

Hearing 25-5-06
Case number 21
Greek State for G.
Petroutsas
Against
D. Petroutsas

5042
24-5-06

[Round Seal:
HELLENIC
REPUBLIC,
FIRST INSTANCE
COURT
OF PIRAEUS]

With regard to the application being heard, the applicant, namely the Greek State, acting on behalf of Georgios Petroutsas, resident of the U.S.A., sets out that the latter, his wife (the defendant) and their underage child were living in California, U.S.A. up to 8-11-2005, when the defendant visited Greece along with the underage child; ever since, the defendant is keeping the underage child in Greece illegally, while the child should have returned on 1-12-2005. It is also stated that both litigants have joint custody and guardianship of the underage child.

Furthermore, it requests that the defendant be forced to return the underage child to its father, so that the latter can take the child back to the place of permanent residence in California, U.S.A., that, in the event that the defendant does not comply with the court order, she be threatened with a fine and an arrest and that a preliminary injunction be issued. The application is admitted for hearing in this Court, which has subject matter and personal jurisdiction to hear the case according to the injunction procedure (articles 686 of the Civil Procedure Code); it is lawful based on the provisions of articles 1, 2, 3, 4, 5, 6, 8, 9, 10, 11, 12 of the International Convention on the Civil Aspects of International Child Abduction, which was signed in the Hague on 25-10-1980 and ratified by Greek Law 2102/1992; as well as on the provision of article 950, article 1, of the Civil Procedure Code, excluding the request to pronounce the court order temporarily enforceable, which is illegal and hereby rejected, because an injunction is always immediately enforceable. Therefore, the application must be examined on the merits.

It appears, from the sworn witness depositions of the litigants, Mr. Dionisis Heliotis and Mrs. Maria Asvesta, which were examined during the hearing, from sworn statements under Nos 5525, 6626, 5504 and 5528/22-3-2006, given before the Athens magistrate, upon the claimant being summoned—as evidenced by service report No 10155 b/16-3-2006 of the Athens-First-Instance-Court process server, Mr. Evangelos Zervos—and given that during the injunction procedure, sworn statements can be given without prior notification to the adverse party (see Tzifras, Injunctions, page 53), as well as from the documents submitted by the litigants, the following facts have most probably taken place: Georgios Petroutsas, who has both Greek and American citizenship and was christened according to the Greek Orthodox creed in Zakynthos on 30-8-2003, and the defendant, who has Greek citizenship, were

married to one another other in a civil ceremony on 30-3-2002 in Watsonville, Santa Cruz county, California.

After their said marriage, they had a son, Antonios-Georgios, born on 21-5-2005, in Santa Cruz, California. The regular place of residence of the couple and their child, was the city of Capitola, California, where the couple had settled since January 2003. Georgios Petroutsas assured the defendant that their stay in the U.S.A. was temporary and that, soon, they would return to Greece permanently. Georgios Petroutsas' job as an estate agent provided minimal income, not enough to cover his and the defendant's basic living needs. The latter looked for a job and was temporarily employed by the Ministry of National Defense as a Greek language teacher, with a fixed term contract. As of 2004, Georgios Petroutsas' behavior* started to change. He became violent, he would start a lot of quarrels, he would talk badly to the defendant and insult her [text missing] and he would be inexcusably absent from home. After the birth of their child, Georgios Petroutsas would neglect his conjugal and family obligations. He would start intense quarrels in the presence of the child. As of September 2005, the couple did not have any communication or physical contact and the defendant would communicate with her husband via email, because of the latter's refusal to talk. On 2-11-2005, in an email regarding the prospect of returning to Greece, Georgios Petroutsas wrote that he refused to stay in an apartment with a 2x8 meter balcony, that their house should have a garden, also, it should be only a few meters away from the sea and that he wanted to work in his own company; he also wrote that if the defendant did not agree to his terms, he would be forced to seek a divorce. Furthermore, he suggested to the defendant to go to Greece with their child and said that he would come and visit. On 9-11-2005, the defendant came to Greece with the child, with the consent of her husband, who escorted them to the airport, having already signed a relevant document, giving the defendant permission to travel with the child for a period starting on 8-11-2005 until 8-12-2005. The defendant and child would return to the U.S.A. with the defendant's mother, followed by her father and brother, to spend the Christmas holidays together. On 29-11-2005, during a phone conversation, Georgios Petroutsas told the defendant that he had reported her to the American authorities for kidnapping their child and threatened to have her imprisoned and prevent her from seeing her child again. At the time, the defendant was informed by a relative, that, in the summer of 2005 and while on vacation in Zakynthos, her husband would watch on his computer, over the

*towards the
defendant

INTERNET, his secretary Jessie, strip. Later on, she was informed that her husband had been having an affair with the aforementioned since December 2004.

Also, the defendant was informed that from 20-8-2005 to 22-8-2005, her husband had met with his ex-girlfriend, Sofia Drakogianni, in a hotel at Lagonissi. Because of the aforementioned behavior of Georgios Petroutsas, the relationship with his wife was severely shaken, which made the continuation of married life intolerable for the latter. On 30-11-2005, Georgios Petroutsas, unbeknown to his wife, filed an application in U.S.A. courts for the legal dissolution of their marriage also requesting to take custody of the child. He falsely stated that the date of separation was 18-11-2005. Subsequently, the defendant filed an action in the Athens First Instance Court on 5-12-2005, requesting the legal dissolution of the marriage between her and her husband, and also an application, dated 5-12-2005, in the One-Member First Instance Court of Athens, requesting temporary custody of the child. Upon relevant request by the defendant and having summoned her

* on 9-12-2005

husband by telegram, a preliminary injunction order was issued * granting her with temporary custody of her child and specifying her father's house at 22, Platinos Street, Piraeus [illegible] as the child's temporary place of residence in Greece, until the hearing of the action in court, on 9-1-2006. On that date, hearing of the action was stayed, in accordance to article 16 of the aforementioned International Convention [stating that] the contracting State, where the child was moved or kept, cannot rule over the primary issue of custody rights, until it is established that the child will not be returned. From all the evidence that was submitted, it is proven that the move and stay of Antonios-Georgios in Greece is not illegal, given that the child's father, Georgios Petroutsas, as mentioned before, had consented to the move and stay of the child in Greece, providing the defendant with relevant written permission, and instructing the defendant to remain in Greece with the child, while he would communicate with the latter during his visits to Greece. Also, it was proven that, in essence, Georgios Petroutsas was not exercising custody rights at the time of his move, because as stated above, he neglected his family obligations, did not take care of the child and did not care about the child's psychosomatic development. Furthermore, it was proven that there would be a serious risk if the child returned to the U.S.A., which would expose it to emotional stress, given that, in such a case, it would be deprived

of the presence, affection, love and care of its mother at the tender age of 12 months; it would also be deprived of the security and stability it feels with its mother, and the emotional connection with her would be cut off. Provided with proof of the above, this Court is not bound to order the return of the child to the U.S.A. As a result, the application must be rejected as unfounded on the merits; and Georgios Petroutsas is hereby ordered to pay the legal expenses of the defendant (article 176 of the Civil Procedure Code), as stated more specifically here below.

FOR THESE REASONS

In the presence of both litigants.

The court rejects the application and

Orders Georgios Petroutsas to pay the defendant's legal expenses, namely four hundred (400) euro.

[Round Seal: HELLENIC REPUBLIC,
FIRST INSTANCE COURT OF PIRAEUS]