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Hague Convention Division

Consular Affairs Bureau

Ministry of Foreign Affairs of Japan

2017 (Ra) No. 742 Appeal case against an order of the return of a child

(Court of Prior Instance: Osaka Family Court Judgment of 2017 (Ie-Nu) No. 3)

Decision

Address:

Appellant (Respondent of the prior instance) A

Appellant's attorney:

Same as above:

Same as above:

Address:

Respondent: (Petitioner of the prior instance) B

Respondent's attorney:

Same as above:

Address:

Child: C

Born *mm dd*, 2014

Main Text of the decision

- 1 The appeal is dismissed.
- 2 The cost of appeal shall be borne by the appellant.

Reasons

I The object of and reasons for the appeal

The object of and reasons for this appeal are as recorded in the petition for immediate appeal against an order and the first written allegation of appellant (both copies).

II Determination by the court

1 Abbreviations are as per the examples of the decision of prior instance.

The court finds the decision of prior instance appropriate. The court cites the “Reasons” of the decision of prior instance as the reasons of the decision of this court because they are as described in the “Reasons” of the lower court’s decision, except for the items supplemented in the next paragraph as the reasons for the appeal. However, the “petitioner” at line 18 on page 8 of the decision of prior instance is corrected to “appellant”. (Translator’s note: In this English translation, the “petitioner” is located at para III-1 (13) of the decision of prior instance)

2 Determination concerning the reasons for the appeal

(1) Article 28 (1) (iv) of the Act (Grave risk)

A The appellant claims that, as the respondent has been repeatedly using violence that poses a grave risk to the appellant’s life and body, and the personal protection order of Singapore is not effective in preventing violence by the respondent against the appellant, there is a risk that the respondent may also use violence in the future that may cause psychological harm to the daughter.

However, the court cited and found on the basis of the decision of prior instance (the violence or other harm) that the violence was triggered by the worsened relationship and quarrels between the two parties and the respondent did not repeatedly use violence that posed a grave risk to the appellant’s life and body. Furthermore, after returning to Japan with the daughter, the appellant entered Singapore multiple times for the hearings for the personal protection order and access between the respondent and the daughter. Taking into consideration that the respondent did not show any behavior that violated the personal protection order at those times, the personal protection order of Singapore was effective in preventing violence by the respondent against the appellant. Therefore, the aforementioned appellant’s claim cannot be upheld.

B The appellant claims that it is difficult for her to take care of the daughter in Singapore. As her reasons, the appellant points out that her return to Singapore would expose the daughter to great physical and psychological harm because she has fully adapted to life in Japan. If the appellant returns to Singapore, even if she returns to the Home, it might worsen her PTSD and there is a risk that the respondent may use violence against the daughter in Singapore also in the future.

However, in the light of the daughter's age (two years and xxxx months old), there is adequate possibility for her to adapt to the environment after relocating to Singapore if a good living environment is arranged. So, it cannot be said that her return to Singapore will expose the daughter to great physical and psychological harm. Even if the appellant has developed PTSD (Otsu 85), it cannot be found that her living in Singapore will worsen her condition. Furthermore, there are insufficient materials in the case records to establish that the respondent used violence against the daughter; thus, it cannot be said that there is a risk that the respondent may use violence against the daughter in Singapore in the future.

In this regard, the appellant submitted to this court a written opinion (Otsu 81) and medical certificate (Otsu 85) that seem to be in line with the aforementioned claims. However, Otsu 81 is not based on specific diagnosis by a medical doctor but it merely mentions the expectation or the possibility that the daughter's return to Singapore would expose her to physical or psychological harm. Otsu 85 also merely points out that the appellant's PTSD would worsen and there is a risk that the respondent might use violence against the daughter; therefore, neither can be upheld. It should be said that none of the aforementioned claims by the appellant can be upheld.

- C Other various claims made by the appellant concerning Article 28 (1) (iv) of the Act do not affect the conclusion that the ground for refusal of return prescribed in the item is not found.

(2) Article 28 (1) (ii) of the Act (failure to exercise the custody rights)

The appellant claims that it is clear that the respondent has not actually exercised his rights of custody over the daughter, since the appellant left the Home with the daughter and moved into a shelter on *mm dd*, 2016.

However, the reason why the respondent was not able to care for the daughter after the appellant left the Home until she left Singapore with the daughter is not that the respondent gave up his rights of custody over the daughter, but that the appellant entered a shelter and hid her whereabouts from the respondent. Therefore, it cannot be said that the respondent did not actually exercise his rights of custody, and the aforementioned claim by the appellant cannot be upheld.

(3) Article 28 (1) (iii) of the Act (Subsequent approval of the retention)

The appellant claims that the respondent subsequently approved of the retention, because after he knew the fact that the appellant and the daughter left Singapore and entered Japan the respondent did not immediately file a petition for return of the child, but rather filed a petition for this case about a year after their entry into Japan.

However, on *mm dd*, 2016, the respondent came to know that the appellant and the daughter had left Singapore and entered Japan. About a month later, on *mm dd* of the same year, he filed an application for assistance (in securing the return of the child) in accordance with the Convention through the Central Authority of Singapore, and was notified of the decision to receive assistance from the Central Authority of Japan as of *mm dd* of the same year. After that, in *mm* of the same year, the appellant demanded a divorce, but the respondent did not agree. From *mm dd*, 2017 to *mm dd* of the same year, he had contact with the daughter through the visitation assistance program of the Ministry of Foreign Affairs. On *mm dd* of the same year, he filed a petition for the case with the court of prior instance.

Considering this background, even though the respondent filed a petition for this case about a year after the appellant and the daughter entered Japan, it cannot be considered that the respondent approved the retention; therefore, the aforementioned claim by the appellant cannot be upheld.

(4) Summary

As stated above, the petitioner's claims from (1) to (3) above are groundless and the petitioner's various other claims do not affect the conclusion that the decision in the prior instance is appropriate.

3 Conclusion

Accordingly, the decision of prior instance is appropriate. The appeal is groundless and it is dismissed. The decision is made as described in the main text of the decision.

September 15, 2017

Osaka High Court, the Ninth Civil Division

Presiding Judge Toru Matsuda

Judge Takahiro Hiwada

Judge Ayako Takahashi

Decision

Address:

Petitioner: B

Petitioner's attorney:

Same as above:

Address:

Respondent: A

Respondent's attorney:

Same as above:

Same as above

Address: Same as Respondent

Child: C

Born *month day*, 2014

Main Text of the decision

1. The respondent shall return the child to the Republic of Singapore.
2. Each party shall bear its own court costs.

Reasons

I The object of the petition

Same as the first item of the Main Text

II Outline of the case

This is a case where the petitioner, the father of the child C (hereinafter referred to as "the

daughter”), requests that the respondent, the mother of the daughter, return the daughter to the Republic of Singapore (hereinafter referred to as “Singapore”) which is the state of the daughter’s habitual residence under the Act for Implementation of the Convention on the Civil Aspects of International Child Abduction (hereinafter referred to as the “Act”).

1 Factual background

According to the records of the case, the facts listed below have been found.

- (1) The petitioner (Singaporean nationality, born *mm dd*, 1973) and the respondent (Japanese nationality, born *mm dd*, 1978) were married on *mm dd*, 2014 through the Singaporean legal system and had the daughter (born *mm dd*, 2014 [two years old as of the day of the conclusion of proceedings], Japanese and Singaporean dual nationality).

After birth, the daughter lived with the petitioner and the respondent in Singapore.

- (2) The respondent left Singapore with the daughter on *mm dd*, 2016, entered Japan on *dd* of the same month, and currently lives with the daughter in the city of xxxx. The daughter is being prevented from travelling to Singapore (the situation shall be referred to as “the retention” hereinafter).
- (3) On *mm dd*, 2017, the petitioner filed a petition for this case.
- (4) At the time of the commencement of the retention, Singapore was a contracting state of the Convention on the Civil Aspects of International Child Abduction (hereinafter referred to as “the Convention”).
- (5) Under Singaporean law, the petitioner had legal custody of the daughter at the time of the commencement of the retention (as stated in 2(2) below, there is a dispute between both parties as to whether the petitioner actually exercised the custody rights of the daughter at the time of commencement of the retention).

2 Points at issue and claims of both parties concerning the points at issue

- (1) Grave risk (Article 28 (1)(iv) of the Act)

A Respondent’s claims

- (a) There is a risk that the daughter would be subject to physical violence or other physically or psychologically harmful behavior (hereafter referred to as “violence or

other harm”) of the petitioner. There is also a risk that, in a case where the respondent and the daughter enter Singapore, the respondent would be subject to violence or other harm by the petitioner in such a manner as to cause psychological harm to the daughter.

- a Around 9 p.m. on *mm dd*, 2015, in their house, the petitioner had a quarrel with the respondent because the respondent closed a door with a loud noise. The petitioner wrung the respondent’s neck while she was holding the daughter and took the daughter away from the respondent. Then, the petitioner slapped the respondent’s head twice, repeatedly kicked her left leg after she fell down, and said to her that he would kill her if she made him angry again. The respondent got a large bruise on the left leg.
- b Around 8:15 p.m. on *mm dd*, 2016, in their house, the petitioner cursed the respondent because the respondent dropped water drops on the floor when she tried to give medicine to the daughter by using a dropper. When the respondent got angry, threw a towel at the petitioner, and kicked his left shin, the petitioner kicked the respondent’s leg and wrung her neck while she was holding the daughter.
- c Around 2:20 p.m. on *mm dd*, 2016, in their house, the petitioner had a quarrel with the respondent and hit her on the left eye twice with his fist because she did not turn off the heater of the bathroom. At that time, the daughter stayed close to them.
- d The petitioner committed the assaults mentioned in a to c above in the presence of the daughter.
- e The petitioner does not regret at all for the assaults mentioned in a to c above.
- f In addition to the assaults mentioned in a to c above, the petitioner abused the respondent on a daily basis, such as by uttering a curse against and yelling at the respondent.
- g On *mm dd*, 2015, the petitioner trapped the daughter in a toy cage and enjoyed watching her being scared. On other occasions, the petitioner scared the daughter and enjoyed watching her.

Moreover, on *mm dd*, 2016, the petitioner committed an assault against the daughter by pinching her finger with a clothespin. On other occasions, the petitioner committed acts that could harm the daughter's health and acts that could be deemed abusive.

- h The petitioner has a larger sized build than the respondent, has strong arms, and has experience in martial arts from a police officer training.
 - i For the aforementioned various circumstances, there are risks that the daughter may suffer violence or other harm from the petitioner, and in a case where the respondent and the daughter enter Singapore, the respondent may be subject to violence or other harm that would cause psychological harm to the daughter.
- (b) There are circumstances that make it difficult for the petitioner or the respondent to take care of the daughter in Singapore.
- a In the light of the employment situation of the petitioner, he cannot take care of the daughter. The petitioner also continues to use violence and to abuse the daughter as mentioned in (a) g above, and is not competent as a custodian of the daughter. Furthermore, as the petitioner's parents are not competent as the assistant custodians of the daughter, the daughter cannot return to Singapore alone.
 - b Moreover, due to the PTSD caused by the petitioner's violence, the respondent cannot return to Singapore where the petitioner resides.
- If the respondent returns to Singapore, she will refuse to live with the petitioner. Even if the respondent can get the same amount of salary as she received when she worked in Singapore, it will be difficult to rent a property and live there because rents are high in Singapore. Shelters for victims of domestic violence are not intended for a long-term stay and are not appropriate at all as a living environment for the daughter; therefore, it will also be difficult for the respondent to live in a shelter.
- c For the aforementioned reasons, there are circumstances that make it difficult for the petitioner or the respondent to take care of the daughter in Singapore.
- (c) Summary of the paragraphs under sub-heading A

For the aforementioned circumstances, there is a grave risk that would place the daughter in an intolerable situation.

B Petitioner's claims

The petitioner denies and contests the respondent's claims.

- (a) In regard to the respondent's claim mentioned in A(a)a above, the petitioner denies everything except that around 9 p.m. on *mm dd*, 2015, he had a quarrel with the respondent and pushed her against a wall while grabbing her neck. The petitioner also kicked the respondent's left leg multiple times, she got a bruise on the left leg and the daughter stayed close to them.
- (b) In regard to the respondent's claim mentioned in A(a)b above, the petitioner affirms that he covered the mouth of the respondent who was screaming loudly by his hand, but it is not true that the petitioner committed an assault against the respondent.
- (c) In regard to the respondent's claim mentioned in A(a)c above, the petitioner affirms that his right finger unintentionally touched the respondent's eye, but it is not true that the petitioner committed an assault against the respondent.
- (d) The petitioner regrets the event happened around 9 p.m. on *mm dd*, 2015 (refer to (a) above), did not object to the personal protection order, and received counseling to improve his relationship with the respondent. Considering that the personal protection order is still valid, there is no risk that the petitioner will commit assaults against the respondent.

Furthermore, there is no risk that such events mentioned in (a) to (c) above may cause psychological harm to the daughter.
- (e) In regard to the respondent's claim mentioned in A(a)g above, it is not true that the petitioner committed an assault against the daughter or abused her. The truth of what the respondent claims as the event of *mm dd*, 2016 is that the daughter's finger was caught in a door when the petitioner almost closed the door without knowing that the daughter had put her hand near the door.
- (f) The high rents mentioned in the respondent's claim in A(b)b above are for presumed luxury condominiums. The petitioner has also continued to pay alimony to the

respondent. Considering that it is assumed that the respondent will work in Singapore, the respondent will have no financial issues.

(g) As stated above, there is no grave risk that would place the daughter in an intolerable situation.

(2) Failure to exercise custody rights (Article 28 (1)(ii) of the Act)

A Respondent's claim

Since the respondent moved into a shelter with the daughter on *mm dd*, 2016, the petitioner has not actually exercised the rights of custody of the daughter.

B Petitioner's claim

The petitioner denies and contests the claim.

The interpretation concerning Article 28 (1)(ii) of the Act claimed by the respondent cannot be upheld.

(3) Subsequent approval of the retention (Article 28 (1) (iii) of the Act)

A Respondent's claim

Although he could file a petition for the return of child immediately after he came to know the fact that the respondent and the daughter had entered Japan, the petitioner finally filed a petition for this case on *mm dd*, 2017; therefore, it is obvious that the petitioner subsequently approved the retention .

B Petitioner's claim

The petitioner contests the claim.

III. Judgment by the court

1 Findings of fact

In addition to the factual background (mentioned in II-1 above), according to the records of the case, the facts listed below have been found.

- (1) Around *mm* 2013, the petitioner and the respondent got to know each other at a running club in Singapore.

At that time, the respondent worked at a Japanese travel agency in Singapore.

- (2) On *mm dd*, 2014, the respondent moved into the house of the petitioner's parents.

- (3) A On *mm dd*, 2014, the petitioner and the respondent were married through the Singaporean legal system.

B On *mm dd* of the same year, the respondent gave birth to the daughter at a hospital in Singapore.

The respondent resigned from her job at the travel agency in Singapore mentioned in (1) above on the occasion of the daughter's birth.

- (4) In *mm*, 2015, the respondent left Singapore and entered Japan with the daughter to attend her younger sister's wedding.
- (5) In *mm*, 2015, the petitioner purchased a new house in xxxx (hereinafter referred to as "the Home").
- (6) The respondent returned to Singapore with the daughter in *mm*, 2015 and lived with the petitioner at the Home thereafter.

Around that time, the petitioner worked as a company employee and as a volunteer special constable at the same time.

- (7) In *mm*, 2015, the respondent obtained a permanent residence permit in Singapore.
- (8) Around 9 p.m. on *mm dd*, 2015, at the Home, the petitioner had a quarrel with the respondent because the respondent closed a door with a loud noise. The petitioner grabbed the respondent's neck with his right hand while she was holding the daughter, pushed her body against a wall while holding her neck, took the daughter away from her, and repeatedly kicked the respondent's left leg after she fell down. Due to such violence, the respondent got a bruise on her left leg.
- (9) Around 8:15 p.m. on *mm dd*, 2016, at the Home, the petitioner cursed the respondent and they started fighting because the respondent dropped water drops on the floor when she tried to give medicine to the daughter by using a dropper. At that time, the

respondent threw a towel at the petitioner and kicked his left shin. The petitioner covered the mouth of the respondent, who tried to call for help, with his hand.

- (10) Around 2:20 p.m. on *mm dd*, 2016, at the Home, the petitioner had a quarrel with the respondent because she did not turn off the heater in the bathroom. At that time, the petitioner poked his right finger toward the respondent's face and hit her eye (hereinafter this respondent's act and the acts mentioned in (8) and (9) above referred to as the "the Assaults.").
- (11) A On *mm dd*, 2016, the respondent left the Home with the daughter and moved into and hid in a shelter.
- B On the same day, the respondent filed a petition for a personal protection order against the petitioner with the Family Justice Court in Singapore by claiming the facts that are generally in line with the respondent's claims mentioned in II-2(1)A(a)a and c above.
- (12) On *mm dd*, 2016, the petitioner had contact with the daughter through the intermediation of a non-profit organization that deals with domestic violence issues in Singapore (hereinafter referred to as "D").
- (13) On *mm dd*, 2016, the petitioner left Singapore with the daughter and on *dd* of the same month, they entered Japan.
- (14) A On *mm dd*, 2016, since the petitioner did not oppose the personal protection order requested by the respondent (mentioned in (11)B above), the Family Justice Court in Singapore issued a personal protection order which included the following items; (1) the petitioner shall not commit domestic violence, (2) both parties shall receive counseling provided by the Ministry of Social and Family Development in Singapore, and (3) both parties shall appear if the ministry contacts them.
- B The petitioner received counseling several times in accordance with the personal protection order mentioned in A above.
- C The personal protection order mentioned in A above is still valid.
- (15) A On *mm dd*, 2016, the petitioner had contact with the daughter, who had temporarily returned to Singapore with the respondent, through D.

B The respondent took her and the daughter's personal belongings from the Home during the visitation mentioned in A above. Later, she left Singapore and entered Japan with the daughter.

(16) A On *mm dd*, 2016, the petitioner learned that the respondent had already entered Japan with the daughter.

B On *mm dd* of the same year, the petitioner filed an application for assistance (in securing the return of the child), in accordance with the Convention, through the Central Authority of Singapore.

On *dd* of the same month, the Central Authority of Japan upheld the application mentioned above and gave notice of the decision to grant assistance on *mm dd* of the same year.

(17) Around *mm* 2016, the petitioner received a letter of conditions which set out a divorce proposed by the respondent from the respondent's attorney.

On *dd* of the same month, the petitioner sent the respondent an email telling her that he would not consider getting a divorce.

(18) From *mm dd*, 2017 to *dd*, of the same month, the petitioner had contact with the daughter through the organization E which the Ministry of Foreign Affairs of Japan commissioned its visitation assistance program.

2 Grounds for return of child

The grounds for return of child are prescribed in the items of Article 27 of the Act. According to the factual background (mentioned in II-1 above), the daughter has not attained the age of 16 ((i) of the Article); the daughter is located in Japan ((ii) of the Article); the retention breaches the petitioner's rights of custody over the daughter pursuant to the laws and regulations of Singapore which can be considered her state of habitual residence ((iii) of the Article); and Singapore was a Contracting State at the time of the commencement of the retention ((iv) of the Article); therefore, the court found the grounds for return of the child in this case.

3 Grounds for refusal of return of the child

(1) Grave risk (Article 28(1)(iv) of the Act)

A First, the court considers whether there is a risk that the daughter may be subjected to violence or other harm by the petitioner in Singapore. According to the records of this case, the petitioner did not directly commit abusive acts against the daughter. Therefore, the court cannot recognize such risk.

B Next, the court considers whether there is a risk that the respondent can be subject to violence or other harm from the petitioner that would cause psychological harm to the daughter in a case where the respondent and the daughter enter Singapore.

(a) Although the respondent claims that the petitioner committed various assaults against the respondent (mentioned in II-2(1) A(a)a to c, and f above), the court cannot find sufficient materials supporting the respondent's claim except for the Assaults.

(b) Moreover, even if the facts claimed by the respondent that are mentioned in II-2(1)A(a)a to c above existed, both of them were triggered by quarrels between both parties at the Home and there were no specific circumstances which indicate that the petitioner regularly had an intention to inflict harm on the respondent's life and body.

In the light of the fact that the decision for the return of the child is not an order to live with the petitioner and that the respondent has already obtained a valid personal protection order in Singapore, the court cannot recognize that there is a risk that the petitioner may commit an assault upon the respondent again in a case where the parties live separately in Singapore.

Furthermore, the daughter has never been injured by the assaults. There are also no appropriate materials that adequately prove that the daughter became mentally unstable. Taking into consideration her age at the time of the Assaults, it is difficult to say that the Assaults can be deemed violence or other harm which would cause psychological harm to her.

(c) Based on the aforementioned various circumstances, the court cannot find that there is a risk that the respondent may be subjected to violence or other harm which would cause psychological harm to the daughter, in a case where the respondent and the daughter enter Singapore.

C Furthermore, the court is going to consider if there are circumstances that make it difficult for the petitioner or the respondent to take care of the daughter in Singapore.

- (a) As a result of close examination of the records of this case, the court cannot find that there are circumstances that make it difficult for the petitioner to take care of the daughter in Singapore.
- (b) The respondent claims development of PTSD and the housing situation in Singapore as the circumstances that make it difficult for her to take care of the daughter in Singapore (mentioned in II-2(1)A(b) above).

However, even if the respondent has developed PTSD, since its seriousness is not clear, the court at least cannot find a circumstance which should be considered to prevent the respondent from living in Singapore.

Furthermore, the housing situation in Singapore cannot be considered as the circumstances which negate available options; for instance, the respondent and the daughter could return to the Home after the petitioner moves to the petitioner's grandparents' house.

The court cannot find that there are other circumstances that make it difficult for the respondent to take care of the daughter in Singapore.

- D Even though the court considers other circumstances that could be found in the records other than those mentioned in A to C above, there is no grave risk in the case that would expose the daughter to physical or psychological harm or otherwise place the daughter in an intolerable situation.

Therefore, the court cannot recognize that there are the grounds for refusal of return of the child prescribed by Article 28(1) (iv) of the Act.

- (2) Failure to exercise custody rights (Article 28 (1)(ii) of the Act)

As described in the findings of the facts (mentioned in 1(11) A above), on *mm dd*, 2016, the respondent left the Home and moved into a shelter with the daughter; however, the court cannot recognize that this means that the petitioner was not actually exercising legal custody of the daughter. There are no grounds for refusal of the return of the child as prescribed in Article 28 (1) (ii) of the Act.

- (3) A subsequent approval of the retention (Article 28 (1) (iii))

The court cannot find appropriate materials that sufficiently prove that the petitioner

approved of the retention after it occurred and recognize that there are grounds for refusal of the return of the child as prescribed in Article 28 (1) (iii) of the Act.

(4) Summary

As stated above, in this case, the court cannot find that there are grounds for refusal of the return of the child as prescribed in Article 28 (1) of the Act.

4 Conclusion

For the above reasons, in this case, the court found the grounds for return of the child and cannot find the grounds for refusal of the return of the child; therefore, it is appropriate to order the return of the daughter to Singapore.

Therefore, the decision is made as the main text of the decision.

(Conclusion of trial examination on June 8, 2017)

June 19, 2017

Osaka Family Court, the Second Domestic Relations Division

Presiding Judge

Judge

Judge