Higher Regional Court Hamm, 3 UF 133/13

Date:	30.08.2013
Court:	Higher Regional Court Hamm
Chamber:	3rd Senate for Family Matters
Ruling:	Resolution
Filing:	3UF 133/13
Lower Court:	District Court Dortmund
Tags:	Requirements of FamFG to the standard of review in the interim order proceedings on custody rights; conditions for judicial ruling according to $1631 BGB regarding the authority to decide in the matter of a non-medically indicated circumcision of a son for cultural-ritual reasons (here following the Kenyan rite), as intended by the parent holding sole custody.
Standards:	FamFG §26, §51 para 1 s 2, §31, §49 et seq; §159 para 2, 1631 BGB§d §1626 §2 s 2, §1628 §2631 para 2, §1666, GG Art.6 §§1 and 2 Art. 8 EMRK.
Guidelines:	1 To the requirements of the summary examination according to §§ 49 et seq, 26, 51 para 1 s 2, 31 FamFG in interim custody proceedings. 2 Generally, §1631 BGB d para 1 allows the custodial parent or the parent holding sole custody to decide for a child who is older than six months in favor of a non-medically indicated but cultural-ritual circumcision, if the child has not reached the age for the ability to judge or to give informed consent. However, the procedure must be carried out *lege artis* by a medical professional. Also, a child who is significantly under the age of 14 must be heard personally by the court, according to FamFG §159 para 2, because even in the case of no detectable capacity to consent, the child's expressed desires and inclinations must be taken into account (BGB §1631 d para 1, §§ 1626 para 2 s 2, 1631 para 2). The parent(s) holding custody are obliged to discuss the intended surgical procedure in an appropriate way with the child, according to the age and developmental stage of the child and in so doing try to reach a good understanding. 3 If there is a dispute among parent(s) holding custody whether circumcision would endanger the child's welfare and there is no clear result in an impact assessment in favor of circumcision and against a child welfare risk, the decision by the parent(s) pursuant to §1631 d s 1 BGB is ineffective and shall, at least in the interim order proceedings, be transferred to a neutral guardian *ad litem*. 4 The issue of child welfare risk is generally to be answered within the standard of §1631 d para 1 BGB in the context of §1666 BGB. Purely medical and health concerns may not be relevant insofar as §1631 d para 1 BGB explicitly allows a non-medically indicated circumcision under certain conditions (the legislature

being aware of the minor residual medical risks, which a properly performed circumcision poses).

5 Depending on the level as to which the custody-holding parent's main motives in favor of the intended circumcision deserve protection, the threshold for the conflicting child welfare endangerment can be set lower than the general standard of §1666 BGB.

6 Regardless of the issue of conflicting interests of child welfare endangerment, §1631 d para 1 BGB sets an unwritten factual precondition that has to be met: The effectiveness of the custody-holding guardian's consent to circumcise depends on the evidence of a proper and comprehensive education about the odds and risks of the procedure having taken place, given by the person assigned to perform the circumcision, usually a physician.

Tenor: I

The appeal of the child's mother from 13.06.2013 against the ruling from 23.05.2013 through the District Court -Family Court- Dortmund, in connection with its ruling from 21-03-2013 (File 113 F 1527/13) is being rejected.

II

Legal costs for the appeal procedure are not applicable. A refund of extrajudicial costs will not occur.

III

The procedural value for the appeal process is set at 1.500,-- Euros.

Reasons:

I

The child's parents fight in the interim order proceedings over the question whether their son G (currently six years old, *2007) shall undergo penile circumcision without medical indication.

The child's father (48 years old) and the child's mother (31 years old, Kenyan national, married since 14.06.2012 to Mr. M) are divorced spouses. Besides their son G they have a daughter O, born 23.12.2008). The children live since their parents' separation and also after their divorce in their mother's household. In its ruling (113 F 47/66/11) on 06.11.2011, the District Court - Family Court- Dortmund transferred sole custody of G and O to the mother. The father filed a complaint against this decision, which he retracted on 12.06.2012 (II-3 UF 293/11), after the children's parents - having had a long history of legal battling at the District Court since 2009 over relationship to the children - had agreed upon a renewed visitation modus for the father under involvement of a contact guardian, Ms. D. The Senate has also referred to the proceedings 113 F 4755/11 District Court - Family Court- Dortmund, II3 UF 12/12 OLG Hamm, and 113 F 5507/11 District Court - Family Court- Dortmund, as they relate to visitation right regulations. In the latter, on 22.03.2013, the Family Court has obtained a psychological expert opinion through psychologist Ms. L, and subsequently, after

oral proceedings on 07.06.2013, ordered in a ruling on 23.05.2013 visitation contacts by the father, to be accompanied by the new contact guardian Mr. Q.

After a telephone conversation with the former contact guardian, which was about the children's mother's intention of a timely circumcision of the child G, the father instituted the instant legal proceedings on 20.03.2013, in which the Family Court per resolution on 21.03.2013 revoked the mother's sole custody rights for the present and transferred custody to the youth welfare service of the city E. The youth welfare service as guardian *ad litem* has explicitly vetoed the mother's intention to circumcise child G until further notice. On the basis of oral proceedings on 07.05.213 with hearing of both parents, the social service caseworker, the guardian *ad litem* at the youth welfare service in E. and the expert Ms. L. the District Court has upheld the order from 21.03.2013 through the contested resolution from 23.05.2013, in as far as the mother's right to have her son G circumcised was revoked and transferred to youth welfare services. Furthermore, the right of the mother to make other healthcare decisions for G has been reinstated. Regarding details see the resolution reasons.

Against this the mother's appeal is directed, in which she requests to remand the cases District Court -Family Court- Dortmund from 21.03.2013 and 23.05.2013 and reinstate her right to make health care decisions for her son to the full extent.

In her reasoning she refers to §1631 d BGB, which explicitly does not require a medical indication for a circumcision. Because she regularly visits her home country Kenya together with her son, she wants to have him circumcised according to the cultural customs in her home country, in order for him to be seen and acknowledged there as a full-fledged man - also by her relatives. Because she is holding sole custody she claims to be entitled to make this decision, a right that only can be revoked if the child's welfare is endangered, which would not be the case.

The child's father defends the contested decision in first instance, deepening his arguments and requests to dismiss the appeal.

The General Social Service and the guardian ad litem at the youth welfare service in E. also defend the contested decision.

For further details regarding the case and dispute referral to the content of files at hand and those consulted is given.

II

A.

The child's mother's appeal, permissible according to §§57 S.2. Nr.2, 58 ff. Fam G, and lodged within the 14 day time limit is unfounded.

I.

Because no further insights were to be expected from a new oral hearing, and because of the temporary character of the ruling's content, as well as for the existence of comprehensive written statements, none was scheduled before the Senate. The first instance oral hearings showed credibly the facts of the case. (§68 Abs. 3 S.2 FamFG).

II.

The appeal is unsuccessful in the matter itself.

1.

In the interim order proceedings, the standard of 49 ff. FamFG applies. Accordingly, *prima facie* evidence of facts must be furnished that urgently warrant legal measures. In the scope of the necessary summary examination through the Senate, a review of all pertaining points of law has to occur, albeit on the basis of preliminary fact-finding, not completely meeting the standard of §26 FamFG, but merely the requirements of §§51 Abs 1 S. 2, 31 FamFG. The facts provided for the intended regulation must be stated as predominantly likely on the basis of a independent appraisal of the entire process material. (see Giers in: Keidel, FamFG, 17th edition §49 para 10, 11, §51 para 6)

2.

Measured against this standard, the District Court has in its result rightfully determined that at least in the interim order proceedings the question in dispute between the child's parents regarding their son's circumcision, can for the time being not be decided in favor of the child's mother.

a) In general, the child's mother is entitled to decide on the health care question of circumcision of her child, due to the granted sole custody decision in the earlier proceedings 113 F4766/11 District Court - Family court - Dortmund, II3 UF 293/11 OLG Hamm. Due to the "Law on the scope of custody in the case of circumcision of a male child" from 20.12.2012 (BGBl. I 2012 S.2749), which came into effect on 28.12.2012, it has been clarified that the parental custody rights include deciding on a non-medically indicated circumcision of a son who has not reached the age of consent, independent of the parental motivation (under certain conditions, which have been spelled out in the newly standardized §1631 d BGB). Background for this new regulation was a public discussion based on a decision by the Regional Court Cologne from 07.05.2012 (151 Ns 169/11, NJW 2012, S.2128f.), which had viewed a circumcision performed at the request of the parents *legis arte* by a physician as bodily injury in terms of the law of §223 StGB, and had acquitted the physician because of an unavoidable prohibition error resulting from the unclear legal situation. (see for background on origin of §1631 d BGB Hamdan, in: jurisPK-BGB, Volume 4, 6. Edition 2012, status 14-02.2013, § 1631 d Rdnr. 1 – 4).

b) Because the circumcision of child G shall not be performed during the first six months of life in the sense of § 1631 d Abs.2 BGB, since he had been age five by the time of the legal procedure initiation and is six years of age today, the basis for the possible right of his mother to decide on circumcision of the child, can solely be §1631 d Abs. 1 BGB. Therefore, the following conditions must be met:

aa) The child's mother must hold custody for the child, which is the case – with the exception of the restriction placed by the first instance decision that she currently contests.

bb) The child concerned must not be capable of consent and judgment.

(1)

The Senate does not assume that age of majority is required to reach the ability to consent – as assumed in an older jurisdiction of this court in the case of medically curative treatment (see OLG Hmm, decision from 16.07.1998, 15 W 274/98, researched by juris, Rdnr. 12, NJW 1998, S. 3424 f.). Yet, this jurisdiction is not transferrable to the case at hand, a non-medically indicated circumcision, because as such it does not qualify as a medically curative treatment, according to §1631 d Abs. 1 BGB. According to the legal explanatory memorandum (BT Drucksache 17/11295, S. 17) non-medically indicated circumcisions occur regularly at an age at which the ability of the child to consent is lacking; at which age one can regularly assume the acquired ability to consent has meanwhile been left unanswered in the legislation materials. In an individual case (see Regional Court Frankenthal, judgment from 14.09.2004, 4 O 11/12, researched at juris, Rdnr. 20, MedR 2005, S. 243 ff.) jurisdiction has comprehensibly decided – directly related to circumcision of a boy at the age of nine – that it cannot be assumed that the child, given his developmental state of mental and moral maturity, cannot possibly gauge the meaning and scope of the circumcision procedure nor that of its permission (see also Hamdan, in jurisPK-BGB, a. a. O., Rn. 10). This must all the more hold true for a boy of five, by now six years of age as is child G.

(2)

Nevertheless, the custodians and the physician are obliged to get an idea whether or not the child has the capability of insight and consent, as well as finding out what the child's desires and inclinations are. If one of them comes to the conclusion that affirms the ability to consent, the parents' consent becomes ineffective. An opposing will of the child must be observed imperatively. With that, at least for children over the age of about ten years, the legal certainty targeted by the legislature will not be achieved (see Hamdan, in jurisPK-BGB, a.a. O., Rn. 11). Rather, a personal hearing of children who are clearly under the age of 14 might become regularly necessary in family court cases pertaining to procedures like the one at hand, in order to gain insight into the child's developmental stage with regard to the ability to consent and to assess his desires and inclinations towards an intended circumcision procedure, according to §159 Abs.2 FamFG. Even if the child's ability to judge cannot be conclusively assessed by such means in an individual case, the expressed will in such a hearing cannot *a priori* be considered irrelevant. The following apply: §§ 1626 bs. 2. S.2, 1631 Abs. 2. BGB. Not just at the family court hearing, but the custodian already has the prior obligation – in the case of §1631 d Abs. 1 BGB, as does the physician – to discuss the question of circumcision with the child in age-appropriate ways, as far as it concerns the impact on the child's bodily integrity, whereby they have to attempt to establish a consensus with the child (see §1626 Abs. 2. S. 2. BGB). Such participation of child G can presently not be ascertained. Neither has the mother declared if, when, how and with what results she herself or the physician intended to perform the circumcision, have had conversations with child G about the intended procedure, nor has the family court at the time of its decision on 23.05.2013 conducted a hearing of the almost six years old child.

cc) The circumcision may not be medically indicated. §1636 d BGB in its clear wording does not apply to medically indicated circumcisions (see Hamdan, in jurisPK-BGB, a.a.O., Rn. 5). In the case at hand it is undisputed among all parties involved that the circumcision, as desired by the child's mother, is not medically necessary.

dd) The non-medically indicated circumcision, which is desired by the custodian for ritual, cultural or hygienic reasons, must nevertheless occur through a physician *legis arte*, if §1631 d Abs. 1 BGB applies. This also includes, besides the surgical procedure performed according to general medical standards and methods, an effective pain treatment afterwards (BT-Drucksache 17/11295, S. 5, 17; Hamdan, in: jurisPK-BGB, a. a. O. Rn. 13 – 15). The original order decision from 21.03.2013 by the district Court was based on the assumption that it cannot be determined whether the intended circumcision shall be performed *legis arte*,

according to medical standards. The reasons for that were statements given under oath by the child's father and statements by the youth welfare service staff member Mr. N., as well as two written statements by the expert witness psychologist L., given on 20.03.2013. The child's mother already has in first instance proceedings admitted in writing from 22.04.2013 that the other parties' concerns were expressed subsequent to her own untrue statement that the circumcision had already taken place, without naming the physician who allegedly performed it. By now it must be clear to all parties involved – not least to the mother as well, on the basis of the ongoing proceedings – that a potential future circumcision of child G would have to occur under anesthesia, followed by pain treatment either in hospital or in a urology-pediatric office respectively.

ee) In the interim order proceedings the Senate cannot sufficiently ascertain the existence of another unwritten factual precondition: The effectiveness of the consent to circumcise, given by the person holding custody for the child, depends on a proper and comprehensive education of the legal custodian about the surgery's benefits and risks (BT-Drucksache 17/11295, S.17); as this requirement already corresponded to the legal situation applicable until then, it has not explicitly been included in §1631 d BGB (see Hamdan, in: jurisPK-BGB, a.a.O., Rn. 16). The child's mother, who appears set in her positive attitude towards the circumcision for reasons based in Kenyan rituals and culture, as well as for hygiene reasons, has informed the that she originally had arranged an appointment on 25.03.2013 to have her son circumcised in the medical office of Dr. B. Yet she has not been able to show credibly that she had received prior to her final decision for this scheduled surgery date – or during the months since then – a comprehensive medical education about the procedure and its risks by this or any other physician.

ff) Furthermore the Family Court has rightly so assumed in the scope of a summary examination that for the father's claim the overwhelming probability – as required for the issuance of the interim order – exists. He claims that child G's welfare would be endangered if he were to undergo a circumcision in the sense of §1631 d Abs. 1 S. 2 BGB) – also with taking into account and appreciation of its purpose. This is to be assumed as a starting point in accordance with the case law of the Supreme Court regarding §1666 BGB, if a present or imminent danger exists to such a degree that through further development of things a significant damage of the child's emotional and physical well-being can be predicted (see BGH, Entscheidung vom 25.11.2011, XII ZB 247/11, researched at juris, Rn. 25, NJW 2012, S. 151 ff.). By including the purpose of the circumcision in § 1631 d As. 1 S. 2 BGB legislature makes clear that the child's well-being is not a fixed term. Depending on the worthiness of protection with regard to the predominant motives for a circumcision, the threshold for endangerment of a child's well-being may have to be set lower than the general standard of §1666 BGB (see Hamdan, in: juris-PK-BGB, a. a. O., Rn. 18 and 19).

(1)

In the present case, the mother essentially asserted the following motives: G shall be circumcised according to the cultural custom rite in Kenya, because otherwise, during his visits there, he would not be seen and acknowledged as a full-fledged man – also by his relatives. In Africa it is like this, all boys have to do this. In each phone conversation with her relatives in Kenya she is being asked if her son has finally been circumcised.

The question of circumcision is furthermore a question of hygiene and cleanliness.

Although these two named motives are noteworthy insofar as they generally can justify a non-medically indicated circumcision. Yet, especially through her second marriage to a German, the center of the mother's and her son's lives are in Germany, where the child has his friends and attends school. Indisputably, the mother can only undertake rare visits to Kenya with her son. Moreover, he is indisputably baptized

Protestant, so that religious reasons do not indicate a circumcision. Finally, the mother has not presented persuasive reasons that genital hygiene and cleanliness may be compromised. Instead, it may be assumed that G – like the vast majority of German children who predominantly are not circumcised – is not in need of being circumcised for hygiene reasons, since sufficient genital hygiene practice can be taught in everyday life within parenting. According to the above, health reasons cannot be taken into account within the framework of §1666 d BGB anyway. Moreover, motives, insofar as they assume a "necessity" of circumcision because of Kenyan cultural requirements, hardly reveal any critical reflection on the mother's part, pertaining to the consequences for the child's well-being.

(2)

On the other side, factual circumstances have been made credible through oral and written testimony by the child's father, the representative of youth welfare service, the guardian *ad litem* and the expert psychologist L. Their statements point towards endangerment of the child's well-being in the case of circumcision and, in comparison with the mother's motives, appear to be likely under preliminary consideration and to be predominant according to current knowledge.

(aa) The medical risks that remain, even with a medically properly performed circumcision, as cited by the child's father, as well as the pain associated with the procedure, as cited by several parties and the expert opinion have not been deemed relevant to the decision, because these also accompany any medically indicated circumcision. If they were to be used as basis for decision making, the parental right under §1631 d Abs. 1 BGB would be rendered void without exception, because any and all circumcisions for other than medically indicated reasons would then have to be omitted for pain and residual risk reasons. With regard to these consequences, parents' obligation to seek comprehensive education prior to consenting to the surgery must suffice.

(bb) On summary examination, however, there exists a sufficiently credible risk of impairment of the psychological well-being of the child. Psychologist L's expert opinion emphasizes in the oral hearing from 05.05.2013 that from a psychological point of view it is alarming for G that in the case of a circumcision performance the child's mother sees herself unable to directly assist her child who then would visibly be suffering pain. This would be an imposition on the child. One that in her -the psychologist's – experience can cause psychological disorders even years later. While on the one hand an understanding of the child for the sense of the irreversible surgical procedure is not to be expected – he can decide this on his own in years to come under consideration of his Kenyan roots, – it cannot be expected on the other hand that a possible circumcision of the now six-year-old boy would contribute substantially to a more positive relationship to the Kenyan culture, given the infrequent visits to Kenya. In the German cultural sphere that predominantly shapes his everyday life, the child, on the one hand, would be treated differently from the large majority of his contact persons of approximately the same age, were he to undergo circumcision as intended by the mother; on the other hand, at least in a preliminary assessment according to the present state of the facts, it has not been possible to establish that G had been particularly positively influenced by the Kenyan roots of his mother.

As far as an opposing will of G, which could be expected in case of a child-oriented explanation of the intended surgery, would not be observed and the mother of the child does not even intend to accompany her son during the procedure, this can also, to the conviction of the Senate, have an extremely negative effect on the psyche of the child, in particular with regard to the relationship of his mother as his main reference person. The fact that this would be detrimental to the child's welfare should be obvious from the result of the hearing and would only have to be supplemented by a family psychology expert opinion in the main proceedings in exceptional cases if necessary.

(cc) In the opinion of the Senate the assumption is justified – also due to the child's parents' high level of dispute over many years as well as the respectively significant education deficits – that on the one hand the child's mother cannot critically query the consequences of the intended circumcision for the child's well-being due to her being caught up in her perspective of the fierce parental dispute and on the other hand both parents of G unconsciously convey the rejection of the circumcision or the intention to carry it out in this respect at least by their behavior in everyday life or in contacts with the child. In view of this inner conflict, which is likely to have an increasingly negative effect on G's psyche if the parents' dispute continues, for the time being only a neutral guardian *ad litem* can take on a decisive role that will relieve G. The Senate gains the aforementioned convictions in particular on the basis of the multiplicity of judicial dispute proceedings of the child's parents about the children as well as on the basis of the psychological findings in the current expert report of Mrs. Dipl.-Psych. L from 22.03.2013 in the enclosed file 113 F 5507/11 District Court - Family Court - Dortmund. According to this, it can be assumed with a high degree of probability that the question of circumcision is a further, not unimportant piece of the mosaic in the fierce power struggle of the child's parents over their two children, in which the actual well-being requirements of the child – in some circumstances largely unintentional and not culpably reproachable – have increasingly fallen out of sight.

(dd) In this situation, the correctness of the contested decision results not least from a weighing of consequences. In the main proceedings on the health care of G, which are either already pending or to be expected, according to what has been established above, a comprehensive hearing will first have to be obtained not only of the child's parents and of the Youth Welfare Office involved as an authority and of the guardian *ad litem*, but also, after corresponding preparatory discussions, of the child G, of the intended doctor and of a guardian *ad litem*, in order to obtain a comprehensive and not merely provisional answer to the question of whether the circumcision intended by the child's mother would be in the best interests of the child G beyond the inconvenience of the medical intervention as such to a more than merely insignificant extent. If the result of the hearing is not sufficiently clear in one direction or the other, a psychological expert opinion could be obtained if necessary. Whether in this case the previous expert, Ms. L, or, at the request of one or the other of the parents, another expert to be appointed by the family court, had to prepare this expert report is not relevant to the decision in the present interim order proceedings and is also not subject to the decision of the Senate in the main proceedings. The decision on the merits is not for the Senate to decide.

If, however, the Senate were to amend the contested decision in the present interim order proceedings and revoke the temporary withdrawal of healthcare and order of guardianship *ad litem* with regard to consent to circumcision, it would be expected that the child's mother would schedule the circumcision performed by a physician in a timely manner. This is also supported by the fact that she originally intended to perform the circumcision quickly and without the involvement of the child's father, and that she untruthfully informed the child's father and the expert witness that the circumcision had already been performed by an unspecified medical practice. Accordingly, it is to be feared that the *fait accompli* quickly created by the child mother, for example after a preliminary decision favorable to her, could no longer be changed in this case, even if the expert opinion to be obtained in the main matter were later to assume a (considerable) risk to the well-being of the child associated with the circumcision and the family court were to follow this assessment. If, on the other hand – as decided by the Senate in the present case – the child's mother's right to decide on circumcision is provisionally revoked and transferred to the guardian *ad litem*, and if a future expert opinion in the main proceedings comes to the conclusion that circumcision is compatible with the best interests of G from the point of view of family psychology, the procedure can subsequently still be performed *lege artis* after the entire sole health care has been transferred back to the child's mother. The fact that the child will then be a few months older is unlikely to have a significant influence on the child's mother's decision-making

authority for her child in this respect, who even then will not yet be capable of giving his own consent, nor in so far on the reasonableness of the procedure.

c) Finally, the temporary suspension of part of the health care on the basis of § 1666 of the Civil Code and its transfer to the Youth Welfare Office of the City of E as guardian *ad litem* also does not appear to be a disproportionate encroachment on the fundamental parental rights of the child's mother and father under Articles 6 paras. 1 and 2 of the Basic Law and Article 8 of the European Convention on Human Rights.

aa) The child's mother is only provisionally deprived of the authority to decide on the circumcision until, as a result of the future taking of evidence in the main matter outlined above, a reliable factual basis is available as to whether, as a result, in the case of the circumcision of G, beyond the pure pain of the intervention or local anesthesia (these burdens are accepted by § 1631 d par. of the local anesthetic (§ 1631 d (1) of the German Civil Code accepts these burdens incidentally by permitting an intervention in accordance with the rules of medical art), there are weighty indications of a not merely insignificant endangerment of the child's welfare or not. If the comprehensive taking of evidence indicated *ex officio* according to § 26 FamFG refutes the concerns of the child's father, the child's mother will be entitled in a few months in the context of her then to be expected, after appropriate local court decision, again complete sole personal custody to make use of the possibility of the consent to a ritually/culturally justified circumcision of G by a physician in accordance with her fundamental parental right from Article 6 paragraph 1 and 2 GG, 8 EMRK.

bb) The contested decision also does not violate the fundamental parental rights of the child's father, insofar as the Local Court did not itself provisionally transfer to him the authority to decide on the question of circumcision in accordance with his application of 20 March 2013 pursuant to § 1628 of the Civil Code, but to a guardian *ad litem*. On the one hand, the – albeit brief – reasoning of the contested decision supports the result reached. Since the parties have been involved in highly contentious child custody and contact proceedings concerning their children before the Family Court in around a dozen cases since 2009 – and in the meantime for the third time already in the appeal proceedings before the Senate – it is not to be expected that a provisional transfer of the decision-making authority to the child's father pursuant to § 1628 of the Civil Code would be an equally suitable, milder means for the provisional protection of the child's welfare. Rather, it represents a necessary and appropriate encroachment on the fundamental parental right of the child's father that the decision-making power with regard to the question of circumcision has instead been transferred provisionally to the youth welfare office as guardian *ad litem* and neutral steward of the child's well-being. This need follows from the statements above on b) cc) concerning the highly contentious nature and limited ability of both parents to raise the child. Moreover, in the appeal proceedings the father of the child does not himself pursue his original request further, but merely defends the impugned order against the attacks of the mother of the child.

B.

The decision on costs follows from sections 51 (4), 84, 80, 81 of the Family Proceedings Act.

C.

The determination of the procedural value for the appeal proceedings is based on sections 5141,45 (1) no. 1 FamGKG.

Notice of appeal:

This decision is final.

List of abbreviations and terms as used in the cited references throughout the text:

Abs.	Absatz	paragraph
BGB	BürgerlichesGesetzbuch	German Civil Code
BGBl.	Bundesgesetzblatt	official gazette
BGH	Bundesgerichtshof	Federal Supreme Court
Drucksache		Printed Matter
EMRK	Europäische Menschenrechts Konvention	ECHR (European Convention on Human Rights)
ff.	and following pages	pp.
FamFG	Gesetz über Verfahren in Familenangelegenheiten	Act on Procedure in family matters
GG	Grundgesetz	Basic Law
OLG	Oberlandesgericht	Higher Regional Court, Appeal Court
Rdnr.	Randnummer	marginal note
StGB	Strafgesetzbuch	Criminal Code