



Decision

In the family matter

regarding the parental custody for

1. Machsejah Wunderlich, born 07/23/1999
resident [REDACTED]

– Person concerned –

Legal representative:

Attorney Johannes Hildebrandt, [REDACTED]

Reference Code: AZ: 13/8468/JH/le

2. Joshua Wunderlich, born 09/30/2000
resident [REDACTED]

3. Hananjah Wunderlich, born 04/27/2002
resident [REDACTED]

4. Serajah Wunderlich, born 09/14/2005,
resident [REDACTED]

– Persons concerned –

For 1, 2, 3 and 4 represented by
Mr. Certified Pedagogue Roland Wiebe, [REDACTED]

Legal representative:

for 2, 3 and 4

Attorney Johannes Hildebrandt, [REDACTED]

Reference Code: 13/1054/601

Parties:

1. District Darmstadt-Dieburg Youth Welfare Office Mrs. Kissel,
Jägertorstr. 207, 64276 Darmstadt,

– Petitioner –

2. Petra Wunderlich,

resident [REDACTED],

3. Dirk Wunderlich,

resident [REDACTED],

Legal representative:

for 1 and 2

Attorney Dr. Andreas Vogt, [REDACTED]

Reference Code: 179/13VO01

4. Certified Pedagogue Roland Wiebe,
[REDACTED]

In the family matter

the district court—family court—Darmstadt through Judge at district court Malkmus has
decided on December 18, 2013:

1. In addition to the decision by the Higher Regional Court (HRC) Frankfurt am Main of April 15, 2013, the parents Dirk and Petra Wunderlich also have their parental care concerning the "right to apply for help to educate" revoked and transferred to the Youth Office Darmstadt-Dieburg as the care taker.
2. The request of the parents to reinstate their right to determine the location of the children, the right to make educational decisions for the children, as well as the right to file legal applications for their children is being refused.

The alternative requests of the parents dated Dec. 12, 2013 are being refused.

3. The main request of the child Machsejah to reinstate all parental care rights to the parents is being refused.

The alternative requests of the child Machsejah are being refused.

4. Court cost are not levied. Other cost are not reimbursed.
5. The value of the procedures are set to be 3,000 €.

Appeals cost: 3,000.00 €

Reasons

I.

The requests come from the parents of the children, who live in their household and who are cared for by them. Due to the persistent refusal of the parents to let their children be schooled, the parental care rights regarding the right to determine the children's location, the right to make educational (school) choices for the children and the right to file legal requests, were transferred by the court to the Youth Office as care taker. The complaint of the parents was rejected by the HRC (Higher Regional Court) Frankfurt am Main with their decision of April 24, 2013, due to the fact that the right to decide the location of the children was given to the Youth Office as care taker and to the parents only during school vacations in Hessen. As a result of the court decisions in the first and second instance the children have been in regular school attendance since the fall vacations (Oct 28, 2013). In a letter to the Youth Office, the parents communicated on Oct 14, 2013 already, that they wanted to emigrate to France together with the children to set up permanent residence there.

The Youth Office is now of the opinion, that for the implementation of the above family court decisions, it is necessary to remove the parental care right to apply for help with education from the parents. It should be considered that emigration plans of the parents indicate that the parents will continue to prevent schooling of their children in a public school. Even though there are no suspicions of any parental care right abuses, besides the prevention of public school attendance, the further withdrawal of the part of parental care rights is considered necessary to help and support the education of the children, to ensure the children's attendance of a regular school.

The Youth Office requests

that the parental care right regarding the right to apply for help with education according to §§ 27 ff SGB VIII be taken away from the parents and to transfer that right to the Youth Office as care taker.

The parents request

1. To refuse the request by the Youth Office.
2. To overturn previous court decisions which took part of the parental care rights away from the parents and transferred them to the Youth Office.

Alternatively the parents request:

1. To revise the court decision of the family court by granting the parents the right to make educational decisions for their children and to release the Youth Office from its care taker role in that regard.
2. To revise the decision of the family court and to return to the parents the right to emigrate from Germany and to settle with their children abroad in a member state of the EU and to have the right to file all official applications with the authorities in that regard and to release the Youth Office from its care taker role in that regard.

The child Machsejah requests:

All parental care taker rights will be transferred back to the parents.

Alternatively she requests that those parts of the parental rights be transferred back to the parents, which allow the parents to file official applications necessary to prepare for emigration to a EU member state, specifically to France, particularly the right to withdraw their children from public school; the right to apply for ID cards and the right to inform the public registration office of their departure from Germany.

Alternatively she also requests that in case they have to remain in Germany, the parents will have the right to apply for an exemption from the mandatory school attendance requirement.

The parents and Machsejah are of the opinion, since the whole issue is only about the mandatory school attendance of the children anymore, not only the request of the Youth Office to have the right to determine educational issues should be rejected, but all portions of the parental rights should be transferred back to the parents. The child well-being is not in jeopardy, since the children have attended public school since Oct 28th, 2013, independently of the fact that the former homeschooling did not noticeably endanger the child well-being. They should be granted the right to have the children removed from public school attendance based on balanced considerations of parental rights. In addition, considering articles 6 and 11 of the Basic Law, it should be possible to settle with the children abroad, where the children could possibly be homeschooled.

The court has provided a case assistant for the children. Also the court has heard the parents and the children.

The court further references correspondence between the parties.

II.

The request of the Youth Office is permissible and well founded. In contrast, the main as well as the alternative requests of the parents and the child Machsejah are rejected as unfounded.

Since the HRC Frankfurt with their decision of April 25, 2013 in reference to §§ 1666, 1666a BGB¹, confirmed that based on the family court decision of Sept 6, 2012 portions of the parental care rights are to be taken away from the parents, namely the right to determine one's location (with the exception of school vacations), the right to file official applications as well as the right to make educational decisions, the parents were also to have their right to apply for help with education revoked and transferred to the Youth Office as care taker. This decision is also based on civil laws §§ 1666, 1666a BGB.

Without the transfer of this further part of the parental rights, the final decision of the HRC Frankfurt of March 25, 2013 cannot be carried out. It is according to the administrative legal decisions, which are based on the Federal Administrative Court of June 21, 2001, that an application for help with education by an authorized expert of the Youth Office can only be granted, when the right to apply for help with education was transferred to the applicant. To grant help with education based on an application by the Youth Office without this right to request help for education would be illegal based on the above mentioned court decisions.

The HRC Frankfurt in its above mentioned decision of April 25, 2013, has thoroughly justified, that through the persistent refusal of the parents to ensure their children's school attendance, the child well-being is endangered. The HRC also thoroughly laid out that there are no constitutional concerns against the mandatory school attendance and that the parent's concerns towards the confirmed court decisions of the Federal Constitutional Court and the Federal Administrative Court concerning homeschooling are not shared by the HRC Frankfurt. In another decision, the Federal Constitutional Court addressed the school laws of the state of Hessen and stated that the parent's obligation to ensure their children's attendance at a publically recognized school constitutes a permissible limitation of their parental rights.

In addition the HRC Frankfurt in its decision of April 25, 2013 pointed out that the alleged advantages of homeschooling, which is allowed in other countries do not need to be addressed here since it does not force the conclusion that the prohibition of homeschooling is unconstitutional.

¹ BGB = **B**ürgerliches **G**esetz**b**uch = Civil Law Code.

Because the parents and the child Machsejah present the same arguments and constitutional concerns, just in other words, as in the previous process before this court and the HRC Frankfurt, nothing has changed about the recent assessment concerning the endangerment of the child well-being by the HRC Frankfurt in their decision of April 25, 2013, which this court fully agrees with, based on the reasons given for the decision and the above mentioned summary of reasons.

In respect to the stated emigration plans of the parents, it is simply added that the parents do in principle enjoy the freedom to move according to article 11 of the Basic Law, but that this freedom is always bound by obligations in respect to the child well-being. Specifically, when parents plan to emigrate it is always to be made sure that the child well-being is not endangered, which is the case here.

The opinion of the parents is wrong, when they believe that there is no damage to the child well-being to be feared and that such damage has not occurred.

The opposite is the case.

The concrete endangerment of the child well-being is present according to the HRC Frankfurt in their decision of April 25, 2013, by holding on to the children in a "symbiotic" family system and the denial of the form of education, which meets the accepted standards and the standards necessary for the children's future within society. The HRC Frankfurt has laid out that the damage has occurred because the children—apart from a few weeks—have not yet visited a school. To date nothing has changed this situation including their school attendance since Oct 28, 2013. The parent's fight to homeschool their children is primarily focused on binding their children closely to themselves with the exclusion of third persons. The children have grown up in the past in an isolated family enclave. Only since Oct 28, 2013 has there been some small success in breaking the straight jacket in which the children were bound through years of isolation, initiated and supported by their parents, with the help of education experts, by taking the children to public school through pressure by the courts and the state.

The emigration plans of the parents will negate those efforts. The parents have admitted in a personal hearing that the reason for their emigration plans to France are that they want to homeschool their children again. As a last consequence the implementation of the parent's emigration plans would mean that the children would again be growing up in a family enclave, more or less isolated from 3rd persons and through homeschooling in France they would again be exposed to the inadequate influence of their parents only. Compared to homeschooling in Germany, the situation of the children would be further intensified as they would be confronted with a foreign language in a foreign country, which would rather foster than soften further isolation within the framework provided by their parents. The children would grow up in a parallel society without having learned to be integrated or to have a dialogue with those who think differently and facing them in the sense of practicing tolerance.

During personal hearings, all the children stated that they wish to emigrate to France with their parents and to be homeschooled by their parents there. Their wishes cannot be considered autonomous but the result of their parents influence. When the children hear from the parents that they should be homeschooled, they accept that; on the other hand, when they hear from the parents that they should go to a regular school, the children also accept that as is known from the previous process. There the children were vehemently opposed to attendance in a public school, but gave up their resistance immediately, when the parents indicated their willingness to cooperate in bringing their children to a public school. The changing moods of the children make it especially clear that they are under the strong influence of their parents.

The isolated situation of the children, which has been apparent in the past, leaves no room for another (court) decision as the mildest form of enforcement. The above stated reasons therefore exclude the transfer back of some of the already removed parts of parental rights to the parents. Also the alternative requests by the parents and the child Machsejah are to be rejected in their entirety based on the above stated reasons. For the above reasons, the child well-being demands not to allow the suspension of the mandatory school attendance or anything like it.

To the contrary, it needs to be stated in this context that in the future it needs to be ensured that the children will participate in all school activities. This includes the participation of gym classes from which the parents currently hinder their children to participate without stating any reasons. This situation can also not continue indefinitely, but may only be accepted during a transition period during which the children get used to the school.

In conclusion the court points out that the appointment of a court appointed counsel in respect to the representation of the interests of the children was justified as could be seen during the course of the process. Therefore the court made the right decision, not to end the appointment of case assistant Mr. Wiebe, contrary to the requests by the parents and the legal representative of the children.

The legal representative of the children was appointed by the parents and represented primarily the interests of the parents and not that of the children. That's why an independent stakeholder was appointed by the court, which is typical in such cases.

Malkmus
Judge at District Court

Executed
District Court Darmstadt, 2013/12/19