Andegiorgis v. Giorgis, [2018] O.J. No. 7075

Ontario Judgments

Ontario Court of Justice

M. Pawagi J.

Heard: October 19, 2018.

Judgment: November 22, 2018.

Dfo Court File No.: 18-15627

[2018] O.J. No. 7075 | 2018 ONCJ 965

Between Aman Tsige Andegiorgis, Applicant, and Genet Araya Tekel Giorgis, Respondent

(78 paras.)

Counsel

Cynthia Mancia, for the applicant father.

Umme Habiba, for the respondent mother.

Reasons for Judgment

M. PAWAGI J.

1: Nature of Case

1 On February 27, 2017, the respondent mother left Norway, where the parties had been living since 2014, and came to Canada with the parties' 6-year-old child without telling the applicant father. The father immediately commenced an application for the return of the child to Norway pursuant to the *Hague Convention*. The mother argues that the *Convention* does not apply as the child's habitual residence is Canada, not Norway, and the father has no custodial rights that would prevent her ability to move. In the alternative, if the *Convention* is found to apply, the mother argues that the child should not be returned to Norway because doing so would place the child at grave risk of harm, and because the child objects to being returned.

Convention on the Civil Aspects of International Child Abduction, Can. T.S. 1983, No 35 (in Ontario, incorporated into s. 46 of the *Children's Law Reform Act*, R.S.O. 1990, c.C.12 as am.)

2: Brief Overview of the Facts

2 The parties met in Kenya in 2003. Their background in Eritrean/Ethiopian.

3 The mother immigrated to Canada in 2005. The father was living in Norway. The parties married in Calgary in 2007. The father returned to Norway shortly after they were married, but travelled to Calgary for visits; while the mother remained in Calgary, but resided with the father in Norway for a few months in 2009.

4 The parties' daughter was born [xxx], 2010 in Calgary. The mother and the child are Canadian citizens. The father is a Norwegian citizen.

5 The child has lived in the following places since her birth:

* Canada (Calgary) for 1 1/2 years from 2010 to late 2011/early 2012 (birth to age 1 1/2), with mother alone;
* Eritrea for 2 1/2 years from late 2011/early 2012 to mid 2014 (age 1 1/2 to 4) with both parents;
* Norway for 2 1/2 years from mid 2014 to early 2017 (age 4 to 6 1/2) with both parents until August/ September 2016, when the parties' separated, and then with mother alone;
* Canada (Toronto) from February 27, 2017 until the present (age 6 1/2 to 8) with mother alone, without the father's consent.

6 While the parties were living in Norway, the child attended kindergarten at a Norwegian language school from August 2015 to July 31, 2016. The parties then transferred her to an English language school in August 2016.

7 The mother was in Norway on a three year resident permit which expired on June 26, 2018. The mother operated her own business, a hair salon, while in Norway.

8 The parties separated in August/September 2016. The mother and child moved out and resided first in a shelter and then in an apartment on their own.

9 The parties attended mediation and signed an agreement on November 29, 2016 that provided the following:

* The parents will have joint parental responsibility;
* The child will live permanently with the mother;
* The child will have access with her father every other weekend from Friday to Monday once he has his own home and until that time the child will have day access as agreed by the parents.

10 In February 2017, the mother advised the child's school that she and the child were going to Denmark during the school winter holiday, and that the child would miss two days of school, returning on March 2, 2017.

11 On February 27, 2017, the mother and child left Norway for Toronto.

12 On March 2, 2018, when the child did not return to her school in Norway, the school tried, and failed, to contact the mother, then contacted the father and Child Welfare Services. The father contacted the police.

13 On March 21, 2017, the father commenced a Hague Application in Calgary as he mistakenly believed the mother and child had returned to Calgary.

14 The parties only had two exchanges by text since the mother left Norway:

a. On March 27, 2018, the mother texted the father to say she and the child are okay and that he can call to talk to his daughter. The father responded that she thinks she can run away but she will be surprised when she sees his court documents and he will see her in court.

b. On June 4, 2018, the mother texted the father that if he really loves his daughter he should call her on her birthday (which was coming up on July 1st) and that their daughter had said, "I wish daddy is here with us." The father responded that she should not tell him this nonsense, that he wants to "SEE her [the child] every day." He did not call his daughter.

15 On May 28, 2018, the father brought the within Hague Application in Toronto after a lengthy search to determine the mother's whereabouts. The matter was first in court before me on June 8, 2018. It was adjourned several times for the father to locate and serve the mother.

16 On August 9, 2018, both parties appeared in court with their counsel. An order was made on consent requesting a Voice of the Child Report from the Office of the Children's Lawyer, and setting out what affidavits could be filed and by what date. The hearing was scheduled for October 19, 2018.

3: Issues

17 There are four disputed issues. The first two issues concern whether the *Hague Convention* applies in this case; namely, was the child's habitual residence Norway and did the father have custodial rights to the child at the time of the removal. The second two issues concern whether, if the *Convention* applies, should the court refuse to order a return on the basis of one of the exceptions; namely, grave risk of harm and/or the child's objection.

18 There was also one procedural issue. Prior to the commencement of the hearing, father's counsel sought an order striking the mother's October 16, 2018 affidavit as it was not in compliance with the August 9, 2018 order. Submissions were made and the decision was reserved. This is my ruling on the issue: The affidavit is struck in its entirety as it is an additional affidavit beyond what was specifically listed in the August 9, 2018 order and furthermore, it does not contain any information that could not have been provided in the mother's affidavit of first instance, nor does father's reply affidavit raise any new issues that this affidavit then had to address.

4: The Law

19 The *Hague Convention* is an international treaty, signed to date by 90 plus contracting States, including Canada and Norway, to deal with the pressing issue of parental child abduction.

20 The purpose of the *Convention* is set out in Article 1: to secure the prompt return of children whose parents have wrongfully removed them from, or wrongfully retained them in, another jurisdiction. The question in a *Hague Convention* proceeding such as this is not which parent should have custody, but rather, in which jurisdiction should the question of custody be decided. The *Convention*'s underlying rationale is that it is in the best interests of the child to have the question of custody determined by the court where the child habitually resides.

21 The test for when the *Convention* applies is set out in Article 3. It provides that the removal or retention of a child is considered wrongful where it breaches the custodial rights of the left behind parent in the State where the child was habitually resident immediately before the wrongful removal or wrongful retention. Said custodial rights can include joint custodial rights, and can arise from law, a decision, or an agreement that has legal effect.

22 The direction for mandatory return is set out in Article 12 which provides that the court shall order the return of child if the Hague proceeding was commenced within a year of the wrongful removal or retention. Article 12 further provides, that even when the proceeding is commenced after one year, the court shall still order the return unless is it demonstrated that the child is now settled in his or her new environment. Article 12 is not relevant in this proceeding as the Hague Application was brought within one year.

23 Exceptions to the direction for mandatory return are set out in Article 13 because while the direction to return is mandatory, it is not automatic. Two of the possible exceptions are relevant here; namely, that the judge has the discretion not to order return if there is a grave risk that returning the child would place expose her to physical or psychological harm or otherwise place her in an intolerable situation; or if the child objects to be being returned and has attained an age an degree of maturity at which it is appropriate to take account of her views. I have set out the relevant parts of Article 13 below:

> *Article 13*
>
> Despite the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that:
>
> ...
>
> (b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.
>
> The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

5: Analysis

5.1: Habitual residence

24 The mother argues that the removal of the child was not wrongful as the child was not habitually resident in Norway at the time of her removal.

25 There is no definition of "habitual residence" in the *Convention*. It is a question of fact to be determined by the court.

26 The dominant approach in Canadian jurisprudence had been to determine a child's habitual residence based mainly on parental intention. Until recently, the leading case was *Korutowska-Wooff v. Wooff,* [2004] O.J. No. 3256, where the Ontario Court of Appeal held that habitual residence is the place where the child resides for an

appreciable period of time based on the joint settled intention of the child's parents. Parents need not intend for a place to be their permanent home for it to be deemed their habitual residence.

27 Then came the recent Supreme Court of Canada case of *The Office of the Children's Lawyer* v. *Balev,* [2018] S.C.J. No. 16.

28 The Court considered the then dominant "parental intention approach" and also considered the "child centred approach", supported by the Office of the Children's Lawyer, which determines habitual residence by the child's acclimatization in a given country rendering intentions of parents largely irrelevant, and focusing on the child's connections with the state.

29 The Court determined that "clarification" of the existing law was required, and concluded that habitual residence should be determined using a "hybrid approach," where instead of focusing primarily or exclusively on either parental intention or the child's acclimatization, the judge must look to all relevant considerations arising from the facts of the case.

30 This has proven to be a controversial decision where much of the legal commentary has echoed the concerns laid out in the strongly worded dissent to the decision, namely, that the decision seriously undermines the founding principles of the *Hague Convention* by encouraging rather than discouraging parents to wrongfully remove or retain children as they may now, so the worry goes, rely on connections the child forms *after* the wrongful removal or retention to thwart a return, something the *Hague Convention* itself only permits in cases where the proceeding was commenced after one year.

31 Indeed, mother's counsel does just what the dissent in *Balev* feared by submitting that *Balev* means this court, in determining habitual residence, must also consider the child's circumstances *after* the alleged wrongful removal from Norway to Canada.

32 Mother's counsel submits that the following circumstances, described in the Voice of the Child Report, support the mother's position that the child's habitual residence is Canada:

* The child is now settled in Toronto and says that "everything is better in Toronto."
* The child has forgotten how to speak Norwegian.
* The child is now happy, enjoys school, participates in lots of extra-curricular activities (Karate, swimming, Kumon tutoring) and has made friends in the community.

33 Mother's counsel submits that because the child is currently more connected to Canada than to Norway, and also because she was born in Canada and spent the first year of her life in Canada, therefore her habitual residence is Canada.

34 Father's counsel submits, on the other hand, that, contrary to popular belief/fear, a close reading of *Balev* would demonstrate this is *not* what *Balev* has done. I agree with father's counsel's interpretation that *Balev* has not actually eviscerated the *Hague Convention*.

35 The following is a brief summary of the legal proceedings in *Balev*:

a. The father brought a Hague application for the return of the children to Germany when the mother failed to return them after the one year agreed upon stay in Canada was up. The Application judge ordered the children's return to Germany, finding their habitual residence remained Germany as the parental intention was that the stay in Canada was only temporary not permanent, and none of the exceptions applied.

b. The Divisional Court allowed the mother's appeal on the basis that while the parents' settled intention was only that the children would live temporarily in Canada, the children became integrated in the community, speaking English, attending school, living with mother and maternal grandparents.

c. The Court of Appeal for Ontario allowed the father's appeal finding a child's habitual residence does not shift when one parent gives consent to a time limited stay in another jurisdiction. The court held that evidence of acclimatization, settling in, is not relevant if the application brought within one year of wrongful removal or retention.

36 The Supreme Court did not rule on whether the application judge erred in ordering the return of the children to Germany because events rendered the appeal moot (the children were returned to Germany and the German courts then permitted mother to move to Canada with them). However, the Court found that the issues raised in the appeal were important and that the law required clarification.

37 It appears, from counsels' submissions in the case before me, regarding conflicting interpretations of *Balev*, that *Balev* itself also needs to be clarified.

38 I agree with father's counsel that paragraphs 43 and 67 in *Balev* are key (emphasis added):

43. On the hybrid approach to habitual residence, the application judge determines the focal point of the child's life -- "the family and social environment in which its life has developed" -- **immediately prior to the removal or retention**: Perez-Vera, at p. 428; see also *Jackson v. Graczyk* *(2006), 45 R.F.L. (6th) 43* (Ont. S.C.J.), at para. 33. The judge considers all relevant links and circumstances -- the child's links to and circumstances in country A; the circumstances of the child's move from country A to country B; and the child's links to and circumstances in country B.

...

67. Nor does the hybrid approach "ignor[e] the fact that a child could develop genuine links to a new jurisdiction following a wrongful removal or retention": my colleagues' reasons, at para 146; see also para. 149. Habitual residence is determined **immediately prior to the wrongful removal or retention**: see Articles 3 and 4. **Subsequent links are relevant only to the exception under Article 12**.

39 The Supreme Court is clear that while the child's circumstances are to be considered along with parental intention in the hybrid approach, the timing of those circumstances are *prior* to the wrongful removal or retention, and not afterwards. The Court is clear that the child's circumstances following the wrongful removal or retention can *only* be considered when the Hague Application is not brought within a year of the wrongful removal or retention.

40 Thus, in an alleged wrongful retention case, as *Balev* was, the court is to consider not just parental intention regarding the temporary nature of the stay, but also the children's circumstances, including connections they form, during the agreed upon temporary stay. But the court should not consider circumstances after the alleged wrongful retention.

41 Similarly, in an alleged wrongful removal case, as the case at bar is, the court should consider not just parental intention regarding the nature of the family's stay in Norway, but also the child's circumstances in Norway. But the court should not consider circumstances after the alleged wrongful removal.

42 Thus, *Balev* has only really expanded what the court must consider in determining habitual residence in wrongful retention cases as the court may now consider connections the child forms in another jurisdiction during the agreed upon temporary stay.

43 Balev has not expanded the test to permit the court to consider connections formed after a wrongful removal (where the application was brought within one year).

44 In the case at bar, I find that, in considering both the parental intention and the child's circumstances prior to the removal to Canada, the child's habitual residence is Norway based on the following:

a. While the mother's evidence is that the family had not decided to remain in Norway permanently, permanence is not required. It is sufficient that they were residing in Norway for the time being.

b. It is clear they were residing, not simply visiting, in Norway. They were residing there for over two years at the time of the removal. The mother was there on a three year resident permit and ran her own business, a hair salon.

c. The child had completed at least one year of kindergarten in a Norwegian language school and was then enrolled in an English language school.

5.2: Custodial rights

45 The mother's counsel further submits that even if the child's habitual residence is Norway, the *Hague Convention* still does not apply because the father did not have any custodial rights at the time of the removal.

46 The custodial rights of parents are determined in accordance with the law of the child's habitual residence: *W.(V.)* v. *S.(D.)*, *[1996] S.C.J. No. 53*.

47 As other courts have noted, according to section 40 of the *Norwegian Children Act*, one parent is not permitted to move out of the country with the children of the marriage without the consent of the other parent where the parties have joint custody of the children: *Solem* v. *Solem, [2013] O.J. No. 723* (Ont. SCJ).

48 Mother's counsel submits that the mediation agreement, which provides that the parents have joint parental responsibility, is not valid because the mother did not understand it.

49 I find the mother's evidence on that issue to be both internally and externally inconsistent as follows:

a. The mother deposes that the mediator spoke Norwegian only; that the father interpreted for her into English and she did not have a full understanding of what the father interpreted. This is contradicted by the letter from the Norwegian Child and Family Protection Agency filed by the father which stated that while no notes were kept of that particular mediation, the practice is if parties do not understand, the mediation is postponed until an interpreter is obtained and that "parties do not interpret for each other." The provenance of the letter was not disputed.

b. The mother then contradicts her earlier statement that she did not understand what was happening in the mediation when she deposes that she understood from the mediation that she "was given the full and sole custody of the Child where I every [sic] right to take the Child where I would feel necessary to go."

c. The mother provides no evidence that she has sole custody other than her belief. Her assertion that she believed she had sole custody and could move as she pleased is not consistent with her failing to tell the child's school that she was removing the child and instead telling them only that the child would miss two days of school. The school contacted (or tried to contact) both parents

immediately when the child failed to return to school and the school reported the failure to the Child Welfare Services.

50 Furthermore, even assuming, without deciding, that the mediation agreement is not valid, in the absence of an agreement or court order there is a presumption of shared parental responsibility according to the *Norwegian Children Act*.

51 Thus, I find that the child's habitual residence at the time of her removal was Norway and her father had custodial rights at that time; and that therefore the mother's removal of the child to Canada was wrongful within the meaning of Article 3 of the *Convention*.

52 Accordingly, this court must order the return of the child to Norway unless the mother is able to prove that an exception under the *Convention* applies to permit the child to remain in Canada.

53 The mother contends that two of the three exceptions set out in Article 13 of the Convention apply: grave risk of harm and the child's objection.

5.3: Grave risk of harm

54 The first ground the mother asserts is that this court should refuse to order the return because it would place the child at grave risk of physical or psychological harm or otherwise place her in an intolerable situation.

55 An assessment of risk involves not only an assessment of the severity of the harm, but also an assessment of the likelihood of it occurring.

Ojeikere v. Ojeikere, 2018 ONCA 372 at para. 62

56 The test for severity is addressed in *Jabbaz* v. *Mouamman* (2003), 38 R.F.L. (5th) 103 (O.C.A.), where Rosenberg J.A., at para. 23, referred to the phrase "intolerable situation" as "an extreme situation that is unbearable; a situation too severe to be endured."

57 The mother's evidence regarding the severity of the harm is scanty and is comprised of more opinion that facts:

a. She deposes that the father verbally abused and threatened her. The total evidence she provides is her allegation that the father would threaten her that government social workers would take the child away from her.

b. She deposes that the father financially controlled her. The total evidence regarding finances she provides is her allegation that he failed to adequately support the family. She concedes that she ran her own business while in Norway, a hair salon.

c. She deposes that the father physically abused her. The total evidence she provides is her allegation that on two occasions he pushed the mother's head to the wall. She does not provide dates or indicate if the child was present.

d. She deposes that the father abuses alcohol. She provides no evidence.

e. She deposes that the child witnessed the father watching pornography in 2015 and 2016. The total evidence she provides is that the child told her that the father "watches kiss kiss things all the time" and the child told the Children's Lawyer clinician she saw her father watching "gross stuff" like people kissing. The photos she provides are unclear screen shots; one appears to show two

people kissing (just their heads) and another appears to show a woman's bare chest. But there is no evidence that this is what the child allegedly witnessed.

f. She deposes the father shared a photo of the child with other women on a porn site. Her evidence is a screen shot of said photo.

58 The father denies all of the mother's allegations. He further explains that he has shared photos of the child online but only with family and friends.

59 The mother's evidence at its highest consists of two occasions where the father pushed her. None of the allegations of exposing the child to pornography are made out even on the mother's evidence alone. Her evidence does not amount to a situation too severe to be endured.

60 Turning now from severity of harm to likelihood of it occurring, it is important to remember the basic presumption of the *Convention* that all contracting states are equipped to make, and will make, suitable arrangements for a child's welfare. That presumption is rebuttable, but the onus is on the party seeking to establish an exception to the convention.

Finizio v. *Finizio-Scoppio*, *1999 CanLII 1722* ONCA

61 The mother's evidence, far from rebutting that presumption, actually supports it. When the parties separated, allegedly due to the father's abusive behaviour, the mother and the child went to live in a shelter, where she had access to legal clinic assistance, and then to an apartment. The mother does not suggest that the alleged abuse continued after the separation. The question before the court is not whether to return the child to the father's care, but whether to return the child to Norway. The mother has not demonstrated that Norway is not able to protect this child.

62 The threshold for the test in the *Hague Convention* is high. The mother has not come close to demonstrating that there is a grave risk that the child's return to Norway would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

5.4: Child's objection

63 The second ground the mother asserts is that this court should refuse to order the return of the child because the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of her views.

64 The Supreme Court in *Balev*, in addition to clarifying the law with respect to habitual residence, also addressed the issue of a child's objection, confirming that it is a question of fact, and setting out the factors to be considered at paragraph 81 of the decision:

> If the elements of (1) age and maturity and (2) objection are established, the application judge has a discretion as to whether to order the child returned, having regard to the "nature and strength of the child's objections, the extent to which they are 'authentically her own' or the product of the influence of the abducting parent, the extent to which they coincide or are at odds with other considerations which are relevant to her welfare, as well as the general Convention considerations": *In re M*., at para. 46.

65 I find the threshold requirements of objection, age and maturity are met in this case:

a. The evidence from The Children's Lawyer clinician is that the child, age 8, presents as her age and was engaged and responsive and appeared to comprehend the purpose of the interview. This is consistent with the child's school report from Norway that she is a "sparkling" student who is capable of independent thinking; and that she is a very spirited girl, quite bright, and she "doesn't hesitate to express herself."

b. The evidence from The Children's Lawyer clinician is that the child wishes to remain in Toronto and that she is strong and consistent in her views. Given a scale of 1 to 10 (with 1 being very sad, and 10 being very happy), she said she would feel 10 if she remained in Toronto and 1 if she had to return to Norway.

66 While 8 years of age is on the young side, given the evidence that she is bright and her wishes are strong and consistent, and given that the *United Nations Convention on the Rights of the Child* provides that a child capable of forming her own views has the right to express them in matters affecting her and to have them be given due weight in accordance with her age and maturity, I find I should take account of her views.

67 However, that is not an end of the inquiry. This Article 13 exception is subject to judicial discretion. It does not require a judge to automatically accede to the child's stated wishes. In considering whether to exercise its discretion, courts have found it is appropriate to consider the reasons for the objection.

68 Courts differ on whether only "exceptional" circumstances will qualify, but it does not appear to be disputed that the reasons must at least be "substantial." As Mackinnon J. noted in *Garelli* v. *Rhama,* 2006 CarswellOnt 2582 (Ont. S.C.J.), in cases where effect was given to the child's objection, the reasons for the objection were substantial, "important psychological, language and educational factors, or were related to parental misconduct by the parent seeking the return of the child."

69 The Application judge in *Balev,* for example, found that while the children in that case (age 9 and 12) were of an age and level of maturity such that it would be appropriate to take account of their views, she found their views did not have the requisite strength of feeling, amounting more to a preference for Canada over Germany rather than an objection to returning to Germany. The Supreme Court specifically noted that it did not overturn those findings of the Application judge in its final decision. The Application judge concluded that the threshold for a court to refuse to return based on a child's objection is high:

> The court must conclude that a valid defence based on the children's objections has not been made out by the mother. The court comes to this conclusion by examining the reasons behind the objection (too much homework; loss of friends and family dog; Canada feels like home) in the context of the purpose of the Convention. To accede to such an objection would set the threshold much too low and certainly much lower than intended by the Convention which provides that where there has been a wrongful retention, children shall be returned to their habitual residence unless the removing parent can establish that exceptional circumstances exist. Such circumstances do not exist in this case.
>
> This principle is best captured in the comments of Chamberland J.A. in *F. (R.) v. G. (M.)* 2002 CanLII 41087 (QC CA) referenced in *Ellis v. Wentzell-Ellis*, 2010 ONCA 347:
>
> * The Hague convention is a very efficient tool conceived by the international community to dissuade parents from illegally removing their children from one country to another. However, it is also...a fragile tool and any interpretation short of a rigorous one of the few exceptions inserted in the Convention would rapidly compromise its efficacy.
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> *Balev* v. *Baggott,* [2015] O.J. No. 4490 at paras. 105-6

70 Similarly, judges have consistently returned children where the reasons behind the objection were not found to be substantial:

a. In *Toiber* v. *Toiber*, Hoilett J. refused to allow a 13-year-old who strongly objected to returning to Israel to remain in Canada, citing concerns the child was caught up in the vortex of a custody battle: *[2005] O.J. No. 6139* (Ont. S.C.J.), upheld on appeal *[2006] O.J. No. 1191* (Ont. C. A.).

b. In *Vieira* v. *Dos Santos Trillo*, Shelston J. refused to allow a 12-year-old boy to remain in Canada who strongly objected to returning to Brazil because he was fearful of his father and he preferred life in Canada, finding that the reasons for the objection were not substantial: *2016 ONSC 8050*.

71 Meanwhile, in cases where judges have accepted the child's objection and refused to return the child, the reasons were substantial:

a. In *Wilson* v. *Challis*, Foran J. refused to return an 11-year-old child to the U.K. where the child's objections were based on parental misconduct: *[1992] O.J. No. 563* (Ont. Prov. Div.).

b. In *R.M.* v. *J.S.*, Kenny J. upheld the trial judge's refusal to return a 10-year-old child to Israel because the child's objections were based on his religious and cultural background and his concerns about being returned to a certain part of Israel: *[2012] A.J. No. 1148* (Alta Ct. of Queen's Bench).

c. In *Re S*, Balcombe L.J., upheld the trial's judge's refusal to return a 9-year-old child to France (from the U.K.) because the child's objections were based on educational concerns. There was evidence of serious psychological problems manifesting as speech difficulties in her French language school, that necessitated a change to an English school in the U.K.: [1993] Fam. 242 (Eng. C.A.).

72 In the case at bar, the Children's Lawyer clinician summarized the child's views with respect to her father and with respect to returning to Norway:

a. The child told the clinician there was nothing she liked about her father. She could recall nothing fun, only that he would take her grocery shopping and drop her at school sometimes. He watched "gross stuff" like kissing on his computer. He drank beer and acted "meaner" when he was drinking. He did not send her birthday or Christmas presents before or after she lived with him in Norway.

b. The child told the clinician that she came to Canada with her mother because her father started lying to her mother, that he put a picture of her on the computer for a girl to see. He also lied by saying her mother took her away from him. She knows this because her mother told her. She said he did not help them when they lived in Norway; that it would be weird to talk to him after so much time has passed; and that she is worried he would yell at her.

c. The clinician noted that the child's views of her father may not be independent: "Her mother has shared adult information with [the child] about reasons for the separation and her father's allegedly inappropriate behaviour which may be influencing [her] view of her father."

73 I find that I cannot give much weight to the child's views with respect to her father because they have been influenced by her mother. Furthermore, the issue before me is whether the child should be returned to Norway, not whether she should be returned to the care of her father.

74 With respect to the child's views about returning to Norway, the clinician noted that the child struggled to identify anything positive about living in Norway. She said there wasn't a lot to do there, other than swimming. It was "weird" going to school and not understanding the language. And though she did learn the language she now has forgotten everything. She wants to remain in Toronto. She's happy here and there are many more activities to do here.

75 While the child is presently 8 years old, it is important to note that her memories of Norway are from when she was ages 4 to 6. She expresses concerns about the Norwegian language, but she had already been switched to an

English language school in Norway where she was doing well and was described, as noted above, as a "sparkling" student.

76 I find the basis for the child's objection to returning to Norway is not substantial and to refuse to return her on the basis of her preference for Toronto would seriously undermine the principles of the *Hague Convention*.

77 For these reasons, the mother is ordered to return the child to Norway by December 6, 2018.

5: Order

78 Order to go as follows:

a. The child, N.A.T., born [xxx], 2010, shall be returned to Norway by December 6, 2018 in the care and control of the respondent mother;

b. Court administration is directed to release the passports of the respondent mother and the child to the respondent mother forthwith;

c. Previous orders of this court preventing the respondent mother from changing the child's residence outside the Greater Toronto Area are amended to permit the respondent mother to remove the child to Norway only;

d. Police Officers in the City of Toronto, OPP, RCMP, and officers of any other law enforcement agency having jurisdiction are directed and authorized to enforce this order, if requested, and in doing so may enter any place, including a dwelling place, where they have reasonable and probable grounds to believe the child is located.

e. The respondent mother shall provide the applicant father with a copy of her itinerary as soon it is booked and her contact information in Norway (address, telephone and email) upon arrival and if changed thereafter, along with contact information for any lawyer she retains in Norway.

f. The applicant father shall provide the respondent mother forthwith with his current contact information (address, telephone and email) and of his lawyer in Norway when retained.

M. PAWAGI J.
