

Commentary: Appellate Court Cases

Hernandez v. Cardoso, 844 F.3d 692 (7th Cir. 2016)

Other Seventh Circuit Cases

Martinez v. Cahue,
826 F.3d 983 (7th Cir. 2016)

Redmond v. Redmond,
724 F.3d 729 (7th Cir. 2013)

Walker v. Walker,
701 F.3d 1110 (7th Cir. 2012)

Khan v. Fatima,
680 F.3d 781 (7th Cir. 2012)

Norinder v. Fuentes,
657 F.3d 526 (7th Cir. 2011)

Altamiranda Vale v. Avila,
538 F.3d 581 (7th Cir. 2008)

Kijowska v. Haines,
463 F.3d 583 (7th Cir. 2006)

Koch v. Koch,
450 F.3d 703 (7th Cir. 2006)

Van De Sande v. Van De Sande,
431 F.3d 567 (7th Cir. 2005)

Grave Risk Defense | Intimate Partner Violence in Child's Presence

In this case, the Seventh Circuit applied a clear error standard when reviewing factual determinations made by a district court and addressed whether there was sufficient evidence domestic violence to sustain the defense of grave risk.

Facts

Mother left Mexico with her two children, an eight-year-old son and a fourteen-year-old daughter. Mother's removal of the children was in violation of the father's custody rights. Approximately seven months after the children's removal, father discovered that mother and the children were in Chicago, Illinois. Father demanded the return of the children to Mexico. In response, mother returned the daughter but refused to return the son. Father filed a petition for the return of his son in December 2015. At the evidentiary hearing, the district court found that mother credibly testified about a continuous pattern of physical abuse against both her and their son. Father deliberately abused mother in the presence of the

children despite her attempts to insulate the children from the abuse. The son was questioned by the court in camera, and he substantiated mother's claims. The district court found that returning the son to Mexico would expose him to grave risk of harm under Article 13(b) of the Convention, and it denied father's petition for return.

Discussion

The Seventh Circuit evaluated whether the district court's determination of mother and the son's credibility formed a sufficient basis upon which to deny father's petition for return of the son to Mexico.

The circuit court affirmed the district court's decision to deny return of the child due to grave risk of physical or psychological harm. Neither party disputed that the child had been wrongfully removed from Mexico. The only issue in the case was whether the grave risk defense was supported by sufficient evidence. The Seventh Circuit stated that the standard of review of factual determinations was whether the trial court's de-

terminations constituted clear error. Citing its decision in *Ortiz v. Martinez*,¹ the Seventh Circuit reiterated,

“Under the clear error standard, we will not overturn the district court’s factual findings unless, after reviewing all the evidence, we are ‘left with [a] definite and firm conviction that a mistake has been [made].’ In other words, a district court’s credibility findings are ‘binding on appeal unless the [court] has chosen to credit exceedingly improbable testimony.’”²

Citing to its previous holding in *Khan v. Fatima*,³ the court found that the existence of repeated physical and psychological abuse of a child’s mother in the presence of the child “is likely to create a risk of psychological harm to the child.”⁴

1. 789 F.3d 722 (7th Cir 2015).

2. *Hernandez v. Cardoso*, 844 F.3d 692, 695 (7th Cir. 2016) (citations omitted) (quoting *Ortiz*, 789 F.3d at 728–29).

3. 680 F.3d 781 (7th Cir. 2012).

4. *Hernandez*, 844 F.3d at 696 (quoting *Khan*, 680 F.3d at 787).