75408 - They became Muslim after they got divorced and they have a daughter. What are the rights of both of them?

the question

If a couple where Kuffar and the woman found out she was pregnant, then the male asked her to get an abortion. She refused regardless of his suggestion and had the child. Later the couple became Muslim together, but were divorced. Does the father still have more right then the mother when he clearly did not desire for the child to be born in the first place? (It is a female child).

Detailed answer

Praise be to Allah.

Firstly:

We praise Allaah for having guided you both to the truth. This is the greatest blessing that Allaah can bestow upon His slave, because it brings happiness in this world and in the Hereafter. We ask Allaah to help you to do that which He loves and which pleases Him, and to help you to remain steadfast in following His religion.

Secondly:

You did well by refusing to have an abortion, because abortion is a sin, whether it was done before the soul is breathed into the foetus or afterwards, but the sin is greater after the soul has been breathed into the foetus.

This has been explained in the answers to questions no. 40269 and 42321.

Thirdly:

If a man divorces his wife, and they have a child, then according to Islam the mother’s right to custody of the child is greater than the father’s, so long as there is no impediment such as her

having remarried or being lacking in religious commitment or failing to take proper care of the child.

This has been discussed in the answers to questions no. 8189, 20705 and 21516.

Fourthly:

The father's bad conduct in demanding an abortion does not mean that his rights are waived, such as the right to having the child attributed to him, care, spending, naming, and visiting the child when he or she is in the mother's custody. He also has the right to custody if there is some impediment to the mother taking custody, such as if she remarries.

We hope that Allaah will forgive him as he has become Muslim, for Islam erases the sins that come before it.

Fifthly:

The questioner asks: "Does the father still have more rights than the mother"?

It should be noted that the father's rights are not always greater than the mother's, rather her rights take precedence with regard to custody, as stated above, and her right also takes precedence over his with regard to good treatment. It was narrated that Abu Hurayrah (may Allaah be pleased with him) said: A man came to the Messenger of Allaah (peace and blessings of Allaah be upon him) and said: "O Messenger of Allaah, who among people is most deserving of my good company?" He said: "Your mother." He said, "Then who?' He said, "Then your mother." He said, "Then who?' He said: "Then your mother." He said: "Then who?" He said: "Then your father."

Narrated by al-Bukhaari (5971) and Muslim (2548)

Al-Nawawi (may Allaah have mercy on him) said:

This indicates that we are urged to honour our relatives, and that the mother is the most deserving of them, then after her comes the father, then the next closest and the next closest. The scholars said: the reason why the mother is given precedence is because of her great efforts for

the sake of the child, her kindness towards him and her service; she suffers hardship in pregnancy, then she suffers hardship when giving birth to him, then she breastfeeds him, then she raises him, serves him and takes care of him when he is sick, and so on. Al-Haarith al-Muhaasibi narrated that the scholars were unanimously agreed that the mother is to be given precedence in kind treatment over the father. Al-Qaadi ‘Iyaad narrated that there was a difference of opinion concerning that, but the majority said that she is given precedence. Some of them said they should be honoured equally. He said: some of them attributed this view to Maalik. But the correct view is the first one, because this is clearly stated in these ahaadeeth. End quote.

And Allaah knows best.