

**Supreme Court of Israel
Sitting as a Court of Appeal**

Before Justices Levin, Bach and Matza

**F
vs.
F**

Decision in the appeal against the judgement of the Tel Aviv District Court, handed down on October 28, 1992 by Justice H. Porat, file no. M.A. 2898/92.

Date of the hearing: 23rd of Heshvan, 5753 (19.11.92)

For the appellant: Lawyer Ben-Menashe

For the respondent: Lawyer Freedman

JUDGEMENT

Justice S. Levin:

1. In hearing an appeal submitted by virtue of the Hague Treaty (for the return of abducted children), 5751-1991, the Tel Aviv District Court ordered the appellant to return the couple's three daughters to Montreal, Quebec, Canada. The girls had been removed by the wife from Canada on 5.3.92. The appellant argued before the District Court that the Act and the Treaty Respecting the Civil Aspects of International Child Abduction signed in The Hague on 25.10.80 (henceforth referred to as "the Treaty") do not apply in the present case, the reason being that the respondent had no custody rights. Therefore, removal of the daughters did not detract from the husband's rights because the girls would suffer great harm if they were returned to Canada, as stated in Article 13 (b) of the Treaty. In

this case, an obstacle has arisen to returning the girls due to their refusal to acquiesce, as mentioned in the said article. Hence the appeal before us which we hereby reject, based on the following arguments rendered at the hearing. We therefore order the appellant to pay the costs of the appeal, as well as the lawyer's fees of IS 15,000.

2. In general, we are of the opinion that there are no grounds for reversing the decision of the District Court, based on the facts and in support of the judicial ruling. Furthermore, there has been no evidence of legal misinterpretation in these conclusions.

This appeal must consequently be rejected, mainly on the basis of Regulation 460 (b) of the Regulatory Orders of the Civil Act, 5744-1984. We also cite, as part of our ruling, the statements of Halakha (Jewish law) by Justice Netanyahu in B.B.S.H.A 1648/92 (not published) which are applicable to the facts in this case. We consider it appropriate to deal briefly with only a few of the arguments brought before us by the learned attorneys.

3. (a) According to Paragraph 3 of the law, the foreign minister will publicly put on record a list of those countries bound by the Treaty to the State of Israel, under Articles 37 and 38 of the Treaty. The law was finalized on 29.5.91 and was published in the official Gazette of the Government of Israel on 2.4.92, after the removal of the girls from Quebec; however, publicizing the law does not make it legally binding. But it does apply to the case before us. Based on the evidence brought before the District Court, we also accept that the State of Israel, as well as Canada, are Member States, according to Article 37 of the Treaty, and therefore,

Article 38 of the Treaty does not apply here, and the appellant's claims in this case are not relevant.

(b) Quebec is not a sovereign state and has to be viewed as bound by the Treaty by virtue of Canada being a signatory; however, whatever the case may be, Article 4 of the Act Respecting the Civil Aspects of International and Interprovincial Child Abduction of Quebec, dated 1.3.85, should not be treated as an exception to the Treaty, but as an extension of the time the law came into effect, even in cases where keeping the children is a violation of a local court order.

(c) We concur that an agreement was made between the parties on 23.5.91 regarding visitation and custody arrangements, where it was established that each parent required the permission of the other to any significant change in the children's place of residence. This agreement was included in another agreement of 4.10.91, but in that agreement, too, it was established that visitation rights would be determined on the basis of approval; should such approval not be forthcoming (by either side), the parties would consult a rabbi. By kidnapping the girls without the respondent's approval and without consulting a rabbi, the appellant violated both agreements and thus ignored the terms of what was defined as an "agreement having legal effect under the law of the (that) state", as mentioned in Article 3 (b) of the Treaty.

(d) We concur that, to comply with the Treaty and the Act, the term "custody rights" must be interpreted more broadly so that it may apply to each case where there is a need for approval by one or the other of the parents to remove children from one country to another, and that every

case involving the transportation of children from one state to another with the objection of one of the parents, who has the right to agree or disagree with it, and whose agreement was not given will be considered as kidnapping (see Article 5 of the Treaty).

(e) When we decided that Article 3 of the Treaty applied to the case before us, we also established when Article 14 of the Treaty would take effect, thus establishing that the appellant was continuing to keep the children, contrary to the ruling handed down by the Quebec court which we also have the power to enforce under that Article in the State of Israel.

4. In addition to the afore-mentioned, we are of the same opinion as the learned judge, that the judgement can also be confirmed on the basis of the general judgement, even beyond the limitations of the law. In fact, we are dealing with a clear and simple case of child kidnapping, with the appellant continuing to hold the children, in breach of the agreement between the parties, while violating the order of a Quebec court. Since there were no counter-arguments, it is nevertheless simple to return the girls to the place from which they were taken, so that the parties could undertake any further legal proceedings concerning custody and visitation rights.

JUDGE

Justice G. Bach

I agree

JUDGE

Justice A. Matza

I agree

JUDGE

As confirmed by the judgement of Justice S. Levin.

Handed down today, the 23rd of Heshvan 5753 (19.11.92)

JUDGE

JUDGE

JUDGE

True copy of the original

Shmaryahou Cohen

Chief Secretary

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