**AI v MT**
High Court, Family Division: Baker J, 30 January 2013
[2013] EWHC 100 (Fam)
*Family court – children – arbitration – Beth Din – rabbinical authorities – consent order*

The parents of two children were from devout orthodox Jewish families. The mother was British and the father Canadian. At the time of separation the family resided in Canada. By agreement, the mother returned to the UK with their first child for the birth of their second child. After the birth, however, she refused to return to Canada, maintaining that the marriage had broken down completely. After an alleged attempt by the father and paternal grandmother to remove the elder child from the mother's care, the mother instituted proceedings under the Children Act 1989 and obtained a prohibited steps order preventing the father from removing the children from the jurisdiction of England and Wales. The father instituted proceedings under the Hague Convention for the summary return of the children to Canada.

While awaiting the final hearing in the Hague Convention proceedings, the parents agreed to explore the possibility of entering into a process of alternative dispute resolution before the New York Beth Din. The court made orders allowing for the mother's safe travel to and return from the United States with the younger child, where the parties entered into rabbinical negotiations that gave rise to an agreement to refer all the disputes between them to arbitration by a senior rabbi, Rabbi Geldzehler of the New York Beth Din. The parties submitted a consent order to the court for dismissal of the proceedings for the summary return of the children, reciting that the parties were agreeing 'to enter into binding arbitration before Rabbi Geldzehler' and undertaking to 'seek and abide by any determination of the family issues through binding arbitration before the New York Beth Din'. Baker J indicated that he considered the terms of the consent order to be unlawful on the basis that the parties could not oust by agreement the jurisdiction of the court to determine issues arising out of the marriage, or concerning the welfare and upbringing of the children. He nevertheless acknowledged the parties' devout religious beliefs and wish to resolve their dispute through the rabbinical court. He sought and received assurances from the New York Beth Din about the principles that would be applied by Rabbi Geldzehler in determining the arbitration, confirming, inter alia, that the best interests of the children were the primary consideration in resolving such cases. In light of these assurances Baker J indicated that he would endorse the parties' proposal to refer their disputes to a process of arbitration before the New York Beth Din on the basis that the outcome, although likely to carry considerable weight with the court, would not be binding and would not preclude either party from pursuing applications to the court in respect of any of the matters in issue.

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After two years the parties presented a consent order to the court reflecting the outcome of the arbitration and Baker J made orders confirming the outcome of the arbitration. In making those orders he observed that the court gives appropriate respect to the cultural practice and religious beliefs of litigants before it, but this does not oblige the court to depart from the welfare principle, which is sufficiently broad and flexible to accommodate many cultural and religious practices. Further, whereas it was in the interests of parties to resolve disputes by agreement wherever possible, the court must be careful to avoid endorsing any process that has or might have the effect of ousting the jurisdiction of the court, particularly (but not exclusively) in respect of the welfare of children. If parents cannot agree how their children should be brought up they should be entitled to choose how their disagreement should be resolved without state intervention, unless either one or both parents invoke the help of the court or the children are suffering or likely to suffer significant harm as a result of their parents' actions. Further, in this case it was an integral part of the arbitration process that it took place under the auspices of the Beth Din. This accorded with the profound beliefs of the parties. Having been assured that the principles to be applied by the rabbinical authorities were akin to the English paramountcy principle, and subject to the proviso that the outcome would not be binding without the court's endorsement, the court was content to respect the parents' deeply held wishes. It did not necessarily follow that a court would be content in other cases to endorse a referral of a dispute concerning children for determination by another religious authority. [RA]

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**Re All Saints, Foots Cray**

Rochester Consistory Court: Gallagher Ch, 7 February 2013

*Memorial – churchyard rules*

The petitioner sought a confirmatory faculty in relation to a memorial stone that she had had placed in the churchyard over the cremated remains of her brother. The parochial church council (PCC) and incumbent opposed the application. The stone did not comply with the PCC's churchyard rules, which had been approved by the previous chancellor. The chancellor accepted that the petitioner had not deliberately flouted the rules but found that she had been provided with a copy of those rules on two occasions and had also made no attempt to contact the incumbent to inquire whether the intended memorial was acceptable. She had laid the memorial stone without any reference to the incumbent. The petition was refused. [RA]

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