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[21/12/1998; Holt Court of Execution and Enforcement (Norway); First Instance]
S.E.H. v. H.E.H., 21 December 1998

UNOFFICIAL TRANSLATION

In the Holt Court of Execution and Enforcement

COURT RECORDS of HOLT Court of Execution and Enforcement

PRE-TRIAL HEARING

In the Year 1998 on the 18th Day of December the Court held session in the court premises at Donnestadgarden, N-4900 Tvedestrand, Norway.

Judge: Chief Local Judge Anne Katrine Andreassen

Keeper of the Records:The Judge

Case No. 98-00308 D

Plaintiff: S.E.H.

Counsel for the plaintiff: Advocate Mie Reiersen

Defendant: H.E.H.

Counsel for the defendant: Advocate Snorre Torgrimsby

In the matter of: Application for the return of children under The Hague Convention.

Present: The defendant and counsel for both parties.

The Judge told the Court that the two eldest children had a conversation with Mr. Hans Christian Lunder, a psychologist appointed by the Court, who would thereafter interview the children in the Judge's presence.

Advocate Reiersen was granted leave to present a statement of case on behalf of the plaintiff

Advocate Torgrimsby was granted leave to present a statement of case on behalf of his client.

He produced five (5) photographs, and the following documentary evidence: Doc. No.2, annex 4; Doc. No. 2, annex 3.

A marriage certificate dated 05 Feb 1985 was also produced.

The Judge then had a conversation with the children, M and A, outside the courtroom, together with the psychologist, Mr. Lunder. The children were interviewed separately and the entire interview lasted from 12.00 to 12.30 hrs.

The Judge then gave an account in court of what the children had said.

Advocate Torgrimsby continued his presentation of the statement of case on behalf of the defendant. He produced diary entries dated 14th September 1989, 9th October 1989 and 20th July 1990 written by the defendant.

The defendant stood before the Court:

H.E.H., born 23 Jun 1961

Address: * Tvedestrand

Occupation: Housewife

The defendant was exhorted to tell the truth, solemnly affirmed the truth of her testimony and gave evidence.

Following this, the plaintiff gave evidence over the telephone:

Plaintiff:

S.E.H.

Address: *, Israel

Occupation: Self-employed

The plaintiff was exhorted to tell the truth, solemnly affirmed the truth of his testimony and gave evidence.

Kari Kadab was present in Israel to provide linguistic assistance to the plaintiff during the giving of evidence.

S.E.H. was advised of the statements made by the defendant and the two children before giving his own evidence.

Advocate Reiersen was granted leave to make a closing statement.

Before counsel concluded her closing statement the following witness appeared before the Court:

E., born 24 Jun 1960

Address: *

Occupation: Insurance Advisor

The witness was exhorted to tell the truth, solemnly affirmed the truth of her testimony and gave evidence.

Advocate Reiersen continued her closing statement after the witness had been examined.

Advocate Reiersen entered the following

Statement of claim:

1. [That] the application for the return of the children be allowed.

2. [That] the defendant be ordered to reimburse the plaintiff's costs.

Advocate Torgrimsby was granted leave to make a closing statement. He entered the following

Statement of claim:

1. [That] the application for the return of the children be dismissed

2. [That] the plaintiff be ordered to reimburse the defendant or the public purse for costs and the plaintiffs own fee.

Advocate Reiersen did not wish to reply on behalf of the plaintiff

The Judge then declared that the hearing was concluded and that the case would be decided.

The Judge advised the parties of what the result of the case would be. The application would not be allowed Advocate Reiersen would notify the plaintiff of the Court's decision on the following Monday.

The Court hearing was concluded at 17.45 hrs.

The Court rose.

Anne Kristine Andreassen (sign.)

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In the Holt Court of Execution and Enforcement

Case No. 308/98 D

In the Year 1998 on the 21st Day of December, the Court was again convened in the Office of the Chief Local Judge with the same Judge presiding in proceedings in respect of the same case. The Judge only was present.

The Judge delivered the following

ORDER

The matter concerns an application for the return of children under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction.

The plaintiff, S.E.H. has presented an application for the return of the children of the parties' marriage, M, A, N and E, from Norway to Israel The application was presented via the Ministry of Justice in the State of Israel and thereafter addressed to The Royal Ministry of Justice and Police in Norway.

The application was received by the Norwegian Ministry of Justice on 03 Dec 1998, and thence forwarded to the Office of the Chief Local Judge in Holt, Tvedestrand, by sending dated 04 Dec 1998 and received at that Office on 09 Dec 1998.

The application with a summons to appear before the Court on 18 Dec 1998 was served on the defendant, H.E.H., on 11 Dec 1998. The two eldest children, M and A, were also called in to be interviewed by the Judge and an expert witness at the same time, on 18 Dec 1998.

The Judge then contacted Advocate Mie Reiersen, who had been appointed as counsel for the plaintiff in consultation with the County Governor of Aust-Agder.

Advocate Reiersen advised the plaintiff of the summons to the court hearing and he submitted a request via the Israeli authorities to the Norwegian Ministry of Justice for permission to be present at the hearing. Advocate Reiersen contacted him concerning this request, and it emerged then that he could not attend before the New Year. He was asked if he would instead give his consent to a statement being taken from him over the telephone, and be consented to this.

At the hearing on 18 Dec 1998, Advocate Mie Reiersen appeared for the plaintiff, and the defendant appeared in court in person accompanied by her counsel, Advocate Snorre Torgrimsby.

Mr. Hans Christian Lunder, a psychologist, was appointed to assist as an expert witness in connection with the Judge's interviews of the children M and A. At the start of the hearing, Mr. Lunder spoke with the children alone for about one hour. There was then a pause in the proceedings whilst the Judge spoke with the children one at a time, with Mr. Lunder present on both occasions. No other persons were present during these interviews.

The children were advised that what they said would be relayed to their parents, and that their statements would be read out in court after the interviews were concluded. After the defendant had given her testimony, the plaintiff was examined over the telephone, the plaintiff first being advised of the statements of the two children and the defendant. The telephone interview was conducted in Norwegian and a Norwegian lady was present to assist the plaintiff in Israel, translating into Arabic when the plaintiff had trouble understanding what was being said.

One witness, whom it had not been possible to contact before the plaintiff gave evidence, was subsequently examined in court.

The facts that have emerged in the case are in all essentials as follows:

The parties first met in Oslo in 1983 and subsequently moved to Copenhagen, where they were married on 05 Feb 1985.

They lived in Copenhagen until they moved to Israel in 1992.

The parties' children are M, born 18 Feb 1985 in Denmark; A, born 30 May 1988 in Denmark; N, born 17 Sep 1994 in Israel; and E, born 15 Jan 1998 in Norway.

The parties went to Norway at Christmas 1997 on a holiday to visit the defendant's family. The defendant was at that time pregnant with the parties' fourth child.

On 2nd January 1998, the defendant was admitted with her children to a refuge for battered women in Aust-Agder, and stayed there until 7th January.

The plaintiff tried for some days to find his family, and also tried to enlist the help of the police. He was however unable to locate them, and returned alone to Israel on 12th January 1998.

The defendant then rang the plaintiff and told him that she wanted to stay in Norway until May 1998, because her father was seriously ill. The plaintiff agreed to this, and reserved tickets for the family to fly out to Israel on 22nd May 1998.

The defendant did not however return with the children as agreed, but remained in Norway, where she is still living.

The plaintiff tried to make contact with his family, both by direct communication with them and via acquaintances. These attempts at contact were however problematic, and the plaintiff now has no contact with his children.

The parties have joint parental responsibility for the four children. The parents lived together in Israel before they went to Norway.

The defendant has now begun the process to obtain a separation and has applied for a separation via the County Governor in Aust-Agder. The application was served on the plaintiff via the Norwegian Embassy, but the plaintiff has refused to accept the service of documents.

The defendant also filed a formal complaint against the plaintiff to the police in Arendal Police District on 12 May 1998 for having physically abused the defendant, M and A.

When interviewed by the Judge, the two children said that they had both been hit by their father several times. Neither of them wished to return to their father. The appointed expert, Mr. Hans Christian Lunder, found that the children had made their statements clearly and straightforwardly and that there was nothing in any way remarkable about they way the gave their evidence.

The plaintiff, S.E.H., has in all essentials argued as follows:

The plaintiff demands that the children be returned to Israel under the Child Abduction Act, section 11.

The parents were exercising joint parental responsibility for the three eldest children when the wrongful retention of the children took place. With respect to the youngest child, joint parental responsibility would have been exercised but for the retention, cf. section 11 (2b).

The retention was wrongful from the start as S had at first not consented to the children being withheld from him.

The question is whether the conditions exist for making an exception from the duty to return the children set out in section 12 of the Act.

The onus of proof to show that the conditions in section 12 b), c) or d) exist is on the defendant.

The defendant has argued that the plaintiff exerted violence against her and the children, and it appears to have been a turbulent marriage.

The plaintiff admitted in the telephone interview that he had hit the defendant some times, but not many, and that the children had never witnessed these incidents.

He also admitted having exerted violence against M on one occasion in the autumn of 1997, when he pushed her down onto a chair. He went on to explain that he his asked forgiveness for this many times and had also been to the police with the defendant in Israel. He had said the same to them as he told the Court now, and the police had said that he should see a psychologist. This he said he had done, and was now a good man. He wants to start anew with his family, and also wants his wife to come back He firmly denies having hit A or N. He may perhaps have yelled at A once, but they are good friends.

He thinks the reason that M and A are now saying that he hit them is because they have been manipulated by their mother and grandmother.

The pages from the defendant's diary that have been produced in court do not show any violence having taken place against the children.

The defendant has not presented any evidence to show that M was exposed to violence, except for the incident in October 1997. The mother has also not been very specific about what kind of harm was said to have been done to A, and she has not presented any evidence to show that he was exposed to physical violence.

The decisive issue here is not what has happened previously, however, but whether there is a grave risk of the plaintiff behaving violently again if the children are returned to him.

The plaintiff has stated that he has now seen a psychologist, and has become a good man. It is also hard to say whether the plaintiff's aggression has been caused by a difficult marriage.

If the children should return alone, the situation will be different to what it was before, and there would then be no grave risk of violence being done to the children.

The question is whether there is a grave risk of psychological harm. The children may possibly be marked by the situation they have experienced with their parents, and may have become somewhat emotionally dulled in that they no longer react very much to violence.

That is not however relevant to the situation that is being dealt with here, that is to say the question of what harm the children may perhaps suffer by being returned to their native country. In that case there cannot be deemed to be a grave risk of them suffering psychological harm.

The conclusion is that no evidence has been presented to show that the conditions exist for refusing the return of the children under section 12 b).

Under Section 12 c) the return of the children may also be refused if the children themselves object to being returned and have attained an age and degree of maturity at which it is appropriate to take account of their views.

M objects to being returned to her father, and the Court must then decide on the matter in relation to M's degree of maturity.

A has also said that he does not want to go back to his father, but be has not attained such an age and degree of maturity to enable him to understand fully what this means. The Court cannot therefore take account of the fact that he objects to being returned.

Under section 12 d) the return of children can also be refused if doing so would be inconsistent with basic principles here in Norway for the protection of human rights.

The children have stated that they were hit at school, and the defendant has argued that they will experience social condemnation if they go back to Israel now.

These arguments have not been made specific, nor are such situations regarded as a violation of human rights.

There are thus no grounds for refusing the return of the children under section 12 d). The plaintiff has endorsed his application with the following

Statement of claim:

1. [That] the application for the return of the children be allowed.

2. [That] the defendant be ordered to reimburse the plaintiff's costs

The defendant, H.E.H. has argued in all essentials as follows:

There are grounds for refusing the return of all four children.

The grounds for demanding their return are different for the four children. Under Article 4 of the Hague Convention, return can be ordered in the case of children who were resident in a Contracting State immediately before a breach of custody or parental responsibility. Where E is concerned, this is not the case. He was born in Norway, is registered with a Norwegian national identity number, and has always lived in Norway. No order can therefore be made for his return under the Convention or the Child Abduction Act, section 11.

Where the three other children are concerned, the conditions exist for exceptions under section 12 b), c) and 4) of the Child Abduction Act.

The conditions under section 12 b) exist inasmuch as there is a grave risk that returning the children will expose them to physical or psychological harm.

In assessing whether the conditions in section 12 b) exist, the crucial issue is what will happen in the future. The events of the past do not however elucidate the situation.

The facts that have emerged in the case show that the plaintiff exhibits personality traits that are well outside the accepted norm. The plaintiff has used physical violence in setting limits for his family in order to get things the way he wants them, and in a pretty arbitrary fashion The plaintiff's testimony over the telephone also shows that he has a very particular attitude to his family The telephone interview did not show a person who had improved to any significant degree after being treated by a psychologist.

In assessing the evidence the Court finds that it can base its decision on the testimony of the children and the defendant. Evidence has been presented showing extensive physical abuse of H and M, some physical abuse of A, and also to a somewhat lesser extent of N. Where N is concerned, psychological abuse has taken place inasmuch as she has seen violence being exerted against other members of the family. M and A must also have suffered psychological harm as a result of what they have experienced.

The plaintiff exhibits certain personality traits, which indicate that physical abuse will also continue if the children are returned to him. The telephone interview of the plaintiff during the court hearing was also elucidating for the presentation of the evidence.

As regards the question of whether all the children should be returned, consideration must be shown in respect of the most vulnerable of the children, so that the consequence is that none of the children will be sent to Israel. M is the one who has been most exposed to physical abuse, and who will again be so if she is returned to her father.

The conditions exist for refusing the return of the children under section 12 c) also.

Here, the Court must give decisive weight to the statements made by M and A themselves. The age of the children, and the clarity with which they have made their statements, indicates that due weight should be given to their evidence.

The Ministry of Justice has stated in its guidelines that children from the age of seven should be allowed to make their views known before an application for return is decided.

It is certain that the children's mother will not return to Israel and continue her marriage to the plaintiff. Even if some of the violence inflicted may derive from marital problems, there is no reason to assume that the plaintiff will refrain from hitting his children if they return alone without their mother That would be a totally unreasonable burden to place on the children.

Reference is made inter alia to A's statement that "now Papa has nobody to hit at and decide over any more" as a description of his father's conduct.

The conditions under Section 12 b), second sentence and section 12 d) for refusing the return of the children exist also.

M must be deemed to be the most vulnerable of the children as regards exposure to physical abuse on the part of the father. She herself has also firmly objected to returning to her father. In E's case, there is no question of sending him to his father in Israel. A also has been exposed to violence from his father and objects to being returned.

If only those of the children who today are least exposed to violence from the plaintiff were to be returned, it would mean the children being split up and an unreasonable burden being placed on the child or children who is/are sent back alone.

If no order can be made for the return of E, and both M and A have been and will be exposed to physical violence and object personally to being returned, the alternative is to sent N alone to her father.

Splitting up a family of children in this way would mean both that they would be placed in an intolerable situation, and that it would be in violation of their basic human rights The conditions under both section 12 b) second sentence and section 12 d) therefore exist.

The defendant has endorsed her statement with the following

Statement of claim:

1. [That] the application for the return of the children be dismissed.

2. [That] the plaintiff be ordered to reimburse the defendant or the public purse for costs and the plaintiff's own fee.

The Court notes as follows:

The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction was implemented in Norwegian law in the Child Abduction Act of 8 July 1988, cf. section 1 (2) of the Act.

Under section 11 of the Act, any child who is wrongfully retained in Norway shall be returned promptly if the child was resident in a Contracting State immediately before the retention. Israel is a signatory to the Hague Convention.

Under section 11(2), retention is wrongful if it is in breach of rights of custody attributed to a person under the law of the State in which the child was resident immediately before the removal or retention; and at the time of removal or retention those rights were actually exercised, or would have been so exercised but for the removal or retention.

From the factual information pertaining to the case received from the Israeli authorities, it appears that under Israeli law the parents were the "joint guardians" of their underage children, and that this includes parental authority and custody and the right to decide where the children are to live.

The Court therefore bases its decision on the fact that the parents had joint parental responsibility, and that this was actually being exercised in the case of the three eldest children before the defendant took the children with her to the women's refuge in Aust-Agder on 2nd January 1998.

In the case of the youngest child, E, joint parental responsibility would have been exercised but for the retention. It is however more doubtful whether the condition in section 11(1) exists, that is to say whether E was resident in Israel immediately before the retention. E was born in Norway and has always lived here, but the family's residence before going to Norway at Christmas 1997 was in Israel.

The concept of residence is equivalent to the term "habitual residence" adopted in the Convention, and this concept has been subject to interpretation in the case law of different countries.

The Court refers in particular to a judgment pronounced by Lansretten (the county administrative court) in Malmehus in Sweden on 16 Oct 1990 upheld by Kammarretten (the administrative court of appeal) in Gothenburg on 14 Nov 1990, in a case in which a mother took her children with her to the Netherlands with the intention of remaining there. The conclusion of the Court was that, since the children's father had brought them back to Sweden after 12 days, they had already in that time established a new habitual residence in the Netherlands because it was their intention to settle there.

The situation in this case is unusual, inasmuch as E has never lived in Israel at all. It was not the intention of the parties to remain in Norway when they came here on holiday at Christmas 1997, although at the time the defendant moved into the women's refuge it must be assumed that she had decided to stay in Norway. She told the Court that, before moving to the refuge, she had asked the two eldest children whether they wanted to stay in Norway, and they had said that they wanted to do so. E was born after this, and has always lived in Norway.

The conclusion of the Court is accordingly that E has never been habitually resident in Israel, and no order can therefore be made to return him there under the Hague Convention.

Where the three other children are concerned, the point of departure is that they are to be returned to their father immediately, unless the conditions exist for refusing their return under section 12 of the Act.

Section 12 b):

Under section 12 b) of the Child Abduction Act, the return of a child can be refused if there is a grave risk that returning the child will expose him or her to physical or psychological harm or otherwise place the child in an intolerable position.

The onus of proof rests on the defendant to show that this is the case.

The defendant and the children M and A have stated that the plaintiff exerted a significant degree of violence against both the plaintiff [sic] and the two children, and that N was a witness to these incidents.

The plaintiff has for his part firmly denied their presentation of the circumstances within the family.

The defendant has told the Court that the violence against her had been going on for most of the couple's married life, and that M in particular had gradually been exposed to a lot violence from the plaintiff as well. This was explained inter alia by the fact that the plaintiff was over-anxious that M should not have any contact with boys. This anxiety manifested itself inter alia in the plaintiff hitting her when boys passed on the street, because he thought they were only there to look at her. The defendant promised M each time this happened that it would be the last time, and that they would go to the police. She did not dare go to the police, however. The plaintiff threatened that if she did so, everything would be worse and she would not be allowed to go out with her children any more.

M also spoke in her interview with the Judge of the plaintiff's extensive use of violence against her. She said that she had been hit by her father since she was about six years old. She also said that Papa hit them with any object that came to band, such as a chair, broomstick, vacuum cleaner, etc. She showed scars on her arm and said that she also had scars on her leg from wounds inflicted on her by the plaintiff.

A said in his interview with the Judge that now Papa had nobody to hit at and decide over. He said that Papa got angry about everything, that he yelled and hit, and that they had bruises from the blows.

The defendant made a formal complaint against the plaintiff to the Israeli police in October 1997, after a more serious incidence of violence against the daughter. The defendant alleges the plaintiff hit M with a chair. The plaintiff has admitted that he was reported to the police, but gives a different version of what happened than that given by the defendant. He says that be only pushed M down onto a chair.

When the defendant reported the plaintiff to the Israeli police after the incident of violence against M in October 1997, the defendant [sic] was told to contact a psychologist. He did so, but the defendant states that this meant that she also had to accompany him to the psychologist, and that she had said to the psychologist that the complaint she had made to the police was something she had just made up. She was afraid that the plaintiff would not otherwise allow her to come to Norway.

The defendant has since made a formal complaint against the plaintiff to the police in Norway, and produced photographs for the Court that had also been annexed to the

complaint. There are two photographs of arms and fingers with grazes and two small cuts, which the defendant said were photographs of M after the violent incident in October 1997. The defendant [sic] said in the telephone interview that he and the defendant had taken the photographs together. Other photographs showed the defendant with a black eye, and she stated that this photograph had been taken by M in 1990, when they were living in Denmark. The defendant said that the plaintiff had on that occasion bit her with a brass candlestick.

M also said that she thought the plaintiff would not admit anything that they had said about him, and would say that everything she said was a lie. She says that her father makes many promises but keeps few. The defendant stated in her testimony that the plaintiff never takes any responsibility himself, but always blames other people when things go wrong.

The defendant and M both told the Court of an incident that took place at Christmas 1997. M had forgotten a handbag containing a bunch of keys on the bus from Oslo to Tvedestrand. The plaintiff was very angry at this and acted threateningly towards M. She was frightened and went very quiet as a result, and her behaviour was also observed by other people close by. The witness Haugstoga told the Court that she had observed M sitting curled up into a ball at one end of the sofa, and that it seemed the child was trying to avoid her father. The reason was that M expected to be hit as soon as the plaintiff got the opportunity.

Family and friends who observed the behaviour of both M and the defendant when in the plaintiffs presence during their Christmas holiday in Norway in 1997, advised the defendant to move into the women's refuge in Aust-Agder, and helped her to do so.

The defendant has stated that she had always previously had it in mind to stay behind in Norway, but had never dared to go through with it,

The defendant's presentation of the facts in Court agrees with the account she gave to the police when she filed a formal complaint against her husband on 12 May 1998. Regarding her statement in the complaint that the plaintiff had begun hitting her after they had been married for about one year, she says however that this must be wrong. They married just before M was born, so that this is not correct.

Her testimony also agrees with the contents of letters she wrote to the Norwegian Embassy in Israel in August 1997. The letters and police complaint were produced in court.

In a covering letter dated 17 Dec 1998 from the Norwegian Embassy in Tel Aviv, it appears that she also contacted the Embassy by telephone on several occasions and told them about her problems. It also appears that the plaintiff refused to sign separation papers that were sent to him by the Embassy, and that since then he has contacted the Embassy by telephone several times. He has asked for assistance, accused the Embassy of being instrumental in him not seeing his children, and has on occasion appeared threatening.

In the entries from the defendant's diaries for September and October 1989, it also appears that the plaintiff was violent and threatening.

The witness E told the Court that she had been in touch with the plaintiff by telephone after he went back to Israel, and that in these conversations he had not denied her statements that he had behaved violently towards his family. The plaintiff also made threats against this witness and her daughter in these telephone conversations.

After the presentation of the evidence to the Court, the testimonies of the defendant and their two children, M and A, are accepted as being a substantively correct description of the

situation within the family. The children's statements were specific and agreed in all essentials with the mother's testimony. That the children's statements should be solely the result of influence exerted by their mother and her family after they came to Norway, is not very likely. The Court refers to the other facts in the case, which strengthen the testimony of the defendant and the children.

The Court finds therefore that it cannot give any substantive weight to the plaintiffs testimony, which is characterised by an unwillingness to acknowledge his conduct towards his family.

The Court finds it proven that the children, particularly M, have suffered physical harm at the hands of their father, and that they have all suffered psychological harm because of his behaviour. Their mother stated inter alia that A was a bed-wetter in Israel, but not in Norway; and that the children were jumpy if anyone spoke harshly or loudly to them. She also stated that the children had not reacted so much to their father's behaviour at the end, as they had been used to it ever since they were small. Both the defendant and M stated that N sat with her hands over her ears and screamed when she saw her father hitting the others.

The question is, however, whether there is consequently a grave risk of the children suffering physical or psychological harm if they are now returned to their father.

It does not appear likely that the plaintiff has changed to any significant degree since being treated by a psychologist. The Court appreciates that he must be finding the present situation both difficult and desperate, but that does not alter the lack of credibility in his testimony. His unwillingness to admit his behaviour towards his family shows a lack of recognition of his own conduct that gives grounds to fear that he will continue along the same path if the children come back to him.

If the children are returned, it will also mean that they can no longer be with their mother, and even if the father's conduct has mostly been directed at the mother, they will not have her to support them in situations where the father is unable to control his temper.

He demanded in the telephone interview to speak to his children, and when the Judge explained that M would not speak to him, he insisted that she must because she was his daughter. The Court appreciates that he wished to speak to his children before Christmas. The manner in which he spoke, however, showed little appreciation that the situation could be difficult for the children.

The Court therefore bases it decision on the fact that the condition in section 12 b) exists for not allowing an application for the return of children, in that there is a grave risk that returning the children will expose them to physical and psychological harm. Under this provision the return of the three eldest children is therefore refused.

Section 12 c)

The Court also deems that the condition in section 12 c) exists in the case of both M and A. Both have clearly stated that they do not want to go back, and in the case of M significant weight must be given to her wishes because of her age. Where A is concerned, the fact that he is only 10 years old means that somewhat less weight must be given to his views; but he is also of sufficient age and degree of maturity to mean that his views must be taken into account as well.

The motive for the views held by the children is also of importance. In this case, it is their relationship with their father. Even if the father's conduct had actually been somewhat

better than as described by the defendant and the two children, it would in any case have been so problematic that there would have been grounds to give significant weight to the children's views.

The time aspect must also be taken into account. Both children have settled down well in their present environment in Norway, where they have been living for nearly a year.

Both children were clear and unambiguous in their statements, it is appropriate to take account of their statements, and the return of both A and M is refused under section 12 c) also.

Section 12 b), second sentence: If there are no grounds to allow the application for the return of M and A under section 12 c), it would also put N into a completely intolerable position if she alone were to be sent back to her father. In M's, the condition in section 12 b), second sentence also exists if section 12 c) is applied as a ground for refusing the return of M and A.

The Court finds no grounds for assessing whether the condition in section 12 d) also exists.

The application for the return of the children is accordingly dismissed.

Costs:

The application has not been successful and under the principal rule in section 172, first subsection of the Civil Procedure Act (Norway), the plaintiff shall be ordered to pay the defendant's costs.

However, under the second subsection of the provision, exception may be made from this principal rule if the losing party had adequate grounds for bringing the matter to court, or if the winning party can be shown to have been wholly or partly responsible for the case coming to court.

The Court finds that this excepting provision should be applied. The plaintiff has been in a very difficult situation, inasmuch as he has had no contact with his family for a long period after the defendant retained the children in Norway. Even if the Court finds that the plaintiff himself must be blamed for the situation that has arisen within the family, there are adequate grounds for him to have had the matter of the return of the children examined in court. The defendant must also be held to blame to a certain extent for the fact that she failed to arrange any form of communication with the plaintiff that could have made the situation less acute.

In consequence of the above, each party shall cover his or her own costs.

Rendition of Judgment:

1. The application for the return of the children is dismissed.

2. Each party shall cover his or her own costs.

The Court rose.

Anne Kristine Andreassen (sign.)

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For questions about this website please contact : The Permanent Bureau of the Hague Conference on Private International Law