

Maryland Lawyer

News and analysis of legal matters in Maryland

Judge orders daughter returned to Egypt

Mother moved girl to Silver Spring in violation of foreign court order

BY STEVE LASH

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Moustafa El Masry was paying child support to the mother of his 8-year-old daughter in Egypt when, in the spring of 2008, a payment was returned to him as undeliverable.

When he went to mother Mona Yasmin Nasser's house, the mother and daughter were not there. A private investigator uncovered that Nasser had moved with her daughter, Malak, to Silver Spring.

This month, a **Montgomery County Circuit Court** judge ordered that Malak return with her father to her native Egypt, holding that the mother had removed Malak from the country in violation of an Egyptian court order requiring the mother to keep Malak in Egypt.

"The court does not find the defendant [Nasser] to be a credible person, someone that I can trust, someone who will comply with a court order to return the child," said Judge Steven G. Salant in issuing his decision from the bench.

Salant found that the foreign order was valid and owed deference by U.S. courts.

Gambler's faith

Masry's lawyer, James S. Maxwell, called Salant's ruling a victory for a loving parent who had traveled thousands of miles and spent several hundred thousand dollars in going to a foreign court to retrieve his daughter.

Masry had a gambler's faith, said Maxwell, of **Maxwell & Barke LLC** in Rockville.

"He took a stack of \$100 chips and he put them on the space marked U.S.



SUBMITTED PHOTO

A judge ordered young Malak to return to her native Egypt with her father, following an international legal battle.

and he hoped he was making the right bet," Maxwell said of El Masry.

"He surrendered to the process of the court," Maxwell added. "He was rewarded for doing so."

El Masry left for Egypt with his daughter within hours of Salant's May 6 ruling, Maxwell said.

The mother, Nasser, has not decided if she wants to appeal Salant's ruling, said her attorney, Stephen J. Cullen, of

Miles & Stockbridge PC in Baltimore.

Salant declined to render a custody determination, saying that issues of primary care and visitation must be decided by the Egyptian courts. Salant said his ruling was limited to an order that the child return to Egypt with her father.

The litigation, like many lawsuits between mothers and fathers, came down to she said-he said, and Salant

found the man more credible.

As in any parental dispute, the judge also considered the child's best interests, which were represented in the case by attorney Linda A. Delaney, of **Delaney McKinney LLP** in Chevy Chase.

Salant also appointed a psychologist, whom Delaney had recommended, to evaluate Malak.

Delaney and the psychologist, Ruth Zitner, recommended that Malak be returned to Egypt with her father, who was also the primary custodian for her brother, Nadeem.

A 'competition of cultures'

Despite its similarities to family-law litigation, the case presented the complex issue of whether and how a U.S. court should enforce the order of a foreign court, especially one in a country with a rule of law rooted in religious rather than statutory law.

Maxwell praised Salant for navigating this "competition of cultures" in ruling, first, that the Egyptian order should be recognized and, second, that it should be enforced.

Salant said recognition was warranted because the ruling complied with American notions of due process, including notice and an opportunity to appeal. As for enforcement, Salant saw a loving father, who had his daughter's interests foremost in mind in wanting to bring her back to Egypt, Maxwell said.

"Best interest of the child' is not a mathematical calculation," Maxwell said in noting the difficulty of Salant's decision.

Much like the case they litigated in Rockville, the relationship between Malak's parents is complex.

El Masry and Nasser married in 1993. Their son, Nadeem, was born in 1995, followed by Malak, on Oct. 31, 2001.

The couple subsequently separated and remarried twice before splitting again in 2004. Nasser took Malak and El Masry took Nadeem.

Nasser thwarted El Masry's efforts to visit his daughter, Salant said.

El Masry did not see Malak until two years later, when he went to her school. After that visit, Malak — "for some reason" — stopped attending the school and El Masry again could not obtain visitation, the judge said.

El Masry responded by getting a "ne exeat" order from the Egyptian court on Dec. 12, 2006. The order barred Nasser from taking Malak out of Egypt.

Nasser appealed the decision but lost.

She subsequently claimed El Masry had injured her and filed multiple protective orders, which kept him from seeing his daughter, Salant said.

Then, in the spring of 2008, El Masry's received the notice that his child support payment was undeliverable. Once El Masry discovered that Nasser and Malak were living in Silver

Spring with Nasser's mother, he retained Maxwell to help him recover his daughter through the courts.

Assessing credibility

In her testimony in Salant's courtroom, Nasser said she took Malak from Egypt to Dubai in May 2008, then to Germany in July 2008 and finally to the United States in

August 2008. Salant stated in his ruling that Nasser faces outstanding charges in Egypt of suspected passport fraud.

Salant called much of Nasser's testimony unbelievable. He said she told "an out and out lie" in contending she had no knowledge of the Egyptian order not to take Malak out of the country.

Belying her claim of ignorance, Nasser had in fact appealed the order in Egyptian courts unsuccessfully

before taking Malak on the odyssey from Egypt to Silver Spring, the judge said.

By contrast, Salant called El Masry a loving father who put his daughter first.

"He would go to the ends of the Earth for this child, and he did," Salant said, noting that El Masry, an executive at an oil-services company, had traveled back and forth between Egypt and Montgomery County in January, March and April with his son.

"I'm frankly amazed at how he was able to do that," Salant said. "Now clearly, he couldn't have done it without the resources, but that's not the point. The point is he uprooted his whole life for this child. I don't know what more you can ask a parent to do."

Salant ordered that the father bring Malak back to Egypt himself, rather than permit the mother to return the child.

All parties represented

Delaney, the best-interest attorney, hailed Salant's decision to allow the father to return with Malak and her brother to Egypt after a separation of two years.

Due to this reconciliation, Malak has a relationship not only with her mother but with her father and brother, Delaney said.

"This child has two parents in her life," Delaney added. "They both fought over her."

Even in defeat, Cullen, Nasser's lawyer, praised Maxwell, Maxwell's co-counsel Joel R. Zuckerman and Delaney for the quality of their arguments in such unusual litigation.

"The case just crystallizes the desperate need for representation in particularly complex family-law matters with international aspects," Cullen said. "Win, lose or draw, every lawyer in that courtroom knew that due process went on and that everyone was properly represented."



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JUDGE STEVEN G. SALANT
Montgomery County Circuit Court