

# Judicial Communications Office

Thursday 30 June 2011

## COURT OF APPEAL DIMISSES APPEAL AGAINST A FORCED MARRIAGE PROTECTION ORDER

### Summary of Judgment

**The Court of Appeal today dismissed an appeal by the mother of two girls who were subject to a Forced Marriage Protection Order. The Court found that there was sufficient evidence for the making of the Order and that the judge had not unlawfully or disproportionately interfered with the rights of the appellant or her children.**

The appeal was heard by Lord Justice Coghlin, Mr Justice Hart and Sir Anthony Campbell.

The Court heard that the appellant is the mother of six children of whom the youngest, G and D, are both female and currently 14 and 15 years old. At the beginning of 2005, the two eldest children S and T, both boys then aged 16 and 17, were told by their mother that their father would be taking them on holiday to Pakistan in the summer.

A few hours into their flight to Pakistan their father informed the boys that the purpose of the visit was for them to be married. T provided the Court with a detailed account of the horrifying degree of emotional and physical abuse to which they were subjected by their father after their arrival in Pakistan in order to try and compel them to take part in the marriage ceremony:

*“By the fifth day my dad had really worn us down. He said he had our passports and threatened to take them home with him and leave us behind. This really frightened S and me. We knew that if we did not go along with his pretence my dad would no longer be able to hold his head up in his village. He would be seen as a disgrace to other family members. S and I decided we could not take any more beatings or threats from our dad so we eventually gave in to him.”*

The boys were then compelled to go through a ceremony which they did not understand but which they believed to be a form of marriage to two girls, neither of whom they had ever met before and one of whom may have been approximately 12½ years of age. Both boys were forced to spend a night in a hotel with the girls. This came as a shock as their father had reassured them that the wedding was only a

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front "... to get the girls visas and to have him shown respect by his relatives". When they declined to spend further overnight stays with the girls they were subjected to a beating. Two weeks after then returned to Belfast the boys escaped from the family home and went to a local police station. They were then taken into care by Social Services. S appears to have returned to the family home in late 2005. T was placed in foster care however the appellant and her husband subjected him and the foster family to such a degree of harassment that T felt compelled to apply for a non-molestation order and wardship in May 2006.

In January 2007 T told his social worker that he believed his mother would be sending G and D to Pakistan during the summer. At that time they would have been approximately 10 and 11 years of age. The social worker decided not to intervene until the trip was confirmed. In June 2007 T told his social worker that G and D were being sent to Pakistan at the end of that month with one way tickets. The appellant was interviewed. She confirmed the girls had left school in Northern Ireland and were being sent to Pakistan to attend an English speaking school so they could be educated in accordance with Islamic culture. She specifically denied they were being sent to be married.

When initially interviewed the appellant and her husband were unable to provide the names and addresses of relatives who would be caring for the girls or details of the school they would be attending. The parents later provided the Trust with correspondence advising that the girls had "firmly accepted an unconditional offer of a place" in the International Public School, Peshawar. They also provided details of the address at which they would be living. The Trust made enquiries with the Consular Directorate in Islamabad who confirmed that the information provided by the appellant had been forged by the appellant's nephew and the girls did not have a place at the school.

The girls were subsequently made subject to a wardship order. In November 2008 Trust asked the High Court to consider making a Forced Marriage Protection Order ("FMPO") which would provide an alternative, less interventionist, method of dealing with concerns. Mr Justice Stephens provided the parties with a draft FMPO for consideration. The final FMPO was confirmed on 14 June 2010.

The appellant appealed against the FMPO on the following grounds:

- There was no adequate evidence that G and D were being forced into a marriage or that there was any attempt or intention on behalf of the appellant to do so;
- Mr Justice Stephens had exceeded his powers under the Forced Marriage (Civil Protection) Act 2007 ("FMA") and had interfered with the ECHR rights of the appellant and G and D by placing a blanket prohibition upon any betrothals, arranged marriages or marriages freely entered into without the leave of the Court, placing an indefinite restriction on travel by G and D outside Northern Ireland without the leave of the Court, ordering G and D to surrender their passports and identity cards to the Court and, generally, directing that the FMPO should continue on an indefinite basis.

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Dealing with the evidential question, the Court of Appeal reviewed the factors taken into account by Mr Justice Stephens when making the FMPO. The judge had acknowledged that circumstances within the family had changed to some degree since 2007, for example the parents no longer wanted G and D to be educated in Pakistan, T had been reconciled with his family and was living with the young woman he had married in Pakistan, G and D had received very positive assessments from their teachers and social workers. After considering this evidence, Mr Justice Stephens reached the view that the real reason that G and D were to be sent to Pakistan in 2007 was so that they could learn “respect” as an overarching filial duty which, in the context of this family, meant obedience overriding their full and free choice. He found that thereafter it was the intention of the parents that G and D would be forced to marry in Pakistan. Mr Justice Stephens accordingly found, as a fact, that there was a present, real and substantial risk that they would be forced to marry. The Court of Appeal said it had no hesitation in endorsing Mr Justice Stephens’ decision as there was ample evidence to fully justify it.

The Court of Appeal then went on to consider whether the terms of the FMPO were disproportionate. Counsel for the appellant said that by prohibiting or placing restrictions on a party entering into a marriage with a partner of their own choosing or a partner chosen for them by the parents whom they had endorsed would constitute a violation of their rights under Article 12 of the ECHR. The Court of Appeal found that the expressed aim of the FMPO made by Mr Justice Stephens was to prevent damage being caused to G and D and, bearing in mind their ages, was appropriate and did not violate their Article 12 rights.

Counsel for the appellant then submitted that the requirements of the FMPO breached the Article 8 rights of the appellant and G and D. The Court of Appeal said that there can be no doubt that the protection of individuals, particularly those of tender years, from being compelled to participate in forced marriages is a legitimate aim and, having considered the evidence, concluded that the FMPO was rationally connected to that objective and represented a proportionate and fair balance between all affected interests in the case.

The final submission was that the indefinite prohibitions and restrictions placed on the appellant and G and D in respect of arranging marriages or travel outside Northern Ireland without the leave of the Court were disproportionate in the circumstances. The Court of Appeal said this was a matter which had given the court some concern. Lord Justice Coghlin, delivering the judgment of the Court, said that the FMPO provides the appellant and G and D with the power to apply for discharge or specific variations of the order whenever they consider it appropriate to do so. He added, however, that the initiation of legal proceedings makes significant demands both in terms of cost and emotion and, given the number and extent of the prohibition/restrictions contained in the order, the Court of Appeal considered that it might well have been advisable to arrange for a review of the matter when G and D respectively reach the age of 18. Lord Justice Coghlin said this was a matter which Mr Justice Stephens may wish to give further consideration.

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The Court of Appeal dismissed the appeal.

## NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Court Service website ([www.courtsni.gov.uk](http://www.courtsni.gov.uk)).

**ENDS**

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