



MALTA

CIVIL COURT
(FAMILY SECTION)
THE HON. MADAM JUSTICE
ABIGAIL LOFARO

Sitting of the 18 th September, 2014

Rikors Generali Number. 583/2013

The Director of Social Welfare Standards Department

VS

A B

The Court:

Having seen the application filed by the Director of Social Welfare Standards Department by means of which the Director of Social Welfare Standards Department premised:

That this application is being filed in terms of the Child Abduction and Custody Act (Chapter 410 of the laws of Malta) through which two Conventions on the civil aspects of international abduction of minors and the recognition and enforcement of custody decisions were ratified.

That this application concerns the child C D who was born on the 9th July 2012 in Royal Infirmary Maternity Unit, Bradford, England as evidenced by the birth certificated, a copy of which is attached and marked as Doc HS1.

That C D is the child of Mr P Q D and Ms A B who were married on the 4th May 2013 as is evidenced by the marriage certificate, a copy of which is attached hereto and marked as Doc HS2.

That the facts as outlined by the Central Authority in England via an application (a copy of this is attached hereto and marked as Doc HS4) are as follows:

1. That the father P Q was working in Malta in September whilst the mother and the minor C resided in Bradford England. The father was exploring the possibility that they leave England and come to live in Malta;
2. On 2 November 2013 the parents talked over the phone and agreed that they will continue the conversation on the 3rd November. However, on the 3rd November the mother informed the father that she could not talk to him as her mobile was flat, out of battery;

3. On the 4th of November the father spoke to the mother on facebook and he received notification that she was communicating to him from Malta;

4. That when he tried to communicate with her on facebook, she did not divulge as to where she was. That the father pointed out to the Mother that he was aware that she was in Malta and that he did not agree that the minor C goes to Malta;

5. That the father P Q informed the mother that he wished to see the minor C however she replied in the sense that she did not want him to see his son;

6. That when the father P Q returned to England on the 5 November, he realised that the mother's clothing together with the minor's clothing were missing from the house where they used to live;

That on the 26th November 2013, the Maltese Central Authority received a request from the English Central Authority in order to file an application for the return of the minor child C D (photo attached and marked as Doc HS5).

That according to Article 2 and the subsequent articles of the Children Act 1989 under English law (copy attached hereto and marked as Doc HS3), the care and custody of the minor C D is vested jointly in the father C P D and the mother A B. Consequently, the mother is impeded both from changing the child's residence without the father's consent and from not granting him access to the same minor C D.

That the Central Authority of Malta was authorized by the Central Authority in England to proceed against the mother in Malta and also to

do whatever is permissible by law in order to have the child returned to England, since the minor's habitual residence is in England.

Therefore, the applicant respectfully requests this Honourable Court to order the return of the minor child C D to England and further requests that in the interim period, it gives all those necessary directions in the interests of the child, including giving notice to the authorities concerned, so that the illicit taking of the minor from Malta to another country is safeguarded, which removal would make the return of the child to his habitual Residence much more difficult and this in explicit violation of the Convention on the Civil Aspects of International Child Abduction Child.

Having seen its decree dated the 2nd December 2013;

Having seen the respondent's reply, by virtue of which she premised:

That she was notified with the application filed on 29 November 2013.

That she opposes the request for the following reasons:

1. This Court lacks jurisdiction to hear this application. According to Article 6 of Chapter 410, the jurisdiction is vested in the First Hall of the Civil Court or other court which the Minister may by order specify. This is a special law and as a special law, the order for a different court other than the First Hall of the Civil Court to hear the case could only be made by the Minister under this special law. The orders that emanate from Chapter 410, do not specify any court other than the First Hall of the Civil Court. For all intents and purposes, neither does it transpire that the Legal Notice 397 of 2003, (which is not an order) includes a reference to the Chapter 410 of the laws of Malta. Therefore this Honourable Court has no jurisdiction to continue to hear this case.

2. On the merits. That is manifest that P Q D had come to Malta and that there was the intention between parties to establish themselves in Malta. On the 3rd November, the respondent in fact came to Malta. This was also evident as on the 4th November she told him that she was in Malta. The husband was dismissed from work. On the 5th November he decided to leave Malta knowing that the respondent together with their son C and her other child, were in Malta. That an argument between the parties arose due to P Q D's attitude.

That the respondent is a European Union citizen and enjoys the right to live wherever she pleases. That as it transpires from the application, P Q D had been in Malta since September 2013.

3. That the applicant strongly objects to the unfounded allegations that the father is making. It is not in the best interest of the child that the same child be returned to England. In fact, in connection with the same proceedings, the father issued a prohibitory injunction so that the child will not be able to leave Malta and therefore Malta has no jurisdiction in matters relating to the child and to the parties' marriage. That the respondent will proceed with personal separation proceedings due to excesses, grievous injury and threats (after a short period of time subsequent to their marriage in May 2013). The parties were cohabiting before marriage but subsequent to the marriage, the situation had become impossible. This is demonstrated by the fact that he left England, came to live in Malta, lost his job and when he got to know that his wife was in Malta, he left to England and is making these claims.

Thus, for the reasons cited above, including the pleas of a procedural nature, the claim should be dismissed with costs.

That during the hearing held on the 9th January 2014 the respondent's counsel requested the Court to authorize that proceedings be continued in the English language since the respondent does not understand Maltese and the Court acceded to such request;

Having seen its decree dated the 4th February 2014 by virtue of which the Court dismissed the respondent's first preliminary plea;

Having heard all the witnesses produced;

Having seen all the documents filed, the evidence produced and the acts of these proceedings;

Having seen the notes of submissions;

Having seen that the application has been adjourned for judgment to be delivered today;

Having Considered:

That the Court is faced with the applicant department's request to order the return of the child C D to England in terms of Chapter 410 of the Laws of Malta together with further requests aimed in the best interests of the child.

The applicant department's version

That the child C D was born on 9 July 2012 in the UK. His parents are P Q D and the respondent (who were married on the 4th May 2013). By means of the application which gave rise to these proceedings, the applicant gives a chronological explanation of the facts of the case (as explained to him) in the following manner, that is, that the respondent decided to come to Malta with the minor without the father's permission, authorization or consent. It was precisely for this reason that by application dated 26 November 2013, the Maltese Central Authority, (subsequent to the English Central Authority's request) filed the present application also on the basis that at the moment in time when the respondent left with the child, the care and custody of the same child was entrusted to the two parents jointly. Consequently, the same respondent cannot deprive the father from having access to his son nor can she change the child's residence.

The Respondent's version

By means of her reply, the respondent insists that it was both parties' intention to take up residence in Malta, so much so that P Q D Malta had come to Malta for work purposes. When he was dismissed from work, he returned to England despite being aware of the fact that his wife and child were in Malta and that their intention before the respondent came to Malta was to take up residence here. She also states that as a citizen of the European Union she has the right to live where she pleases and fully objects to the claims and requests as forwarded by the applicant department on the basis that it was her intention, together with the father to establish residence here in Malta. So much so that she had already sold everything before she came to Malta and is therefore adamant not to go back to England. From her testimony it transpires that before her arrival to Malta, she was already aware that her husband had lost his job but she insists that since the ticket had been purchased before, and since she had already sold everything, she decided to stick to the plan and come near her husband in Malta.

The respondent affirms that although she has not been in Malta for a long time, she's happy here because she knows that she can find a job and make a living in Malta. By means of her testimony she also confirms that her husband never gave her permission to remain in Malta together with the minor and that by living in Malta virtually nothing has changed since the parties had encountered problems in England (she mentions that the father had incurred huge debts) and that she was looking for the same kind of employment that she had in England, that is of a chambermaid. By means of the same testimony, the respondent contradicts herself when she states that her husband had learnt that she was in Malta the day after she arrived and not before. Asked directly by the Court why she decided to come to Malta to live with a man without a job, who two-timed her and who wanted her to be a cleaner and to work for him, the respondent does not reply. She confirms that before she came to Malta with the child, the latter was with her in England, he was born England and she and P D have joint parental Authority over the same child. She contradicts herself once again when she affirms that the father knew that she was coming to Malta with the minor when she had already claimed that she came to Malta without his knowing and without his permission.

Plea of a Preliminary Nature

That the respondent filed a plea of a preliminary nature on the basis of lack of jurisdiction of this Court to hear and decide the present case. However, such plea was rejected by means of a preliminary ruling dated 4 February 2014. Therefore, the court ordered the continuation of the case on its merits.

The merits of the case

The respondent exhibits a number of documents which show a series of telephone messages supposedly sent between her and her husband.

She also exhibits correspondence between her husband and third parties which at the very least show a certain level of friendliness between them, but such correspondence has no bearing on the merits of the present case since what this court needs to decide is whether the minor was taken from England in breach of the Chapter 410 of the Laws of Malta or not. It must be said however that although these messages show that there was some form of arrangement that the respondent comes to Malta, but the question is whether her husband knew that she wanted to stay here and keep the child in Malta with her. It must be determined whether the change in residence of the same child occurred without the consent of the father or not and whether there are any reasons which may prove to be a defence for the respondent.

That from the compilation of evidence it is clear (even upon the respondent's own admission) that she and her husband (at least before she came to Malta) both enjoyed rights relating to parental authority over the child and this in terms of Article 2 (2) and Article 4 (1) (a) of the UK Children Act 1989. The Court also notes that before the respondent came to Malta together with the minor, the latter was resident in England. This is also confirmed by the respondent. What the parties disagree upon is whether the respondent came to Malta together with the minor with the father's approval or not. The Court notes that the respondent contradicts herself when she gives two versions of the facts, that is, that the father knew that she was coming to Malta together with their child and the other version that the father became aware that she was in Malta together with the same child the following day she arrived here. It needs to be pointed out as well that the father's knowledge of his son coming to Malta does not suffice for the purposes of this application, for the same child could have easily come to Malta together with the respondent for a short holiday. What is imperative is that the father needed to have known that the child would establish his residence in Malta. It appears that not even the respondent is sure of this and such uncertainty cannot but lead the Court to conclude that the respondent is trying to distort the facts to her advantage. From the evidence produced during the course of these proceedings, it transpires that the parties' marriage was one which could not be described as a happy one. The

respondent states that it was her intention was to follow her husband to Malta despite of his work-related problems, despite her suspicion of him committing adultery and despite their marital problems. This is highly questionable. This is being stated even in view of the respondent's own declaration in the sense that he did not know that she was coming to Malta with the child and that he was informed of the same the day after they arrived.

Therefore, taking into account the above and taking into account the fact that the child was taken from his ordinary residence in England and brought to Malta without the consent or approval of the father (since the father had not authorised or consented that the child lives in Malta on a permanent basis), by application of Article 12 of the First Schedule of Chapter 410 of the Laws of Malta, the Court accedes to the applicant's requests and consequently orders the return of the child C D to England, which return shall be made by the assistance and all the necessary involvement of the applicant Department.

With costs against the respondent.

< Final Judgement >

-----END-----