

Abducted

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helped him abduct their four children. She was awarded \$10,000, but the state Supreme Court overruled the decision because the parents had joint custody.

If they won't now overturn the ruling, Dalbec hopes the justices will consider allowing Vakizadeh's prosecution another way. Dalbec suggests that a family court judge's grant of visitation rights to Saba's father implied that the mother had physical custody of the girl.

Dalbec said he prefers to see Marshak overturned, fearing that the problem will arise again.

"It's just bad law," he told the justices, raising a few of their eyebrows.

Is a battered woman who takes herself and her children to a secret shelter to avoid further abuse then guilty of custodial interference, the justices asked of Dalbec.

His answer was that if she took the children for a prolonged period without using the courts to obtain a restraining order or other protection from the abusive husband, then her actions would be interfering.

Mirjavadi, 29, wants to see Vakizadeh prosecuted in hopes that her ex-husband will be pressured to return to the United States with Saba.

The mother came here and divorced Orang Farbiz. She alleged in court documents that Farbiz beat her regularly in Iran since 1993. Farbiz has denied those claims. Mirjavadi has said she tolerated the beatings

because she had no recourse in Iran.

She has political asylum in the United States but would face criminal charges, for leaving Iran without her husband, if she returned there.

Vakizadeh's attorney, Glenn Conway of New Haven, agreed with Dalbec that Marshak protects his client from criminal charges. But, he believes the law should stand.

Senior Justice Ellen Peters questioned Conway about whether the Marshak decision really prevents the high court from ruling in Dalbec's favor.

"If I'm allowed to see my child only in the company of (a supervisor), it seems difficult for me to say that I can take that child out of the country," Peters said.

Conway said the state Legislature didn't write any nuances into the law on custodial interference that would account for such a situation.

He also maintained that Mirjavadi's endangered position was in part the result of her own inaction.

"There were plenty of tools out there for the parties," he said. "The parties could have moved for sole custody."

The state Supreme Court heard these arguments for the second time yesterday. The case was argued before five justices last spring. But the case was reconsidered en banc, meaning by all seven justices, yesterday. Such a hearing is often arranged when the high court is considering reversing one of its previous decisions, appeals attorneys have said.

High court reviews case of child abducted at mall by her father

By Kerry Tesoriero
Staff Writer

For a little girl to be returned to her Stamford mother, justices of the state's highest court may have to admit they were wrong about a previous decision, a state's attorney argued yesterday.

Saba Farbiz, 5, hasn't seen her mother, Leyla Mirjavadi, for nearly three years, since her father abducted her at the Stamford Town Center mall and took her to their homeland of Iran.

The girl had been living in Stamford with her mother, who was recently divorced. Her parents had joint custody of her, but her father was only allowed supervised visits. Whether taking the child was a crime remains undecided.

An uncle who helped in the abduction, Anthony Vakizadeh, was cleared of wrongdoing by former state Superior Court Judge Harold Dean. The judge said his hands were tied by a pre-

vious Supreme Court ruling.

Yesterday, that former ruling, *Marshak v. Marshak*, was before the state's highest court again. Senior Assistant State's Attorney Leon Dalbec argued that Saba's father and uncle committed first-degree custodial interference.

But he admits that the law today, formed by the *Marshak* ruling, says their actions were legal. Any parent with joint custody could keep their children from the other parent indefinitely, according to Marshak. He argued that common sense says that's wrong and that Marshak should be overturned.

"If it stands, joint custodians will have absolutely no protection," Dalbec said. "It's first come, first served. Whoever decides to run away with the child is (allowed) by this court."

In *Marshak vs. Marshak*, Karel Marshak of Waterbury sued her husband's friend, mother and others, claiming they

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