

PROVINCE OF QUÉBEC
MONTRÉAL REGISTRY

N°: 500-09-007524-986
(550-04-003487-985)

COURT OF APPEAL

On April 22, 1999

**THE HONOURABLE LeBEL
BAUDOIN
THIBAUT, J.J.A.**

DROIT DE LA FAMILLE -- 3193

Respondent, A... B... has applied to this Court for summary dismissal, under section 501.5 of the Quebec Code of Civil Procedure, of the appeal filed by Appellant N... P... from a judgment of the Superior Court rendered November 12, 1998 by the Honourable Johanne Trudel at Hull, Quebec.

This judgment dismissed a motion of Appellant asking that the child of the parties, born in the State of Israel, be returned there according to the provisions of the Act Respecting the Civil Aspects of International and Interprovincial Child Abduction, L.R.Q. c. -A. 23.01 and on the Convention on the Civil Aspects of International Child Abduction.

The Superior Court dismissed the application for the return of the child to Israel on the ground that Mrs. B... came under some of the exceptions to the general rule of return of the abducted child to his country of origin. The judgment of the Superior Court referred to the serious risks for the child, arising out of the past relationship between the parties. The notice of appeal filed by Mr. P... submits that the trial judge misinterpreted the evidence. Moreover, Mr. P... argues that he was not adequately represented by his attorney in the Superior Court proceedings and did not receive a fair trial because he could not understand parts of the evidence given in French and not

translated into English.

At the hearing, held by phone through the cooperation of the Ministry of Justice of Israel and of the Ministère de la Justice du Québec, Mr. P... asserted that he sought mainly to have the judgment quashed and the matter remitted to the Superior Court for a new hearing.

From an examination of the judgment, the notice of appeal and documents filed by the parties, it appears that the appeal does not have any serious chance of success. The evidence was properly examined and assessed by the trial judge and no clear manifest and determining error was shown in this respect.

The allegation of inadequate representation by the lawyer acting for Appellant has not been properly made out. On the contrary, from the judgment it appears that the lawyer acting at the time for Mr. P... filed the proper proceedings and made all relevant arguments in the Superior Court and presented such relevant evidence, as was available.

Mr. P... gave evidence in open Court and in English and some other parts of the evidence were also translated from Russian into English. His lawyer was available to explain or summarize to him the evidence given in French. The guarantees of a full and fair trial were certainly not breached in this case.

For those reasons, the motion to dismiss the appeal filed by Respondent A... B... is granted and the appeal of the Appellant N... P... is dismissed, the whole without costs under the circumstances.

LOUIS LeBEL, J.A.

JEAN-LOUIS BAUDOIN, J . A.

FRANCE THIBAUT, J.A.

Mr. N... P...
for himself;

Me Suzanne Tessier
Me Marthe Carpentier
for Respondent A... B...

Me Jean-François Boulais
for the Attorney General of Quebec;

Date of the hearing by telephone
conference from Israel and Montreal April 14, 1999;