

## **Judgment**

COURT OF ZUTPHEN  
Civil Sector – Family Division

Case number: 83927 JE RK 07-110

Judgment of the Juvenile Court Judge dated 31 July 2007

at the request of:

The mother (parental authority): [applicant],  
residing at: [address]  
lawyer: Gelderman

in the case of  
the child [Applicant's son],  
born on [2005] in Apeldoorn, the Netherlands,

and

Stichting Bureaus Jeugdzorg Gelderland, a foundation  
having its registered office in Arnhem, the Netherlands,  
address: Prins Willem Alexanderlaan 201, 7311 ST Apeldoorn

### **Course of the proceedings**

The course of the proceedings is apparent from:

- the petition with appendices, received on 6 February 2007; and
- the record of the hearing of 27 February 2007.

### **The facts**

The Applicant (referred to below as “the mother”) has the (sole) parental authority over the child.

Since [2005], the date of his birth, the child has been under the supervision of Stichting Bureaus Jeugdzorg Gelderland (referred to below as “the Foundation”) by order of the Juvenile Court Judge in Zutphen. Since that same day he has been placed in custody, initially in a crisis foster family, later in the foster family offering prospects, where he is currently staying. The child protection measures apply until 23 September 2007.

The foster family's address is being kept secret from the mother (Applicant) for the time being. Supervised visits take place between the mother and the child.

By letter dated 26 January 2007 the mother requested the Foundation to cooperate in circumcision of the child. She is arguing that if the child had not been removed from her custody immediately after his birth, she would have had him circumcised shortly after his birth. She has stated the following reasons for the desired circumcision of the child:

- a. "in my family all the boys have been and are circumcised;
  - b. in my family this is done partly for hygienic reasons; and
  - c. the father of [Applicant's son] (the child; court) is a Hindu and this forms part of their culture."
- The mother wishes the child to be raised in her tradition.

The Foundation is refusing to cooperate in the mother's request. It informed the mother of its decision in writing on 1 February 2007, in the form of a "decision on the application" in which the Foundation informed the mother that it would not comply with her wish. In the Foundation's opinion the circumcision is "an irreparable, physically unnecessary operation on a young or too young a child, who has no say in the matter." The Foundation has furthermore stated that [Applicant's son] himself can take a position on this issue when he is older.

### **The request**

The mother has requested the Juvenile Court Judge under Section 1:259 of the Dutch Civil Code to set aside the aforesaid "decision on the application", which she regards as an instruction (*aanwijzing*).

At the hearing she explained that the circumcision of the child is in his best interest. She stated that the circumcision of the child must take place for hygienic reasons. She also stated that it is a tradition in her family to have boys circumcised at a young age. Moreover, before the child was born the father stated that he wanted the child to be circumcised. The reason for this is that the father is a Hindu. In the mother's opinion, the Foundation, in taking its position, is ignoring her feelings and wishes and is not taking into account her cultural background regarding the raising of the child.

The mother's lawyer argued at the hearing that a circumcision is a less drastic intervention for a young child than for an older child, for whom the operation is more difficult and more painful. When asked, he stated that after the birth of the child a DNA test was performed to determine whether the man ([name]) named by the mother as the putative biological father was indeed the father of the child, and that the outcome of the test was not disclosed, because the father failed to pay the costs involved.

### **The position taken by the Foundation**

The family supervisor argued at the hearing that the decision on the request is intended as a written instruction. The Foundation chose this form to give the mother the opportunity to present the matter to the assessment of the Juvenile Court Judge. In effect, the mother is requesting the Foundation to cooperate in an operation of the Child, since she herself is unable to have the circumcision performed due to the care and supervision order and the placement in custody of

her son. In such a case the law does not provide for a procedure of alternative permission similar to that under Section 1:264 of the Dutch Civil Code.

Substantively, the family supervisor has argued that circumcision is not in the child's interest at this time. It is an irreversible operation. The child himself must be able to decide whether he wishes to have it performed. The child is growing up in a foster family offering prospects, where he is likely to stay these coming years. Circumcision does not form part of the culture or tradition of that family. The family supervisor is furthermore arguing that the father does not play any part in the child's life; the child does not know him. The child also does not have any contact whatsoever with his family, apart from his mother. Finally, the family supervisor has argued that the medical world is divided on the question of whether a circumcised penis is by definition more hygienic than an uncircumcised penis.

### **The position taken by the foster parents**

The foster parents are opposed to circumcision of the child. They do not consider the operation to be necessary from a hygienic perspective. It is an irreversible operation on a healthy body. They are not in favour of doing so. Their own son, with whom the child is growing up, has not been circumcised. Circumcision does not form part of their tradition or religious background. During the first year after his birth the mother never mentioned circumcision of the child. The foster parents assume that they will raise and care for the child in the coming years. They fear a traumatic experience for the child if he is circumcised, because he will feel (even more) different from the other family members, he will be an exception compared with his friends and classmates, and he may be hindered in the future in entering into sexual relationships. They furthermore find it difficult to counsel the child when it undergoes such an operation.

### **The assessment**

The circumcision of the child desired by his mother is a medical operation that can be performed in the Netherlands provided that the parent(s) who has/have custody give permission under the Medical Treatment Contracts Act. The mother's (sole) custody of the child is restricted by the care and supervision order.

Because of the factual impossibility of taking her son to a hospital or clinic, the mother has requested the Foundation's cooperation. In response to her written application, the Foundation, after internal consultation, decided that it would not cooperate in the operation, since – briefly stated – it does not consider it to be in the child's interest. Because there are no separate statutory regulations for such a decision, the Foundation has decided to issue its reply in the form of a "decision on the application" so as to give the mother the opportunity to present the case to the Juvenile Court Judge as an instruction.

The Juvenile Court Judge will interpret the Foundation's decision as an instruction not to circumcise the child, given to the mother by the family supervisor in the context of the care and supervision order, and the mother's request as a request to cancel that instruction, since in the

current case there is no other statutory framework under child protection law, the mother and the Foundation agreed to this, and it is considered to be most in the best interest of all the parties involved.

The question of whether an instruction can pertain to an injunction on circumcision of the child must be answered affirmatively. Under the provisions of Section 1:259 of the Dutch Civil Code, the Foundation is authorised in the context of a care and supervision order to give instructions to a parent regarding care and upbringing. Those instructions must be followed. Although instructions given to parents usually relate to a situation in which the parents themselves are in charge of the day-to-day care for and upbringing of the child, the use of the remedy is not limited to that purpose.

The circumcision of the child desired by the mother, who is not entrusted with his day-to-day care and upbringing, is based on reasons having to do with hygiene and reasons related to the culture and/or tradition in which she wishes to have the child brought up. The request and the subsequent instruction relate to the child's care and upbringing.

The mother has argued that the Foundation has not taken her wishes and cultural background into account in its instruction. Under Section 15 of the Youth Care Act, the Foundation must perform the duties assigned to it on the basis of the client's religious inclinations, personal beliefs and cultural background. Both the child and the mother are the client (Section 1 of the Youth Care Act).

The mother's wish to have the child circumcised is not based on religious reasons. The mother stated at the hearing that she is a Catholic. The circumcision tradition in her (Antillean) family is not based on religious motives, but rather on hygienic reasons.

The Juvenile Court Judge rules in respect of the hygienic argument that, irrespective of the medical views on that point, it is not customary in the Netherlands – without a special reason – to circumcise on hygienic grounds. No special reasons of a physical nature have been established.

With regard to the cultural argument the Juvenile Court Judge rules as follows. The child is growing up in the Netherlands, in a family in which circumcision of boys is not customary. There is no prospect of the child of being raised by his mother. His future is in the foster family. The operation is not customary in the family and the environment in which the child is growing up, which means that it would make him different from the boys around him. That argument outweighs the mother's argument that, if he is not circumcised, he will be different from the male members of her family, particularly since the child does not in fact form part of that family and there is no prospect at the moment of contact with his mother's family.

On the grounds of the provisions of Article 3 of the Convention on the Rights of the Child, the child's interests must be the primary consideration in all measures related to children. From the child's perspective, in light of the above considerations, circumcision cannot be considered to be in his interest. It is an operation that is medically unnecessary and also irreversible. Moreover,

the child can always have the operation performed at a time at which he himself can form an opinion on it.

The Court will not consider the arguments presented by the mother about the father's wishes regarding the circumcision, since it has not been established that the father named by the mother is the child's biological father, he is not his legal father, and neither the child nor the mother has any contact with the father. Moreover, the father must be deemed capable, if he so wishes, to promote his own interests in the child's upbringing.

In light of the above, the Foundation's instruction is considered to be necessary in the interest of the raising and upbringing of the child. The Juvenile Court Judge will therefore disallow the mother's request to cancel the instruction.

### **The decision**

The Juvenile Court Judge:

disallows the mother's request to cancel the written instruction given by the Foundation.

This decision was issued by I.G.M.T. Weijers-van der Marck and pronounced at a public hearing on 31 July 2007 in the presence of the Registrar.