

Regional Appeal Court Hamm defines new circumcision regulation (§ 1631 d BGB)

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A child's mother is not allowed to have her six year old son circumcised. This has been decided by the Third Senate for family matters at the Regional Appeal Court in Hamm by order of 08.30.2013, which upholds the first instance decision of the District Court - Family Court – Dortmund and thereby defines the statutory requirements of § 1631 d Civil Code ( BGB ) for circumcision without a medical indication.

In the provisional order proceedings the child's divorced parents from Dortmund dispute whether the child's mother from Kenya - by this time married to another man - is allowed to have their 6 year old son circumcised. The child lives with the 31-year -old mother who also has the right to sole custody. The child's mother wants to circumcise the boy according to the cultural rites of her home country Kenya, so that during his visits in Kenya he would be regarded and respected as a full man - especially by her relatives. She also regards circumcision beneficial for hygiene reasons.

The third Senate for family matters of the Regional Appeal Court Hamm ruled that currently, the child's mother may not let her son be circumcised. The ruling further states that the power to decide on this question remains allocated to the supplementary custodian from child protective services. It states that at this time, the controversial issue between the child's parents regarding the boy's circumcision cannot be resolved in favor of the child's mother. According to the newly created provision of § 1631 BGB the child's mother, holding sole custody, has in principle the right to consent to medically indicated circumcision of her son, as long as the boy cannot consent himself. The legal requirements for informed consent by the custodial parent to circumcision, however, are not present. Even if a six year old is not yet in a position to decide on his circumcision himself, the statutory provision requires of the custodial parent and - in the case of children older than six months - even the physician to discuss the procedure with the child in a manner appropriate to his age and development and to respect the wishes of the child in the decision making. In the case at hand such an involvement of the child has not yet occurred.

The consent by the parent(s) entitled to custody is only effective if they had prior been fully and properly informed about the procedure. So far, the child's mother has not stated or shown a corresponding education.

In the present case it is seen as justified to revoke the mother's the right to consent to the child's circumcision for the time being. Currently, there exists a high probability of endangerment of the child's well-being, if he underwent circumcision. This follows from the Senate's evaluation of the particular circumstances in this case. The motives of the child's mother for circumcision can in principle justify a non- medically indicated circumcision. In the present case, however, they carry a lesser weight because the child's mother has her permanent center of life in Germany, visits to Kenya are rare, and the boy is raised as a baptized Protestant. Furthermore, it is not evident that

the boy's intimate hygiene is at risk without circumcision. The medical risk and possible pain associated with circumcision are not being considered in the decision, because these circumstances accompany any non- medical circumcision. Yet, in the present case substantial reasons indicate that circumcision at this time, induced by the child's mother, would negatively impact the boy's emotional well-being, especially because the mother does not see herself able, according to her own statement, to accompany her son to the procedure - even if he should reject it.

Legally binding decision by the Third Senate for family matters at the Regional Appeal Court/Hamm from 08.30.2013 (3 UF 133/13)

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Press Office Notice:

The regulation § 1631 d Bürgerliches Gesetzbuch, effective since 12/18/2012, - Circumcision of the male child reads as follows:

(1) Custody right includes the right to consent to a non-medically indicated circumcision of a male child, who is not able to decide and consent himself, as long as it is performed lege artis. This does not apply, if by circumcision, also considering its purpose, the child's wellbeing is being endangered.

(2) During the first six months after the birth of the child, individuals appointed by religious communities to circumcise according to section, are permitted to perform circumcisions, if they have been specially trained to do so without being physicians, comparable to a physician's procedure.