

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

AHED SAID SENJAB,

Appellant,

vs.

MOHAMAD ALHULAIBI,

Respondent.

S.C. No.:

D.C. Case No.:

Electronically Filed
May 07 2021 04:32 p.m.
Elizabeth A. Brown
Clerk of Supreme Court
81515
D-20-606093-D

NOTICE OF SUPPLEMENTAL AUTHORITY

Appellant, Ahed Senjab, by and through her attorney of record, Marshal S. Willick, Esq., of the WILICK LAW GROUP, provides notice of persuasive authority in support of *Appellant's Fast Track Statement* in accordance with NRAP Rule 31(e).

The Superior Court of Chelan County, Washington, recently issued a memorandum decision after an extensive evidentiary proceeding, including the detailed examination of multiple experts in Saudi Arabian law, and an exhaustive review of recent American treatment of the Saudi legal system, and most centrally its treatment of women in child custody cases.¹

¹ *AlHaidari v. AlHaidari*, No. 20-3-00028-04 (Wash. Super. Ct., Feb. 8, 2021).

This Supplemental Authority applies to pages 29-32 of the *Fast Track Statement*, for the proposition that no American court can treat Saudi Arabia as a “state” for purposes of the UCCJEA, UIFSA, or the Hague Convention, because:

It is clear from the record and from the laws of Saudi Arabia both as written and in practice that, in Saudi Arabia, women are not treated as equals of men, that non-Muslims are not treated as equals to Muslims, and that non-Saudi citizens are not treated as equals to Saudi citizens. Not only are these classes of individuals not treated as equals, but they are denied basic rights to due process, including their right to be heard in front of a fair and impartial tribunal.

This Court declares that the right to due process is a fundamental principle of human rights. Without due process, an individual could be subject to loss of parental rights, imprisonment, and even death without having the opportunity to be heard. A country which denies any person the right to due process of the law and the rights of a parent to a child based upon that person’s gender, religion, or national origin violates the fundamental principles of human rights and should not be recognized as a “state” under Washington’s adoption of the UCCJEA.

Id. at 7.

The Washington court also noted the standing defiance of Saudi Arabia of the Universal Declaration of Human Rights, the 2018 U.S. Department of State finding that Saudi Arabian law in substance and practice is discriminatory and inherently violative of fundamental principles of human rights, and the U.S. Congress’ declaration in 2019 condemning those abuses.

Id. at 8-10.

Based on that analysis, the availability – or even the actuality – of child-related orders from a Saudi Arabian court should be entirely disregarded even if Saudi Arabia could otherwise be considered a home state, and the custody and support of a minor child should be entirely determined in accordance with the law of the state in which the child is physically present at the time of the initiation of the proceeding. Nevada is the only place in which child custody and support orders can, or should, be made.

A full copy of the Decision is included as Exhibit 1.

Dated May 7, 2021.

Respectfully submitted,
WILICK LAW GROUP

//s//Marshal S. Willick, Esq
Marshal S. Willick, Esq.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the WILICK LAW GROUP and that on this 7th day of May, 2021, a document entitled *Notice of Supplemental Authority* was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows, to the attorneys listed below at the address, email address, and/or facsimile number indicated below:

David Markman, Esq.
MARKMAN LAW
4484 S. Pecos Road, Ste. 130
Las Vegas, Nevada 89121
Attorneys for Respondent

//s//Justin K. Johnson

An Employee of WILICK LAW GROUP

**Superior Court of the State of Washington
For Chelan County**

FILED
FEB 09 2021
Kim Morrison
Chelan County Clerk
Kristin M. Ferrera, Judge
Department 3
Tracy S. Brandt
Court Commissioner

Lesley A. Allan, Judge
Department 1
Travis C. Brandt, Judge
Department 2



401 Washington Street
P.O. Box 880
Wenatchee, Washington 98807-0880
Phone: (509) 667-6210 Fax (509) 667-6588

February 8, 2021

Scott Volyn
Volyn Law
P.O. Box 3163
Wenatchee, WA 98807-3163
scott@volynlawfirm.com

Robert Bennett
Goldberg & Jones, PLLC
1200 Westlake Ave. N., Suite 700
Seattle, WA 98109
rbennett@goldbergjones.com

Via Email and First Class Mail

Re: AlHaidari v. AlHaidari
Chelan County Cause No. 20-3-00028-04

Dear Counsel,

This matter came before the Court on June 18, 2020 and June 22, 2020 on Respondent Ghassan AlHaidari's Motion to Dismiss based on his Petition to Enforce Out of State Custody Order. Scott Volyn appeared at the hearings representing Petitioner Bethany AlHaidari. Robert Bennett appeared at the hearings representing Respondent Ghassan AlHaidari. The parties provided additional briefing and declarations on June 24, 2020 and June 29, 2020. Subsequently, Petitioner filed additional declarations on September 15, 2020 to which Respondent filed a response on October 16, 2020. Petitioner then filed declarations on October 22, 2020 and November 30, 2020. Respondent has not replied to the latter two declarations. The Court has considered all pleadings submitted in connection with the motions, arguments of counsel, and the file and records therein. This letter constitutes the Court's memorandum opinion. For the reasons stated below, the Court denies Mr. AlHaidari's Motion to Dismiss to the extent that it relates to any child custody determination. As to the issue of whether the Court has personal jurisdiction over Respondent for the purposes of child support, the Court requests the parties brief as to whether and how *In re Custody of Miller*, 86 Wn.2d 712, 548 P.2d 542 (1976) applies to this case.

ISSUES PRESENTED

Mr. AlHaidari asks the Court to determine the following issues: 1.) Whether the Court has personal jurisdiction over the Respondent? 2.) Whether the Court must have personal jurisdiction over the Respondent to enter a child support order in this case? 3.) Whether the Court has subject matter jurisdiction to make an initial child custody determination in this case? 4.) Whether the Court would have subject matter jurisdiction to make any further child custody determinations in this case should the Court's temporary emergency jurisdiction expire? 5.) Whether the Court should dismiss this action for lack of personal jurisdiction and lack of subject matter jurisdiction?

At the crux of this case is the very basic and complex question: What are the fundamental principles of human rights? Statutory and case law in Washington and the United States have not clearly defined these principles as they relate to child custody laws in foreign states, leaving trial courts, as the arbiters of initial child custody determinations, at a disadvantage when tasked with answering this question. It is important for the Court to respect and honor the cultural differences reflected in the laws of other countries and the Court takes this very seriously. However, Washington law cannot operate to deny an individual seeking relief in the courts of this state the fundamental right to due process and the fundamental right of a parent to her child by recognizing and enforcing orders from a country which denies her these rights based solely on her gender, national origin, and religion. To honor such child custody laws would deny our state and country's Constitutional rights to a litigant in our state's courts. In adopting the Uniform Child Custody Jurisdiction and Enforcement Act ("UCCJEA"), RCW Ch. 26.27 *et seq.*, the Washington State Legislature could not have intended to adopt laws of another country that violate federal and state Constitutional due process rights.

FACTS AND PROCEDURAL HISTORY

Petitioner Bethany AlHaidari and Respondent Ghassan AlHaidari married in Saudi Arabia in November of 2013.¹ Bethany and Ghassan had a child, whom this Court will refer to as ZA, who was born in Saudi Arabia in December of 2014. ZA is a citizen of both the United States and Saudi Arabia. Bethany is a United States citizen and Ghassan is a citizen of Saudi Arabia.

Prior to ZA's birth, the couple had problems in their relationship which only worsened as the years went on. The parties went to counseling to attempt to resolve their relationship problems, but the problems continued. Bethany alleges that Ghassan was emotionally, verbally, and physically abusive towards her, sometimes even in front of their daughter.

¹ For the sole purpose of preventing confusion as to the individuals referenced, the Court is using their first names for the remainder of this letter opinion, without intending any disrespect of the parties by doing so.

Bethany asked Ghassan for a divorce in September of 2017. If Bethany filed for divorce in Saudi Arabia, she had to provide a reason for the divorce and return her dowry. Ghassan could file for divorce without making payment and without giving any reason.

Bethany's legal residence in Saudi Arabia was dependent on Ghassan as her legal guardian because he was her husband. In 2018, she requested Ghassan update her residency in Saudi Arabia and he refused. He also refused to allow ZA and Bethany to leave the country to visit Bethany's family in Washington State over the holidays. Because her residency in Saudi Arabia was 90 days from expiration and she was worried about her ability to remain in Saudi Arabia and/or travel out of the country and Ghassan refused to renew her residency or file for divorce, Bethany was forced to file for divorce. Bethany was further required to provide her reasons for the divorce which included Ghassan's substance abuse and domestic violence.

The Saudi court granted the parties' divorce in January of 2019. Of particular note, the following occurred during the divorce proceedings in January of 2019: 1.) Bethany struggled to communicate her position and defend herself because she had no legal counsel and the court appointed interpreter did not speak or understand basic English. 2.) Bethany was denied \$26,000 in alimony because Ghassan claimed he "Islamically divorced" Bethany in May of 2018 and swore under oath he was telling the truth, despite Bethany's testimony and text messages expressing his refusal to divorce her at that time. Bethany's testimony was not considered because she could not provide two male witnesses to support her testimony. 3.) Although Bethany wore a full body black covering that also covered her hair, she was ordered by the judge to leave the courtroom and only return if her entire face, including her eyes, was covered as well. This is particularly relevant because it demonstrates the impact of the accusations and photos Ghassan presented to the court later in the case in order to discredit Bethany.

The judge refused to order Ghassan to renew Bethany's residency, despite having the jurisdiction to do so. Ghassan held multiple documents necessary for Bethany to renew her residency, which was fast approaching expiration, yet refused to provide those documents so that Bethany could remain legal in the country.

By February 7, 2019, Bethany no longer had legal status in Saudi Arabia and therefore could not make filings in the court system or take any legal action, pay her salaries for her company, nor access her bank account for risk of being deported or jailed. It was not until Bethany approached the media and her story was published in the *New York Times* that that the Saudi government provided her with legal residency status again.

There is some dispute between the parties whether Ghassan refused to see ZA or whether Bethany denied him visitation at this point. Regardless, in April of 2019, Ghassan sued Bethany for visitation. From that point forward, the parties engaged in a bitter custody battle in Saudi Arabia. Both sides made inflammatory accusations about the other in an attempt to discredit the other's ability to parent. Ghassan sought to remove Bethany's custody rights based on allegations that she worked full time, put ZA in school rather than staying home with her, and claimed that Bethany had a

learning disability so she was mentally unfit to parent. Instead of seeking custody for himself, Ghassan moved to give custody to his mother, AlBandari AlMigren, whom he lived with at the time.

In April 2019, Ghassan's legal team attempted to present a video to the Saudi judge of Bethany doing yoga in Riyadh's diplomatic Quarters, uncovered. When the judge refused, the video was spread around social media and Bethany was called in by the police and investigated for criminal charges of public indecency and disrupting public order, a criminal charge that could result in lashings and prison. Bethany hired a lawyer and learned that Ghassan reported Bethany to the authorities for investigation over the yoga video. At this point, Bethany was able to convince the U.S. Embassy in Riyadh to appear as an observer in the court proceedings, although they did not agree to intervene.

In the following custody hearing, Ghassan presented photos and videos to the judge, including photos of Bethany in a bikini *in the United States* (the fact that the judge prohibited Bethany from exposing anything but her eyes in court demonstrates the egregious and humiliating nature of presenting these photos to the judge), the video of her doing yoga, accused Bethany of gender mixing (having male friends is a punishable crime), accused Bethany of adultery by presenting a photo of her with a male friend who he claimed was her boyfriend (a crime punishable by death), accused Bethany of insulting Islam and Saudi Arabia (also crimes punishable by death), and submitted to the judge a video of Bethany stating that ZA was going to visitation so it was “metime,” arguing that caused her to be an unfit mother.

Bethany argued against these allegations, stating that Ghassan had agreed to have ZA live with her but was acting out of revenge rather than ZA's best interests. Bethany also presented videos of verbal abuse and death threats from Ghassan, and videos of his drug use, but the judge did not consider these videos.

Ghassan's sister, Leena AlHaidari, testified in court against her mother, AlBandari AlMigren, stating that her mother was abusive, unfit to parent, and addicted to pills. But in June 2019, Saudi Judge Tuwaijiri ruled that “though all three candidates were unsuitable to parent, the grandmother was better than the parents.” The judge stated that though there could be security concerns for the father residing with the grandmother, he was a man, and it is not in a man's nature to take on childcare or be in the house. The court awarded custody to Ghassan's mother, stating that Bethany was a foreigner and still embraced her (western) cultural traditions, and ZA was fluent in English so therefore ZA needed to be protected from Bethany's western culture and traditions.

Bethany sought assistance from the media, the U.S. government, and human rights organizations. Ghassan then filed a complaint with the Saudi government alleging Bethany was refusing visitation and the Saudi government issued an arrest warrant for Bethany as well as a 10-year travel ban prohibiting her from leaving Saudi Arabia. Bethany's appeal of the custody decision was ignored and the case was

sent back to the civil court to force a settlement. After one unsuccessful settlement conference, the head of the court called the parties back in and told them that no one was awarded custody and he was closing the case. This meant that Ghassan, as ZA's father, would have all rights and Bethany could do nothing. She would not be permitted to travel with ZA, obtain issuance of identification for ZA, take ZA to the hospital, or enroll her in school. Due to this, Bethany agreed to reconcile her relationship with Ghassan in order to convince him to reach a settlement affording her custody rights to ZA. They were to finalize the agreement in November of 2019 but did not agree on terms. Bethany forfeited her financial rights to child support in order to get the right to travel.

The parties' final settlement provided that both parents had equal custody and visitation rights. In December of 2019, Bethany, under the guise of the parties reconciling, received Ghassan's permission to travel to the United States with ZA for a visit with her family in Chelan County, Washington. Bethany has not yet returned to Saudi Arabia and has expressed her intention not to return.

While Ghassan denies some of the allegations regarding the marriage, divorce, and custody case that Bethany has presented to this Court, he does not deny many of the primary allegations. Instead, he attacks Bethany's credibility. Bethany admits that she was dishonest at times to Ghassan and entered into agreements that she did not agree with because she felt trapped and did not feel that she had any choice if she wanted to keep custody of her daughter and be permitted to leave Saudi Arabia. She provides sufficient reasons for any lack of credibility during the Saudi custody battle. Bethany's statements in this court record are supported by her documentary evidence and multiple declarations from individuals who personally witnessed the events she testified to. The Court lends particular weight to the Declaration of Leena Abdulrahman AlHaidari, Ghassan's sister, who testified in her declaration that Ghassan was abusive to Bethany and a neglectful father, Bethany is an excellent mother, and Ghassan's request to have his mother care for ZA over Bethany was incredibly surprising and damaging, given their mother's abusive and neglectful behavior toward her own children and ZA. Leena's testimony puts her at risk both with her family relationships and in her own country, but appears to be solely dedicated to the best interest of ZA.

On January 23, 2020, Bethany filed this action asking this Court to exercise temporary emergency jurisdiction and enter a temporary restraining order and a temporary parenting plan. Bethany's attorney sent Ghassan a copy of the above referenced motions via email on January 23, 2020. Attorneys at Infinity Law in Victoria, British Columbia purported to represent Ghassan in a letter to Petitioner's attorney dated February 19, 2020, acknowledging Ghassan's receipt of the Motion for Emergency Temporary Jurisdiction, Motion for Order to Show Cause for a restraining order and the supporting documents.

On February 20, 2020, the Court held a hearing on the Motion for Emergency Jurisdiction and Motion for Temporary Restraining Order, holding that this Court had Temporary Emergency Jurisdiction under RCW 26.27.231, entering a restraining order

granting temporary custody to Bethany and directing Bethany to have Ghassan personally served with these motions in Saudi Arabia. Ghassan was personally served with the Motion for Emergency Temporary Jurisdiction, Motion for Order to Show Cause for a restraining order, and the supporting documents on February 21, 2020 in Saudi Arabia.

On March 12, 2020, the Court held another hearing in this matter and found Ghassan had defaulted as to the issue of jurisdiction for failing to appear or respond in this matter and further held that Saudi Arabia's child custody laws violated the fundamental principles of human rights thus determining that no court of any state had jurisdiction over the ZA's custody determination. On that date, the Court also entered a Temporary Parenting Plan and Order extending the Immediate Restraining Order. The Court's decision that it would not recognize Saudi Arabia as a "state" under the UCCJEA was based on Saudi Arabia's denying litigants their due process rights in the justice system because of their gender, national origin, and religion.

On March 25, 2020, Bethany filed a Summons and Petition for a Parenting Plan and/or Child Support. Ghassan did not appear in this case until March 31, 2020. Shortly thereafter, Ghassan was personally served in Saudi Arabia with the Summons and Petition and accompanying pleadings supporting the requests on April 8, 2020.

On April 3, 2020, Ghassan filed a Petition to Enforce Out-of-State Custody Order and a Request to Register Out-of-State Custody Order seeking this Court's enforcement of the settlement agreement the parties entered into in Saudi Arabia. Although the Court had already determined it would not recognize Saudi Arabia as a "state" under the UCCJEA and Ghassan did not seek an order to vacate that decision, this Court proceeded to a hearing on this matter to ensure that both parties had an opportunity to have their case heard before this Court.

In her opposition to the present motion, Bethany offered declarations from experts Dr. Hala AlDosari, Dr. Abdullah S. Alaoudh, and Dennis Horak regarding Saudi laws and human rights violations. Ghassan raised no objection to the expert qualifications of these individuals. Ghassan did present one expert declaration regarding the child custody laws of Saudi Arabia: Abdulaziz Alkhorayef. However, Bethany properly disputed this expert's opinions, pointing out that the court records from Saudi Arabia demonstrate Saudi Arabia does not have a codified system as Ghassan's expert alleges.

The Court has reviewed the qualifications of Bethany's experts and finds that both of her legal experts have relevant knowledge, skill, experience, training, and education concerning both family law and child custody law in Saudi Arabia. The Court likewise finds Mr. Horak has the relevant knowledge, skill, and experience, concerning women's treatment in Saudi Arabia, including the treatment of women within the judicial system. The Court finds the declarations from Bethany's experts are credible. Bethany's experts have the specialized knowledge to assist the Court in understanding the applicable Saudi family laws and operation of the judicial system in Saudi Arabia as it relates to mothers in those cases for the purposes of this motion. Ghassan's expert practices law in Saudi Arabia and therefore would be at risk both professionally and personally to speak against

Saudi Arabia's justice system, given how Saudi Arabia treats dissidents. Furthermore, his testimony defies the written court records issued by the Saudi court in the parties' case. Therefore, the Court does not find Ghassan's expert credible or reliable.

ANALYSIS

Before proceeding further with this case, this Court must determine whether it has authority to do so. Because there is already a child custody proceeding in Saudi Arabia, a country which was ZA's home until December of 2019, this Court must determine whether it will follow the orders in the Saudi case. If this Court decides that Saudi Arabia's child custody laws violate fundamental principles of human rights, then it need not follow Saudi Arabia's child custody determination over ZA and instead can exercise jurisdiction in this case.

It is clear from the record and from the laws of Saudi Arabia both as written and in practice that, in Saudi Arabia, women are not treated as equals of men, that non-Muslims are not treated as equals to Muslims, and that non-Saudi citizens are not treated as equals to Saudi citizens. Not only are these classes of individuals not treated as equals, but they are denied basic rights to due process, including their right to be heard in front of a fair and impartial tribunal.

This Court declares that the right to due process is a fundamental principle of human rights. Without due process, an individual could be subject to loss of parental rights, imprisonment, and even death without having the opportunity to be heard. A country which denies any person the right to due process of the law and the rights of a parent to a child based upon that person's gender, religion, or national origin violates the fundamental principles of human rights and should not be recognized as a "state" under Washington's adoption of the UCCJEA.

A. Subject Matter Jurisdiction Generally

Superior courts of this state have original and concurrent jurisdiction in family law cases. *See* Wash. Const. Art. IV, § 6; *In re Marriage of Buecking*, 179 Wn.2d 438, 448050, 316 P.3d 999 (2013). The superior court cannot acquire jurisdiction over a civil action until the filing party fulfills the requirements of RCW 4.28.020. The Court adopts with approval the portions of argument in Plaintiff's Brief in Response to Respondent's Motion, pages 1-3 in their entirety and page 4, lines 1-3 as support for its decision that Chelan County Superior Court has subject matter jurisdiction in this matter. Whether the Court has jurisdiction personal to Respondent and under the UCCJEA is set forth below.

B. Personal Jurisdiction as to Respondent

Ghassan resides in Saudi Arabia. Petitioner effected service on Ghassan via personal service in Saudi Arabia. Ghassan has appeared in this action and received actual notice of these proceedings. Therefore, this Court has personal jurisdiction over Ghassan for the purposes of determining the child custody issues in this case. *In re Marriage of*

Tsarbopoulos, 125 Wn. App. 273, 277, 104 P.3d 692, 694 (2004). However, the Court is concerned that Ghassan does not have sufficient contacts with the State of Washington for the Court to exercise personal jurisdiction over him for the purposes of child support. The parties did not argue whether *In re Custody of Miller*, 86 Wn.2d 712, 548 P.2d 542, (1976) applies to this case in order for the Court to exercise personal jurisdiction over Respondent. As such, the Court will allow the parties to provide additional briefing and set a court hearing for oral argument as to this issue.

C. Jurisdiction Under the UCCJEA

The next question the Court must answer is what court has jurisdiction to determine child custody under the UCCJEA. RCW 26.27.201 sets forth whether a Washington court can exercise jurisdiction to make an initial child custody determination. Although a Saudi court has already made a child custody determination regarding ZA, this Court need not recognize and enforce that determination if the Court finds that Saudi Arabia did not make its child custody determination in substantial conformity with the jurisdictional standards of UCCJEA. Even if this Court makes that finding, Saudi Arabia would still be the “home state” for the purposes of jurisdiction over future determinations of child custody of ZA unless this Court determines that Saudi child custody laws violate fundamental principles of human rights. RCW 26.27.051.

Prior to Bethany filing this action, ZA had not resided in Washington State for the requisite six months for Washington to be the “home state” under the UCCJEA. In fact, ZA had resided in Saudi Arabia most of her life, excluding a few months when she visited Washington State with her mother. Therefore, under the UCCJEA, Saudi Arabia is the “home state” that would have sole jurisdiction to make a child custody determination over ZA unless this Court determines that Saudi child custody laws violate fundamental principles of human rights. RCW 26.27.051. If the Court makes this determination, then no other state has sole jurisdiction to enter a child custody determination and this Court can exercise jurisdiction in this case.

Washington’s application of the UCCJEA should not operate to impair the fundamental rights of a child or her parent to safety and protection. The United States of America and Washington State have numerous laws protecting women’s rights to equality under the law. The United Nations has similarly recognized that, “[d]iscrimination based on sex is prohibited under almost every human rights treaty...” United Nations and the Rule of Law, Human Rights and Gender, <https://www.un.org/ruleoflaw/thematic-areas/human-rights-and-gender/> (last visited on Feb. 8, 2021). Furthermore, under the Universal Declaration of Human Rights:

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

(Art. 2)

All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

(Art. 7)

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

(Art. 10)

(1) Everyone has the right to freedom of movement and residence within the borders of each state.

(2) Everyone has the right to leave any country, including his own, and to return to his country.

(Art. 13)

(1) Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family. They are entitled to equal rights as to marriage, during marriage and at its dissolution.

...

(3) The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.

(Art. 16)

United Nations, *The Universal Declaration of Human Rights*,
<https://www.un.org/en/universal-declaration-human-rights/> (last visited Feb. 8, 2021).

Saudi laws and their implementation in the justice system violate each of the above principles for mothers in child custody cases. In addition to the above, the United States Congress declared that Saudi laws impede women's freedom, specifically citing child custody laws as part of these violations:

Whereas the 2018 Department of State Country Report on Human Rights Practices for Saudi Arabia stated that, "Women continued to face significant discrimination under law and custom, and many remained uninformed about their rights", and "women also faced discrimination in courts, where in most cases the testimony of one man equals that of two women";... Whereas serious impediments to women's freedoms in Saudi Arabia remain, including a high

prevalence of forced marriages, inequality in marriage, divorce, child custody and inheritance, laws that prevents women from directly transmitting citizenship to their children, and the male guardianship system;"... "Resolved, that the house of representatives - ... (5) calls on the United States Government to... (d) prioritize human rights, including the rights of women, as a key component of the relationship between the United States and Saudi Arabia.

Condemning the Government of Saudi Arabia's Continued Detention and Alleged Abuse of Women's Rights Activists, H.R. 129, 116th Cong. (July 15, 2019).

Undeniably, Saudi Arabia does not afford women equal rights as those provided to men. Notably, Saudi laws prohibited Bethany from leaving the country without permission of Ghassan, did not provide Bethany with all the rights and freedoms without distinction of her sex, religion, and national origin, did not provide her full equality to a fair and public hearing by an independent and impartial tribunal in the determination of her rights as a parent to ZA, and did not allow her the right to leave Saudi Arabia on her own volition. She was not entitled to equal rights as to the dissolution of her marriage nor was her right to her family protected by the State in Saudi Arabia because she was denied basic rights as a parent both within the court system and in the guardianship system for the sole reason that she is a woman.²

1. Child Custody Law in Saudi Arabia

The Court, having fully reviewed the record submitted to it regarding the AlHaidari child custody case in Saudi Arabia, is left puzzled with the Saudi court's conclusion and custody determination. It is unclear what standards the court there followed as it appears to have disregarded the father's right to custody and commented that "it is in men's nature not to stay at home and not to honor/fulfill the parental roles themselves" and the mother's right was also disregarded because she is a foreign woman who is new to Islam, and still embraces the culture of her upbringing. (Personal Status Court of Riyadh's Initial AlHaidari Custody Decision, April 14, 2020 Bethany AlHaidari Decl. Ex. K at 14.) Instead, custody was granted to the paternal grandmother apparently because she had good standing in the community, despite the fact that her own daughter expressed concern about her mother's abusive behavior. The Saudi custody determination did not follow any standards set forth in any Saudi law because there is no set codified child custody law in Saudi Arabia. Although judges are expected to follow guidelines set out by Sharia law, child custody determinations are left within the judge's sole discretion. (May 21, 2020 Dr. Hala AlDosari Decl. at 2.)

Saudi Arabia remains the only Gulf state without a codified PSL, despite a PSL draft presented in 2013 by the Shura Council, Saudi Arabia's appointed

² It is important to note that the Court is not determining whether custody laws based on Sharia law violate fundamental principles of human rights. In fact, Petitioner admits that "Sharia law itself is not the problem, several States which derive inspiration from Sharia law in custody hearings manage to maintain and align with the basic principles of human rights..." (April 14, 2020 Bethany Al-Haidari Decl. at 3:20-22.)

advisory body. Saudi judges follow the Muscat PSL as a reference, but not as an obligatory document. Most Saudi judges continue to apply the strict Hanbali madhhab that rejects any attempts of reformation of earlier interpretation of the Quran and hadith, including codification for legal references. ...Codification of PSL, though it may cement discrimination into laws, restricts the ample authority granted to a judge, who is otherwise left to rule based on his own discretion.

Dr. Hala AlDosari, The Arab Gulf States Institute in Washington, *The Personal is Political: Gender Identity in the Personal Status Laws in the Gulf Arab States*, August 29, 2016, https://agsiw.org/wp-content/uploads/2016/08/Aldosari_ONLINE_updated.pdf at 4 (last visited Feb. 8, 2021).

The lack of codified child custody laws in Saudi Arabia makes it difficult for this Court to determine whether Saudi Arabia's child custody laws "violate fundamental principles of human rights." This Court must look to actual custody determinations presented to the Court which were entered under the minimal laws that do exist as well other Saudi laws that significantly impact the justice system in Saudi Arabia. Of particular concern for the purposes of this case, is the treatment of women, foreigners, and non-Muslim individuals in Saudi Arabia's justice system as well as the guardianship system in Saudi Arabia that appears to trump child custody determinations as they relate to the mothers in these cases. Petitioner cited several cases in which Saudi courts have denied mothers' rights to their children based upon failing to cover their children's faces, gender mixing, working full time jobs, and the mother's cultural or national origin. (April 14, 2020 Bethany AlHaidari Decl. at 5. *See also* April 14, 2020 Autumn Davis Decl.) These custody cases demonstrate the unequal treatment of women and foreigners in the Saudi justice system. In the absence of codified child custody laws in Saudi Arabia, the Court must also look to Saudi laws regarding the justice system in general to determine whether these laws, which would apply to any litigant in the Saudi justice system, violate fundamental principles of human rights.

2. Violations of Women's Human Rights in Saudi Arabia

It is impossible to separate the general human rights violations against women in Saudi Arabia with Saudi Arabia's child custody laws (or lack thereof) and the implementation of Saudi laws. Women's rights are violated in very basic ways from the outset of any case, including child custody cases. For example, one of the most important rights of any individual within the court system is the right to due process, in particular, the right to be heard. Women do not automatically have this right in Saudi Arabia. A woman's testimony is equal to half a man's in Saudi courts. (April 14, 2020 Bethany AlHaidari Decl. at 2:9-15.) She is seen as less than a full person who is not entitled to be heard unless supported by a man's testimony. If a man makes a statement in court under penalty of perjury against a woman, the court will disregard that woman's testimony and her other evidence unless she presents the testimony of at least two male witnesses that support her position. This law alone creates a dangerous and potentially deadly situation for any woman in a country where the death penalty is actively utilized as punishment for

crimes. This law impacts Bethany directly because Ghassan accused Bethany of adultery and insulting Islam and Saudi Arabia which are all crimes punishable by death. The Saudi justice system treats women as less than men, which severely impacts a mother's ability to present her case for child custody. Such laws equate to child custody laws that violate fundamental principles of human rights.

3. Violations of the Rights of Foreigners and Non-Muslims in Saudi Arabia

It is difficult to separate the human rights issues related to Bethany's gender versus her status as a foreigner and non-Muslim in Saudi Arabia but it is necessary to mention how significantly more discriminated against she is because of these two additional factors. Also concerning is that ZA will forever be branded with such discrimination because of her heritage. As demonstrated by the pleadings submitted in this case, the treatment of foreigners and non-Muslims in the Saudi justice system as it relates to child custody cases violates fundamental principles of human rights.

4. End Result as Evidence of Fairness

Ghassan's briefing suggests that the Court should disregard whether Saudi Arabia's child custody laws violate the fundamental principles of basic human rights if the end result in this case was a fair result. If the Court were to adopt this reasoning, Ghassan argues, then the parties' purportedly "agreed" parenting plan is fair and just because it provides both parents with 50/50 shared custody. Ghassan's reasoning ignores the effect of the male guardianship system on the custody of ZA in their case. Furthermore, Bethany has provided substantial evidence that she entered into this agreement under duress so that she could keep ZA protected from the abusive paternal grandmother and because she had been threatened with deportation if she did not follow through with Ghassan's wishes. Bethany's evidence demonstrates that she was forced into a settlement by the Head of the Court in the Personal Status Court of Riyadh and was forced to waive all rights and active appeals in the Saudi courts. Fairness cannot occur when a party enters into a settlement and waives their rights under duress.

Ghassan's reasoning also completely ignores the fact that the custody arrangement the parties allegedly agreed to requires ZA to live in Saudi Arabia, which could effectively cause Bethany to lose all rights to her child if she loses her legal status in Saudi Arabia. This is a situation that has already occurred once due to the actions and omissions of Ghassan and is at extreme risk of happening again, especially considering that Bethany has violated the terms of the custody "agreement" and has "agreed" in this document to be found guilty of kidnapping by keeping ZA in the United States. This "agreement" subjects her to three years of confinement in prison once she returns to Saudi Arabia. This cannot be reasonably considered as a "fair" result.

5. Guardianship System in Saudi Arabia

In addition to the equal protection and human rights violations mentioned above, Saudi Arabia's guardianship system is particularly problematic when it comes to child

custody issues. Guardians can only be men and are generally the father of a female child. Despite a court granting custody to a mother, the father, as the legal guardian under Saudi law, makes the majority of decisions related to their female “ward” until the woman is 21 years of age, far past the age of majority. These decisions which are restricted solely to the male guardian include procuring a passport, authority to travel, authority to live outside of the home and approval of any such accommodations. Regardless of the rights conveyed to a mother in a Saudi child custody order, Saudi Arabia’s guardianship system prevents her from having full parental rights as are afforded to the father of the child. Furthermore, if a mother of a Saudi child is not a Saudi citizen, she may be subject to deportation and prevention of returning to Saudi Arabia, and, because her child’s ability to travel is solely determined by the male guardian (typically the father), this could result in the mother’s complete loss of parental rights. The risk that this could occur in Bethany’s case is significant, given that she has already experienced problems with her immigration and travel status in Saudi Arabia.

The male guardianship system cannot be separated from Saudi child custody laws. Saudi Arabia’s guardianship system that places all major decision-making with the father, solely based on his gender, and which could effectively eliminate the mother’s rights to visitation, equates to a child custody law that violates the fundamental principles of human rights.

CONCLUSION

A legal system that is set up to not only fail to protect but to deny basic human rights as a matter of course, such as the right to due process and the right of a parent to a child, based solely on that parent’s gender, national origin, and/or religion, is not a legal system whose child custody laws this State can honor. As a woman, an American citizen, and a non-Muslim, Bethany was not honored with due process and equality as a parent in Saudi Arabia, therefore this Court cannot uphold the child custody decisions of the Saudi court. For these reasons and the reasons set forth above, the Court denies Ghassan’s Motion to Dismiss and Motion to Enforce Out of State Custody Order and orders that Washington State can and will exercise jurisdiction over ZA’s child custody determination because no other state has sole jurisdiction over this case.

Mr. Volyn shall prepare the order reflecting this Court’s decision. If the parties agree as to the form of the orders, then they may sign and present the orders *ex parte*. If the parties do not agree to the language of the orders, then they shall note presentment of the orders for hearing.

Sincerely,



Kristin M. Ferrera
Superior Court Judge

Cc: Court File