

UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Vasquez v. Acevedo

Vasquez v. Acevedo, 931 F.3d 519 (6th Cir. 2019) · Decided July 24, 2019

SUMMARY

Vasquez v. Acevedo, 931 F.3d 519 (6th Cir. 2019). In a Hague Convention on International Child Abduction petition, the Sixth Circuit affirmed the denial of the father’s claim of wrongful retention, holding that the United States was the child’s habitual residence. For a very young child (two years and four months old), the court applied the parental-intent standard, looking to the parents’ last shared mutual intent for the child’s residence, rather than the acclimatization standard. Clear error review applies to the district court’s habitual-residence findings, and the court found no clear error in the conclusion that the father knew the mother intended to remain in the United States with the child and acquiesced in that plan. The case clarifies the choice between acclimatization and parental-intent standards for infants and toddlers lacking cognizance to acclimatize.

CASE DETAILS

COURT	United States Court of Appeals for the Sixth Circuit
WRITING FOR THE COURT	McKeague; Batchelder; Nalbandian
JURISDICTION	Federal
DECIDED	July 24, 2019
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the denial of a Hague Convention petition by the United States District Court for the Middle District of Tennessee.
STANDARD OF REVIEW	The district court's choice of habitual-residence standard is reviewed de novo; its findings of habitual residence under either standard are reviewed for clear error.
PRECEDENTIAL VALUE	Published
PARTIES	Edison Alberto Carvajal Vasquez v. Paola Andrea Gamba Acevedo

TOPICS

family law

child custody

international comity

standard of review

appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the district court erred in choosing the parental-intent standard over the acclimatization standard to determine habitual residence.
2. Whether the district court clearly erred in finding that the parents' last shared intent was for the child to live in the United States.

HOLDINGS

1. The district court's choice of the parental-intent standard was not erroneous under either de novo or deferential review.
2. The district court's finding of habitual residence based on parental intent was not clearly erroneous.

KEY QUOTATIONS

"The purpose of the Hague Convention is to prevent parents from gaining custody of children 'by virtue of their wrongful removal or retention.'" (523)

"The goals of the treaty are 'to restore the pre-abduction status quo and to deter parents from crossing borders in search of a more sympathetic court.'" (523)

"The only question in this case is 'where [the] custody determination should be made.'" (524)

"The underlying custody dispute is 'forbidden territory.'" (524)

"Under the acclimatization standard, 'the court must focus on the child, not the parents, and examine past experience, not future intentions.'" (525)

"In such cases, we look to the parental-intent standard, that is, 'the parents' last settled mutual intent for where their child would live.'" (525)

"Clear error review is 'highly deferential,' and the district court must be affirmed 'unless the fact findings strike us as wrong with the force of a five-week-old, unrefrigerated dead fish.'" (528)

FACTUAL BACKGROUND

The child TCG, born in Colombia, was brought to the United States by his father Carvajal in August 2016, after the mother Gamba had entered the United States illegally and was detained. Carvajal left TCG with Gamba's sister in Tennessee and returned to Colombia. After Gamba's release, she lived with TCG in Tennessee. Carvajal visited in December 2016 and proposed marriage, then returned to Colombia. The engagement ended in February 2017, and Carvajal filed a criminal complaint in Colombia and later a Hague petition in Tennessee, alleging wrongful retention. The district court found that the United States was TCG's habitual residence based on the parents' last shared intent.

PROCEDURAL HISTORY

Carvajal filed a petition under the Hague Convention alleging wrongful retention of his child in the United States. The district court denied the petition, finding that the United States was the child's habitual residence. Carvajal appealed.

DISPOSITION

affirmed

CASES CITED

- Friedrich v. Friedrich (Friedrich II), 78 F.3d 1060 (6th Cir. 1996)
- Jenkins v. Jenkins, 569 F.3d 549 (6th Cir. 2009)
- Robert v. Tesson, 507 F.3d 981 (6th Cir. 2007)
- Taglieri v. Monasky, 907 F.3d 404 (6th Cir. 2018) (en banc)
- Friedrich v. Friedrich (Friedrich I), 983 F.2d 1396 (6th Cir. 1995)
- Ahmed v. Ahmed, 867 F.3d 682 (6th Cir. 2017)
- Gitter v. Gitter, 396 F.3d 124 (2d Cir. 2005)
- Pullman-Standard v. Swint, 456 U.S. 273 (1982)
- Flores-Aldape v. Kamash, 202 F. Supp. 3d 793 (N.D. Ohio 2016)
- Holder v. Holder, 392 F.3d 1009 (9th Cir. 2004)
- Delvoye v. Lee, 329 F.3d 330 (3d Cir. 2003)
- Whiting v. Krassner, 391 F.3d 540 (3d Cir. 2004)
- Karkkainen v. Kovalchuk, 445 F.3d 280 (3d Cir. 2006)
- Mozes v. Mozes, 239 F.3d 1067 (9th Cir. 2001)
- Maxwell v. Maxwell, 588 F.3d 245 (4th Cir. 2009)
- Barzilay v. Barzilay, 600 F.3d 912 (8th Cir. 2010)
- United States v. Perry, 908 F.2d 56 (6th Cir. 1990)
- Liberty Mut. Ins. Co. v. Rotches Pork Packers, Inc., 969 F.2d 1384 (2d Cir. 1992)