A judge’s decision to separate a transgender parent from her Jewish Orthodox children was deeply misguided

Posted: Fri, 10th Feb 2017 by Dr Antony Lempert

The decision to separate a transgender parent from her children gets to the heart of why faith-based harm is perpetuated and is frequently unchallenged, writes Dr Antony Lempert of the Secular Medical Forum.

A recent ruling in the Family Court of Manchester denied an application from a transgender father for direct contact with her children. The father is now living as a woman having left the strict ultra-orthodox Charedi community. The judgement forbids any contact with her children except four letters a year. This distressing case offers a poignant example of how collusion with a religious community that unashamedly embraces discrimination, ignorance and coercion undermines the fundamental rights of children and minority groups.

The judge acknowledged that "an absent parent's involvement in the child's upbringing will further the child's welfare… and… the courts recognise the vital importance of the role of non-resident fathers in the lives of their children and only make orders terminating contact when there is no alternative."

There was no dispute that the father loved her children, and they her, and that she had her children's welfare at heart. There were no substantive child protection concerns and the judge noted that some of the younger children particularly were missing their father and wanted to see her again. The judge expressed no antipathy towards the transgender community nor was there evidence in the judgment of religious bias. The enforced separation is likely to have a devastating impact on the father and to deny five children any meaningful contact with one of their parents. So what steered the judge towards such a draconian judgement?

The judge concluded that he was "driven to this conclusion'". He regarded it as probable that "these children and their mother would be rejected by their community if the children were to have face to face contact with their father." He further believed that "the worst possible outcome for the children would be to be victimised and ostracised for having contact with their father."

The judge was not blind to the dangers of the community in whose care he has entrusted the children. He commented on "the lengths to which the community is prepared to go regardless of… justice… or… the welfare of the young people." He noted "…evidence that the practices within the community… amount to unlawful discrimination and victimisation of the father and the children because of the father's transgender status."

His judgement, which can only add fuel to this discrimination and victimisation, is all the more perplexing for that. It is perhaps best explained by the tendency to accept the religious paradigm as somehow normal no matter where it leads. There is a general societal deference to religious or cultural norms coupled with an extreme reluctance to challenge even harmful or illegal religious or cultural practices. There are parallels and lessons to be learned here. The ruling is a well-reasoned demonstration of how institutional harm becomes embedded and pandered to, even when the

opportunity is there to prevent or challenge it. Institutional harm is not always about wilful complicity, but sometimes due to sincere, well-intentioned failure.

By threatening to harm the children, the community has done enough to ensure that its culture and cherished beliefs remain sacrosanct and free from the threat of challenge or change. By such precedent, other bullying, insular, cultish communities may follow. The losers are the innocent and the victimised.

And there are other troubling aspects of this judgment.

Whilst the father alleged that she had to leave the family home because her life was threatened by members of the community, the judge stated that it was not necessary to take a view on this. At the very least, an allegation that a member or members of an insular community harbour homicidal ambitions towards people with different views or sexuality should be considered from a child safeguarding perspective. Violence within such communities is not rare and the barriers to reporting and justice are large. Some of these children, whose best interests are the cornerstone of the judgement, might later try to make contact with and see their father. Should they do so, the risk to them of similar aggression from the community might best be considered rather than dismissed.

Separating parents from their children should only be considered when the parent poses a significant, enduring threat to the child, which was clearly not the case in this scenario. The threat was to the cohesion of a narrow-minded community which made no secret of an active ambition to expose the children to ostracism and bullying were it to be threatened in any way.

The Charedi community shares many characteristics of a cult. Were a cult to behave in this manner, curtailing educational opportunities, instigating bullying, coercive behaviour and seeking to separate a parent from her children, the children would likely be removed to a safe haven. The familiarity and outward respectability of religious belief has instead led the judge to leave these children at its heart and to deny access to the one person who might have offered a safe haven outside. The father only sought reasonable contact, not custody. The judge tacitly acknowledged that his decision was not really based on the relationship between the father and her children but ironically on the limitations of the very community in which he constrained the children: "the truth is" he said "that for the children to see their father would be too much for the adults."

According to the judge, the mother had responded to events "within the limited horizons of her upbringing." She had argued that "the community would not accept" contact between her children and their father. The judge agreed and thought it probable that "the children would be ostracised by the community if they had direct contact" with their father; that they would, in essence, be bullied by the community. Yet instead of standing up to bullying, the judge has acted to appease the bullying culture at enormous cost to the children and their father.

It is within those very "limited horizons" that the children have now been condemned to grow up. For example, a representative from a faith school in the community reported "If a child had a parent... who was reading newspapers around them, that child would not be offered a place at the school." Such a comment speaks volumes about the learning environment of the children in this community. The UN Convention on the Rights of the Child guarantees children the right to education which should prepare children and young people for a responsible life in a free society. Instead, this community is intent on limiting the children's horizons and preventing them from having an open future.

The judge satisfied himself that this was a difficult but ultimately pragmatic decision. He failed to recognise it as a form of societal collusion with regressive religious attitudes and behaviours to the

detriment of the children's rights; the children have been caught in the crossfire.

The ruling offers lessons for secularists and child safeguarding workers alike. There are significant dangers inherent in supporting and buttressing harmful religious or cultural behaviour on what appear to be convincing, pragmatic grounds. When the limited parameters defined by self-interest groups are not challenged, it should come as no surprise when the end result is that people are harmed.

That the father is transgender is pivotal to the adverse outcome. The unashamed Charedi community discrimination against any form of sexuality that does not sit within a simple heterosexual paradigm has been enforced by the judge. The judge commented on the conflict between "the right of religious freedom and the right to equal treatment" for minorities. This is a false dichotomy; the children have a right to an open future and to have a meaningful family life and relationship with both of their parents. By allowing access to their father, the children's right to choose their beliefs would have been unaffected. Individuals have human rights, not communities.

This ruling gets to the heart of why much faith-based harm is allowed to continue and to be supported unchallenged by wider society. Many of the issues discussed are widespread among other close-knit religious communities including the wider Jewish orthodox community, if not always on the same scale. Many people report being threatened with being disowned or worse by their family should they marry someone from outside the community or break the rules.

Such threats are an unfortunately effective technique for preserving insularity precisely because the perceived best interests of a child are then narrowed into the single interest of remaining within their community of origin to prevent the threatened harm. But it doesn't have to be that way. Given the chance, the education, the fortune and the fortitude of a judge who would instead support enlightened values despite the threats, children would at least stand a chance of escaping from such narrow-minded, restrictive world-views and function in wider society.

Despite the judge's stated belief that the oldest child had autonomously chosen his belief, these children are being factory-farmed into a lifestyle and belief system. With the judge's approval, the possibility of their hearing about or considering alternatives has been greatly reduced. The child's view may well have been honestly held but had been moulded for him from the moment of his birth with dire threats should he think differently; that is not the same as autonomy.

Child-safeguarding workers are now trained to recognise the dangers of grooming. The appearance of a willing child has fooled many who should have known better. As adults, these children may choose to remain within the community, but the barriers the judge identifies as an impediment to their contact with their father will also serve to prevent them from having the opportunity to move out into the wider world.

The Children's Guardian noted that these children had no choice over what faith they should follow. This comment demonstrates a fundamental misunderstanding between culture and faith. Being born into a faith community, should not constrain one's future belief options. Statements such as these should be challenged rather than be used as excuses to further the interests of the religious community over the needs of the child and the rights of their father.

Although the judge curiously chose to sidestep the overt discrimination, threats and coercion evident in this case to make what appears to be a pragmatic decision, he did comment on the broader themes. In fact, the judge was so concerned he wrote to the Department for Education about certain details of the case – especially with regard to the faith schools concerned. Nevertheless he considered the children's best interests to be served by being placed in this

environment and limiting external sources of information and knowledge.

Some people not raised in a closed-minded faith community may find it difficult to perceive the many barriers to escape and the enormous pressure put on people not to rock the boat, not to hurt the members of the community (who stay in) and not to talk about it. Some of those barriers are deliberate, some inevitable when parents and communities place such great store by their beliefs that their pain is real when their children head in a different direction.

In his discussion, the judge identified several benefits for the children of direct contact with their father. It "…prevents the situation where… the children will be locked in by community and family pressure." Quite. Remarkably considering the final judgement he articulated the problem so well: "It would give the children some small experience of the wider world and might even open the door to them being able to make life choices for themselves as they grow older."

The judge made the classic mistake of limiting his imagination of the children's future self to the narrow ideology defined by their community of origin. He has sought to embody that limited imagination in a self-fulfilling directive. With this judgement, he has barricaded the exits, hidden the tools to escape and separated these children from a loving parent and one of the few people who might have offered them a different perspective on life and opened their eyes to a world that they may, or may not, have chosen as adults. Further he has separated a parent from her children for no good reason, in fact, for very bad reasons. This is a truly deplorable judgement that needs to be challenged.

Dr Antony Lempert is the chair of the Secular Medical Forum and has experience on related issues as a GP with some additional expertise in child safeguarding.

Dr Antony Lempert

Dr Antony Lempert is chair of the NSS's Secular Medical Forum. The views expressed in our blogs are those of the author and may not necessarily represent the views of the NSS. You can follow him on Twitter @seculant

- Share on What's App
- Share on Facebook
- Share on Twitter
- Share on Email
- Subscribe to RSS Feed

Tags: FoRB

Related Campaigns

- ### Freedom of religion or belief

  Secularism protects freedom of religion or belief for all.

Read More

Related Articles

The universality of human rights needs defending

Seventy-five years on from the adoption of the Universal Declaration of Human Rights, its promise of freedom and equality remains a distant dream for those living under religious rule, says Stephen Evans. Read More »

Freedom of religion or belief must include the freedom to ‘blaspheme’

The freedom to question and criticise religious ideas in the same manner as any other kind is foundational to a democratic... Read More »

Established church hinders religious freedom, NSS tells UN expert

The NSS has told a UN expert that lack of separation between Church and state is undermining freedom of religion or belief in the UK. Read More »

Study: Jurors could be biased against people who don’t swear to God

Bias against people who don't swear a religious oath in court may lead to hundreds of additional convictions, researchers... Read More »

NSS welcomes shelving of Bill of Rights

The National Secular Society has welcomed the government's decision to shelve its plan to replace the Human Rights... Read More »