



Pravni fakultet Osijek
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CASE STUDY

This case concerns ‘V’ a little girl aged 5. Her parents, Mr and Mrs N, are both Portuguese citizens. Mrs N a British born citizen acquired Portuguese citizenship as a spouse by naturalisation in 2018. Mr N was born and has always lived in Portugal.

The parties met in England in 2011, married in September 2014 and in March 2015, the mother relocated to Lisbon, Portugal. V was born in Lisbon shortly thereafter and was habitually resident in Portugal.

On 12 March 2020, the mother travelled to England for a two-week holiday with V but did not return on the expected flight back. On 23 March 2020, the mother and V became stranded in the UK when lockdown measures were implemented, and a travel ban was introduced in the face of the Covid-19 pandemic. At the end of April 2020, the mother informed the father that she would not be returning to Portugal. The mother asserted that the travel to England was also to trial a separation following incidents of aggressive and abusive behaviour by the father towards her. The incidents intensified after the birth of V after the mother suffered from a short period of post-natal depression when the father would often criticise her care of V. The mother’s case was that arguments would escalate to verbal and physical abuse, including slapping, pushing, twisting of her arm and threats to remove V from her care, and control so that she rarely visited her family in England. The mother alleged that, on two occasions when the father had been drinking excessively, V was present during the arguments, including when he twisted her arm and when he pushed her, causing V to cry and to become clingy with the mother in the days that followed.

The mother asserted that, prior to leaving Portugal, she sought support from a women’s charity that advised her to leave the home and move to a shelter, and also to obtain measures of protection. She was intending to follow through with that advice until the father gave her permission to travel to the UK to visit her family.

On 12 October 2020, the father commenced summary return proceedings under the 1980 Hague Convention and the Brussels IIa Regulation. The father denied the allegations of domestic violence, though accepted that there were occasions when the couple would argue and that this would get out



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of hand, but it was nothing more than raised voices and unkind words. The father's position was that the visit to the UK was for a short holiday and the mother and V were due to return 2 weeks later, and that he had booked their return flights for 26 March 2020 when the lockdown happened. It was agreed that once travel restrictions were eased the mother would return with V. Whilst he agreed to a trial separation, he did not consent to the mother relocating with V to England during that separation period.

The mother intends to defend the application relying on Article 13(1) b) based on the domestic violence that she has suffered, and that V has been exposed to. The mother asserts that there is a grave risk of physical and psychological harm or other intolerable situation for V should a return order be made. The mother further asserts that she could not return due to her fear of the father and, therefore, separating V from her primary carer by making a return order would also constitute a grave risk of harm.

