

IN THE SUPREME COURT OF NOVA SCOTIA

[Cite as: J.E.A. v. C.L. M., 2002 NSSC 128]

J. E. A. APPLICANT

- and -

C. L. M. and A. D. M. DEFENDANTS

Justice Walter R. E. Goodfellow Halifax, Nova Scotia SFHCAA 013786

LIBRARY HEADING

DATES HEARD: May 6th, 7th, 8th, 9th, 10th, 2002

DECISION: May 16th, 2002

SUBJECT: *HAGUE* CONVENTION - CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

SUMMARY: Dr. S. and J. A. married in Iowa November 1st, 1990, daughter born January 14th, 1992, separated September, 1992, divorce granted April 24th, 1993 in the Iowa District Court for Madison County reciting both parents were joint legal custodians of child with mother having "physical care". Notes authored by Dr. S. dated November 12th, 1992 reveal from the outset "I will not put up with him anymore and I will go to any length to keep my daughter in my custody"... "there is no way that I will let my daughter go to him". There followed a series of escalating complaints of inattention, spanking and allegations of inappropriate sexual touching. Iowa State Protection Services declined application based on child being a child in need of assistance and sheriff's office determined evidence did not establish probable cause, however, departmental investigations of some duration concluded spanking producing red mark and subsequently through evidence of Art and Play Therapist and also an investigator of possible inappropriate sexual touching resulting in administrative proceedings placing father on registration.

Dr. S.'s lawyer advised her that independent assessment would result in finding of no sexual impropriety so Dr. S. who had outstanding applications to the Iowa Court relative to the father's access to the child crystalized what she had already put in place; namely, the acquiring of false passports for her and her daughter and rather than waiting for Court determination contacted "underground" and fled to Saltspring Island, British Columbia. She met and entered a relationship with another gentleman with whom she entered her fourth marriage and this relationship produced a child. Dr. S., the A.' child, the new baby and her new husband moved to Nova Scotia in 1997. Dr. S. and the A.' child through deception, use of false names, etc. remained on the run and hid for approximately seven years and only when divorce filed in Nova Scotia and when present ex-husband was concerned in relation to their daughter, did the presence of Mr. A.' daughter come to the attention of the R.C.M.P. and to him. Application pursuant to the Convention filed.

Application under the Convention is not a trial on issues of custody or determination of whether or not and by whom any inappropriate sexual or physical conduct may have been made to the child. Serious concerns with respect to credibility of Dr. S. and thoroughness of therapist's report in Iowa. Onus on Dr. S. to establish an exception to the Convention and this she failed to do resulting in application of Supreme Court of Canada direction in *Thomson v. Thomson*, [1994] 3 S.C.R. 551 that the underlying purpose of the Convention is to protect children from the harmful effects of their wrongful removal and to ensure their prompt return to the State of their habitual residence. *Hague* Application granted, child ordered returned to Iowa. Counsel entitled to be heard on costs.

**THIS INFORMATION SHEET DOES NOT FORM PART OF THE COURT'S DECISION.
QUOTES MUST BE TAKEN FROM THE DECISION, NOT THIS COVER SHEET.**