half-brother in Scotland had offered her a home with his family. Although there was an issue concerning jurisdiction, given that the girl had no connection with England and Wales other than her British nationality, the court nonetheless made the girl a ward of court, and also made the appropriate orders to enable her to come to the UK. The half-brother's family home in Scotland was promptly assessed as a suitable and proper place for the girl, and she was now living there.

Held – discharging the wardship –

(1) While the court accepted that it should be extremely circumspect in assuming any jurisdiction founded on nationality alone in relation to children physically present in some other jurisdiction, in these dire and exceptional circumstances the tentacles of the court could stretch towards Pakistan to rescue a girl who was and always had been a British child and who was seeking British help. It would not have been right to ignore her pleas. Each case would turn on its own circumstances; only if the circumstances were sufficiently dire and exceptional would such an unusual order be made (see paras [7]–[10]).

(2) It was wholly and completely wrong to require anyone to enter a marriage contrary to his or her wishes, and even more so if they were under age; it was significant that the girl had been under the age at which she would have been permitted to marry in the UK (see para [10]).

(3) The wardship was to be discharged because the Scottish courts had jurisdiction and were now seized (see para [11]).

Cases referred to in judgment

Al Habtoor v Fotheringham [2001] EWCA Civ 186, [2001] 1 FLR 951, CA

Mr Teertha Gupta for the plaintiff by way of her litigation friend Ms Anne-Marie Hutchinson

The defendant did not appear and was not represented

Cur adv vult

HOGG J:

[1] I am dealing with a 15-year-old young lady who is a British national and a Pakistani national. She was born and has lived in Pakistan all her life. Her father was a British citizen. He had returned to Pakistan where he married the young lady's mother, and he died in 2003. She is currently my ward, I confirmed the wardship on 4 April when this matter was first brought to court.

[2] The young lady is 15. She has an elder half-brother in Scotland. Towards the middle of March 2008 she contacted her brother asking for his help. She herself, afterwards, went to the British High Commission in Islamabad on 31 March asking for help.

[3] Her mother had been orphaned as a child and had been protected by a Mr S. It was through him that the parents met and married. He has a son who is considerably older than the 15-year-old ward. He is unknown to her. There is a suggestion the son is an alcoholic. The mother and her former protector (I am not sure what the correct term would be; carer or guardian may be a better word) arranged a marriage for the 15-year-old ward and the protector's son. The ward did not wish to go through with this proposed marriage. She made her feelings felt to her elder half brother, who is in Scotland, and made her own feelings felt to the High Commission in Islamabad when she went to them and, in essence, said, 'I do not wish to be married to this man. I don't know him. He's too old. I've heard he's an alcoholic and I want to be taken out of this situation and I want to go and live with my brother in Scotland'.

[4] The High Commission was very responsive to this request. They knew she was a British national holding a British passport and informed the Forced Marriage Unit in London that they would be prepared to bring this young lady to this country to rescue her from the situation but required legal backing and court orders before they could do so.

[5] The brother is married with five children, one of whom is the same age, if not older, than my ward. He has been checked and assessed very quickly by the local authority in Scotland as he was offering a home to his half-sister.

[6] I was presented with a difficulty, on 4 April, over jurisdiction. The ward had never been in this country. Other than her father's nationality she had no connection with this country, but she is a British national in desperate need of help. I made her a ward of court and the appropriate orders to enable her to come to this country. She came not to this country but to Scotland, direct to her half brother's home, on 9 April. She and the family were assessed on 10 April in Scotland as being a suitable and proper place for her.

[7] The difficulty as to jurisdiction is that she had no connection, other than her father's nationality, with this country. I had to ask myself whether the inherent jurisdiction and the old *parens patriae* principles could be extended to protect her. Thorpe LJ in *Al Habtoor v Fotheringham* [2001] EWCA Civ 186, [2001] 1 FLR 951 said, when dealing with the *parens patriae* jurisdiction, that the courts of this jurisdiction should be extremely circumspect in assuming any jurisdiction in relation to children physically present in some other jurisdiction founded only on the basis of nationality.

[8] That was, and has been, my approach, but these were dire circumstances. A young woman had presented herself to the High Commission. They had not sought her out. She was 15 and is still 15. The marriage was due to take place on 10 April this year. It was going to be a

'forced' marriage, totally against her will. The FCO in Islamabad assessed her as being *Gillick* competent. This was a voluntary application by her to come to this country. She wished to be rescued. She was aware, and has been aware since, that she was making a huge voluntary decision to leave her family but such was her distress and anxiety that she made that decision and sought help from the British jurisdiction. If a young lady was in this country put into this position of a forced marriage it is absolutely certain that this court would have assisted her and provided her with orders to protect her from being coerced into a marriage.

[9] I came to the view that in these very dire circumstances the tentacles of this court should stretch towards Pakistan to rescue this child from the circumstances she found herself in. It is a very unusual thing to do but such were the circumstances that I thought it was justified and made the order. She is, and always has been, a British child, and she was seeking British help. I pose the question: would it have been right to ignore her pleas? The FCO wanted to help. They saw her; they assessed her; they indicated that they would help, providing the appropriate orders were made in this country.

[10] Of course, each case will turn on its own circumstances and potentially there will be cases in the future where the circumstances are not sufficiently dire and exceptional when orders would not be appropriate. In this case I took the view that the order should be made and I would only do it again if there were similarly exceptional circumstances. I put it that way because I know that the Foreign and Commonwealth Office and the Forced Marriage Unit seek guidance as to how far they can go. I do not think I can assist them in any other way. Each case will turn on its own facts. This was a 15-year-old. Young people in this country are not allowed to get married before they are 16. That in itself is something to consider. It is wholly and completely wrong to require a young person or anyone to enter a marriage contrary to his/her wishes, and even more so if they are under age. Arranged marriages are one thing; forced marriages are beyond the pale, and are indeed abusive.

[11] I am asked to discharge the wardship because the Scottish courts are already seized with the matter. I think it would be wrong for me to continue the wardship because the Scottish courts have jurisdiction and are dealing with the matter. For that reason I will discharge the wardship and direct, as requested, that the papers in this matter should be made available for the Kilmarnock Family Court which is handling the matter.

[12] A transcript of this brief judgment can be obtained and disclosed to that court and to the FCO Forced Marriage Unit. I hope I have put enough information in without disclosing the identity of the young lady. I hope that her confidentiality will be maintained, but I think it is a useful tool for the FCO to have and I hope it will provide some guidance for them in the future.

[13] I will make the orders as sought.

Order accordingly.

Solicitors: *Dawson Cornwell* for the plaintiff

PHILIPPA JOHNSON
Law Reporter