

Not Reported in F.Supp.2d

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United States District Court,
E.D. Pennsylvania.
Catherine GRAMMES, Petitioner
v.
Douglas P. GRAMMES, Respondent
No. Civ.A. 02-7664.

Filed Oct. 1, 2002.

Oct. 6, 2003.

represented by Rebecca A. Craggs, Amori & Riegel LLC, Stroudsburg, PA, Lead Attorney, Attorney to be Noticed, for Catherine L. Grammes, In Re: the Matter of Hague Petition for Summary Return of Child Wrongfully Removed and/or Wrongfully Retained, Petitioner.

represented by Linda Shay Gardner, Rooney Mannicci & Gardner, Bethlehem, PA, Lead Attorney, Attorney to be Noticed, for Douglas P. Grammes, Respondent.

MEMORANDUM AND ORDER

MCLAUGHLIN, J.

*1 The petitioner, Catherine Grammes has filed a petition for the return of her son, Samuel Grammes, from the United States to Canada, pursuant to 42 U.S.C. <section> 11603 and the Hague Convention on the Civil Aspects of International Child Abduction, October 28, 1980, T.I.A.S. No. 11,670, 1343 U.N.T.S. 89 ("The Hague Convention").

The respondent, Douglas Grammes, Samuel's father, filed a motion to dismiss the petition, alleging that the Court should abstain from hearing the case because of the pendency of Pennsylvania child custody proceedings. The Court denied this motion on January 29, 2003. The respondent appealed this decision, and the United States Court of Appeals for the Third Circuit dismissed his appeal on April 25, 2003.

The petitioner filed a motion for summary judgment and expedited disposition on February 4, 2003. The Court denied the petitioner's motion for summary

judgment and granted the portion of the motion for expedited disposition on May 12, 2003. The Court held a bench trial on June 23, 2003 and will now deny the petition.

I. Findings of Fact

A. Background

The petitioner currently resides in Perth, Ontario in Canada. The respondent resides in Orefield, Pennsylvania. In September of 1997, the petitioner left her job, rented her home in Canada, and moved to Pennsylvania to live with the respondent, where the respondent ran a restaurant with his sister. The parties married in May of 1998 in Gananoque, Canada, close to the United States border. At about that time, the parties bought a house together in Kresgeville, Pennsylvania. On September 26, 1998, their son, Samuel Grammes, was born in Ontario, where he would be covered by health care insurance. Transcript of June 23, 2003 Trial, (hereinafter "Tr."), at 9-10, 12; Petitioner's Exhibit, (hereinafter "Pet'r Ex.") at 1.

Samuel Grammes lived with both of his parents in Kresgeville, Pennsylvania from September 1998 until December 1999. The parties lived in the house they owned in Kresgeville. The parties separated in December 1999, and the petitioner took her two children, Lyndsey Traynor, her daughter from a previous relationship, and Samuel, to Ontario. Tr., at 16, 18. [FN1]

FN1. The petitioner testified that she went to Canada in order to take her two children to safety. She was not specific about why she was concerned about the children's safety, except to say that the respondent kicked them out of the house. Tr., at 19. The petitioner also testified that she and the respondent agreed that they would move to Canada and raise their children there. Tr., at 9. I reject that testimony in view of the facts that the petitioner rented her home and left her job in Canada, the respondent owned a restaurant in Pennsylvania with his family, and the parties bought a home in Pennsylvania. Tr., at 9, 16.

From January of 2000 to June 26, 2000, the petitioner and Samuel made numerous trips to Pennsylvania, including a three week trip in April. The parties shared custody pursuant to a private agreement during this time period as they attempted to reconcile. Respondent's Exhibit, (hereinafter "Resp't Ex.") 7; Tr., at 20.

B. Custody Litigation in Pennsylvania and Canada

On June 26, 2000, the respondent initiated a custody action in the Court of Common Pleas of Monroe County, Pennsylvania. On July 10, 2000, the parties signed a custody stipulation that was approved and entered as an order by the Monroe

County court one day later. The petitioner agreed to a stipulation on July 11, 2000, which submitted her to the jurisdiction of the Pennsylvania Court. Resp't Ex. 7. In August of 2000, the Monroe County court adopted the recommendations of a custody conciliator who recommended shared custody based on the stipulation. The order gave the parties partial physical custody of Samuel for alternating two consecutive week periods. Resp't Addition to Motion to Dismiss, Ex. N (hereinafter "Resp't Add. Ex. N"); Resp't Motion to Dismiss, Ex. A.

*2 On September 15, 2000, the petitioner filed a custody complaint in Ontario, Canada. Ten days later she filed a petition to modify custody in Monroe County. Pet. Ex. 18; Resp't Ex. 7.

September 23, 2000 was supposed to be the respondent's first two-week period with Samuel. The parties agreed to meet in Tully, New York to exchange Samuel. The petitioner, however, violated the Monroe County custody order and refused to let Samuel go to the United States with his father. Tr., at 151.

On October 4, 2000, the respondent filed an emergency petition in Monroe County, requesting that the court modify custody and hold the petitioner in contempt for her disobedience of the Monroe County custody order. On October 19, 2000 the respondent filed a petition in Ontario to return the child to Pennsylvania under the Hague Convention on Child Abduction ("Hague petition"). Id.

The Monroe County court granted the respondent interim sole legal and physical custody on October 24, 2000. On January 8, 2001, the Ontario court denied the respondent's Hague petition, finding that the child's "habitual residence" was not in Pennsylvania in August or September 2000 according to Ontario law, when the petitioner decided not to return the child to the respondent. The Ontario court also granted the petitioner interim custody, limiting the respondent's access on the condition that the child remain in Ontario until a mirror order was issued in Pennsylvania. Pet'r Ex. 5.

In February 2001, the respondent filed for custody in the Ontario court. On March 26, 2001, the Ontario court awarded interim custody to the petitioner in a temporary order, and gave the respondent the right to physical custody one week and one weekend per month. The Ontario court also ordered that the child could not leave Canada until a mirror order was entered in Pennsylvania. Pet'r Ex. 6.

On April 3, 2001, the petitioner was indicted in the United States District Court for the Middle District of Pennsylvania on a count of international parental kidnapping for obstructing the respondent's parental rights. This indictment related to the petitioner's violation of the Monroe County custody order in September 2000. Resp't Ex. 5.

On July 31, 2001, pursuant to a stipulation by the parties, a mirror order to

the March 26, 2001 Ontario order was entered in the Monroe County court. In September 2001, the petitioner violated a custody order a second time by refusing to allow the respondent to pick up Samuel for his second visit under the Canadian order. When the respondent phoned the petitioner and told her that he was going to pick up Samuel, she told him not to bother. When the respondent went to her house, neither she nor Samuel was there. The respondent first contacted the Ontario Provincial Police and then made a motion for a finding that the petitioner was in contempt of the court. On September 7, 2001, the Ontario court held the petitioner in contempt of its March 2001 order. [FN2] The court also ordered the respondent to pay interim child support to the petitioner. Tr., at 153; Pet'r Ex. 21, 22.

FN2. The petitioner testified that she was willing to turn Samuel over to the respondent, but the respondent's car would not start. Despite this, Justice Peddlar found the petitioner in contempt. Tr., at 52. This Court does not find petitioner's story to be credible.

*3 Following the September 2001 Ontario court order, the respondent brought Samuel to Pennsylvania for his monthly visits until January 2002. September 2001 was the first time the respondent was able to visit Samuel in over a year, due to the petitioner's violations of the September 2000 Monroe County court order and the Ontario court order. Tr., at 152, 153, 155.

In January 2002, the petitioner phoned the respondent and asked him if he could pick up Samuel early for his visit. She told the respondent that she wanted a free weekend to help her boyfriend move to Calgary, which is located in Western Canada, over 3800 kilometers from Perth, Ontario. She informed the respondent that she intended to go to Calgary, because her father and brother lived there, her boyfriend was moving there, and the job situation was bad in Perth. Because of the petitioner's past violation of two custody orders, the respondent feared that the petitioner would move to Calgary with Samuel and that he might never see Samuel again. [FN3] He also feared that the petitioner would flee with Samuel when she received information about her April 2001 indictment, which he himself had just received. The respondent called his lawyer. Tr., at 156, 157, 207.

FN3. The petitioner denies making this statement. In the face of conflicting testimony, this Court must make a credibility determination. The Court finds the respondent's testimony on this issue more credible.

On January 18, 2002, the day before respondent picked up Samuel in Canada pursuant to the custody order, the respondent filed an emergency petition in the Monroe County court for a modification of custody and for an order of contempt against the petitioner based on his conversation with the petitioner. The respondent also requested an expedited disposition of the emergency petition. Resp't Ex. 11, 12; Tr., at 156, 197, 200. The petitioner alleges

that the wrongful retention under the Hague Convention began on January 28, 2002. Pet'r Post-Trial Mem. of Law, at 1.

Pursuant to the respondent's ex parte request, the Monroe County court granted sole legal and physical custody to the respondent with supervised visitation to the petitioner pending a hearing on January 22, 2002; thereafter, Samuel was not returned to Canada. The petitioner was served with the January 22 order on January 25, 2002. On February 14 and 21, 2002, over an objection by the petitioner to the court's exercise of jurisdiction, the Monroe County court heard testimony from both parties on these issues. At this hearing, the petitioner testified that she would do anything for her children, including violating a court order. Resp't Ex. 2, 4, 7, 13; Pet'r Ex. 9. The Monroe County court's denial of the petition to strike the custody order for lack of jurisdiction was upheld on appeal. Tr., at 162; Resp't Add. Ex. N.

On February 1, 2002, Constable Metzger supervised a visit at the McDonald's in Stroudsburg, Pennsylvania pursuant to the Monroe County court order. That court had required supervised visits in light of the petitioner's possible relocation to Calgary and her past violations of the Pennsylvania and Canadian custody orders where she kept the respondent from seeing Samuel. Resp't Ex. 2, 11.

*4 Constable Metzger's job was to prevent the petitioner from taking Samuel. At the beginning of the visit, the Constable told the petitioner that she could not take Samuel outside. In spite of this, the petitioner attempted to leave the McDonald's with Samuel on two separate occasions, in violation of the visit guidelines of which she was aware. The Constable admonished the petitioner after her first violation, but she attempted to go outside to her car a second time. There was a man in her vehicle with the keys in the ignition waiting outside the McDonald's during the visit. Tr., at 178, 179.

The petitioner sent a Petition for Return of Child to the Ontario court on February 6, 2002. She did not state in the Petition that there was a new Pennsylvania order in effect granting the respondent custody. Pet'r Ex. 12. On February 22, 2002, the Ontario court found that Ontario was the jurisdiction with primary connection to Samuel, held the respondent in contempt, and ordered the respondent to return the child to the petitioner in Canada. The petitioner and the respondent's counsel appeared in court that day. The court received evidence from both parties. This Court cannot make a finding of fact as to whether the Ontario court had information about the recent Pennsylvania custody order. [FN4] The Ontario court then adjourned its proceedings until March 22, 2002. Pet'r Ex. 16.

FN4. The petitioner's testimony about what she told the Ontario court in February about the Pennsylvania order was unclear. The petitioner stated at different points in the trial that she did not have to tell the court in Canada about it, that she could not remember who told the court about

it, and that it was given to the court as an exhibit. The petitioner then denied the existence of a January 22, 2002 Pennsylvania order granting the respondent interim custody. Tr., at 55, 78.

In an Order dated March 18, 2002, the Monroe County court held that it had jurisdiction over the child custody case and, without comment, denied the petitioner's motion to dismiss for lack of jurisdiction. Resp't Ex. E. There is nothing in the record before this Court about future Ontario court proceedings. [FN5]

FN5. The courts in Canada and Pennsylvania communicated with each other about the custody proceedings. With the permission of the parties, this Court held a telephone conference with Justice K.E. Peddlar, the Ontario Judge for the case, and Judge Margherita Worthington, the Monroe County Judge for the case. Justice Peddlar informed this Court that he is prepared to mirror the March 2002 Monroe County Court Order once the decision is final. His only concern is whether the bond portion of the order would be valid under Canadian law. Judge Worthington is prepared to continue working with the parties on the bond issues once the appeals in the case are resolved.

On March 19, 2002, the Monroe County court issued an order and opinion that: 1) found the petitioner in contempt of a prior Monroe County court order; 2) granted the parties shared legal custody; 3) granted the parties shared physical custody until the child reaches the age for mandatory schooling in Canada; 4) ordered that, once the child reached school age, the petitioner is to have primary physical custody and the respondent partial custody; 5) ordered that the petitioner could not relocate more than fifteen miles from her home without permission; 6) ordered that the parties could not use or permit the use of drugs when they had physical custody and ordered the parties to undergo anger management; 7) ordered the petitioner to post a \$100,000.00 bond prior to exercising her right to physical custody; 8) ordered the respondent to post a bond equal to the petitioner's bond; 9) ordered that the parents share transportation equally; 10) ordered that the parents allow the other parent to have telephone access with the child; and 11) ordered that a mirror order be filed in the Ontario court prior to the petitioner's exercise of physical custody. Resp't Ex. 7.

The parties cross-appealed this order to the Superior Court of Pennsylvania. On December 3, 2002, the Superior Court affirmed the March 18 order in full, and affirmed all aspects of the March 19 order except for the bond requirements. The matter was remanded to the Court of Common Pleas for re-determination on the issues relating to the bonds. A petition for allocatur was made to the Supreme Court of Pennsylvania on January 2, 2003. Resp't Add. Ex. N.; Pa.Super. Docket Sheet, 1447 EDA 2002.

C. The Parties' Current Status

*5 The petitioner currently lives in Ontario with her daughter Lyndsey Traynor. In June 2003, the petitioner was employed by Blair Enterprises, a company in the boat cruise industry. Tr., at 107. The petitioner owns approximately one acre of land with a house on it in Perth, Ontario. The market value of the property was approximately \$90,000 in April 1998 with a mortgage of approximately \$36,000. Resp't Ex. 6.

The petitioner has not lived in the main home on her property since the summertime of 2002. Since then, she has lived with Roger and Lorace Balu, an elderly couple from her church. She also lived with her friend Wayne Allen. The petitioner has been living in a cabin on the property since May 2003. The cabin has no electricity and no sewage facilities. Tr., at 83, 85, 164, 165, 203.

The respondent has had great difficulty communicating with the petitioner over the last few years. The respondent has had five numbers for the petitioner in 2002-2003. He can only reach her by phone occasionally at her friend Wayne Allen's house. The petitioner has the respondent's home and telephone numbers, but does not leave messages on the respondent's voice mail. Resp't Ex. 14.; Tr., at 112, 130, 163, 167.

The respondent attempted to reach the petitioner via certified mail in May and October of 2002 to give her his phone numbers, but these letters were returned as unclaimed. His attorney also sent multiple letters to the petitioner's attorney in the spring of 2003. The letters provided the respondent's phone numbers and requested the petitioner's current telephone numbers. Resp't Ex. 16, 18, 19; Tr., at 169. Because the petitioner is so difficult to contact, Samuel has rarely talked to her since he has lived in Pennsylvania with her father. The petitioner has gone to see Samuel twice since her February 2002 visit with him at the McDonald's in Stroudsburg. She has not sent him any birthday or Christmas presents. Tr., at 109, 111, 112, 162, 169.

The respondent is concerned about petitioner's ability to care for Samuel. The petitioner was convicted of committing an assault upon a minor, Brandon Campbell, in October 1999. However, the conviction was absolutely discharged. Resp't Ex. 8; Tr., at 101-102. The respondent testified that during one visit to Canada, he found Samuel dirty and naked, lying on a bed covered in urine while petitioner was asleep in the living room. The petitioner admits to past marijuana use and to offering the respondent marijuana. The respondent has witnessed Samuel roll up dollar bills like a marijuana joint. Tr., at 106, 116, 175.

The respondent lives in Orefield, Pennsylvania. Samuel has been living with him since January 2002. Samuel has been enrolled in a pre-school program in Schnecksville, Pennsylvania for that time. When he is not in day care, Samuel goes to work with the respondent for breakfast and stays with the respondent's father and

mother. The respondent has taken Samuel to see Dr. Jane Tyler Ward, a child psychologist, seven or eight times out of concern for his child's well-being. Tr., at 172, 173.

II. Analysis

*6 The objectives of the Hague Convention are to secure the prompt return of children wrongfully removed to or retained in any Contracting State, and to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States. The Hague Convention, Art. 1. [FN6]

FN6. The convention is codified at 42 U.S.C. <section> 11603 (2003).

A petition under the Hague Convention requires that the Court determine whether the child has been "wrongfully removed or retained" within the meaning of the convention. Petitioner has the burden of proving, by a preponderance of the evidence, wrongful removal or retention. 42 U.S.C. <section>

11603(e)(1)(A). Removal is wrongful under the Convention if:

- a) it is in breach of the 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 the removal or retention those rights were actually exercised ... or would have been so exercised but for the removal or the retention. The Hague Convention, Art. 3.

In applying this provision, a court must ask four questions. 1. When did the removal or retention at issue take place? 2. Where was the child habitually resident immediately prior to the removal or retention? 3. Did the removal or retention breach the petitioner's rights of custody under the law of the habitual residence? 4. Was the petitioner exercising those rights at the time of the removal or retention? *Mozes v. Mozes*, 239 F.3d 1067, 1070 (9th Cir.2001). The removal or retention is only wrongful if the child is removed from his or her habitual residence. See *Friedrich v. Friedrich*, 983 F.2d 1396, 1400 (6th Cir.1993). The remedy for wrongful retention or removal under the Convention is the return of the child. The Hague Convention, Art. 12.

Once the petitioner meets the burden of proving wrongful removal or retention, the respondent has the burden of proving an exception to the general rule. The exception that the respondent argues in this case, that there is a grave risk that the child's return would expose him to physical or psychological harm, must be shown by clear and convincing evidence. The Hague Convention, Art. 13b; 42 U.S.C. <section> 11603(e)(2)(A).

The respondent argued three grounds for denying the Hague petition to return Samuel to Canada: 1) the United States was Samuel's habitual residence; 2) the

respondent's retention of Samuel was not wrongful; and 3) Samuel will be subject to grave harm if he is returned to Canada.

The retention at issue took place in January 2002. The petitioner claims that the respondent wrongfully retained Samuel on January 28, 2002 when he did not return him to the petitioner pursuant to the March 2001 custody order. Pet'r Post-Trial Mem. of Law at 7. The respondent had filed an emergency petition for modification of the July 2001 mirrored order with the Monroe County Court of Common Pleas on January 18, 2002. The Court must determine where Samuel was a habitual resident immediately prior to this retention.

*7 Habitual residence has been characterized as a threshold issue by the Third Circuit. *Feder v. Evans-Feder*, 63 F.3d 217, 222 (3d Cir.1995). The Hague Convention does not define "habitual residence," but case law analyzing the term has developed. The determination of habitual residence has been characterized by the Third Circuit as a mixed question of law and fact. *Delvoye v. Lee*, 329 F.3d 330 (3d Cir.2003); *Feder*, 63 F.3d at 222.

The Third Circuit has defined a child's habitual residence as "the place where he or she has been physically present for an amount of time sufficient for acclimatization and which has a 'degree of settled purpose' from the child's perspective." *Feder*, 63 F.3d at 224. This standard must focus on the parents' present, shared intentions regarding their child's presence there. *Id.* This Circuit has held that a child's habitual residence did not exist in a place where the parents lacked a shared intention. *Delvoye v. Lee*, 329 F.3d at 333. See also *McKenzie v. McKenzie*, 168 F.Supp.2d 47, 50 (E.D.N.Y.2001) (where one parent had a unilateral desire to relocate to the United States, the ten months that the child spent there was insufficient to establish habitual residence).

The settled intention of the parties alone does not determine habitual residence. A change in a child's habitual residence requires a period of time to pass which is sufficient for acclimatization. *Feder*, 63 F.3d at 224. The Ninth Circuit observed that even a long period of time in a country might not transform habitual residence if circumstances exist which hinder acclimatization. *Mozes*, 239 F.3d at 1078. One court, for example, found that children who spent 27 months in Greece, but socialized very little with anyone outside of the family, did not habitually reside there. *Tsarbopoulos v. Tsarbopoulos*, 176 F.Supp.2d 1045, 1055 (E.D.Wash.2001).

Even when there is substantial evidence of acclimatization, the Ninth Circuit has concluded that courts should be slow to infer that an earlier habitual residence has been abandoned where there is no settled parental intent. *Mozes*, 239 F.3d at 1079.

In the present case, the petitioner and the respondent shared an intent

regarding Samuel's residence in Pennsylvania through December 1999. Although Samuel was born in Canada, the Court concludes from all of the evidence that the petitioner gave birth to Samuel in Canada for medical insurance reasons and did not intend to move there. The petitioner moved to Pennsylvania in 1997, before Samuel's birth, and rented out her home in Canada. The parties bought a home in Pennsylvania together in 1998. The respondent owned a business in Pennsylvania. Samuel spent the first 15 months of his life living in Pennsylvania with his parents.

The Court must therefore consider whether the petitioner has carried the burden of proof to show that Samuel's habitual residence changed to Canada after December 1999. The Court concludes that the petitioner has not. There is no indication that the parties shared an intent to change Samuel's habitual residence from Pennsylvania during their attempted reconciliation period. After the parties separated in December 1999, they attempted to reconcile through June 2000. The parties only lived six hours apart from each other by car. Samuel and the petitioner made numerous trips to Pennsylvania from Canada during this time. These months Samuel spent in Canada, punctuated by numerous trips to Pennsylvania while the parties attempted to reconcile, do not show that the parties had a settled intent for Samuel to abandon his prior habitual residence.

*8 The respondent initiated a custody action in Pennsylvania in June 2000, revealing his intention that Samuel stay with him in Pennsylvania. The petitioner came to the Pennsylvania court and submitted to the court's jurisdiction.

From June 2000 onward, the parties engaged in a number of custody disputes over where Samuel should live. A custody battle is the antithesis of a shared intention. Though the respondent and the petitioner stipulated to shared physical custody in July 2000, the petitioner refused to comply with the agreement.

The petitioner kept Samuel in Canada through September 2001 in violation of the August 2000 custody order. The respondent showed that it was not his intention that Samuel remain in Canada by filing an emergency petition to modify custody in Monroe County and a Hague petition in Ontario in October 2000. [FN7]

FN7. The petitioner contends that habitual residence exists in Canada, because Justice K.E. Peddlar of the Ontario Court found that Samuel habitually resided in Canada in August/September 2000. However, the time period Justice Peddlar considered was one and a half years before the time period at issue in the present case. Furthermore, it is not at all clear what evidence was before the Canadian court. 42 U.S.C. <section> 11603 generally requires a plenary hearing at which both sides are heard. Egervary v. Young, 159 F.Supp.2d 132, 138 (E.D.Pa.2001) (citing

Klam v. Klam, 797 F.Supp. 292, 205 (S.D.N.Y.1992)). Finally, Justice Peddlar, relied on Section 22(2) and (3) of the Children's Law Reform Act of Ontario rather than on Hague Convention case law.

In 2001, the parties stipulated to an interim custody order executed in Ontario and mirrored in Pennsylvania. This order gave the petitioner interim physical custody of Samuel and gave the respondent physical custody for one week and one weekend per month. The parties followed this order from September 2001 until January 28, 2002, the date at issue in this case. This Court does not find that this interim custody order showed a settled intention of the parties to alter Samuel's habitual residence.

The interim custody order is analogous to cases where the petitioning parent had earlier allowed the child to stay abroad for a period of ambiguous duration. *Mozes*, 239 F.3d at 1077. In this category of cases, courts find that a child's habitual residence is altered where the parents shared a settled mutual intent that the stay last indefinitely. *Id.* An interim custody order, such as the one in this case, is temporary by definition. It is not intended to last indefinitely.

The respondent's petition to modify the interim order only a few months after it took effect further demonstrates the temporary nature of the interim custody order and the tenuous nature of the parties' custody arrangement. The respondent sought to modify the interim custody order because the petitioner had previously violated two custody orders, was indicted for international parental kidnapping for the first violation, and recently informed him that she intended to move to Calgary with Samuel.

Finally, the petitioner in the present case did not present evidence to show that Samuel had acclimated to his life in Canada. Samuel was not in school in Canada. The petitioner did not present evidence on his community or extended family. On the contrary, the facts show that the petitioner's father and brother did not live in Ontario. *Tr.*, at 156.

The Court finds that the petitioner has failed to meet her burden to prove that Canada was the habitual residence of her child. Because the retention was in accordance with the order of the Pennsylvania court, it was not wrongful.

[FN8]

FN8. One commentator has questioned "whether the removal of a child who has previously been removed or retained abroad in breach of actually exercised rights of custody can in itself be said to be wrongful." Paul Beaumont & Peter McEleavy, *The Hague Convention on International Child Abduction* 43 (1999). In the present case, the petitioner violated the custody order in 2000 and 2001 without petitioning any court. The respondent retained Samuel in 2000 after petitioning the Pennsylvania Court which had mirrored the Canadian custody order.

It is unnecessary for the Court to address the grave risk of harm exception under Article 13b of the Convention. For the above reasons, the petition under the Hague Convention to return Samuel Grammes to Canada is denied.

*9 An appropriate order follows.

ORDER

AND NOW, this 3d day of October, 2003, upon consideration of Catherine Grammes's Petition for Return of Child pursuant to the Hague Convention on the Civil Aspects of International Child Abduction, the submitted briefs, and the evidence introduced at the June 23, 2003 trial before it, IT IS HEREBY ORDERED that the petition is DENIED for the reasons set forth in a memorandum of today's date. IT IS FURTHER ORDERED that the Respondent's Motion for Consideration of After-acquired Evidence is DISMISSED as moot.

Not Reported in F.Supp.2d, 2003 WL 22518715 (E.D.Pa.)

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