

[2016 Gib LR 187]

**IN THE MATTER OF C (PROHIBITED STEPS ORDER:
BAPTISM OF CHILD)****E v. B**

SUPREME COURT (Butler, J.): July 8th, 2016

Family Law—children—prohibited steps order—order granted preventing baptism of child by Catholic mother against wishes of atheist father (with parental responsibility)

The applicant sought a prohibited steps order.

The applicant (“the father”) sought an order prohibiting the respondent (“the mother”) from having their child (“C”) baptized. C, who was four years old, lived with his mother. He attended a state Christian school and would attend another such school in due course. The mother (a Roman Catholic) arranged for C to be baptized without notifying or consulting the father, who had parental responsibility for the child. The mother wanted C to be baptized in accordance with her family’s strongly held religious beliefs.

The father, who was an atheist, sought an order prohibiting the mother from causing C to be baptized. He submitted that (a) C should not have his choice made for him before reaching an age at which he could decide for himself which, if any, religion he wished to adopt; and (b) although C would no doubt be influenced by his maternal family’s beliefs and traditions, baptism constituted formal entry into the faith and should not be undertaken without C’s informed consent.

Held, making a prohibited steps order:

The mother would be prohibited from causing or allowing C to be baptized without the written consent of the father or further order of the court. She would be otherwise free to involve C in all religious and family ceremonies and to introduce him to her faith and beliefs. The following principles applied: (a) the overriding consideration was the welfare of the child; (b) each case would depend upon its own facts; (c) parental responsibility was equal, *i.e.* the primary carer did not start with an advantage; (d) the court would not choose between religions (save in rare cases where the tenets of a particular religion were clearly contrary to public policy and/or the child’s welfare); (e) a religion would not be preferred by the court simply because it was followed by the majority—respect for all religions was essential; (f) atheism and agnosticism would

be accorded equal standing to other beliefs; (g) all the circumstances of the case (including the Children Act welfare checklist) must be taken into account; and (h) those circumstances included the actual or potential effect on the child of the effect on each parent of the court's decision. Although parental responsibility was equal, it might be in the child's best interests to follow the traditions, culture and beliefs of his primary carer. The child's medium to long-term, as well as immediate, welfare had to be considered. The court would not make an order unless it would be better for the child than no order. In the present case, a prohibited steps order would be made. C was unlikely to suffer any serious harm whether he were baptized or not. Nor would he suffer as a result of the mother being upset that he could not be baptized, since she would do everything to ensure that he did not suffer and would be unrestricted in involving him in the other religious events, activities and teachings of her faith. The father's concern that C should not have his choice made for him before reaching an age at which he could decide for himself which, if any, religion to adopt was genuine. C's baptism would amount to entire acceptance of the mother's beliefs to the exclusion of the father's and might mean that C, having been baptized, would see accepting his father's views as rejecting the faith chosen for him rather than simply choosing not to follow his maternal family's lead. C would be happier knowing that the views of neither parent had prevailed over him and that his parents could be tolerant of one another until he became able to make his own decision. Even if the order affected either parent's right to freedom of religion pursuant to art. 9 of the European Convention on Human Rights, the result would be justified for a legitimate aim, *i.e.* protecting and promoting the welfare of a child, and proportionate (paras. 9–11; paras. 14–26).

Case cited:

(1) *G (Children), Re*, [2012] EWCA Civ 1233; [2013] 1 FLR 677; [2012] 3 F.C.R. 524; [2013] E.L.R. 25, *dicta* of Munby, L.J. applied.

C. Pizzarello for the applicant;
J. Daswani for the respondent.

1 **BUTLER, J.:** This is an application by the father of a four-year-old child (“C”) for an order prohibiting the child's mother from having him baptized. I have read affidavits sworn by the mother and affirmations of the father and have heard them both give oral evidence. I have before me skeleton arguments of counsel for each parent and have been assisted by their oral submissions.

2 In the event that this ruling should be reported, I direct that the matter be referred to in accordance with the heading to this ruling.

Background

3 The parties' relationship began in about April or May 2011. C was born on March 6th, 2012, when the parties were living in Gibraltar together with the mother's two sons from a previous relationship. The parties did not marry but the father has parental responsibility. The parties separated from January until May in 2013, during which time the mother was the primary carer of C and the father had regular contact with him on two evenings and one full day each week, though contact was of necessity flexible owing to the father's employment on shifts. It is common ground that when living together the parties shared C's care. There were some times when the father, because he was not working, cared for C. As from June 2014, however, the father began spending more time in England, he says in order to assist his parents who have been in poor health. By then the parties were living in Spain. The father says that he cared for C when in Spain because he worked from home. The parties finally separated in May 2015, following which the father claims that C resided with him under flexible arrangements involving the mother generally seeing the child only about two nights per week. The details of the child's previous residence arrangements are not entirely agreed but are not of prime importance for the purposes of this application.

4 It is the father's case that the mother failed to return C to him at the end of August 2015, shortly before the father was due to return to England to visit his parents. At about that time the mother moved back to Gibraltar with C. The father was away from the end of the summer until November 2015. He tried to contact the mother but she did not respond. He claims that on December 2nd, 2015 the mother told him that he would not see C again. Negotiations between the parties' lawyers not having resulted in agreement, the father issued a summons for a contact order on January 26th, 2016 and the matter came before me on February 9th, 2016. The mother had made serious allegations against the father, including allegations of violence, false imprisonment, bullying, aggression, drunkenness, drug abuse, threats to kill and to cause damage, criminal damage, infidelity and unreasonable conduct which in the end resulted in her two older sons leaving to live with their father (returning to the mother after the parties had separated) and in C's development being delayed by one or two years. The allegations and counter-allegations are set out in correspondence between the parties' lawyers exhibited to the father's first affirmation, in his second affirmation and in the mother's two affidavits. I do not intend for the purpose of this discrete application to rehearse or make findings in detail about the cross-allegations. There seems now to be some improvement in the parties' relationship. I am particularly concerned that the parties should now, if possible, concentrate on C's future and his best interests and should do everything possible to enable him to enjoy his childhood happily with his estranged parents working in harmony for

his best interests. I made a detailed interim contact order and the issue of contact is due to come before me again in September. In the meantime the parties have been attending the Agency's parenting programme and contact has been progressing well. Indeed the mother has not only agreed and accepted considerable flexibility to fit in with the father's variable shifts but has accepted more generous contact than that which I had ordered. Furthermore, she told me that she feels that C needs more contact with the father. In this I am satisfied that the mother is genuine and that she is very much acting in C's best interests. It is well known that I take allegations of domestic violence extremely seriously, especially when children are involved directly or as witnesses. Nevertheless, it is not suggested that there has been any physical violence since the parties separated and I do not think that it would be helpful to dwell upon such matters when considering this particular application. Suffice it to say that it is very much to the credit of the mother that she is now promoting contact as it appears she is. There was no indication from her oral evidence that she feels that C is now at risk with the father.

5 Having made those observations, I am bound to say that it is clear to me that the father has extremely entrenched and inflexible views and has a particularly forceful character. I find generally that he has been a difficult man for the mother to deal with and that he has at times been unreasonable with her.

6 The father's views relating to religion are clear. He is vehemently anti-religious and believes that religion has been responsible for a great deal of harm. He is not alone in holding those views and is entitled to respect for them. The mother, on the other hand, is a Roman Catholic Christian to whom her religion is of significant importance. Her parents (particularly her father) are particularly religious and her wider family is also Christian. Her father has a religious shrine at home and they have brought up the mother and her siblings as committed Christians. C's half siblings have been brought up as Christians, were baptized and have gone through the various stages of acceptance into the Christian faith.

7 Each party has been aware of the views of the other during their relationship. Despite his views, the father has attended some religious ceremonies concerning the mother's older children and her family, though she says that he prevented her from attending the older children's communion, confirmation and other church activities.

8 This discrete issue came before me on April 22nd, 2016 because the mother had, without notice to the father or consultation with him, arranged for C to be baptized. She did, however, seek legal advice because she was worried about whether her actions were proper and legal. I find that she was aware that the father would oppose C's baptism and that it was wrong for her to proceed with it without his being consulted. Mr. Daswani, who

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represents the mother, absolutely properly advised her that the father has parental responsibility and should be given notice of her intentions. The father's strongly held views led him to oppose that course and to apply for a prohibited steps order, which I granted on an interim basis with directions leading to trial of the issue.

The parties' positions

9 It is significant that the father does not seek an order going beyond prohibiting the mother from causing C to be baptized. He recognizes that the mother's family holds deeply Christian beliefs and that the mother intends to teach C about her beliefs and to involve him in Christian ceremonies and traditions. His concern (which I accept is genuine) is that C should not have his choice made for him before he is of an age at which he can decide for himself which, if any, religion he wishes to adopt and follow. He recognizes that C will no doubt be influenced by his maternal family's beliefs and traditions but feels strongly that baptism and thereby formal entry into a particular faith should not be undertaken without C's informed consent and wish at an age at which he can properly understand what is happening.

10 The mother wishes, with equally genuine conviction, that C be baptized because that accords with the strongly held beliefs of her family, including herself. C attends a state Christian school and will be attending another state Christian school in due course. She feels that C will feel excluded from the traditions and different from his half siblings, other members of her family, school friends and school traditions if he is not baptized. She is not a regular church-goer herself but has been brought up to believe that her prayers will be heard and answered whether in church, at home or elsewhere. Whilst the father suggests that the mother does not hold beliefs as strong and important to her as she now claims, I am not surprised if, given the strength of his own views and his somewhat intolerant nature (as I find it to be) the mother largely kept her own religious feelings to herself when the parties were cohabiting. The mother says that when C is old enough to decide for himself she will support him, whatever religion or belief he wishes to follow.

Legal principles

11 When the matter first came before me I referred counsel to a number of English authorities (in the absence of any relevant authority in this court) concerning the proper approach to applications such as this and invited counsel to file skeleton arguments for the final hearing. I am indebted to them for the clear arguments which they have filed and put forward. At the commencement of the hearing, I handed down a list of principles which, it appeared to me, follow from those authorities which

are persuasive in this court. Those principles are agreed by counsel to represent the law and principles which I should now apply, as follows:

(a) The overriding consideration is the welfare of the child, which is paramount.

(b) Each case depends upon its own facts. The decision in each case is likely to be fact-sensitive.

(c) Parental responsibility is equal; the primary carer of the child does not start with advantage.

(d) The court will not choose between religions (save in rare cases where the tenets of a particular religion are clearly contrary to public policy and/or the welfare of the child in the circumstances of the particular case).

(e) A religion is not to be preferred by the court simply because it is the chosen faith of the majority. Respect for all religions is essential, including minority faiths (save as indicated above).

(f) For these purposes, atheism or agnosticism should be accorded equal standing to other beliefs. It is not for the court to engage in philosophical or theological analysis or comparison of such beliefs.

(g) All the circumstances of the case (including those in the Children Act welfare checklist) must be taken into account.

(h) Those circumstances include the actual or potential effect on the child of the effect on each parent of the court's decision, one way or the other. There is, however, no particular status or weight to be given to this consideration beyond the facts of the individual case. It is one of the considerations to which the court should have regard and in some situations will weigh more heavily than in others.

12 To those principles I add the following observations. Whilst parental responsibility is equal, in appropriate circumstances it may legitimately be found in the best interests of the child's welfare that the child should be allowed to follow the traditions, culture and beliefs of the family of his primary carer, other considerations being equal. It is not only the child's immediate welfare which is paramount but also his medium to long-term welfare. I must not make an order unless I find that it would be better for C that I do so than that I make no order.

13 The words of Munby, L.J. in *Re G (Children)* (1) are apposite to this situation ([2012] EWCA Civ 1233, at para. 27; paras. 35–36; paras. 80–82)):

“27 ... Evaluating a child's best interests involves a welfare appraisal in the widest sense, taking into account, where appropriate, a wide range of ethical, social, moral, religious, cultural, emotional

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and welfare considerations. Everything that conduces to a child's welfare and happiness or relates to the child's development and present and future life as a human being, including the child's familial, educational and social environment, and the child's social, cultural, ethnic and religious community, is potentially relevant and has, where appropriate, to be taken into account. The judge must adopt a holistic approach . . .

35 Religion—whatever the particular believer's faith—is not the business of government or of the secular courts, though the courts will, of course, pay every respect to the individual's or family's religious principles. Article 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 (the European Convention), after all, demands no less. The starting point of the common law is thus respect for an individual's religious principles, coupled with an essentially neutral view of religious beliefs and a benevolent tolerance of cultural and religious diversity . . .

36 The court recognises no religious distinctions and generally speaking passes no judgment on religious beliefs or on the tenets, doctrines or rules of any particular section of society. All are entitled to equal respect, so long as they are 'legally and socially acceptable' . . .

80 . . . [O]ur objective must be to maximise the child's opportunities in every sphere of life as they enter adulthood. And the corollary of this, where the decision has been devolved to a 'judicial parent,' is that the judge must be cautious about approving a regime which may have the effect of foreclosing or unduly limiting the child's ability to make such decisions in future . . .

82 . . . I have viewed this dilemma as one where I have tried to assess in which situation the children will have the most choices . . . in the future."

14 I have also considered whether in the circumstances of this case a prohibited steps order would contravene the mother's (or father's) rights pursuant to art. 9 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950. This is not a point raised by either party. I can deal with it briefly: even if such rights were affected, the result would be (and is) justified for a legitimate aim (namely protecting and promoting the welfare of a child) and proportionate. My decision in no way involves any disrespect of the beliefs of either party in this case. Furthermore, I bear in mind art. 3(1) of the United Nations Convention on the Rights of the Child: "In all actions concerning children . . . the best interests of the child shall be a primary consideration."

Findings and conclusions

15 In my view the circumstances of this case are finely balanced. C is too young to be able to form his own informed decision. Both parents have been involved in C's upbringing and are intending to be involved in it fully in the future. The mother has been involved in his care throughout his life and is now and is intending to remain his primary carer.

16 I was impressed with most of the mother's evidence. In her oral evidence she did not exaggerate and seemed reasonable. There are indications that she has previously found it difficult to come to terms with C's needs with regards to his father and with the role which the father should play in his upbringing. I find it likely that she has suffered overbearing behaviour on the father's part in the past and it has taken time for her to settle following what has been a fairly traumatic period following the separation. Both parties, however, have managed to adopt a more conciliatory and understanding approach, which I hope has been contributed to by the parenting programme.

17 There are no particular characteristics of C which I find relevant. Each parent is capable of meeting C's physical needs. I am satisfied that the mother is capable of meeting his emotional and other needs. There are questions over the father's general and inflexible attitude which I have not been able to resolve at this stage but the mother has not directly suggested that the child is likely to come to harm in his father's care.

18 On balance I do not believe that C is likely to suffer any serious harm whether he is baptized at this stage or not. It is perhaps ironic that this conclusion is supported by my conclusion that the mother will do everything to ensure that C does not suffer if his full acceptance into her church and faith is postponed until he can make his own informed choice. So will his maternal family. It is, indeed, likely that they will be at pains to include him in all family activities and that he never feels excluded. The mother is sufficiently capable to explain his special situation to him as he grows up. There will be a significant number of children at school of different religions who do not take part in communion. The mother will be able to explain this to C and to teach him principles of tolerance and understanding, including in due course (when he is of sufficient age and understanding) that his father has different beliefs and views and that everyone is entitled to their own faiths, beliefs and viewpoints. In this way, C will grow up with a particularly balanced outlook and one which will enable him to embrace others with differing philosophies and ideas.

19 I have considered whether C is likely to suffer because the mother will indubitably be upset that C will not be baptized now. Having heard her oral evidence, however, I am convinced that that knock-on effect is not likely to occur. She put it no higher than upset. The father wisely concedes that there should be no greater restriction on the mother involving C in the

religious events, activities and teachings of their faith. The decision will be taken out of her hands at this stage by my order and I am sure that the mother and her family will cope admirably with it. I note that in Mr. Daswani's skeleton argument he suggests that the mother has been having vivid dreams of C being trapped in hell and not knowing where to go, whilst she is present trying to guide C and show him the right direction. It is also suggested that the mother feels that he would go to hell if something were to happen to him. I have not, however, heard any evidence from the mother to support that part of Mr. Daswani's skeleton argument. If the mother's beliefs were such as to lead her to have such fears for this innocent child I should be particularly concerned but her oral evidence gives me reassurance. I hope that, if necessary, she will be given suitable comfort and reassurance by her family and her Church. It is perhaps significant that the mother has not sought previously to have C baptized.

20 So far as the father is concerned, I have considered carefully (a) whether his application arises from genuine concern for C's welfare rather than his own intolerance and wishes, and (b) whether he might be inclined to use my order as a point scored against the mother and her family. I believe that his application is genuine. It accords with the approach that the aim should be to ensure that C should be able and free to make his own decisions when of sufficient age and understanding. No doubt he will regard the inclusion of C in Christian festivals and teachings as indoctrination but he has notably kept his application within its very specific bounds. It would be potentially very damaging and upsetting for C's parents to be competing in his mind and each to be attempting to persuade C that the other is wrong. A great deal of sensitivity will be required of these parents and their parental responsibility in this regard is substantial. There is a risk that C will be caused confusion and emotional harm unless both parents are able to deal with relevant issues with tolerance, understanding and goodwill. In that way C will benefit from the diversity of his parental influence.

21 It may be thought that baptism would in these circumstances make little difference. I do not agree. It would amount to entire acceptance of the mother's beliefs to the exclusion of the father's, or at least it would so seem to him. I think that he would therefore resent the baptism. He has the legitimate view that, whilst he would not stand in the way of C's involvement and participation in the Christianity practised by the mother and her family, C should not feel, when he comes to make his decisions, that they have already been made for him. He will be less open to alternatives, including his father's opinions. He might feel that having been baptized he would be rejecting the faith chosen for him rather than simply choosing not to follow his maternal family's lead. The mother holds her Christian beliefs very deeply. The father's fear of risk that C's religious future will be a *fait accompli* if he is baptized now is genuine. I

do not think that the mother's or more importantly the child's life will be adversely affected to a material or disproportionate extent as a result of the order which I propose to make. Certainly, the mother will be able to cope with it and to ensure without significant difficulty that the child will do so.

22 If I had thought that the father's application was simply an example of his wish to exercise control over the mother and C, the balance may have been different. He does have strong views. But it is accepted that the views which have led to this application have been expressed by him throughout the parties' relationship.

23 It is these points which in my judgment bring the balance down in favour of making a prohibited steps order in the very particular circumstances of this case. I emphasize that this conclusion should not be regarded as applicable in all cases or even as a starting point. There will be kaleidoscopic considerations in every case. I hope that it will be rare for parents to have to seek court assistance on such issues and that in the great majority of cases parents will be able to reach a sensible accommodation in the interests of their child. I emphasize too my hope that as C grows up his parents will be able to encourage him to make his own choices. That does not mean that they should not express their own views and beliefs and faiths, provided that they do so sensitively and without denigrating those of the other parent. The father may become more mellow as time passes by. Even if C is still young, it may be that if he expresses a real wish to follow, embrace and be part of his mother's faith the father will give him full permission and assistance as appropriate. There should be no element of competition between the parents for C's mind. C's life should never be regarded as a matter of winning or losing as between his parents. Indeed the mother has not "lost" in this application. She has presented her deeply held wishes in her oral evidence with restraint and a degree of tolerance. With goodwill and understanding, this loved child will develop into a well-rounded, tolerant, understanding and happy man with much to offer. The welfare report included in my bundle is positive in many respects and the mother says that she trusts the father to "do the best for" C. The father has said that C worships the mother and that the father would never take that away from him.

24 In many cases it will be in the interests of a child to be brought up fully within the faith of the family of the primary carer and there will be no justification for interference with that course. It is with some reservation that I have reached my conclusion in this case. The restriction involved in my order is limited, though important to both parties. The right of the child to be free as he develops to make his own choices is subject to the right and duty of those with parental responsibility to make choices for him until he can choose for himself. Where there is a conflict between the views of separated parents or others with parental responsibility, the court must act as impartial judicial reasonable parent. My view in this case is

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that the child will be happier knowing that the views of neither parent have prevailed over him and that the parents are tolerant of each other until he can make his own decision. Subject to the specific limitation which my order involves, however, the mother will be free to involve C in all her beliefs, ceremonies and religious activities. I hope that the relationship and trust between the parties will have improved by the time C reaches the age at which he might be confirmed and that the parties will be able to approach that issue with sensitivity and understanding, putting aside their own wishes in favour of stability and happiness for C.

25 I have heard evidence from the parties concerning other matters. I allowed them to develop those issues in order to assist me in assessing the parties. It is my firm view, however, that it would be counterproductive to make specific detailed findings on all those points and that, since they are not central to the discrete issue I now have had to decide and I have therefore not heard the fullest evidence and submissions regarding them, it would be wrong to go further than the findings which I have made.

26 My order is that the mother be prohibited from causing or allowing C to be baptized without the written consent of the father or further order of this court but that she be otherwise free to involve C in any and all religious and family ceremonies and to introduce C into her faith and beliefs.

Order granted.
