

International Abduction Fact Scenario for Discussion Purposes

Oren Weinberg
Boulby Weinberg LLP

Brief Overview

1. In February 2023, G, a Bulgarian national and citizen of England, brought an urgent application in Ontario to recognize and enforce the order of Justice W of the Family Division of the High Court of Justice of England and Wales to locate and return his daughter N (11 y/o) to England. N was born in London and was abducted by A in October 2017 following a parenting application G brought before the High Court of England and Wales, Family Division. In that proceeding, A was found not to be N's parent but the court left it open to her to come back and seek parenting orders.
2. A abducted N and took her to Bulgaria in October 2017. In Bulgaria, A remarried her former husband E and caused him to adopt N under his name. They then fled with N to Canada to avoid a European arrest warrant. G brought an application before the Bulgarian courts to annul the adoption and certify that N was the same person in the English court application. That proceeding took 5 years to conclude. The adoption was annulled and in January 2023, the Bulgarian authorities issued N a new birth certificate listing G as her father, removing A as a parent. G then hired investigators to help him find N in Ontario.
3. N sought leave to bring his application on an ex-parte basis, which was granted. The motion was heard within days.
4. On the ex-parte motion, and under a new directive dealing with abduction cases, the court notified the Office of the Children's Lawyer ("OCL") of the hearing. The OCL attended and sought standing and submitted that N's views and preferences should be ascertained before

making a decision. This created a dilemma. On the one hand there is strong authority generally to ascertain views and preferences of children in family law proceedings. On the other hand, doing so in this particular case, a request to enforce a foreign return order, would expose the court to amongst other things, a) re-adjudicating the matter already validly determined by a foreign court, b) create a process wherein the court could be aiding a non-parent abductor. Should it be the policy to have a chat with an abducted child? Are we wading into the territory of aiding the abductor by doing so? If a Canadian was sitting in a foreign jurisdiction, would we want to go along with a child who wants to stay with her abductor?

5. The Ontario Superior Court of Justice ultimately declined to delay the proceeding to ascertain N's views and preferences and recognized the foreign return order. It made ancillary orders directing the police services to apprehend N and deliver her to G.
6. A secondary set of problems arose after the order was made. N had no travel documents. Canada would not issue her documents because she was in Canada under a false name and had no status here. England would not issue her travel documents because she was not a citizen of England even though she had been made a ward of the court. Ultimately the Bulgarian consulate issued travel documents in the last minute.

Facts

7. G was 50 years old. He moved from Bulgaria to London around April 2007. He has British citizenship and works as a gas engineer in London.
8. He and A were friends. They were both Bulgarian. Starting in 2009 G and A lived together along with her 15 year old son in the same rental house in London. They shared the rent. At the time G was 38 years old and wanted to have a child of his own. A helped him find a

surrogate in Bulgaria. G worked long hours and A promised to help him care for N until she was at least four years old. N was born in October, 2011 in London.

9. When N was 2 years old, A obtained a Bulgarian passport for her without G's consent. A declared on N's birth registration that N's father was unknown. A had also declared on Nicole's birth registration that she was the mother, which was not true. A refused to cooperate in changing N's birth registration to include G as N's father and to remove her as the birth mother.
10. At the end of 2016, G moved out of the rental home. In March 2017 he started the process of retaining counsel and bringing a parenting application before the English family court. He initially tried negotiating with A to resolve the parenting issues with the assistance of counsel. The negotiation did not go well. A refused to negotiate any parenting time and she accused G of sexually abusing N. G then started a parenting application in the English Family court. The allegations of abuse were investigated and ultimately determined to be unfounded by social services and the police.
11. On October, 2017, G brought an urgent motion without notice before the English family court out of his concern that A was a flight risk. The court made N a party to the proceeding and appointed a children's guardian.
12. On the return of the urgent hearing, A did not attend. The English court made further orders for personal service, adjourned the hearing, and issued a penal notice with respect to her attendance.
13. In fact, on the same day as the original return date, A abducted N. She left the jurisdiction of England and Wales by Eurostar. She then flew from Paris to Sofia, Bulgaria. Interpol confirmed their entrance in Bulgaria and that she provided her destination address that turned

out to be for a location that was under construction and not capable of habitation. A had instructed Bulgarian lawyers. She also requested copies of all of the documents in the English proceeding through lawyers in England that she ultimately did not retain. The English court declared that N was wrongfully removed from the Jurisdiction of England and Wales, where she was habitually resident until her removal. The court ordered that A shall return N forthwith and continued all of the previous injunctive provisions, including the port alert respecting A and N.

14. G tried to bring an application to establish parentage in Bulgaria. A evaded service, travelling to Greece and then Italy with N in early 2018.

15. In April, 2018, the court of England and Wales ordered the following:

- a. A removed N from the jurisdiction of England and Wales;
- b. At the date of the removal of N from the jurisdiction of England and Wales, she was a Ward of the High Court of England and Wales;
- c. Being a Ward of the High Court is a status which (a) vests rights of custody in the High Court of England and Wales within the meaning of Article 5 of the *Hague Convention on the Civil Aspects of International Child Abduction 1980*, the court being an institution or other body within the meaning of Article 3(a) of that Convention, and (b) forbids any person from removing N from the jurisdiction of the court without the consent of the court;
- d. Prior to the date of N's removal from the jurisdiction of England and Wales, A had been validly served with a Passport Order which expressly forbade any person from removing the child from the jurisdiction of England and Wales;
- e. The removal was wrongful within the meaning of Article 3 of the *Hague Convention*;

- f. G was permitted to provide a copy of this order to the Central Authority for the purpose of helping with my application for Nicole's return under the *Hague Convention*.
16. In July, 2018, satisfied that A had been served with the application, and had notice of the hearing, the court proceeded to determine the application. The court ordered the following:
 - a. A wrongfully removed Nicole from the jurisdiction of England and Wales in breach of a court order made earlier.
 - b. The evidence established that A is not N's biological, gestational, or legal mother, but she has been her psychological mother throughout her life.
 - c. The decision of whether to declare A to be N's parent was adjourned and noted that if she was declared to be parent, the court would still need to determine the consequences of that declaration in terms of A's involvement in N's life and what that meant in terms of parenting time.
 - d. G was declared to be N's parent and granted parental responsibility for N.
 - e. A further hearing was scheduled to determine what if any parenting declaration should be made regarding A.
 17. In August 2018, A married E. In August 2018, E brought an application to adopt N in Bulgaria under a new name. The Kyustendil District Court in Bulgaria granted the full adoption on and permitted the name change. G applied to the Kyustendil District Court to have the court order granting the adoption annulled.
 18. On October 16, 2018, G appeared before the High Court of Justice of the Courts of England and Wales with a status update. The court recorded the following information for the attention of the Bulgarian court dealing with the annulment application:
 - i. The High Court of England and Wales has previously made N, a Ward of Court,

which places the child under the protection of the court, meaning that no significant decisions about N may be made without the High Court of England and Wales' permission and grants to the English court "rights of custody" within the meaning of the 1980 Hague Convention;

- ii. N was made a Ward of Court before she was wrongfully removed from this jurisdiction by A and the order making her a Ward was served on A prior to her taking N;
- iii. The English court had previously made a Declaration of Wrongful Removal in relation to N and had ordered that she be returned to England and Wales;
- iv. A had previously alleged that G had sexually assaulted N and these allegations were investigated by English social services and the Metropolitan Police and those allegations show there was no reason to believe that G posed a threat to N;
- v. The English courts are seized of all matters relating to the welfare of N, on the basis that at the time that the court was seized, N was habitually resident in England and Wales
- vi. The Royal Court of Justice declared that A is not the legal mother of N and that R, the surrogate, is N's legal mother.

19. In October, 2018, Justice W ordered the following:

1. N must be returned to the jurisdiction of England and Wales and the following consequential orders shall apply:
 - a. If A wished to return with N, she must do so within 72 hours of this order being served on her and in any event no later than 11:59 pm on Friday, November 2, 2018.
 - b. If A did not return N pursuant to the paragraph above, A shall hand the child to G for

G to effect Nicole's return.

20. Justice W declared that A was not N's parent and declared that the surrogate was N's parent.

It was declared that the court officer shall send a copy of the order to the Registrar General for Births and Deaths so that he may consider the re-registration of N's the birth.

21. A European Arrest Warrant for A was issued in September 2019. G used the assistance of a private investigator in Bulgaria to keep track of A and N's whereabouts. To avoid the arrest warrant, A under her new surname left Bulgaria sometime in September 2019. A entered Canada with N from Turkey.

22. In October, 2020, the District Court of Blagoevgrad, Bulgaria conducted a hearing of G's application to annul the court ordered adoption. The court published its final decision in April, 2021 but its decision did not become effective until December 9, 2022. A did not attend the hearing but had a lawyer present and made submissions on her and her husband's behalf.

23. The court annulled the adoption and restored N's name to her original name.

24. After the annulment, G applied for a new birth certificate in Bulgaria. A new certificate of birth was issued listing G as Nicole's father.

25. With the help of a private investigators, G determined that A and N resided in Sudbury, Ontario.

26. By that time, at the end of 2022, G had not seen his daughter in 4.5 years.