



Everything Jersey

The Star-Ledger

A mother and child caught in an international nightmare

Thursday, October 06, 2005

The photograph is disturbing. A little girl, just 3, her underpants fitted tightly over her head, covering her mouth like a gag, her eyes peering through the leg holes.

"It was disgusting and frightening," says the child's mother, who received the picture in an e-mail sent by the child's father and used it in court. She has accused him of abusing both her and their child. She says she doesn't know how the picture was taken.

But, four days after receiving it, Elena Mazza says, she fled Argentina with her daughter, Arianna, to get away from the man, Ariel Adan, who sent the e-mail.

A few weeks ago, a federal judge in Newark ordered Arianna Adan, now 5, deported to Argentina, with or without her mother. In effect, District Court Judge William Walls ruled that Arianna is Argentina's, not this country's, concern.

Or, as Adan's lawyer, Walter Lesnevich of Hackensack, says: "I don't know if he abused the child and, frankly, I don't really care. It's Argentina's problem."

Arianna, like her mother, is an American citizen.

The little girl, a kindergartner at St. Anthony's School in Elizabeth, was born here.

A week after Judge Walls issued his ruling, Adan was arrested inside the Union County courthouse for trying to get to Mazza. She was there – inside a protected plaintiff's room – to testify at a domestic violence hearing previously scheduled against Adan. He was handcuffed and later pleaded guilty to violating a restraining order.

"It was stupid," says Lesnevich. "I told him that. He lost his temper."

That outburst, like previous outbursts here and in Argentina, counts for nothing in the decision to deport Arianna to her father's country despite her American citizenship. Just as her mother's testimony about possible child abuse counted for nothing – although, in state courts, such charges would instantly ignite investigations by child welfare agencies to find out what really happened to little Arianna Adan.

"Federal courts are not equipped to handle these issues," says Elliot Gourvitz of Springfield, Mazza's lawyer. "They don't know family law; it's a state matter."

Or, as Merle Weiner, a University of Oregon law professor and expert on such cases says, "Federal courts cannot look at the issue of the best interests of the child."

Because these cases are a matter of international treaty. The Hague Convention on the Civil Aspects of International Child Abduction, ratified by 70 countries, including the United States in 1980. Implemented by Congress in 1988. The overriding question in most cases is: Was the child taken from a country of "habitual residence"?

If so, the child must be returned – and quickly. As in Arianna's case, her American citizenship means nothing. She was living in Argentina at the time her mother, who has legal custody, fled with her to the United States.

A court can refuse to return a child who faces "a grave risk of harm." But that defense, Weiner says, usually has been interpreted narrowly – war or chaos.

And the defense is unavailable to parents. Battered women forced to return with their children often are battered again, she says. Mazza says she and Arianna have been threatened with death and physically assaulted.

The irony is, says Weiner, the "original vision" of the treaty was to help mothers whose children had been abducted by fathers and brought to countries beyond the reach of the home courts. The law professor says she researched rulings and learned, in most cases now, the treaty forces the return of women who say they fled abuse and violence.

Women in this country face other problems. A federal court system that, unlike the state courts, is not set up to investigate child abuse. As Lesnevich says, "It's a jurisdictional issue – that's all. What the mother

says might be true, or it just might be the ranting of a woman caught abducting her child. Argentina will sort it out."

So no one interviewed Arianna -- no judge, no psychologist, no social worker.

Women must pay their legal fees. So far, says Mazza, who drives a delivery truck, says she spent \$25,000, most borrowed from relatives. She faces another \$50,000. Adan, meanwhile, receives free legal counsel in an arrangement with the U.S. State Department and a private organization, the National Council on Missing and Exploited Children, which has a contract with the federal government.

If Mazza ultimately loses the case -- it's now on appeal to the U.S. Court of Appeals for the Third Circuit -- she may also have to pay Lesnevich's fees.

"I don't know what to do," says Mazza, who came to the United States in 1971.

She met Adan in Argentina in 1998. They lived together, she says, and, in 2000, returned to the United States. They never married and their relationship was turbulent, marked with her frequent calls to local police. After Arianna was born, they moved to Argentina. Problems persisted and they separated. She has copies of police reports describing violent incidents and an Argentine restraining order.

Mazza, 41, contends that, in December 2003, the violence was so bad she feared for her life. "I was at the local police station almost every day," she says. She insists the Buenos Aires police would do nothing to help her.

"Arianna and I could be safe only in the United States." So she fled.

Lesnevich says Argentina is "fully capable" of protecting them. But a State Department advisory on Argentina reported: "Domestic violence and sexual harassment against women were recognized as serious societal problems. The Inter American Development Bank estimated 25 percent of women were victims of violence."

In e-mails and letters from Adan to Mazza, he admits he had a "chemical" problem but attends rehab programs. In one e-mail, introduced as evidence in court, he insists he can think more clearly "now that my mind is clear from drugs and alcohol." But, in another, he writes to Mazza that he wants to "rape you totally."

Lesnevich dismisses much of what is in Adan's e-mails as "jokes" or "misunderstandings." He declined to have Adan interviewed or to provide any way of contacting him. No house exists at the Paterson address listed for Adan in court papers.

Mazza has one hope. In a similar case, a federal appeals court in New York refused to order French children deported on the grounds their witnessing of violence against their mother constituted "grave risk of

harm" that could not be cured by French courts. Weiner calls the case "persuasive, but not binding" on the court in Mazza's case.

And, Weiner says, next year, representatives of treaty signatories will gather in The Hague to reconsider its provisions. She will participate and hopes to persuade them to help women who face violence if their children are returned.

"I realize it may be too late for those facing problems now," she says.

Bob Braun's columns appear Monday and Thursday. He may be reached at bobbraun@verizon.net or (973) 392-4281.

© 2005 The Star Ledger

© 2005 NJ.com All Rights Reserved.