

CITATION: Stefanska v. Chyzynski, 2020 ONSC 3570
COURT FILE NO.: FS-19-12026-00
DATE: 20200608

ONTARIO

SUPERIOR COURT OF JUSTICE

BETWEEN:)
)
AGNIESZKA MAGDA STEFANSKA) *Eryk Rybicki*, for the Applicant
)
)
Applicant)
)
)
– and –)
)
KRZYSZTOF PAWEL CHYZYNSKI) *Krzysztof Pawel Chyzynski*, for the
) Respondent
)
Respondent)
)
) **HEARD at Toronto:** June 5 2020

ADDENDUM TO REASONS FOR JUDGMENT

C. HORKINS J.

[1] In Reasons for Judgment released May 15, 2020 (2020 ONSC 3048), the father’s application for an order directing return of the children under the *Convention on the Civil Aspects of International Child Abduction*, 25 October 1980, 1343 U.N.T.S. 89, Can. T.S. 1983 No. 35, was granted (“*Hague Convention*”). The mother was ordered to return the children to Warsaw, Poland forthwith.

[2] Unfortunately, the immediate return of the children was complicated by the COVID-19 pandemic and the resulting problems with international travel. I ordered that the Court would decide the date of return on Friday June 5, 2020 at 10:15 am, or later as ordered by this Court on June 5, 2020, unless the parties could agree on a return date.

[3] The parties cannot agree on a date to return the children to Warsaw, Poland. The father seeks the return of the children no later than July 15, 2020 so they will have time to get settled in Warsaw before returning to school in September. As he points out, the children were wrongfully removed from Poland almost a year ago.

[4] The mother wants the date of return to be delayed until late August 2020. She suggests, without any evidence, that air travel will be safer in late August than July.

[5] The mother shall return the children to Warsaw Poland no later than July 31, 2020. There is no evidence to justify any further delay. As a result of the mother's wrongful actions, the father has not seen the children for almost a year.

[6] The father requests an order to account for the possibility that resumption of air travel to Warsaw is delayed until August 2020. I have provided for this possibility.

[7] International travel between Toronto and Warsaw is scheduled to resume in late June and flights can now be booked on Air Canada and Polish Airline LOT. The mother submits that the cost of airfare has increased, and she cannot afford to pay for the tickets. The father vigorously disputes the mother's alleged impecuniosity. That said, he advised the court that he will pay 50% of the children's return airfare, if ordered.

[8] Article 26 of the *Hague Convention* gives the court jurisdiction to order the parent who wrongfully removed the children, "to pay necessary expenses incurred by or on behalf of the applicant, including travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child".

[9] Finally, the mother says that one child does not have an up to date passport to travel to Poland and she questions the ability of this child to return. Lukasz Prusza, the case manager at the Department of Family and Juvenile Matters, Division of International Proceedings in Warsaw Poland (Central Authority of Poland) deals with Hague Convention matters and the return of children to Poland. It is his understanding that the Polish Consulate in Toronto will be able to assist the parents to make sure that the children have the necessary travel documents to return to Poland pursuant to this court's orders. The Central authority has also confirmed that flights from Toronto to Warsaw Poland are available in July.

[10] The mother shall contact the Polish consulate immediately and provide the consulate with the court's decisions and orders. The court orders alone may be enough for the return of the children to Poland. It is the mother's obligation to make the necessary inquiries and ensure that the children have whatever travel documents are required.

[11] Based on the above, I make the following orders:

- (1) Under the *Convention on the Civil Aspects of International Child Abduction*, 25 October 1980, 1343 U.N.T.S. 89, Can. T.S. 1983 No. 35, the children, Jacob Ian Chyrzynski born July 7, 2008 and Sandra Eva Chyrzynski born June 26, 2009, shall be returned to Warsaw Poland no later than July 31, 2020, in the care and control of the Applicant, Agnieszka Stefanska.

- (2) The Applicant, Agnieszka Stefanska shall no later than June 12, 2020 contact the Polish consulate in Toronto to determine what travel documents, if any, the children require to return to Poland pursuant to the Court orders. She shall provide the Polish consulate with a copy of the court's Reasons for Judgment, Addendum to the Reasons for Judgment and the signed Court orders.
- (3) If either child requires a new Polish passport, the Applicant, Agnieszka Stefanska shall immediately take steps to expedite the issuance of the passport and ensure that each child has the necessary travel documents to return to Poland pursuant to the Court orders.
- (4) The Applicant, Agnieszka Stefanska, shall by email keep the Respondent Krzysztof Pawel Chyzynski informed of the steps she takes to comply with paras. (2) and (3) and shall provide the Respondent with all the information she receives.
- (5) If any new travel documents are issued to the children, the Applicant, Agnieszka Stefanska, shall provide the Respondent Krzysztof Pawel Chyzynski with a copy of such documents, within 48 hours of such documents being issued. This may be done by emailing the Respondent a scanned copy of the issued documents.
- (6) No later than June 30, 2020, the Applicant, Agnieszka Stefanska, shall purchase the airline tickets for travel from Toronto to Warsaw Poland and provide the Respondent, Krzysztof Pawel Chyzynski, with a copy of the tickets, travel itinerary and receipt of purchase within 24 hours of the purchase.
- (7) Upon the return of the children to Warsaw Poland, the Respondent, Krzysztof Pawel Chyzynski, shall reimburse the Applicant, Agnieszka Stefanska, for 50 % of the cost of the airfare for the children at an economy rate.
- (8) The orders of the Regional Court in Warsaw, 6th Civil Family Appeal Division ("Warsaw Family Court") shall continue to apply, unless that court orders otherwise.
- (9) Upon return of the children, the parties are ordered not to remove the children from Warsaw Poland pending further order of the Warsaw Family Court.
- (10) Police Officers in the City of Toronto, OPP, RCMP and officers of any other law enforcement agency having jurisdiction are directed and authorized to enforce this order, if requested, and in doing so may enter

any place, including a dwelling place, where they have reasonable and probable grounds to believe the children are located;

- (11) If the resumption of air travel from Toronto to Warsaw Poland is delayed beyond July 2020, resulting in the children being unable to return to Poland by July 31, 2020, the Applicant, Agnieszka Stefanska, shall rebook the air travel so the children are returned to Poland no later than August 31, 2020. If this occurs, the new travel date shall, if seats are available, be within 10 days of the airline resuming travel to Warsaw Poland. The Applicant shall provide the Respondent, Krzysztof Pawel Chyzynski, with a copy of the rebooking information; tickets, travel itinerary and receipt of purchase within 24 hours of the purchase.
- (12) I make no further order as to costs.

C. Horkins J.

Released: June 8, 2020

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REASONS FOR JUDGMENT

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