

Commentary: District Court Cases

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

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

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)

Comity

The Bermuda courts denied a mother's Hague petition for return of the parties' daughters to New York. While custody proceedings were pending in Bermuda, the mother unlawfully retained the children New York after a court-sanctioned visit. The district court granted the father's petition for the children's return to Bermuda, according comity to the Bermuda Court of Appeal's earlier ruling.

Holding

The district court accorded comity to the Bermuda court's prior judgment in the father's favor, and the father established a prima facie case for return under the Hague Convention.

Facts

A father and mother married in Bermuda in 2008. The father helped raise the mother's infant daughter from an earlier relationship, and they had another daughter together. After the couple separated in 2011, the mother obtained the father's consent to move to New York with the children.

He visited the children in New York, and they spent their summers in Bermuda. In 2018, the children refused to return to New York after their summer holiday, telling the father that they had been sexually abused in New York. The mother had reported the abuse to the police, and the perpetrator had been arrested, but the mother had not informed the father of the incident. The older child also reported that the mother was physically abusive and neglected the children.

When the father decided not to permit the girls to return to New York, the mother filed a Hague petition in the Bermuda courts. As part of that proceeding, social workers interviewed each daughter separately. The older child described the mother's behavior, which included physical abuse and leaving the children alone without food in the house, and the sexual abuse. Both girls said that although they wanted to visit their mother, they did not want to live with her.

The first-instance court granted the mother's petition for return, but this judgment was reversed on appeal. The Bermuda Court of Appeal ruled that the lower court did not

sufficiently address whether the girls' return to New York would create an "intolerable situation" under Article 13(b) of the Convention. The Bermuda appellate court held that the children should reside in Bermuda with the father, at least until the Bermuda courts reached a final custody determination.

In October 2018, the mother petitioned the Bermuda court that was hearing the custody case to permit the children to travel to New York for the Christmas holidays. Relying on a social worker's assessment that the children could safely visit the mother, the court granted her petition and warned her that she may be held in contempt of court if she did not return the children by January 3. But the mother did not return the children, and the father filed a petition in U.S. federal court for return of the children on January 6, 2019.

The district court found that the Bermuda Court of Appeal conducted a "meticulous review of the record and a well-reasoned application of the Hague Convention" and was entitled to comity.¹ It also reiterated that review of a Hague petition is not a custody determination and pointed out that the custody proceedings in the case were ongoing. The district court also concluded that the father established a prima facie case under the Convention: the children were habitual residents of Bermuda, they were wrongfully retained in breach of the father's custody rights, and the father was exercising those rights at the time of the mother's wrongful retention. The court denied the mother's motion to dismiss.

Discussion

Resolution of father's petition rested on whether the district court chose to extend comity to the decision of the Bermuda Court of Appeal. Noting that comity—recognition of the judicial acts of another nation—is at the heart of the Hague Convention, the district court reviewed the case history and appellate court judgment as well as the mother's argument and applicable U.S. case law. U.S. courts are inclined to defer to foreign court determinations in a Hague case.² But comity can be refused when the defects in a foreign judgment result in a misinterpretation of the Hague Convention.

In *Hilton v. Guyot*,³ the Supreme Court held that comity is neither a matter of absolute obligation nor of mere courtesy and goodwill. Rather, under the principles of international comity, the United States may recognize the judicial, executive, or legislative actions of another nation as long as doing so is consistent with U.S. law.⁴ If a court deems that according comity to a foreign judgment is appropriate, it should not readjudicate the foreign court proceeding unless there are specific, compelling reasons to do so.

Although the acceptance of treaty partnership with other nations signifies a certain degree of trust that the courts of other countries will safeguard the interests of children with the same degree of concern as in the United States, U.S. courts will review the substance

1. *Trott v. Trott*, No. 20-CV-1392 (AMD) (CLP), 2020 U.S. Dist. LEXIS 151818, at *13 (E.D.N.Y. Aug. 21, 2020).

2. *Id.* at *12–*13 (quoting *Asvesta v. Petroutsas*, 580 F.3d 1000, 1011 (9th Cir. 2009) (quoting *Diorinou v. Mezitis*, 237 F.3d 133, 145 (2d Cir. 2001))).

3. 159 U.S. 113 (1895).

4. *Id.* at 113.

of foreign court rulings.⁵ Comity is not granted in all cases. For example, in *Asvesta v. Petroutsas*,⁶ the Ninth Circuit concluded that the Greek court granted a mother’s petition for return in error.

After reviewing the facts of this case and the decision of the Bermuda Court of Appeals, the district court concluded that the decision to deny the mother’s petition for return of the children to New York “was not unreasonable, a clear misinterpretation of the Hague Convention, or contrary to the Convention’s fundamental objections.”⁷

5. See, e.g., *Souratgar v. Lee (Souratgar II)*, 720 F.3d 96 (2d Cir. 2013).

6. 580 F.3d 1000 (9th Cir. 2009).

7. *Trott*, 2020 U.S. Dist. LEXIS 151818, at *20.