

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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