

# Commentary: Appellate Court Cases

## West v. Dobrev, 735 F.3d 921 (10th Cir. 2013)

### Other Tenth Circuit Cases

**Leser v. Berridge**,  
668 F.3d 1202 (10th Cir. 2011)

**Navani v. Shahani**,  
496 F.3d 1121 (10th Cir. 2007)

**de Silva v. Pitts**,  
481 F.3d 1279 (10th Cir. 2007)

**Shealy v. Shealy**,  
295 F.3d 1117 (10th Cir. 2002)

**Ohlander v. Larson**,  
114 F.3d 1531 (10th Cir. 1997)

### Summary Judgment | Sua Sponte Orders

This case touches on motions for summary judgment in connection with Hague Convention cases. Because of the emphasis on expedited proceedings, many courts have used summary judgment procedures to eliminate unmeritorious cases and narrow issues to those where there is a real and material dispute. Rule 56 sets out considerations and procedures for summary judgments, and provides that a court may grant a summary judgment where there is no genuine dispute as to any material fact, and the moving party is entitled to judgment as a matter of law.

### Facts

Mother petitioned the district court for the return of her two children to Belgium; they were being retained in Utah by their father after the conclusion of their vacation with him. The district court held a preliminary hearing six days after the petition was filed, during which time the parties provided documentation to support their claims. Mother presented evidence that established a prima facie case for the return of the children—that the children’s habitual residence was Belgium, that she had enforceable custody rights, and that father had wrongfully retained the children. Father asserted an Article 13(b) defense that the children would be exposed to a grave risk if returned to Belgium, but he had no actual evidence that he could present that such a grave risk existed. What father really wanted was additional time to be able to investigate whether there was abuse. Based upon the oral and written submissions of the parties, the district court issued a brief written decision granting mother’s petition and ordered the children returned to Belgium.

### Discussion

**Summary Judgment Procedure.** The Tenth Circuit recognized that Article 11 of the Convention exhorts court to act expeditiously to determine petitions made for return of children. The court noted that a district court has a great deal of discretion to determine the procedures necessary to resolve a Hague case. Quoting *March v. Levine*,<sup>1</sup> the court observed that neither the Convention, nor ICARA, nor any constitutional provisions require that an evidentiary hearing or discovery be allowed, as a matter of right, in Hague Convention proceedings. In this case, mother had easily made out a prima facie case for return, and father was unable to provide any credible evidence that supported his

1. 249 F.3d 462, 474 (6th Cir. 2001).

claim of a grave risk under Article 13. At most, his submissions amounted to a “fishing expedition.” Rejecting father’s claims that he had been denied due process by the lack of an evidentiary hearing, the court held that the father had a meaningful opportunity to be heard and no denial of due process occurred.