

# Al-Jeffery v Al-Jeffery (Vulnerable adult; British citizen) [2016]

**[2016] EWHC 2151 (Fam)**

03/08/2016

## **Barristers**

Henry Setright KC  
Private: Marcus Scott-Manderson QC  
Michael Gration KC

## **Court**

Family Division

## **Practice Areas**

International Children Law

Applications by a British adult in Saudi Arabia, primarily under the inherent jurisdiction, seeking orders including a mandatory order against her father to permit and facilitate her return to this country.

The applicant, Amina Al-Jeffery, a 21-year-old dual British and Saudi Arabian citizen who had lived and been educated in Wales up to the age of almost 17; the respondent was her father, a Saudi Arabian citizen, at the insistence of and in obedience to whom Amina had travelled to Saudi Arabia when almost 17, where she had remained ever since.

Amina asserted that she was “being seriously ill-treated by her father and being kept under constraint by him in his flat; and that she is being prevented by him from leaving Saudi Arabia” (at [1]). The father, in turn, accepted that, at times, Amina had wanted to return to England and Wales and that he had been, and remained, against this – but explained this as wanting to ensure Amina’s “proper education and future” and to prevent her from “taking drugs and consuming alcohol, going to clubs and seeing older men” (both, at [21]).

Initially, two applications were before the court: one, for a forced marriage protection order; and two, for the court to make orders, including mandatory orders, under the inherent jurisdiction to protect the applicant. During the course of the hearing, it was accepted that the first (statutory) order should not be made and this was dismissed. The case, therefore, focused on the second application.

A complicating factor was that, in breach of an earlier order, the father had not, as directed, facilitated attendance of Amina at the consulate in Saudi Arabia to enable her to speak in confidence with her solicitors, including to approve a witness statement. As such, the listed fact-finding element of the hearing was completely ineffective, leading counsel for Amina “quite rightly” (at [17]) unwilling to consider oral evidence when, in accordance with a second direction, Amina was taken to the Hilton Hotel

in Jeddah to give evidence by video link. Holman J, therefore, was “impelled” (at [18]) to decide the outcome of the hearing on un-tested evidence.

#### Publicity; “the cage”

Holman J sat in public throughout the hearing with no reporting restriction. At no stage did Amina’s legal team make any application in that regard; at the very end of the hearing, on behalf of the father an application was made for a reporting restriction order. That was not entertained, for three reasons: (a) it was too late – in effect, only judgment remained, and much reporting had been done; (b) the justification for such an order would be the protection of Amina: she was not seeking one; and (c) no steps had been taken to notify any media organisation.

Sensational headlines appeared in the media in reference to “the cage”, including photographs. Holman J stressed that, on the basis of the photographs (he not having heard oral evidence), Amina was not being kept in a cage akin to that in which an animal might be kept. Within the father’s flat, there were two vertical barred panels (described in detail at [32] – [33]) – the first was “a form of caging, but not a cage” and the second, “a sort of security structure... It, too, is caging, but not itself a cage” (both, at [32]). In short, Holman J found that “Amina was not literally in a cage, but that her freedom of movement was, and is, admittedly constrained in a way that I would regard as severe, having regard to her age and full capacity. She was, and so far as I am aware, still is, deprived of her liberty and could be described as “caged”, although not “in a cage” (at [34]).

#### Law

The power of the High Court to make orders under the inherent jurisdiction in relation to Amina was considered from two angles: subject-matter jurisdiction and territorial jurisdiction.

Dealing with the former, and relying on the dicta of Munby J in *Re SA* (Vulnerable adult with capacity: marriage) [2005] EWHC 2942 (Fam), the Court of Appeal in *DL v A Local Authority* [2012] EWCA Civ 253 and Lord Donaldson of Lynton in *Re F* (Mental patient: sterilisation) [1990] 2 AC 1 at 13, Holman J found that the jurisdiction exists, is well-established and, for all practical purposes, indistinguishable from the *parens patriae* or wardship jurisdiction in relation to children. The submission that the jurisdiction could not be exercised on *prima facie* facts was not accepted.

Turning to territorial jurisdiction, Holman J proceeded on the assumption that Amina was habitually resident in Saudi Arabia. That left one basis for exercising jurisdiction: her British nationality – as confirmed in two recent Supreme Court authorities, *Re A* (Jurisdiction: return of child) [2013] UKSC 60 and *Re B* (A child) (Habitual residence: inherent jurisdiction) [2016] UKSC 4. Drawing on these authorities and following a detailed examination of them, Holman J found that the jurisdiction should be exercised with extreme circumspection or great caution, where the circumstances clearly warrant it and that particular care must be taken not to cut across any statutory scheme (principally at [46] and [48]). From *Re B*, Holman J felt able to identify a test: “the real question is whether the circumstances are such that the British child requires that protection” (at [48]). The same approach, it was found, should apply to vulnerable adults – with neither more nor less caution or circumspection.

Finally, the question remained: did the facts require the exercise of judicial discretion in this case? In brief, and despite the factors that militated against the exercise of this discretion, Holman J found that the circumstances were such that Amina did require protection. In striking terms, the court found that Amina was “disabled from functioning as an independent adult” and that, “These constraints may be acceptable and even the norm under the law and culture of Saudi Arabia. But she is also a British citizen,

and under the law and culture of Britain they are not” (both, at [54]). Further, and despite recognising that there is little or nothing that the High Court could do to enforce any orders against the father in Saudi Arabia, it was found that the court had considerable moral and practical ‘hold’ over the father and that orders should nevertheless be made.

## Order

The court made direct, mandatory orders against the father: including, that he must permit and facilitate the return of Amina to this country, by 11 September 2016, and pay her airfare. A hearing would be fixed (to be heard in private) shortly after that date – with Amina, if present, to attend. No order was made against Amina herself; further consideration was to be given as to what mechanism could be established to permit her to communicate of her own free will and independence, if she so wished, that she did not want to return.

## Permission

 Family Law Week