59933 - Ruling on the trustee taking from the orphan’s wealth

the question

I am the wakeel (trustee) for the heirs of my brother and I look after their inheritance and interests and I visit them weekly, in order to make his children and my children happy. My question is about their requirements (what I give them each month is 15,000 and their inheritance that I am keeping for them is 400,000). I have debts for 4 years because of building. Which is better – putting pressure on myself and my children for a little while or taking some money to cover gas costs etc (because of the visits) without their knowledge?.

Detailed answer

Praise be to Allah.

Islam regards taking an orphan’s wealth unlawfully as one of the seven sins that doom one to Hell – as it was narrated by al-Bukhaari (2615) and Muslim (89) from the Prophet (peace and blessings of Allah be upon him), because it is a great trust which many are unable to fulfil. The Prophet (peace and blessings of Allah be upon him) said to Abu Dharr, when advising him: “And do not take care of the property of an orphan.” Narrated by Muslim (1826).

Islam commands the one who has orphans under his care to look after them properly and raise them well, and if they have wealth he is to guard it and invest it, and pay zakaah on it. If he is rich then it is better for him to refrain from touching their wealth at all, and if he is poor he may consume some on a reasonable basis; if he invests their money he may take payment equal to that of anyone else doing a similar job. These are the rulings of sharee’ah, and they are most wise and just.

Allah says (interpretation of the meaning):

“And give not unto the foolish your property which Allah has made a means of support for you, but

feed and clothe them therewith, and speak to them words of kindness and justice.

6. And try orphans (as regards their intelligence) until they reach the age of marriage; if then you find sound judgement in them, release their property to them, but consume it not wastefully and hastily fearing that they should grow up, and whoever (amongst guardians) is rich, he should take no wages, but if he is poor, let him have for himself what is just and reasonable (according to his labour). And when you release their property to them, take witness in their presence; and Allah is All-Sufficient in taking account" [al-Nisa' 4:5, 6]

Ibn Katheer said:

In the words, "consume it not wastefully and hastily fearing that they should grow up", Allah forbids consuming orphans' wealth unnecessarily. "wastefully and hastily" means hastening before they reach puberty. Then Allah says: "and whoever (amongst guardians) is rich, he should take no wages" meaning, he should not consume anything from it. Al-Sha'bi said: For him it is like dead meat and blood [i.e., forbidden]. "but if he is poor, let him have for himself what is just and reasonable (according to his labour)". This was revealed concerning the guardian of an orphan who looks after him and takes care of him, if he needs to take from it. It was narrated that 'Aa'ishah said: This verse was revealed concerning the guardian of an orphan: "and whoever (amongst guardians) is rich, he should take no wages, but if he is poor, let him have for himself what is just and reasonable (according to his labour)".

The fuqaha' said: He may take whichever is the lesser amount – the equivalent wages for his work or as much as he needs. They differed as to whether he should repay it if he becomes well off. There are two views, one of which is that he should not, because he took it in return for his work when he was poor. This is the correct view according to the companions of al-Shaafa'i, because the verse allows taking without replacing it later on.

The other view is that yes, he should repay it, because the orphan's wealth is forbidden, and it was only permitted because of need, so he should repay it just as if he took wealth from someone else when he was in need.

“and whoever (amongst guardians) is rich, he should take no wages” means, whoever among guardians. “but if he is poor” also refers to guardians. “let him have for himself what is just and reasonable” means, in the way that is better, just as it says in another verse, “And come not near to the orphan’s property, except to improve it, until he (or she) attains the age of full strength” [al-An’aam 6:152], i.e., do not come near it except with the intention of disposing of it in the best way, and if you need it then use it in a way that is just and reasonable."(Tafseer Ibn Katheer 1/454, 455).

It was narrated from ‘Abd-Allah ibn ‘Amr that a man came to the Prophet (peace and blessings of Allah be upon him) and said: “I am poor, I do not have anything, and I have an orphan (under my care).” He said: “Eat from the wealth of your orphan, without being extravagant or wasteful or using it for trade.” Narrated by Abu Dawood (2872), al-Nasaa’i (3668) and Ibn Maajah (2718). Classed as hasan by al-Albani in Saheeh al-Jaami’ (4497).

If you want to take money in return for what you do for them, taking care of their interests, and this work of yours deserves payment, then there is no sin on you for that. But if you want to take payment for visiting them, you should not do that, because the costs of visiting orphans are not usually paid for from their own wealth. This is unlike what you spend on them for clothing, furnishings and food, which may be paid for from their wealth.

As you are in a country where there are shar’i courts, you must refer to what sharee’ah says about that, so that the judge may rule as he sees fit in the orphan’s interests. And Allah knows best.

We hope that you will think long and hard about the words of the Prophet (peace and blessings of Allah be upon him) as narrated by al-Bukhaari (1400) and Muslim (1053): “…whoever refrains from asking, Allah will make him content, whoever seeks to be independent of means, Allah will make him independent, and whoever is patient Allah will bestow patience upon him, and no one is ever given anything better and more generous than patience.” Thus you will realize that the way to pay off your debt is by refraining from asking, seeking to be independent of means and being patient.

Al-Mubaarakfoori said:

“Whoever seeks to be independent of means” means he shows himself to be independent and having no need of people’s wealth, and refraining from asking so that one who is ignorant of his situation would think that he is independent of means and has no need to ask.

“Allah will make him independent” means by making him content. In the hadeeth it says: “Richness does not mean having a lot, rather richness is contentment.” Or it means that He will give him that which will make him have no need of people.

“whoever refrains from asking” means seeking to refrain from that which is haraam and from asking of people. i.e., whoever wants to be content refrain from asking of people, Allah will grant that to him.

“Allah will make him content” means, He will prevent him from falling into that which is forbidden, i.e., whoever is content with the least of provision and refrains from asking, contentment will be made easy for him, and this is a treasure.

“whoever is patient” means, seeks the support of patience from Allah, because Allah says (interpretation of the meaning): “And endure you patiently (O Muhammad), your patience is not but from Allah” [al-Nahl 16:127]. Or: tells himself to be patient and is ready to carry the burden of patience.

“Allah will bestow patience upon him” means: He will make patience easy for him."(Tuhfat al-Ahwadhi 6/143, 144).

And Allah knows best.