UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

RUWEIDA AHMED MUSTAFA, acting on behalf of infant child,

Plaintiff,

v. Case No: 8:17-cv-49-T-17AEP

MICHEL ALLER MUNOZ,

Defendant.

ORDER

This cause comes before the Court pursuant to the *Verified Petition for Return of the Child to Sweden* (Doc. No. 1) (the "**Verified Petition**") filed by the Petitioner, Ruweida Ahmed Mustafa, acting on behalf of infant child, Y.M., (the "**Petitioner**"), and the answer and affirmative defenses (Doc. No. 20) (the "**Answer**") filed by the Respondent, Michel Aller Munoz (the "**Respondent**"). The Court conducted an evidentiary hearing on February 9, 2017, at which both the Petitioner and Respondent testified and submitted documentary evidence. Upon consideration of the Verified Petition, the Answer, and the evidence presented at the hearing, the Court orders that the child, Y.M., be **RETURNED FORTHWITH** to Sweden pursuant to Article 12 of the Hague Convention.

I. Background

The Petitioner filed the Verified Petition on January 6, 2017, seeking the return of her two year old son, Y.M., to Sweden pursuant to Article 12 of the Hague Convention. In the Verified Petition, the Petitioner alleges that she and the Respondent were married in Sweden on March 1, 2013, and that their son, Y.M., was born in Sweden on March 25, 2014. (Verified Petition, ¶¶ 9-12). The Petitioner alleges that Y.M. resided in Sweden

from his birth through August 11, 2016, when the Respondent brought him to the United States. (Verified Petition, at ¶¶ 12-13). According to the Petitioner, the plan was for the Respondent and Y.M., who are citizens of both the United States and Sweden, to travel to the United States and initiate a visa application for the Petitioner, who is not a United States citizen. (Verified Petitioner, at ¶ 14). Once the visa application process was complete, the Petitioner alleges that she planned to join her son and husband in the United States as "an intact family unit." (Verified Petitioner, at ¶ 14). Things did not go according to plan, and approximately three weeks after traveling to Florida with Y.M., the Respondent notified Petitioner that he was seeking a dissolution of marriage, that she should not come to Florida, and that he would be keeping Y.M. with him permanently in Florida. (Verified Petition, at ¶ 15).

After amicable methods of securing the return of the child to Sweden failed, the Petitioner filed this case seeking the return of Y.M. pursuant to Article 12 of the Hague Convention. The parties agreed to entry of a preliminary injunction under which the Respondent agreed not to remove Y.M. from the jurisdiction of this Court, pending a final hearing on the Verified Petition. Thereafter, on January 30, 2017, the Respondent filed his Answer. Through the Answer, the Respondent admits that the Petitioner was exercising valid custody rights at the time of Y.M.'s removal to the United States, and that the child's habitual residence prior to removal was Sweden. (Answer, at ¶¶ 5 & 25). Nevertheless, the Respondent raises the affirmative defenses of consent/acquiescence and endangerment pursuant to Articles 13(a) and (b) of the Hague Convention. (Answer, at p. 3). The Court conducted a hearing on the Verified Petition and the Respondent's defenses on February 9, 2017.

At the hearing, the Respondent acknowledged that based on the admissions in his Answers, the Petitioner had satisfied her prima facie case under Article 12 of the Hague Convention. Thus, the Court focused its analysis on whether the Petitioner consented or acquiesced to the removal of the child to the United States, and/or whether returning the child to Sweden would pose a grave risk of harm to Y.M. or otherwise place him in an intolerable situation. The Petitioner testified that she only agreed to permit the Respondent to remove Y.M. to the United States with the understanding that she would follow her husband to Florida once the visa application process was complete. However, rather than complete her visa application, the Petitioner testified that her husband divorced her under Islamic law, and refused to support her visa application unless she agreed to the divorce.[1] The Petitioner testified that she traveled to the United States on a tourist visa during September 2016, but that her husband forced her to return home after two weeks and refused to allow her to take Y.M. back to Sweden. The Petitioner has apparently since commenced divorce proceedings in Sweden, and both parties are participating in that process.

The Respondent testified that he believes returning the child to Sweden could pose a safety risk. He testified that beginning approximately two weeks after their marriage, his wife began experiencing "psychotic episodes" characterized by screaming, laughing, and speaking in a low, demonic voice. The Respondent testified that these episodes occurred roughly 100 times over the course of their three plus year marriage, resulting in

[1] Both parties testified that under Islamic law, a husband can divorce his wife by stating "I divorce you," which has the effect of immediately suspending the marriage. The parties appeared to agree that the Respondent has taken the steps necessary to divorce the Petitioner under Islamic law, but concede that they are not divorced under the laws of Sweden and/or the United States.

at least one hospitalization at a psychiatric hospital. The Respondent testified that his wife has refused modern medical treatment for her condition, and instead pursues treatment through the traditional Islamic practice of "rokia." According to the Respondent, his wife's episodes became so severe that they moved into and lived at a mosque for a period of time so that the Petitioner could receive daily "rokia" treatments. While the Respondent admitted that his wife never harmed their child, he testified that during one episode he returned home from work to find his child being held and comforted by his neighbors while police attended to his wife. The Respondent testified that he does not have copies of any police reports corroborating his account of that event (or other similar events), and that he does not have any medical records substantiating his wife's medical condition. Finally, the Respondent admitted that he has not completed all paperwork necessary to advance Petitioner's visa application, and that during the course of negotiations with Petitioner he offered to split custody of Y.M. between them on a six month by six month basis.

II. Discussion

"Where a child has been wrongfully removed or retained [under] Article 3 [of the Hague Convention] and, at the date of the commencement of the proceedings . . . a period of less than one year has elapsed from the date of the wrongful removal or retention, the [Court] shall order the return of the child forthwith." Art. 12, Hague Convention. "The removal or the retention of a child is to be considered wrongful where – (a) it is in breach of rights of custody attributed to a person . . . 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." Art. 3, Hague Convention.

"The [Court] is not bound to order the return of the child if the person . . . which opposes its return establishes that (a) the person . . . 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." Art. 13, Hague Convention.

"A petitioner in an action . . . shall establish by a preponderance of the evidence . . . that the child has been wrongfully removed or retained within the meaning of the Convention." 22 U.S.C. § 9003(e)(1)(A). "A respondent who opposes the return of the child has the burden of establishing (A) by clear and convincing evidence that [there is a grave risk that . . . return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation]; and (B) by a preponderance of the evidence that [the petitioner consented to or subsequently acquiesced in the removal or retention of the child]." 22 U.S.C. § 9003(e)(2)(A)-(B).

Here, the Respondent has admitted that the child was born in Sweden on March 25, 2014, and habitually resided there until August 11, 2016. The Respondent further admits that Y.M. was taken to Florida by Respondent on August 11, 2016, and that the Petitioner has rights of custody of the child and was exercising such rights at the time of removal. Thus, the Court concludes that the Petitioner has established that the removal of Y.M. from Sweden was wrongful under Article 12 of the Hague Convention.

Turning to the Respondent's affirmative defenses, the Respondent has failed to prove by a preponderance of the evidence that the Petitioner consented to or acquiesced to the removal of Y.M. from Sweden. To the contrary, the parties' testimony demonstrates

that at the time of removal, the parties understood that the Petitioner, Respondent, and Y.M. would return to being a unified family unit upon completion of the Petitioner's immigration to the United States. It was not until after Y.M. had been removed to the United States that those plans changed and, as a result, the Petitioner cannot be deemed to have consented to the removal or retention of Y.M. under the current state of affairs. Moreover, the Petitioner's pursuit of this action, coupled with her travels to the United States to visit her son, demonstrates that she has not acquiesced to the retention of Y.M. in this country.

Finally, while the Respondent's characterization of the Petitioner's mental health episodes is noteworthy, it does not demonstrate, by clear and convincing evidence, that there is a grave risk that the return of the child would expose Y.M. to physical or psychological harm or otherwise place Y.M. in an intolerable situation. The Respondent testified that the Petitioner has never harmed their child, and has otherwise failed to provide the Court with evidence corroborating his testimony regarding the Petitioner's mental health episodes, such as medical records, police reports, or third-party testimony. As a result, the Petitioner has failed to carry his high burden of proving that returning the child would pose a grave risk of endangerment or place the child in an intolerable situation.

III. Conclusion

Accordingly, it is

ORDERED that the Respondent is directed to **RETURN FORTHWITH** the child, Y.M., to Sweden pursuant to Article 12 of the Hague Convention.

It is further **ORDERED** that the Petitioner is directed to provide a copy of this order to the appropriate Swedish governmental authorities, including the court supervising the

parties' divorce and child custody proceedings, and to encourage Swedish authorities to conduct any further proceedings they deem necessary in regard to the Respondent's characterization of the Petitioner's mental health situation.[2]

It is further **ORDERED** that the Clerk of Court is directed to **CLOSE** this case and terminate any pending motions. Any motion for attorney's fees and costs under 22 U.S.C. § 9007(b) shall be filed within 14 days of the return of the child to Sweden.

DONE and **ORDERED** in Chambers, in Tampa, Florida this 10th day of February, 2017.

ELIZABETH A. KOVACHEVICH
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record

[2] In the event the Swedish authorities wish to obtain a transcript of the February 9, 2017 hearing, they may do so by contacting this Court as follows: via mail: 801 N. Florida Ave, Courtroom 14A, Tampa, FL, 33609; via telephone: 1-813-301-5730; via email: chambers_flmd_kovachevich@flmd.uscourts.gov.