

CANADA / JUDGMENT

C.A.R. v. C.D.P.R.

2025 BCSC 2199

COURT

Supreme Court of British Columbia

DECIDED

6 November 2025

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2025 BCSC 2199 C.A.R. v. C.D.P.R.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

C.A.R. v. C.D.P.R.,

2025 BCSC 2199

Date: 20251106

Docket: E07196

Registry: Abbotsford

Between:

C.A.R.

Petitioner

And

C.D.P.R.

Respondent

Before: The Honourable Justice J. Hughes

Reasons for Judgment

Counsel for the Petitioner:

G. Vlug

Counsel for the Respondent:

K. Naslund

Place and Date of Hearing:

Vancouver, B.C.

October 1-3, 2025

Place and Date of Judgment:

Abbotsford, B.C.

November 6, 2025

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Overview

[1] This is an application brought by the petitioner, C.R., under the Hague Convention on the Civil Aspects of International Child Abduction, 25 October 1980, Can. T.S. 1983 No. 35 (Entered into force 1 December 1983) [Hague Convention], seeking orders that the respondent, C.D.R., has wrongfully retained the parties' child, L.R., in British Columbia and ordering L.R.'s return to El Salvador.

Facts

[2] The parties married in July 2001 and have one child, L.R., who was born in Vancouver, British Columbia in January 2014. From L.R.'s birth through to October 2021, the parties resided in North and West Vancouver. The parties and L.R. are all Canadian citizens. The petitioner is also a citizen of El Salvador; the respondent and L.R. are not.

- [3] The respondent was born and raised in Surrey, British Columbia, and her family continues to reside in Abbotsford, Richmond, and Surrey. The respondent and L.R. maintained close ties with the respondent's family. L.R. formed a particularly close bond with her cousin, M.B., and her maternal aunt, C.B, who is M.B.'s mother.
- [4] The petitioner also has family in British Columbia. However, he is not close with them and L.R. has only occasionally spent time with her paternal extended family.
- [5] The parties ran a home-based media business together, Crystal Insight New Media Inc. ("Crystal Insight"). Crystal Insight was and remains incorporated as a British Columbia company.
- [6] L.R. attended preschool in North Vancouver from 2017 to 2019. From 2019 to 2021, she attended Kindergarten, grade one, and part of grade two through a homeschooling program, Partners in Education. L.R. also participated in extracurricular activities in North Vancouver, including swimming, ballet, and karate lessons.
- [7] At the end of October 2021, the parties moved to El Salvador. They left Canada somewhat hastily to avoid impending travel restrictions and vaccination mandates that they feared would be imposed on account of the ongoing COVID-19 pandemic. The parties did not wish to be vaccinated, and the petitioner told the respondent that he was concerned that they would be forced to do so if they remained in British Columbia. The petitioner also testified that the parties moved to El Salvador because "it had adopted bitcoin as legal tender and it is a tolerant political environment that was opening to the world".
- [8] When the parties left Canada, they did not have plans to return "anytime soon". They spoke of "moving" to El Salvador and were excited about the opportunities that they expected would be available to them there. The parties sold most of their personal belongings, including their vehicle, and stored their sentimental items at C.B.'s home in Abbotsford.
- [9] The petitioner travelled alone to El Salvador on October 28, 2021. The respondent and L.R. arrived on October 29, 2021, and entered the country on 90-day tourist visas. In January 2022, the petitioner sponsored an extension of the respondent's tourist visa. He did not sponsor any further extensions.
- [10] The respondent testified that the petitioner registered himself as a Salvadoran resident and obtained his Documento Unico de Identidad--El Salvador's national identification card--on which he listed his marital status as single. Neither the respondent nor L.R. were ever registered as citizens of El Salvador. None of this is disputed by the petitioner, nor did he produce a copy of his Salvadoran identification card.
- [11] Upon their arrival in El Salvador, the parties lived in various forms of temporary accommodation until early 2023, when they moved to a rental villa located in a gated community. The villa was large, and the parties rented rooms out to other foreigners or "bit coiners", including to their mutual friend, D.E. The gated community was protected by armed guards and surrounded by a high cinderblock wall topped with barbed wire. There

was only one access point in and out, and armed guards would patrol through the compound on a regular basis.

- [12] While in El Salvador, the parties worked remotely. They maintained Crystal Insight as a British Columbia company. The petitioner also incorporated a Salvadorian entity, Crystal Insight SA de CV (El Salvador) ("Crystal Insight El Salvador"). Both parties were shareholders of Crystal Insight El Salvador. Like Crystal Insight, Crystal Insight El Salvador was a media production company. The parties used their rental property in El Salvador for video shoots and the petitioner edited the resulting footage. Business was, for the most part, transacted in Spanish, which resulted in the respondent playing a lesser role than she had played in the Canadian entity's operations.
- [13] The parties' community in El Salvador consisted predominantly of international "bit coiners". The same can be said for L.R.: she socialized mainly with other English-speaking children of tourists or other foreigners, some of whom also lived in the same gated community and with whom she could ride bikes around the complex. In 2023, the parties celebrated L.R.'s birthday with attendees from all over the world.
- [14] Despite this, L.R. struggled to develop long-term friendships while in El Salvador. She did become close with D.E.'s daughters, who would visit him from time to time while on vacation from their home in Scotland. D.E. left El Salvador to return to Scotland in the first half of 2024. The parties' housekeeper would also bring her own child over to play with L.R. from time to time. However, the housekeeper's child was several years younger than L.R., there were language barriers between the two children, and they did not attend each other's birthday parties or socialize other than at the parties' home.
- [15] Throughout her time in El Salvador, L.R. maintained regular contact with the respondent's family in British Columbia, including, in particular, her aunt, C.B., and her cousin, M.B. The two cousins socialized regularly, through video and messaging apps, and while playing video games together online. L.R. also maintained relationships with her friends in British Columbia through online homeschool platforms and online gaming. On occasions when the parties went out in the evenings to socialize, C.B. and M.B. would "babysit" L.R. remotely via video.
- [16] While in El Salvador, L.R. continued to be enrolled in the same British Columbian distance learning program that she was enrolled in while in Canada. L.R. did not attend a local school in El Salvador, was not enrolled in Spanish language classes, and did not learn to speak Spanish. The parties did not prioritize L.R.'s education while in El Salvador. Over course of completing grade two through to starting grade four in El Salvador, L.R.'s scholastic performance deteriorated. L.R. did not participate in any extracurricular activities in El Salvador.

- [17] The petitioner has extended family in El Salvador. However, other than the occasional visit, the parties did not maintain sustained contact with the petitioner's extended family while in British Columbia or El Salvador. L.R. experienced difficulties communicating with the petitioner's family because she did not speak Spanish.
- [18] While in El Salvador, the parties' relationship began deteriorating. The respondent alleges that the petitioner engaged in acts of family violence and exerted financial control over her. The parties' relationship came to an end, and in December 2023, the respondent began a relationship with D.E.
- [19] In late April 2024, the respondent advised the petitioner that she wanted to return to Canada with L.R. Among other reasons, the respondent testified that she wanted to renew her British Columbia driver's license, renew her American passport, and get L.R. caught back up in her schooling.
- [20] The petitioner agreed to the respondent and L.R. returning to Canada. On May 7, 2024, the parties discussed the length of the respondent and L.R.'s stay in Canada via group chat with the petitioner's brother. It is clear from the text messages that the petitioner was agreeable to a three-month stay in Canada, while the respondent contemplated something longer and with an uncertain return date, potentially in the range of three to six months. No agreement was reached: the petitioner indicated that he wanted L.R. to return in three months and would come and get her himself if necessary; the respondent was not agreeable to signing anything with a fixed end date. No return airfare was purchased.
- [21] The respondent acknowledges that the petitioner provided a travel consent form for her to bring L.R. to El Salvador when they travelled separately in October 2021, but did not think that she needed a similar consent form to return to Canada with L.R. Nonetheless, hours before their departure from El Salvador, the petitioner provided the respondent with a travel consent form (the "Travel Consent"). The Travel Consent was in Spanish. The respondent could not read or understand it. At the time, the respondent understood that the Travel Consent permitted her to leave the country with L.R. on the date of travel. She was not aware that it contained an expiry date of August 7, 2024. The respondent was not provided with an English translation of the Travel Consent until the petitioner exhibited one to his affidavit in support of this application.
- [22] The respondent and L.R. returned to Canada on May 8, 2024. Prior to leaving El Salvador and at the petitioner's request, L.R.'s room in the Salvadoran rental property was packed up so that it could be rented out. Upon returning to British Columbia, the respondent and L.R. resided with C.B. They stayed with her for approximately one year, after which the respondent obtained rental accommodation nearby.
- [23] Upon returning to Canada, the respondent renewed L.R.'s B.C. Services Card and obtained medical care for L.R. by: taking her to an eye examination, registering her with a family doctor, taking her to an allergy specialist, and obtaining an EpiPen for her with coverage obtained through the province's Medical Services Plan, among other appointments. The

respondent also applied for income assistance to support herself and L.R. and filed her Canadian income tax returns. Indeed, the petitioner encouraged the respondent to do so, telling her over text on May 20, 2024, to "focus on [her] taxes" and to "get the child tax benefits".

- [24] L.R. continued to be homeschooled and completed grade four in Canada. She also began attending her cousin's hockey tournaments and became interested in playing hockey herself, specifically as a goalie. In June 2024, she began skating and playing hockey with her cousins.
- [25] Over the course of the spring and summer 2024, the respondent and L.R. spent significant amounts of time with the respondent's family, including celebrating special occasions and going on vacations together.
- [26] In late May 2024, the respondent requested permission to take L.R. to Scotland to visit D.E. The petitioner did not immediately agree, but told the respondent that he would do so once she signed a share conversion agreement to convert her shares in Crystal Insight El Salvador from voting to non-voting shares. He also expressed a preference to have a separation agreement in place before consenting to L.R. leaving Canada.
- [27] The parties attempted to negotiate a separation agreement using C.B. as an intermediary. In the course of those negotiations, on July 1, 2024, the petitioner sent an email to C.B. and the respondent in which he asserted that L.R.'s current place of residence was El Salvador and that she had permission to be in Canada pursuant to the Travel Consent only until August 7, 2024. In this email, he also threatened "serious legal and criminal consequences" if L.R. was not returned to El Salvador "unless we agree otherwise, in writing". The petitioner's email also made specific reference to Canada and El Salvador being signatories to the Hague Convention.
- [28] The respondent signed the share conversion agreement on July 8, 2024. The same day, the petitioner filed an application in the British Columbia Provincial Court seeking an order that L.R. not be removed from British Columbia. He did not seek her return to El Salvador or institute proceedings under the Hague Convention. On July 11, 2024, the petitioner appeared virtually in the Provincial Court and obtained a non-removal order, prohibiting the respondent from removing L.R. from British Columbia, absent written consent from the petitioner or further court order. On July 23, 2024, the July 11, 2024, non-removal order was vacated and replaced with an order requiring that the respondent surrender L.R.'s passport to her counsel to be held pending further court order.
- [29] On August 17, 2024, the respondent texted photographs of L.R. wearing her hockey goalie equipment to the petitioner with the following message: "She got a goalie mask, pads, neck pad today for \$60 donation". The petitioner responded to the message with a "thumbs up" emoji. That same day, the respondent asked the petitioner to send \$60 for L.R. to purchase additional second-hand goalie gear. The respondent did so, replying on August 18, 2024: "I sent \$60, but it says it won't get there until Monday. If at all possible, please send me a

receipt of what she buys".

- [30] On August 19, 2024, the respondent filed a notice of family claim in this Court. The petitioner filed his response to family claim on September 10, 2024. Counsel for the parties in the family proceedings are the same counsel as on this application. The petitioner's response to family claim did not dispute jurisdiction or refer to the Hague Convention. He did, however, assert that the parties had been habitually resident in El Salvador since October 2021 and that the claimant had engaged in "parental child abduction".
- [31] In September 2024, L.R. started grade five at the Abbotsford Virtual School, which runs a virtual and in-person program. L.R. attends school in-person one day per week, attends field trips, and receives additional in-person services such as counselling and tutoring.
- [32] The parties attended a judicial case conference in March 2025. Shortly thereafter, on April 1, 2025, the Article 16 Notice was filed.

Statutory and Legal Framework

- [33] The objects of the Hague Convention are to secure the prompt return of children wrongfully removed to or retained in any Contracting State and ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States: Art. 1.
- [34] Canada and El Salvador are both contracting states to the Hague Convention, which has the force of law in this jurisdiction pursuant to s. 80 of the Family Law Act, S.B.C. 2011, c. 25 [FLA].
- [35] Article 3 of the Hague Convention provides that a removal or retention is wrongful where it is done in breach of rights of custody which were actually being exercised at the time of, or would have been but for, the wrongful removal or retention:

Article 3

The removal or the retention of a child is to be considered wrongful where -

- a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
- b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

[36] If the removal or retention is wrongful under Article 3, then the court must make a return order if the return application is brought within 12 months, unless one of the exceptions set out in Article 13 applies. Article 13 provides that the Court is not bound to make a return order in the following circumstances:

Article 13

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that -

- a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or
- b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

[37] The analytical framework for an application for a return order under the Hague Convention is set out in *Ludwig v. Ludwig*, 2019 ONCA 680 at para. 40:

Stage One: Habitual Residence

- 1) On what date was the child allegedly wrongfully removed or retained?
- 2) Immediately before the date of the alleged wrongful removal or retention, in which jurisdiction was the child habitually resident? In determining habitual residence, the court should take the following approach:
 - a) The court's task is to determine the focal point of the child's life, namely the family and social environment in which its life has developed, immediately prior to the removal or retention.
 - b) To determine the focal point of the child's life, the court must consider the following three kinds of links and circumstances:
 - i) The child's links to and circumstances in country A;
 - ii) The circumstances of the child's move from country A to country B; and
 - iii) The child's links to and circumstances in country B.
 - c) In assessing these three kinds of links and circumstances, the court should consider the entirety of the circumstances, including, but not restricted to, the following factors:

- i) The child's nationality;
- ii) The duration, regularity, conditions and reasons for the child's stay in the country the child is presently in; and
- iii) The circumstances of the child's parents, including parental intention.

End of Stage One: Two Outcomes

- 1) If the court finds that the child was habitually resident in the country in which the party opposing return resided immediately before the alleged wrongful removal or retention, then the Hague Convention does not apply and the court should dismiss the application.
- 2) If the court finds that the child was habitually resident in the country of the applicant immediately before the wrongful removal or retention, then the Hague Convention applies and the court should proceed to stage two of the analysis.

Stage Two: Exceptions

At this stage, the court shall order the return of the children unless it determines that one of the following exceptions applies:

- 1) The parent seeking return was not exercising custody or consented to the removal or retention (Article 13(a));
- 2) There is grave risk that return would expose the child to physical or psychological harm or place the child in an intolerable situation (Article 13(b));
- 3) The child of sufficient age and maturity objects to being returned (Article 13(2));
 - a) Has the party opposing return met the threshold to invoke the court's discretion to refuse return?
 - i) Has the child reached an appropriate age and degree of maturity at which the child's views can be taken into account; and
 - ii) Does the child object to return?
 - b) Should the court exercise its discretion to refuse to return the child? In considering whether to exercise its discretion to refuse return, the court should consider:
 - i) The nature and strength of the child's objections;
 - ii) The extent to which the objections are authentically the child's own or the product of the influence of the abducting parent;
 - iii) The extent to which the objections coincide or are at odds with other considerations relevant to the child's welfare; and
 - iv) General Hague Convention considerations.

- 4) The return of the child would not be permitted by fundamental human rights and fundamental freedoms of the requested state (Article 20); or
- 5) The application was brought one year or more from the date of wrongful removal or retention, and the judge determines the child is settled in the new environment (Article 12).

Issues

[38] It is undisputed that this is a wrongful retention case. To establish that the respondent wrongfully retained L.R. in Canada under Article 3 of the Hague Convention, the petitioner must establish on a balance of probabilities (Gill v. Gill, 2024 BCSC 346 at para. 143 [Gill BCSC]):

- a) when the wrongful retention took place;
- b) that L.R. was habitually resident in El Salvador immediately prior to the retention; and
- c) that the retention breached his rights of custody under the law of the habitual residence, namely El Salvador.

[39] If L.R.'s retention was wrongful under Article 3, then the respondent says that I am nonetheless not bound to make a return order because one or both of the following Article 13 exemptions apply:

- a) The petitioner acquiesced to L.R.'s retention in British Columbia under Article 13(a); or
- b) L.R. has attained an age and degree of maturity at which it is appropriate to take account of her views and objects to being returned under Article 13(2).

[40] Considering the parties' positions in light of the analytical framework outlined in and Ludwig, the issues to be determined on this application are:

- a) When was L.R. wrongfully retained?
- b) Where was L.R. habitually resident immediately before the date of the wrongful retention?
- c) If L.R. was habitually resident in El Salvador, did the petitioner have and was he actually exercising custody rights at the time of retention?
- d) If L.R.'s retention in British Columbia was wrongful under Article 3, is a return order not required because:
 - i. The petitioner acquiesced in L.R.'s retention; or
 - ii. L.R. has attained an age and degree of maturity at which it is appropriate to take account of her views and objects to being returned to El Salvador?

Analysis

When was L.R. allegedly wrongfully retained in Canada?

- [41] The petitioner says that L.R. was wrongfully retained as of August 8, 2024--the day after the travel consent expired on August 7, 2025. The respondent says that L.R. was not wrongfully retained until April 1, 2025, when the petitioner filed and served his Article 16 Notice under the Hague Convention.
- [42] I accept that the respondent did not know when she left El Salvador that the Travel Consent contained an end date of August 7, 2024. However, this does not mean that the petitioner's consent was open-ended such that the retention date should be fixed as of when the petitioner first formally asserted their right or demanded the child's return: see e.g. Gill BCSC at para. 164, citing *Beairsto v. Cook*, 2018 NSCA 90.
- [43] Prior to the respondent's departure from El Salvador with L.R., in the parties' May 7, 2024 text message communications, the petitioner expressly communicated to the respondent that he would only agree to L.R. staying in Canada for three months. Further, in his email correspondence of July 1, 2024, the petitioner expressly told the respondent that L.R. "has permission to be with you in Canada until August 7th". Thus, irrespective of whether the respondent was aware of the August 7, 2024, expiry date in the Travel Consent, she was aware that the petitioner had only agreed to L.R. remaining in Canada for three months.
- [44] I therefore find that the wrongful retention date was August 8, 2024.

Where was L.R. habitually resident immediately prior to the alleged wrongful retention?

- [45] To determine whether there has been a wrongful removal or retention of a child under Article 3, the court must first determine where the child was "habitually resident" immediately before the removal or retention: *Gill v. Gill*, 2024 BCCA 140 [*Gill BCCA*] at para. 21. If the child's habitual residence is not in the state of the parent seeking return, then the Hague Convention does not apply: *Office of the Children's Lawyer v. Balev*, 2018 SCC 16 [*Balev*] at para. 36.
- [46] This requires the Court to determine the "focal point" of the child's life, namely the family and social environment in which the child's life has developed immediately prior to the removal or retention: *Balev* at para. 43. *Balev* mandates a hybrid approach which gives consideration to the entirety of the relevant circumstances with no single factor dominating the analysis: para. 44. As *Balev* directs, the hybrid approach is fact-bound, practical, and unencumbered with rigid rules, formulas, or presumptions: para. 47.
- [47] Under the hybrid approach, L.R. is the focus of the analysis. I must determine the focal point of her life, namely the family and social environment in which her life had developed up to August 8, 2024, considering: her links to and circumstances in Canada; the circumstance of her move to El Salvador; and her links to and circumstances in El Salvador. In assessing these links, the factors to consider include L.R.'s nationality, the duration, regularity, conditions and reasons for her stay in El Salvador and the parties' circumstances, including their intentions: *Balev* at paras. 44-45. The list of potentially relevant factors to consider when determining the child's habitual residence is not closed, and the temptation

to overlay the factual concept of habitual residence with legal constructs must be resisted: Balev at para. 47, citing *A. v. A. (Children) (Habitual Residence)*, [2013] UKSC 60, [2014] A.C. 1 (U.K.S.C.) at paras 37-39.

- [48] With respect to parental intentions, Balev and Ludwig provide that parental intention is only relevant as a tool to assess the child's connections to a given country: Balev at para. 46; Ludwig at para. 28. In this respect, the parents' circumstances, including their intentions, may be an important consideration, particularly in the case of young children: Gill BCCA at para. 22. Conversely, this factor may carry less weight in cases involving older children. The role of parental intention in the determination of habitual residence will depend on the circumstances specific to each individual case: Balev at para. 45.
- [49] Applying the approach set out in Gill, Balev, and Ludwig, I find that despite moving to El Salvador, the focus of L.R.'s life--and thus her habitual residence--remained in Canada. In other words, despite being physically present in El Salvador for two-and-a-half years, L.R.'s habitual residence remained in British Columbia. My reasons for this conclusion are as follows.
- [50] L.R. was born in British Columbia and is a Canadian citizen, as are both of the parties. L.R. spent the first seven years of her life in British Columbia. For a child of her age, L.R. had strong ties to her community in North Vancouver before she moved to El Salvador in October 2021, including through her preschool and homeschooling programs, her involvement in extracurricular activities, and the time she spent with her extended family.
- [51] L.R.'s significant connection to British Columbia continued throughout her time in El Salvador. L.R. continued her education through her British Columbia-based homeschooling program. The parties also continued to pay the fees to preserve L.R.'s in-person spot with Fresh Air Learning for the balance of 2021 and into 2022 in anticipation of returning to British Columbia, but gave up L.R.'s spot in June 2022.
- [52] L.R. also remained connected with her social network in British Columbia throughout her time in El Salvador, both through her online homeschooling community and, to an even greater extent, with her extended family. L.R. spent a significant amount of time messaging, having video calls, and playing video games with her aunt, C.B. and cousin, M.B. Indeed, when the parties went out in El Salvador, they would often leave L.R. at home alone with C.B. "babysitting" her via video call or playing video games with M.B.
- [53] Conversely, L.R. did not develop significant ties to El Salvador, despite being physically present there from October 2021 to May 2024. Notably in this respect:
- a) L.R. did not attend school or extracurricular activities in El Salvador;
 - b) L.R. did not speak Spanish and had difficulty communicating and making connections with her paternal extended family in El Salvador;

- c) L.R.'s lack of Spanish made it difficult for her to make friends with other local children, though she was able to socialize with other English-speaking children of tourists and "bit coiners", and was close with D.E.'s daughters when they were on vacation in El Salvador;
- d) L.R. did not receive medical care in El Salvador, other than routine dental cleanings; and
- e) L.R. was not registered as a Salvadoran resident; she entered the country on a tourist visa and there is no evidence of the petitioner taking steps to obtain legal status for her.

[54] In addition, considering the whole of the circumstances of the parties' move to El Salvador, I find that while the move was intended to be indefinite, it was not intended to be permanent. The haste with which they left Canada and the indefinite duration of their stay in El Salvador arose at least in part on account of the uncertainty created by the ongoing COVID-19 pandemic and the associated travel restrictions and vaccine mandates. Consistent with an indefinite but temporary stay, the parties brought their cat with them to El Salvador, but left their sentimental possessions in British Columbia with C.B. The parties did sell their vehicle and some of their other possessions, but this was at least in part due to the cost of storing them while out of the country.

[55] The parties also retained their connection with British Columbia while in El Salvador. The respondent maintained close connections with her family in British Columbia. The parties also maintained Crystal Insight as a British Columbia company. In a Notice of Change of Directors filed February 6, 2023, the parties used C.B.'s Abbotsford address as their mailing and delivery addresses. As of April 2025, Crystal Insight remains active as a British Columbia company and in its Annual Report filed in March 2025, continues to list both parties as directors with mailing and delivery addresses in North Vancouver.

[56] Thus, while the parties' intentions are but one factor to consider, I find that their intentions also reflect a lack of permanence to their lives--and correspondingly to L.R.'s life--in El Salvador. While the focus of the parties' lives may have shifted to El Salvador while they were there--especially the petitioner's--they did little to affect the same shift for L.R.

[57] To the contrary, the parties' actions--or lack thereof--kept the focus of L.R.'s life in British Columbia despite her physical absence from that jurisdiction. While the parties made connections and integrated themselves in the Salvadoran "bit coiner" community, they failed to take steps to help L.R. do the same. They did not enrol her in school or extracurricular activities or help her learn Spanish. Nor did the petitioner take steps to formalize her stay in El Salvador.

[58] Contrary to the petitioner's submission, I am not persuaded that the fact that the parties had birthday celebrations for L.R. in El Salvador with other "bit coiners" or expatriates, or that she had the occasional sleepover with D.E.'s daughters when they visited him in El Salvador from their home in Scotland, demonstrates that the focus of L.R.'s life was not in El Salvador. I find that the parties were content for the focus of L.R.'s life to remain in British Columbia, and for her social connections to be predominantly by way of her online presence and

virtual connections with peers and family in British Columbia.

- [59] In these circumstances, I find that despite L.R.'s physical presence in El Salvador, the focus of her life never shifted to El Salvador, but remained in British Columbia. As such, so too did her habitual residence. Accordingly, the petitioner has not met the onus on him of establishing that L.R.'s habitual residence was in El Salvador immediately prior to her retention in British Columbia on August 8, 2024.
- [60] Furthermore, even if L.R.'s habitual residence did shift to El Salvador for the period of time she spent there, I would nonetheless find that the focus of her life was re-established in British Columbia immediately prior to August 8, 2024.
- [61] First, shortly after returning to Canada, the respondent filed her income tax returns, sought child tax benefits for L.R., and obtained a British Columbia health care card for L.R. All of this was done with the petitioner's knowledge and at his direction. Indeed, in his response to family claim, he asserted that the child tax benefits the respondent expected to receive constituted family property. A parent accessing child tax benefits and other social assistance is a factor to consider in determining the child's habitual residence: *Dunmore v. Mehralian*, 2025 SCC 20 at para. 70.
- [62] Second, L.R.'s close relationship and connection with her maternal aunt and cousins--connections that continued unabated during L.R.'s absence--became even stronger within weeks of her return. L.R. quickly became involved in extracurricular activities with her cousins, mostly notably playing hockey. By June 2024, L.R. was learning to skate, playing hockey lessons with her cousins, and becoming passionate about playing as a goalie. Her involvement in hockey progressed to the point that by August 2024, the petitioner and respondent both contributed funds to purchase goalie equipment for her.
- [63] Considering the impermanence of L.R.'s life in El Salvador and the rapidity with which her connections to and life in British Columbia flourished upon her return, I have no hesitation in concluding that by August 7, 2024, the focus of her life had shifted back to British Columbia. L.R. was therefore habitually resident in Canada immediately prior to August 8, 2024.
- [64] In either case, the result is that L.R. was not habitually resident in El Salvador--the state of the parent seeking return--immediately prior to the alleged wrongful retention on August 8, 2024. Accordingly, the Hague Convention does not apply: *Balev* at para. 36. This conclusion is dispositive of the petition in favour of the respondent.

Exceptions to mandatory return

- [65] However, even if L.R. was habitually resident in El Salvador immediately prior to August 8, 2024, and assuming that the remaining requirements of Article 3 of the Hague Convention are met such that her retention in British Columbia was wrongful, I would nonetheless have declined to make a return order on two grounds: (a) under to Article 13(a) of the Hague

Convention on the basis that the petitioner acquiesced in her retention in British Columbia; and (b) under Article 13(2) of the Hague Convention on the basis that L.R. objects to being returned.

(a) Consent and acquiescence

- [66] Pursuant to Article 13(a) of the Hague Convention, the Court is not required to make a return order if the taking parent establishes that the left-behind parent consented to or subsequently acquiesced in the removal or retention.
- [67] The terms "consent" and "acquiescence" as used in Article 13(a) are given their ordinary meaning: Gill BCSC at para. 22. The terms are related: to consent is to agree to something, while to acquiesce is to agree tacitly, silently, or passively. In this respect, acquiescence implies unstated consent: Gill BCSC at para. 22, citing *Katsigiannis v. Kottick-Katsigiannis*, [2001] O.J. No. 1598 (Ont. C.A.), 2001 CanLII 24075 at para. 47.
- [68] Accordingly, acquiescence involves subjective consent determined by words and conduct, including silence, which establishes the acceptance of, or acquiescence in, a child's removal or retention. To prove acquiescence, the taking parent must provide clear and cogent evidence of some conduct on the part of the left-behind parent that is inconsistent with the summary return of the child to their place of habitual residence: Gill BCSC at para. 23.
- [69] In my view, the petitioner's conduct both before and after August 8, 2024, was inconsistent with seeking that L.R. be summarily returned to El Salvador. After the expiry of the Travel Consent on August 7, 2024, the petitioner took no steps to seek L.R.'s summary return to El Salvador. Rather, the petitioner's conduct, as detailed below, provides clear and cogent evidence of his acquiescence in her remaining in British Columbia.
- [70] First, in May 2024, the petitioner encouraged the respondent to take steps consistent with her and L.R. remaining in British Columbia for longer than the three months contemplated in the Travel Consent. The petitioner told the respondent to get her taxes filed, to "get the child tax benefits", and to either find a job in Canada or to "get welfare". When the respondent texted the petitioner that she had renewed her driver's license, filed her taxes with the Canada Revenue Agency, and was in the process of getting British Columbia health cards for her and L.R., he responded with a "thumbs up" emoji. This conduct--particularly instructing the respondent to obtain child tax benefits and agreeing to her obtaining social services and health care for her and L.R.--is inconsistent with the petitioner seeking that L.R. be returned to El Salvador by August 7, 2024.
- [71] The petitioner did not object to L.R. being enrolled in activities in British Columbia, and in a May 23, 2024, text message to the respondent, expressly stated that while he did not consent to the respondent having "full custody" of L.R., he did not object to L.R. staying in Canada for as long as she wanted:

She's welcome to stay [in Canada] as long as she wants. But if she ever wants to come back [to El Salvador], I will fight you for her right to do so.

as is my right as a father to see her

[Emphasis added.]

- [72] The petitioner's conduct and positions taken in court proceedings in this jurisdiction were also inconsistent with him seeking L.R.'s summary return to El Salvador. First, when the respondent requested permission to take L.R. to Scotland, the petitioner did not take the position that L.R. ought to be returned to El Salvador or seek an order to that effect. Instead, he sought and obtained a non-removal order requiring that L.R. remain in British Columbia. Second, while the petitioner raised the prospect of Hague Convention proceedings as early as July 1, 2024, and referred to "parental child abduction" in his September 2024 response to family claim, his Article 16 Notice was not filed until April 1, 2025. Notably, the petitioner was represented by counsel throughout this timeframe.
- [73] Finally, and most importantly, on August 17, 2024 (after the Travel Consent expired), the respondent texted photographs of L.R. wearing her hockey goalie equipment to the petitioner with the following message: "She got a goalie mask, pads, neck pad today for \$60 donation". The petitioner responded to the message with a "thumbs up" emoji. That same day, the respondent asked the petitioner to send \$60 to purchase additional second-hand goalie gear for L.R. The respondent did so, replying on August 18, 2024: "I sent \$60 but it says it won't get there until Monday. If at all possible, please send me a receipt of what she buys".
- [74] In my view, this exchange and the petitioner's conduct in sending money to purchase hockey gear for L.R. constitutes clear and cogent evidence of conduct on his part that is inconsistent with L.R.'s summary return to El Salvador. L.R. only began to play hockey after she returned to Canada in May 2024. There is no suggestion in the evidence that she had any use for hockey equipment in El Salvador. The only rational basis to be purchasing hockey equipment for L.R.--and for the petitioner to contribute funds for this purpose--is that L.R. was going to remain in Canada and continue to play hockey and that the petitioner acquiesced in this state of affairs.
- [75] I therefore find that the petitioner acquiesced in L.R. remaining in British Columbia. Consequently, had I found that L.R.'s habitual residence was in El Salvador immediately prior to August 8, 2024--and assuming for present purposes that the balance of the requirements of Article 3 were met--I would nonetheless have refused to make a return order on the basis that the petitioner acquiesced in L.R. remaining in Canada under Article 13(a) of the Hague Convention.

(b) Child's Objection

- [76] Article 13(2) of the Hague Convention confers a discretion on the Court to refuse to order the return of a child of sufficient age and maturity who objects to that return: Ludwig at para. 38. To invoke the Court's discretion in this respect, the respondent must establish that: (a) the child has reached an appropriate age and degree of maturity at which the child's views can be taken into account; and (b) the child objects to return.
- [77] In deciding whether to exercise its discretion to refuse a return order on this basis, the Court should consider the following factors (Ludwig at para. 39, citing *In re M (Abduction: Rights of Custody)*, [2007] UKHL 55, [2008] 1 A.C. 1288 (Eng. H.L.) at para. 46:
- a) the nature and strength of the child's objections;
 - b) the extent to which the objections are authentically the child's own or the product of influence of the abducting parent;
 - c) the extent to which the objections coincide or are at odds with other considerations relevant to the child's welfare; and
 - d) general Hague Convention considerations, which include the overarching objectives of securing the prompt return of wrongfully removed or retained children to their country of habitual residence, ensuring that custody rights are respected, and deterring child abduction.

See also Balev at paras. 24, 26; *In re M* at para. 42.

- [78] Pursuant to an order made under s. 211 of the FLA, L.R.'s views were put before the Court by way of a report dated May 13, 2025, from Dr. Michael Elterman (the "Elterman Report"). Dr. Elterman is a clinical and forensic psychologist with extensive experience in providing views of the child and s. 211 reports for use by this Court. The petitioner did not take issue with Dr. Elterman's qualifications. I find that Dr. Elterman is qualified to opine on the following issues: L.R.'s views of her living situation and the reasons for those views; L.R.'s level of maturity; and whether her views are authentically her own or the product of influence by others.

- [79] The Elterman Report addresses, among other things, L.R.'s views on living in El Salvador. In this respect, Dr. Elterman reported the following:

I asked [L.R.] what she liked about being in El Salvador. She initially responded that she doesn't know. She adds that her father became more interested in her before she came back. I enquired whether she had friends in El Salvador and she says that she didn't really and sometimes she made friends with tourists there. Asked whether her father had a family, she says that he did and they seemed nice but they all speak only Spanish. The grandmother was nice but she would talk to dad in Spanish. I asked whether she attended school in El Salvador and she says she didn't and she was home-schooled there but then "they dropped the ball". Asked to explain, she says that she had no education and sat around all day and nothing was getting done. She says that they initially lived in a hotel and then an apartment and then they lived in a big house. She says that she spent

considerable time alone in the big house. I asked whether she was happy there, she says "I was lonely". She says that she was sad because there was nothing to do. She says that it was fun at first but became boring. There was the TV but it was in Spanish. I asked whether they tried to teach her Spanish, she says that they didn't and her dad was too busy working. She tried to teach herself Spanish on Duo Lingo but that didn't work.

I asked her what her concerns would be about moving back to El Salvador. She says (1) I was stuck indoors. (2) I'd miss my friends and family. (3) I couldn't say hello to neighbors because they didn't speak English. (4) It was a gated community with "dudes with guns". (5) There is very little English spoken in El Salvador. (6) [L.R.] says that she doesn't feel that the place is right for her because of missing the cousins and the cousins in El Salvador don't speak English. She says "I had nothing to do there, the TV is in Spanish, I was not going to school". She says that no one taught her Spanish and they said it was too dangerous to go out. She says "my dad said I was kidnapped from El Salvador but I feel like I was kidnapped from Canada".

[80] When asked about her life in Canada, L.R. responded by comparing it to her experience in El Salvador, reporting to Dr. Elterman that if she were sent back to El Salvador, she would miss her cousins and aunts who are her neighbours in Canada, she would miss her Canadian friends, and she would have trouble talking to people in El Salvador because she speaks English. She also commented that for her, Canada is "a familiar place" and that "she feels happy here".

[81] Dr. Elterman reports that L.R. does not want to return to El Salvador. Her wish is to remain with her mother in Canada. The Elterman Report concludes that L.R. is clearly more comfortable in an English-speaking country, found living in El Salvador isolating, and clearly objects to returning to El Salvador. L.R. specifically asked Dr. Elterman to convey that she not be forced to return to El Salvador.

[82] In my view, L.R.'s objection to returning to El Salvador--and the reasons she provided for her objection--are consistent, not at odds, with her welfare. This is particularly the case as it relates to her social and emotional welfare given the lack of social connection, sadness, loneliness, and isolation she reported experiencing while in El Salvador.

[83] Dr. Elterman opined that L.R.'s reasons for her objection to returning to El Salvador were age-appropriate and "not presented in a recitational manner but with some emotion and tears in asking that [he] convey that she not be forced to return to El Salvador". Based on L.R.'s age--she was 11 when interviewed and will be 12 in January--and the nature and reasons for her views, as set out in the Elterman Report, I am satisfied that L.R. has reached an age and degree of maturity where her views can and ought to be considered.

- [84] I also accept Dr. Elterman's opinion that L.R.'s views are authentically her own and that while she is fully aware of what each parent wants, there was no evidence of coaching, incentives, or pressure from either parent. I am thus satisfied that L.R.'s objection to retuning to El Salvador reflects her own view and is not the product of influence by the respondent.
- [85] I find that the strength of, and reasons for, L.R.'s objection to returning to El Salvador, considered together with her age, level of maturity, and the circumstances of her retention, all weigh in favour of the Court exercising its discretion to refuse a return order despite the overarching and general objectives of the Hague Convention.
- [86] Accordingly, had I found that L.R.'s habitual residence was in El Salvador immediately prior to August 8, 2024--and assuming for present purposes that the balance of the requirements of Article 3 were met--I would nonetheless have refused to make a return order on the basis that L.R. objects to being returned El Salvador under Article 13(2) of the Hague Convention.

Conclusion

- [87] In the result, the petition is dismissed.
- [88] The respondent is entitled to her costs of the petition.

"Hughes J."

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Prepared on 28 October 2026 · Esheria