CITATION: M.K. v. F.J., 2022 ONSC 5138
COURT FILE NO.: FS-22-82-00
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2022 ONSC 5138 (CanLII)

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: M.K. / Applicant

AND

F.J. / Respondent

BEFORE: Doi J.

COUNSEL: Michael J. Stangarone and Kristy Maurina , for the Applicant

Respondent, Self-represented

HEARD: August 17, 2022 by video

ENDORSEMENT

Overview

[1] By Endorsement dated August 19, 2022, I released a bottom line decision granting the urgent motion by the Applicant mother for the return of the child, R.J., to his habitual residence in Florida. The following are my reasons for granting the motion heard on August 17, 2022.

Background

[2] The parties married on September 18, 1998 in Iran. They separated while living in Toronto on January 26, 2016. On January 23, 2018, they divorced in Ontario.

[3] In December 2018, the mother obtained a well-paying job in Florida and relocated there from Toronto to assume the position. The Respondent father was supportive of the relocation, left his employment, and took R.J. to Florida to join the mother in January 2019. The parties lived separate and apart in the same home in Florida until May 2019.

[4] On May 4, 2019, the father travelled to Toronto. On May 9, 2019, the mother brought R.J. to Toronto so that he could vacation with the father who planned to visit Iran with the child later that month to see family there.

[5] On May 26, 2019, the mother flew to Iran at the father's request to commence their Iranian divorce proceedings. While in Iran, the father allegedly resiled from a verbal agreement on divorce terms. In turn, the mother applied for "*Mehrieh*" which is an order for an Iranian husband to provide financially for a wife. She also filed an application to restrain the father from leaving Iran which is said to be a party's right under Iranian law when the party is owed money. On June 10, 2019, the mother left Iran to return to work. The father and R.J. were meant to stay and visit with family until the end of July 2019, with R.J. to return to Florida prior to the start of school in August 2019.

[6] On July 11, 2019, the father learned of the mother's application in Iran. In retaliation, he allegedly stopped communications between the mother and R.J. who was 9 years old at the time. Until then, the mother and R.J. had communicated almost daily. The mother tried to communicate with R.J. and offered to pick up the child in Turkey as she feared that the father would block her from leaving Iran if she returned. Around this time, R.J. sent the mother a photo of a large bruise on his arm for which he did not give an explanation before their communications stopped. The mother was concerned about the bruise on R.J.'s arm as the father allegedly had a history of family violence. Although the father's ban from leaving Iran had been lifted by August 2019, he remained in Iran with R.J. and did not return the child to Florida.

[7] The father refused to return R.J. to Florida until October 4, 2019. As an alleged condition of returning R.J., the father required the mother to sign a letter giving him "full custody" of the child. Desperate to see the child, the mother agreed to sign whatever the father drafted. The mother met the father and R.J. at the airport in Istanbul and returned to Florida with the child. At the father's insistence, the mother also paid for the father's return flight to Canada.

[8] I find that the mother was desperate to have R.J. back and signed the so-called "full custody" letter under immense duress to secure the child's return. In my view, the father effectively coerced the mother into signing the letter as a condition of returning the child to her care. From the record, I am satisfied that the mother signed the letter under tremendous pressure, without legal advice, and with severe duress such that the letter did not truly reflect the reality of the situation between the parties.

[9] Upon returning to Florida in October 2019, R.J. was not himself. He apparently told the mother that the father held a pillow over his mouth to stop him from yelling or crying when he was upset which is said to have hindered the child's ability to breathe. R.J. was enrolled in therapy for several months after his return from Iran. As a result of the episode in Iran, R.J. missed three (3) months of school.

[10] Thereafter, R.J. resided in Melbourne, Florida with the mother and attended a private elementary school as a student with its gifted and international baccalaureate diploma program.

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He met many friends in Florida, including his best friends, and engaged in various leisure and sports activities including basketball.

[11] In March 2020 at the onset of the global COVID-19 pandemic, the father came to Florida and apparently chose to stay with R.J. and the mother until May 2022 when he relocated to Montreal for work. Over the two (2) year period, the mother claims that she asked the father to leave many times but he allegedly refused. When the father relocated to Montreal, the mother switched jobs and considered an opportunity to work in Canada or elsewhere in the US but the father insisted that she stay in Florida as he thought that it would be best for R.J. to continue attending school in Florida.

[12] On July 4, 2022, the mother moved to Merritt Island in Florida so that R.J. could live closer to his middle school, Edgewood Junior/Senior School, where he is enrolled. Both parties were supportive of R.J. attending school at Edgewood.

[13] On July 17, 2022, the mother and R.J. came to Toronto for a two-week stay. During the stay, the mother was to attend work meetings in Mississauga while R.J. had plans to visit a childhood friend when she was working. On July 22, 2022, the father flew to Toronto to visit R.J. for one day. The father later extended his visit with R.J. to July 25, 2022 with the mother's agreement.

[14] On July 24, 2022 (i.e., the day before his scheduled return), R.J. messaged the mother on the Telegram app stating, among other things:

> "I'm not coming back. And this isn't daddy's decision, this is mine. I want to be in Canada, and you want to be in Florida, so it fits perfectly. And honestly, I think that would be better. You don't seem to want me around anyways, as your actions have shown. Don't' call me. Don't text me. Nothing. We're OVER. I'M over with you. And don't unpack my stuff, I will pick them up later. Remember, this is my decision and my life. Thank you and goodbye.

[15] The mother was shocked by the message and claims that it was completely out of character for R.J. who does not talk to her in this manner. She tried to call the child but he did not take her call. After the mother continued to text R.J. and coordinate plans for him to visit his friend in Toronto, the child messaged her back on July 25, 2022 stating, "*I'm not your fucking son so don't say I am. I'm blocking you because you won't stop texting me after I told you. Bye. And leave my stuff at the security."* R.J. later sent her the following message: " *ok pesaram. Don't call me your fucking son. You just stole my passport from me what the fuck is your problem. Faggot come back online I need to talk to you. And what about my plushies, xbox, and etc? And my computer.*" The child continued to refuse the mother's calls.

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[16] On July 25, 2022, the mother reported the matter to police. After contacting the father, police advised the mother that the father and the child were staying with a friend in Burlington, Ontario. The father refused to disclose their exact location to the mother. R.J. called the mother that day to demand that she leave the police station and to state that he was not returning home, that she is a terrible mother, and that he is not her son.

[17] Over the next few days, the mother texted and phoned R.J.. During one of their phone calls, she could hear the father in the background coaching the child to insult her.

[18] On July 27, 2022, the father called Edgewood to advise that he would be withdrawing R.J. from school. The mother emailed the school to await confirmation or a court order before removing the child. Minutes later, R.J. messaged the mother to tell her to stop interfering after the father shared her email with the child.

[19] On July 28, 2022, the mother emailed the father to ask that R.J. be available for pick-up the next day at the location in Toronto where she was staying. The father did not respond. Instead, R.J. texted the mother to advise that he was not coming with her. Hoping that the child would appear, the mother waited at her appointed exchange time and location but the father did not attend with the child. R.J. told the mother in a text that she would be waiting there "*forever*".

[20] The mother continued to message R.J. until he blocked her number on his phone and on the Telegram app. Since then, she has emailed the child pertinent information about his school registration and back-to-school details which grew increasingly urgent as his return to school was to resume on August 10, 2022. After the mother expressed her love to R.J., he responded by stating, "*We get it you love me to the moon and earth and sky and up your ass*."

[21] On July 31, 2022, the mother returned to work in Florida and engaged counsel to begin proceedings for R.J.'s return to Florida.

[22] On August 4, 2022, R.J. emailed the mother to ask her to download an app for them to use to communicate. When she downloaded the app, he started to ask her about "*other men that [she had] been seeing*" and specifically asked about three men, namely C., V., and A., respectively. According to the mother, A. is a family friend whom the father falsely accused of having a romantic relationship with her years ago while the parties were married. Based on the mother's exchange with R.J., it is quite apparent that the father inappropriately spoke with the child about adult issues. R.J. also asked the mother to send him the picture that he had taken of his bruised arm in 2019 in Iran, and stated that he was worried that she was, "*trying to get daddy arrested for no reason*." For his part, the father blocked the mother's calls and ignored her emails.

[23] On August 10, 2022, the mother received a message from R.J. and a missed call at 1:11 am asking, "*Why did you lie to the Court?*" The child continued asking questions and wrote at 11:21 am, "*you know I will tell the court you're a filthy liar next week: D, Go to hell*." When the mother told R.J. that the court proceeding was an adult matter, the child replied, "*I HAVE TO COME AND THE ENTIRE CASE IS ABOUT ME*." After she told him to not be stressed about adult problems, he responded, "*Oh my god, shut the fuck up. How can I not be stressed*." At 11:51 am, he messaged her stating, "*You know this court thing is stressing me out. I've cried in real life and want to kill myself because of you.*" Saying that the father had told him that she "*sent the email,*" the child stated that he must attend court on August 17, 2022. When she assured R.J. that he did not have to attend, he responded that she would be to blame if he killed himself before later stating, "*if daddy goes to jail, I have to live with you which I have abundantly stated I don't want to live with you cocksucking whore.*"

[24] On August 12, 2022, the mother asked R.J. why he began to turn against her despite their loving relationship. R.J. responded that the father had been discussing the adult issues with him, and messaged, "*Suddenly, I hated you after I found out you did weird shit with [A.], [V.]; etc. Don't think I don't know. Hello?*"

Legal Principles

[25] The *Convention on the Civil Aspects of International Child Abduction,* Can. T.S. 1983 No. 35 ("*Hague Convention*") seeks to return wrongfully removed or retained children to the state of their habitual residence.[1] The convention applies a presumption that the interests of wrongfully removed or abducted children are ordinarily better served by immediately repatriating them to their habitual jurisdiction where the merits of their best interests can be determined. International abductions have serious consequences for an abducted child who is removed from their home environment, often without having any contact with the other parent. Dueling custody battles waged in different countries may follow and delay the resolution of parenting matters.

[26] A return order under the *Hague Convention* is not a determination of decision-making responsibility or parenting time, but simply seeks to restore the *status quo* that existed before an abduction to end any advantage otherwise gained from the wrongful removal or retention: *Office of the Children's Lawyer v. Balev,* 2018 SCC 16 at para 24; *Thomson v. Thomson*, [1994] 3 SCR 551 at 579-81. A prompt return of a wrongfully removed child serves to: a) protect against the harmful effects of a wrongful removal or retention; b) deter a parent from abducting a child in the hope that they will establish links in a different country that might ultimately award them custody; and c) achieve a speedy adjudication of the merits of parenting disputes in the forum of a child's habitual residence, thereby eliminating disputes about the proper forum for resolving decision-making and parenting time issues: *Balev* at paras 25-27.

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[27] Article 3 of the Hague Convention states that a removal or retention is considered wrongful where:

> a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
>
> b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.
>
> The rights of custody mentioned in sub-paragraph a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State

[28] Article 5 defines rights of custody and access as follows:

> a) "rights of custody" shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence; [and]
>
> b) "rights of access" shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.

[29] The Court of Appeal in *Ludwig v. Ludwig*, 2019 ONCA 680 at para 40 set out the following analytical framework for determining a Hague Convention application:

> *Stage One: Habitual Residence*
>
> 1) On what date was the child allegedly wrongfully removed or retained?
>
> 2) Immediately before the date of the alleged wrongful removal or retention, in which jurisdiction was the child habitually resident? In determining habitual residence, the court should take the following approach:
>
>> a) The court's task is to determine the focal point of the child's life, namely the family and social environment in which its life has developed, immediately prior to the removal or retention.

b) To determine the focal point of the child's life, the court must consider the following three kinds of links and circumstances:

i) The child's links to and circumstances in country A;

ii) The circumstances of the child's move from country A to country B; and

iii) The child's links to and circumstances in country B.

c) In assessing these three kinds of links and circumstances, the court should consider the entirety of the circumstances, including, but not restricted to, the following factors:

i) The child's nationality;

ii) The duration, regularity, conditions and reasons for the child's stay in the country the child is presently in; and

iii) The circumstances of the child's parents, including parental intention.

End of Stage One: Two Outcomes

1) If the court finds that the child was habitually resident in the country in which the party opposing return resided immediately before the alleged wrongful removal or retention, then the *Hague Convention* does not apply and the court should dismiss the application.

2) If the court finds that the child was habitually resident in the country of the applicant immediately before the wrongful removal or retention, then the *Hague Convention* applies and the court should proceed to stage two of the analysis.

Stage Two: Exceptions

At this stage, the court shall order the return of the children unless it determines that one of the following exceptions applies:

1) The parent seeking return was not exercising custody or consented to the removal or retention (Article 13(a));

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> 2) There is grave risk that return would expose the child to physical or psychological harm or place the child in an intolerable situation (Article 13(b));
>
> 3) The child of sufficient age and maturity objects to being returned (Article 13(2));
>
> > a) Has the party opposing return met the threshold to invoke the court's discretion to refuse return?
> >
> > > i) Has the child reached an appropriate age and degree of maturity at which the child's views can be taken into account; and
> > >
> > > ii) Does the child object to return?
> >
> > b) Should the court exercise its discretion to refuse to return the child? In considering whether to exercise its discretion to refuse return, the court should consider:
> >
> > > i) The nature and strength of the child's objections;
> > >
> > > ii) The extent to which the objections are authentically the child's own or the product of the influence of the abducting parent;
> > >
> > > iii) The extent to which the objections coincide or are at odds with other considerations relevant to the child's welfare; and
> > >
> > > iv) General *Hague Convention* considerations.
>
> 4) The return of the child would not be permitted by fundamental human rights and fundamental freedoms of the requested state (Article 20); or
>
> 5) The application was brought one year or more from the date of wrongful removal or retention, and the judge determines the child is settled in the new environment (Article 12).

[30] Under the stage one analysis, the place where a child was "habitually resident" is where the child was living immediately before the wrongful removal pursuant to Articles 3 and 4 of the *Hague Convention*: *Balev* at paras 24 and 67. By taking a hybrid approach for deciding an application under the *Hague Convention*, the court will assess all relevant considerations that arise from the facts at hand to determine the focal point of the child's life, being the family and

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social environment where their life had developed immediately prior to the child's wrongful removal or retention: *Balev* at paras 42-43. Considerations under the hybrid approach include the duration, regularity, conditions and reasons for the child's stay in the member state, with no single factor dominating the analysis that affords a fact-bound and practical approach which is unencumbered by rigid rules, formulas or presumptions: *Balev* at paras 44-47.

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Analysis

a. Date of Wrongful Retention

[31] From the record, it is clear that R.J. was to return to Florida with the mother on July 25, 2022 (i.e., after an extended parenting visit with the father in Toronto) as the parties had agreed. I am satisfied that the father's retention of R.J. in Ontario, his non-habitual place of residence, after July 25, 2022 went beyond the consent of the parties and implicated a wrongful retention of the child from his habitual residence in Florida: *Katsigiannis v. Kottick-Katsigiannis,* 2001 CanLII 24075 (ONCA) at para 33. As a result, I find that July 25, 2022 is the applicable date for the wrongful retention in this analysis.

b. The Child's Habitual Residence

[32] Applying the hybrid approach, and having considered the entirety of the evidence, I am satisfied that R.J.'s place of habitual residence is Merritt Island, Florida.

[33] Although the term "habitual residence" is not defined in the *Hague Convention* or the *Children's Law Reform Act*, the Court of Appeal in *Korutowska-Wooff v. Wooff* (2004), 5 RFL (6th) 104 (ONCA) at para 8, leave to appeal refused [2005] SCCA No 132, gave the following guidance for making such a determination: a) the question of habitual residence is a question of fact to be decided based on all of the circumstances; b) the habitual residence is where the person resides for an appreciable period of time with a "settled intention"; c) a "settled intention" or "purpose" is an intent to stay in a place whether temporarily or permanently for a particular purpose, such as employment, family, etc.; and d) a child's habitual residence is tied to that of the child's custodian(s).

[34] R.J. clearly resided in Florida with the mother immediately before the father's wrongful retention on July 25, 2022. Without question, R.J. resided exclusively in Florida since January 2019 apart from a four (4) month period from July 2019 to October 2019 when the father wrongfully retained R.J. in Iran, as explained earlier. While residing in Florida, R.J. attended school, maintained friends, enrolled in leisure and sports activities, and established his life there for all practical intents and purposes. Both parties clearly agreed that R.J. would reside with the mother in Florida and continue his education at Edgewood Junior/Senior School. R.J.'s primary residence was clearly in Florida with the mother who obviously was exercising parenting rights

when the father wrongfully retained the child: *M.J.W. v. P.S.G.,* 2007 CanLII 13522 (ONSC) at paras 55 and 71-72, affirmed 2007 ONCA 521. It is also apparent that the father had been living in Montreal since May 2022 while R.J. resided in Florida with the mother. On these undisputed facts, R.J.'s habitual residence just before the wrongful retention was clearly in Florida where he had lived for an appreciable period and where the clear focal point of his family and social environment had developed and unfolded.

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[35] The father insists that the mother signed a so-called "custody letter" that required her to give him full "custody" of R.J. as a condition for allowing the child to be returned to Florida from Iran where the father retained R.J. for about four months in 2019. But having regard to all of the circumstances surrounding the "custody letter", including how and why it was signed, I find that the letter is not a valid agreement as the mother clearly signed it under severe duress and out of a sense of desperation to have the father return R.J. to her care. In any event, as a parent cannot wrongfully retain a child even with a custody or parenting order from the jurisdiction of habitual residence, I am not persuaded that the "custody letter" detracts from the mother's exercise of parenting rights in Florida immediately before the father's retention of the child: *Kinnersley-Turner v. Turner* [1996] OJ No 3749 (CA) at paras 21 and 25-26.

c. Application of The Hague Convention

[36] Having found that R.J. was habitually residence in Florida immediately before the wrongful retention, I am satisfied that the *Hague Convention* applies to this case. Accordingly, I shall turn to the second stage of the analysis under the *Ludwig* framework to determine whether the child should be returned to Florida.

d. Mandatory Return and Limited Exceptions

[37] Once a determination is made that a child's removal or retention is wrongful, the *Hague Convention* requires an expeditious return of the child to the contracting state from which the child was removed or retained. Under Article 12 of the *Hague Convention*, the return is mandatory if a period of less than a year has elapsed from the removal or retention and the commencement of return proceedings.

[38] Under Article 13 of the *Hague Convention,* there are exceptions to returning a child to the state of habitual residence. But unless a specific exception is established, the court may not exercise a general discretion to return to return the child: *Balev* at para 76. A determination as to whether an exception to returning the child has been established is to be made on a fact-based and common-sense approach: *Ibid.*

[39] Article 13 of the *Hague Convention* provides as follows:

> Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that
>
>> a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or
>>
>> b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.
>
> The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views. [Emphasis added]

[40] In *Balev* at para 81, the Supreme Court offered the following guidance for courts in determining whether to refuse to order the return of a child under Article 13 due to an objection by the child to being returned:

> If the elements of (1) age and maturity and (2) objection are established, the application judge has a discretion as to whether to order the child returned, having regard to the "nature and strength of the child's objections, the extent to which they are 'authentically her own' or the product of the influence of the abducting parent, the extent to which they coincide or are at odds with other considerations which are relevant to her welfare, as well as the general Convention considerations." [citation omitted, emphasis added]

[41] A child's purported objection will not preclude a return to their habitual residence, and should be considered on a fact-based and common sense approach to the case before the court: *Balev* at para 76. A purported objection by a child should not be determinative, or even presumptively determinative, of whether a court should exercise its discretion to refuse a return order: *Balev* at para 158. In undertaking this part of the *Ludwig* analysis, I am persuaded by the reasoning in *De Silva v. Pitts*, 481 F.3d 1279 (10th Cir. 2007) at paras 14-15 that the court should exercise real caution in considering a child's wishes when those wishes are the *sole reason* underlying an objection to a return outside of some broader analysis. I also accept that a child's wishes should *not* be considered if the child's opinion is found to be the product of undue influence: *In re Robinson*, 983 F Supp 1339 (DColo 1997) at 1343-44. In addition, I accept that the policy objectives of the *Hague Convention* should be considered in deciding whether to

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refuse a return order, including the convention's express objectives of protecting decision-making and parenting time rights: *Balev* at para 158. The fundamental purpose of the *Hague Convention* is to deter international child abduction and to not reward a parent's wrongful abduction by using the objection exception to allow the abductor to keep the child where the child is now located: *Tsai-Yi Yang v. Fu-Chiang Tsui,* 499 F.3d 259 (3rd Cir. 2007) at para 280.

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[42] In this case, the sole reason for the father's objection to returning R.J. to Florida is the child's purported wish to not live with the mother. However, as explained below, I am quite satisfied that R.J.'s opinion is the product of undue influence by the father.

[43] After July 24, 2022, R.J.'s messages and comments to the mother drastically changed. In my view, the only rational or common-sense conclusion to draw on the evidence is that the father clearly engaged in conduct to alienate R.J. from the mother.

[44] A finding of parental alienation can be made at an interim stage and on a written record, particularly where the evidence overwhelmingly points to this conclusion: *Hajji v. Al-Jammou*, 2020 ONSC 6403 at para 37. It is open for the court to make a finding of parental alienation on an analysis of the evidentiary record without expert evidence: *A.M. v. C.H.,* 2018 ONSC 6472 at paras 100-107.

[45] In *Fielding v. Fielding*, 2013 ONSC 5102 at paras 135-136, the court applied the following principles in determining whether parental alienation has been established:

a) There was a prior positive relationship with the targeted parent;

b) There is an absence of abuse by the targeted parent;

c) The alienating parent uses many of the alienating strategies;[2] and

d) The child exhibits most of the alienated behaviours.

[46] From the evidence on the motion, I am quite satisfied that R.J. and the mother shared a positive, close and loving relationship right up until his July 24, 2022 message that he would not return to Florida to live with her. Until then, R.J. had good parenting relationships with both parties. Something clearly changed after R.J.'s parenting visit from July 22 to 25, 2022 with the father. With hindsight, it is quite apparent that the mother's May 2019 application in Iran (i.e., brought after the father allegedly resiled from a divorce settlement) for financial support (i.e., which imposed a travel ban on the father and forced him to stay in Iran for a period) altered the dynamics between the parties by prompting the father to retain R.J. in Iran until the mother signed a letter giving him "full custody" of R.J. on September 24, 2019. Prior to May 2019, there is no basis in the record to suggest that the parties had serious difficulty sharing their

parenting roles with R.J. despite their separation as they jointly made parenting decisions and shared parenting time to fulfill the child's best interests. Regrettably, it appears that the episode in Iran escalated tensions between the parties.

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[47] From the record, I am satisfied that R.J. did not experience abuse by the mother who cared for and nurtured the child as his primary custodial parent. To this end, I am not persuaded by the father's uncorroborated allegation that the mother abused the child by throwing a chair about four (4) years earlier (i.e., when the child was 8 years old), or that she poses a danger to the child by her alleged activities or relationships with others, all of which the mother denies. That said, I do accept that the mother used inappropriate language in certain text messages that she exchanged with R.J. which reflected her clear and obvious frustration with the father's efforts to alienate the child from her.

[48] In this case, I am satisfied that R.J.'s messages and comments to the mother from July 24, 2022 onwards are entirely out of character for the child who previously shared a warm and loving relationship with the mother and never addressed or treated her in the kind of disrespectful manner as reflected by his communications to her from that point onwards. Starting around July 24, 2022, I accept that the father engaged in various strategies to alienate R.J. from the mother by clearly discussing the adult conflict with the child, as R.J. later confirmed with the mother, and by speaking negatively about the mother to the child which is quite obvious from the nature and tone of his messages or comments to her. Among other things, R.J. messaged the mother stating, "*… thanks for cheating [and] thanks for telling me to kill myself …"*, *"I'm not your fucking son …*", and "*… You just stole my passport from me …*" R.J. also asked the mother about "*other men she has been seeing*" and expressing his worry that she was "*trying to get daddy arrested for no reason."* In addition, the child messaged the mother to ask her, "*Why did you lie to the Court?*" within days after her court application was commenced. Without question, the father discussed adult issues and this litigation with R.J. to involve the child in the family conflict which is quite regrettable. It appears that the father's efforts led R.J. to message the mother with highly derogatory comments that were laced with profanities and sexually-explicit references that are quite shocking. I am satisfied that the exceptionally offensive nature and tone of the messages are wholly uncharacteristic of what children of R.J.'s age and maturity would say unless subjected to alienating efforts. On balance, I find that R.J. became a victim of parental alienation after the father shared negative and disparaging remarks about the mother with the child. Given this finding, I am satisfied that little weight should be given to R.J.'s expressed wishes as his views were clearly tainted by the father's efforts to alienate him from the mother: *R.G. v. J.G.*, 2022 ONSC 1678 at para 127, citing *A.G.L. v. K.B.D.* (2009), 93 OR (3d) 409 (SCJ) at paras 143-149; *Pettenuzzo-Deschene v Deschene,* [2007] OJ No 3062 (SCJ) at para 55; *Zacconi v. Mahdavi,* 2010 ONSC 3294 at paras 110, 115, 123 and 133-135.

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[49] Taking this all into account, I find that the court should not exercise its discretion to refuse a return order based on R.J.'s purported objection that resulted from undue influence by the father: *Robinson* at 1343-44. It is only in exceptional circumstances that the court should not order the immediate return of a child who was wrongfully retained due to the child's objection: *Vieira v. Dox Santos Trillo,* 2016 ONSC 8058 at para 70. In my view, this is not one such exceptional case. In addition, I am not persuaded that the father has met the very high threshold for implicating any other exception under Article 13 of the *Hague Convention* by showing that R.J. would face harm or be placed in an intolerable situation if returned to Florida: *Ellis v Wentzell-Ellis*, 2010 ONCA 347 at para 37; *Stacey v. Stacey,* 2016 ONSC 8054 at paras 80 and 94. In my view, the court should respect the fundamental goal of the *Hague Convention* of deterring international child abduction by not invoking the objection exception in this case which would improperly reward the father's retention by allowing him to keep R.J. after alienating the child from the mother and wrongly manipulating their relationship: *Tsai-Yi Yang* at para 280; *Balev* at para 159. To do otherwise would seriously undermine the purpose of the *Hague Convention*; *Stefanska v. Chyzynski*, 2020 ONSC 3048 at para 79, citing *C.L.M. v. J.E.A.,* 2002 NSCA 127 at para 42. I add that R.J.'s purported concerns or preferences are best addressed by the courts in the jurisdiction where he was habitually resident before the retention: *Toiber v. Toiber,* 2005 CanLII 63821 (ONSC) at para 36, affirmed [2006] OJ No 1191 (CA) at paras 9-10.

Outcome

[50] Accordingly, for these reasons, the motion by the mother for the child's return to Florida was granted.

[51] Should the parties be unable to agree on costs for the motion, the mother may deliver written costs submissions of up to two (2) pages (less any costs outline or offer(s) to settle) within 20 days and the father may deliver costs submissions on the same terms within a further 20 days. Reply submissions may not be delivered without leave.

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Doi J.

DATE: August 22, 2022

[1] The *Hague Convention* is implemented in Ontario by ss. 46(2) of the *Children's Law Reform Act*, RSO 1990, c. C.12.

[2] In *Fielding v. Fielding*, 2013 ONSC 5102 at para 136, the court acknowledged the following parental alienating strategies, among others: a) badmouthing; b) limiting contact; c) forcing the child to choose; d) creating the impression that the targeted parent is dangerous; e) confiding in the child personal adult and litigation information; f) forcing the child to reject the targeted parent; and g) undermining the authority of the targeted parent.

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COURT FILE NO.: FS-22-82-00
DATE: 20220822

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: M.K. / Applicant

AND

F.J. / Respondent

COUNSEL: Michael J. Stangarone and Kristy Maurina / For the Applicant

Farsa Jamshidi Respondent Self-Represented

ENDORSEMENT

Doi J.

DATE: August 22, 2022

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