

UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Martinez v. Cahue

826 F.3d 983 (7th Cir. 2016) · Decided June 24, 2016

SUMMARY

The Seventh Circuit held that a child’s habitual residence had shifted from Illinois to Mexico under the Hague Convention on the Civil Aspects of International Child Abduction. Because the mother had sole custody under Illinois law and the father lacked Convention custody rights, his retention of the child in Illinois was wrongful. The court rejected the asserted defenses and ordered the child returned to Mexico.

CASE DETAILS

COURT	United States Court of Appeals for the Seventh Circuit
WRITING FOR THE COURT	Chief Judge Diane P. Wood; Judge William J. Bauer; Judge Joel M. Flaum
JURISDICTION	Federal
DECIDED	June 24, 2016
DISPOSITION	reversed
PROCEDURAL POSTURE	Martinez appealed the Northern District of Illinois's dismissal of her petition under the Hague Convention and the International Child Abduction Remedies Act seeking the return of her child to Mexico.
STANDARD OF REVIEW	The court reviewed factual findings for clear error, legal conclusions and the legal framework de novo, and treated habitual residence as a mixed question of law and fact subject to de novo review while reviewing underlying historical facts deferentially.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Jaded Mahelet Ruvalcaba Martinez v. Peter Valdez Cahue

TOPICS

- child custody
- relocation
- family law procedure
- remedies
- foreign affairs

PRACTICE AREAS

- family law
- international child abduction
- civil procedure
- remedies
- foreign affairs

QUESTIONS PRESENTED

1. Whether Mexico became A.M.'s habitual residence under the Hague Convention when Martinez moved there with him without Cahue's agreement.
2. Whether Cahue possessed rights of custody under Illinois law or the Hague Convention that made Martinez's move to Mexico wrongful or gave his intent legal significance.
3. Whether Cahue's retention of A.M. in Illinois was wrongful under the Hague Convention.
4. Whether the settled-child or acquiescence defenses excused return of A.M. to Mexico.

HOLDINGS

1. A.M.'s habitual residence changed from Illinois to Mexico before Cahue retained him in Illinois.
2. Cahue had no right of custody or no exact right under Illinois law that restricted Martinez's relocation to Mexico.
3. Cahue's retention of A.M. in Illinois was wrongful under the Hague Convention.
4. The record did not support applying either the settled-child or acquiescence defense, and Cahue's deliberate circumvention of Convention procedures weighed strongly against allowing the defenses.

KEY QUOTATIONS

“The Convention represents an international effort to deal with the vexing problem of child custody when more than one country is involved.” (826 F.3d at 989)

“The two most important factors in the analysis are parental intent and the child’s acclimatization to the proposed home jurisdiction.” (826 F.3d at 990)

“At both times that mattered, Cahue had no legal right to decide A.M.’s residence, and Martinez had an unrestricted right to do so.” (826 F.3d at 992)

“Where applying a defense would undermine the deterrent effect of the Convention’s system, a court should hesitate to take that step.” (826 F.3d at 993)

“Here, declining to apply the Convention’s remedy of return would do just that.” (826 F.3d at 994)

FACTUAL BACKGROUND

A.M. was born in Illinois and lived there with Martinez, his unmarried mother, until Martinez moved with him to Mexico in 2013. Martinez and Cahue had a private visitation agreement, but Cahue had never obtained a custody order or other legal right to determine A.M.'s residence. After A.M. made an agreed visit to Illinois in July 2014, Cahue intentionally retained him, obtained emergency state-court possession, and refused to return him to Mexico, where A.M. had established school, family, social, religious, and athletic connections.

PROCEDURAL HISTORY

After Cahue retained the child in Illinois, he obtained emergency possession and later a state-court custody judgment. Martinez filed a Hague Convention petition through the Mexican Central Authority and then

commenced an emergency proceeding in the Northern District of Illinois. Following an evidentiary hearing, the district court found that the child had acclimatized to Mexico but concluded that Illinois remained the child's habitual residence because the parents lacked shared intent to move there, and it dismissed the petition. The Seventh Circuit reversed and ordered the child's return to Mexico.

DISPOSITION

reversed

REMAND INSTRUCTIONS

No remand was ordered. The court directly ordered that A.M. be returned to Martinez's custody in Mexico at the earliest possible time.

CASES CITED

- Garcia v. Pinelo, 808 F.3d 1158, 1162, 1164, 1167-69 (7th Cir. 2015)
- Redmond v. Redmond, 724 F.3d 729, 732, 737-39, 742-47 (7th Cir. 2013)
- Walker v. Walker, 701 F.3d 1110, 1116, 1121 (7th Cir. 2012)
- Whallon v. Lynn, 230 F.3d 450, 456 (1st Cir. 2000)
- Ornelas v. United States, 517 U.S. 690, 697 (1996)
- Koch v. Koch, 450 F.3d 703, 710 (7th Cir. 2006)
- Mozes v. Mozes, 239 F.3d 1067, 1071, 1076, 1081 (9th Cir. 2001)
- In re Parentage of R.B.P., 915 N.E.2d 434, 439 (Ill. App. Ct. 2009)
- Hedrich v. Mack, 27 N.E.3d 666, 670 (Ill. App. Ct. 2015)
- Fisher v. Waldrop, 849 N.E.2d 334 (Ill. 2006)
- In re Arthur H., 819 N.E.2d 734, 756-57 (Ill. 2004) (Garman, J., dissenting)
- In re Marriage of Linta, 18 N.E.3d 566, 570 (Ill. App. Ct. 2014)
- Abbott v. Abbott, 560 U.S. 1, 10, 13 (2010)
- In re Parentage of J.W., 990 N.E.2d 698, 706 (Ill. App. Ct. 2013)
- J.S.A. v. M.H., 863 N.E.2d 236, 253 (Ill. 2007)
- White v. White, 718 F.3d 300, 304-06 (4th Cir. 2013)
- de Silva v. Pitts, 481 F.3d 1279, 1285 (10th Cir. 2007)
- Kijowska v. Haines, 463 F.3d 583, 588-89 (7th Cir. 2006)