

Name of Case

One Member Court of Amaliada (Monomeles Protodikeio Amaliadas) Decision No. 248/2007

Date of Decision

13 March 2007

Requesting State

AUSTRALIA

Requested State

GREECE

Name of Court

One Member Court of Amaliada (Monomeles Protodikeio Amaliadas)

Status of Case

First Instance

Level of Court

Court of First Instance

Published / where available

Trapeza Nomikon Pliroforion (Electronic Database of the Athens Bar Association)

Articles considered

2, 3, 7, 10, 11, 12, 14, 16, 17, 20

Articles or provision upon which disposition of case based

3, 12, 13

Order

Return of the children to the father was refused.

Facts

The couple was married in Greece in 1993 and during their stay in Greece, they had four children (3 girls and a boy) aged 13, 7, 7, and 11 respectively at the time of alleged wrongful removal. In 2001 the family moved to Australia and since the same year they have been in separation. Since 2002 the parents have been living separately. Their place of habitual residence was Sidney, Australia. They agreed that the children would live with their mother, that the parents would decided jointly about issues concerning the long term development of the children and that the mother would decide on issues regarding they day to day life, except during the periods that the children would stay with their father. The right of access of the father was also regulated. Under Australian law parents share common responsibility regarding the custody of their children. In 2006 the mother took the children and came to Greece.

Ruling

The exception of art.12 regarding the settlement of the children to their new environment is not to be taken under consideration, since not more than a year has elapsed since their wrongful removal. Nevertheless, the children have been fully adapted to their new

environment. The children react to their return to Australia. Especially, the two older children have the age and the maturity to express an opinion that should be taken into account. Their opposition has been expressed with stability and clarity. The children love their father and do not prefer any of the two countries. Regarding the two younger children, their return should be refused, as well, as this would cause the separation of the family. The exception of a.13 is applicable and return of the children is to be refused.

Cases and authorities referred to

Supreme Court (Areios Pagos) Decision No. 1382/95; Court of Appeal of Thessaloniki (Efeteio Thessalonikis) Decision No 3662/96; Court of Appeal of Thessaloniki (Efeteio Thessalonikis) Decision No 1957/97; Court of Appeal of Thessaloniki (Efeteio Thessalonikis) Decision No 998/97; Voulgaris, Nomiko Bima 38.14; Doubis, Elliniki Dikaiosisini 39.24; Vasilakis, Armenopoulos 53.1573; Court of Appeal of Thrace(Efeteio Thrakis) Decision No 223/99; Supreme Court (Areios Pagos) Decision No. 63/2001; Court of Appeal of Dodekanisa (Efeteio Dodekanisou) Decision No 68/2005; Court of Appeal of Thessaloniki (Efeteio Thessalonikis) Decision No 722/2003; Court of Appeal of Athens (Efeteio Athinon) Decision No 613/2001; Court of Appeal of Thessaloniki (Efeteio Thessalonikis) Decision No 1255/2005.

Judges

Dimitrios Negas

Legal basis for decision

a. 12, 13

The objection of the children to return to Australia is to be taken into account, as the children have attained an age and degree of maturity, so as to form a stable opinion.

Procedural Matters

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Comments

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