

Uri Landman Husid (applicant/appellant) v. H el ene Marie Th er ese Daviau  
(respondent/respondent on appeal)  
(C55015; 2012 ONCA 655)

**Indexed As: Husid v. Daviau**

Ontario Court of Appeal  
Feldman, Sharpe and Ducharme, JJ.A.  
October 2, 2012.

**Summary:**

A mother wrongfully removed her child from Peru. The father sought to have the child returned pursuant to art. 12 of the Hague Convention on the Civil Aspects of International Child Abduction.

The Ontario Superior Court, in a decision reported [2012] O.T.C. Uned. 547, relied on the "grave risk" exception to the return requirement set out in art. 13(b) of the Convention to deny the father's request. Costs became an issue.

The Ontario Superior Court, in a decision reported [2012] O.T.C. Uned. 2383, awarded the mother costs in the all inclusive amount of \$64,000. The father appealed, arguing that the trial judge erred in permitting a claim for custody to proceed in Ontario rather than ordering the child's return to Peru. He also argued that the trial judge had no jurisdiction to award costs.

The Ontario Court of Appeal dismissed the appeal.

Editor's Note: A motion by the father for unsupervised and overnight access with the child for a few days just prior to the hearing of the appeal was dismissed - see (2012), 294 O.A.C. 313.

**Family Law - Topic 1962**

Custody and access - Child abduction legislation - Jurisdiction (incl. costs) - A mother wrongfully removed her child from Peru - The father sought to have her returned (Hague Convention on the Civil Aspects of International Child Abduction, art. 12) - The trial judge relied on the "grave risk" exception to the return requirement set out in art. 13(b) to deny the father's request - The trial judge awarded the mother costs in the all inclusive amount of \$64,000 - The father appealed, arguing that the trial judge had no jurisdiction to award costs of the trial against him - The Ontario Court of Appeal dismissed the appeal - The trial judge had jurisdiction to award costs - See paragraphs 40.

**Family Law - Topic 1965**

Custody and access - Child abduction legislation - Return order - A mother wrongfully removed her child from Peru - The father sought to have her returned (Hague Convention on the Civil Aspects of International Child Abduction, art. 12) - The trial judge relied on the "grave risk" exception to the return requirement (art. 13(b)) to deny the father's request - The trial judge found that the mother had presented sufficient evidence that the child's return to Peru would expose her to a grave risk of being in an intolerable situation

(in particular, exposure to family violence) - The father appealed - The Ontario Court of Appeal dismissed the appeal - There was no reason to interfere with the trial judge's decision - See paragraphs 1 to 39.

**Cases Noticed:**

Thomson v. Thomson, [1994] 3 S.C.R. 551; 173 N.R. 83; 97 Man.R.(2d) 81; 79 W.A.C. 81; 6 R.F.L.(4th) 290, refd to. [para. 20].  
A., Re (A Minor) (Abduction), [1988] 1 F.L.R. 365 (Eng. C.A.), refd to. [para. 21].  
J.A.P. v. R.S.P. (1999), 118 O.A.C. 169; 43 O.R.(3d) 485 (C.A.), refd to. [para. 23].  
Housen v. Nikolaisen et al., [2002] 2 S.C.R. 235; 286 N.R. 1; 219 Sask.R. 1; 272 W.A.C. 1, refd to. [para. 33].

**Statutes Noticed:**

Hague Convention on the Civil Aspects of International Child Abduction, Can. T.S. 1983 No. 35, art. 13(b) [para. 2].

**Counsel:**

Jeffery Wilson and Joanna Harris, for the applicant/appellant;  
Phyllis Brodtkin and Serena Lein, for the respondent/respondent on appeal.

This appeal was heard on August 22 and 23, 2012, before Feldman, Sharpe and Ducharme, J.J.A., of the Ontario Court of Appeal. The following decision was released for the court on October 2, 2012, by Ducharme, J.A.

Appeal dismissed.

Editor: Elizabeth M.A. Turgeon