

Commentary: District Court Cases

Wan v. Debolt, No. 20-cv-3233, 2020 U.S. Dist. LEXIS 197996 (C.D. Ill. Oct. 26, 2020)

Other District Court Cases

Adkins v. Adkins,

No. 19-cv-05535-HSG, 2020 U.S. Dist. LEXIS 207559 (N.D. Cal. Nov. 5, 2020)

Jacquety v. Baptista,

19 Civ. 9642 (VM), 2020 WL 5946562 (S.D.N.Y. Oct. 7, 2020)

Da Silva v. Vieira,

No. 6:20-cv-1301-Orl-37GJK, 2020 U.S. Dist. LEXIS 174167 (M.D. Fla. Sep. 23, 2020)

Trott v. Trott,

No. 20-CV-1392 (AMD) (CLP), 2020 U.S. Dist. LEXIS 151818 (E.D.N.Y. Aug. 21, 2020)

Leon v. Ruiz,

No. MO:19-CV-00293-RCG, 2020 U.S. Dist. LEXIS 43758 (W.D. Tex. Mar. 13, 2020)

Cunningham v. Cunningham,

237 F. Supp. 3d 1246 (M.D. Fla. 2017)

Marquez v. Castillo,

72 F. Supp. 3d 1280 (M.D. Fla. 2014)

Hague Convention in Force

In this case, a mother filed a motion for summary judgment seeking dismissal of the father’s petition for return of their child under the International Child Abduction Remedies Act (ICARA), on the premise that a presidential executive order asserting China’s authority over Hong Kong nullified Hong Kong’s status as a party to the 1980 Hague Convention.

Holding

The district court ruled that neither the passage of the Hong Kong Autonomy Act¹ nor Executive Order 13936 revoking U.S. recognition of Hong Kong’s autonomy from China have an impact on Hong Kong’s status as a party to the 1980 Hague Convention. The mother’s motion to dismiss was denied.

Facts

A mother and father living in Hong Kong had two children, both born there. The children were dual citizens of the United States and Hong Kong. In July 2020, the mother took the children from their

home in Hong Kong for a vacation to visit relatives in Illinois. The father consented to the trip, but the mother refused to return the children to Hong Kong in August 2020, the date set for return. Hong Kong is a separate country but has been unified with China since 1997 under a “one country, two systems” policy. This policy was to continue until 2047 under a 1984 treaty between Hong Kong, China, and the United Kingdom. Under that treaty, Hong Kong enjoyed substantial autonomy from China.

In 1992, Congress enacted the United States–Hong Kong Policy Act to govern policy between the two countries.² One section of that act provides that if the president determines that Hong Kong

is not legally competent to carry out its obligations under any such treaty or other international agreement, or that the continuation of Hong Kong’s obligations or

1. 116 P.L. 149, 134 Stat. 663, 2020 Enacted H.R. 7440, 116 Enacted H.R. 7440.

2. United States–Hong Kong Policy Act of 1992, P.L. 102–383, October 5, 1992, 106 Stat. 1448.

rights under any such treaty or other international agreement is not appropriate under the circumstances, such determination shall be reported to the Congress in accordance with section 5731 of this title.³

In May 2020, China enacted a national security law that undermined Hong Kong's autonomy. In response, the U.S. Congress passed the Hong Kong Autonomy Act, declaring that China must respect Hong Kong's autonomy as guaranteed by the 1984 joint declaration. The U.S. president issued an executive order suspending the United States–Hong Kong Policy Act, as related to various statutes and acts;⁴ this order did not include the 1980 Hague Convention.

Discussion

Noting the absence of any reference to the 1980 Convention in the executive order—despite the order specifically listing other legal obligations—the court found that Hong Kong's signatory status remained intact:

Without a clear pronouncement from the President of the United States or the United States Congress that the United States does not view Hong Kong as a signatory to the Hague Convention, this Court is not in a position to issue a ruling on the sovereignty of Hong Kong.⁵

3. 22 U.S.C.A. §5721.

4. Exec. Order No. 13936, 85 C.F.R. 43413 (2020).

5. *Wan v. Debolt*, No. 20-cv-3233, 2020 U.S. Dist. LEXIS 197996, at *9 (C.D. Ill. Oct. 26, 2020).