

# Commentary: Supreme Court Cases

## Chafin v. Chafin, 133 S. Ct. 1017 (2013)

### Other Supreme Court Cases

**Abbott v. Abbott**,  
560 U.S. 1 (2010)

**Lozano v. Montoya Alvarez**,  
134 S. Ct. 1224 (2014)

### Mootness | Stays | Expeditious Handling

The primary question presented in this case is whether an appeal from an order of a U.S. court returning a child to his or her habitual residence is moot once the child has been physically returned to the habitual residence and is no longer present in the United States. Overruling *Bekier v. Bekier*,<sup>1</sup> the Supreme Court held that the return

of a child to his or her habitual residence pursuant to an order of a trial court does not render an appeal from that order moot.

### Facts

Father and mother had a child in Germany. Mother was a citizen of the United Kingdom and father was a U.S. citizen in the military. Father was deployed to Afghanistan. Mother and the child went to Scotland. After father's tour of duty in Afghanistan he was transferred to Alabama. Mother and the child then relocated to Alabama to be with father. Father then filed for divorce and custody in Alabama. Due to an incident where she was arrested for domestic violence, mother was deported back to the United Kingdom, and the child remained with father. Mother thereupon filed a petition in U.S. district court requesting the child's return to Scotland. The district court found that the child's habitual residence was in Scotland and granted the petition. Mother immediately left for Scotland with the child. On father's appeal to the Eleventh Circuit, the court dismissed the appeal as moot, on the grounds that once a child has been taken to a foreign country, U.S. courts are powerless to grant relief.

### Discussion

**Mootness.** In this case, both parties continued to actively pursue their own actions for custody of the child—mother in Scotland, and father in Alabama state courts. Father's custody action in Alabama was subsequently dismissed for lack of jurisdiction.

Federal courts have the power to act only in "Cases" and "Controversies."<sup>2</sup> A case is not moot so long as the parties have a "concrete interest, however small, in the outcome of the litigation."<sup>3</sup> A case becomes moot only where it is impossible for a court to grant any effectual relief to the prevailing parties.<sup>4</sup> The Supreme Court found that the *Chafin* case was not moot, as "concrete adverseness" existed: both parties continued

1. 248 F.3d 1051 (11th Cir. 2001).

2. U.S. Const. art. III.

3. *Chafin v. Chafin*, 133 S. Ct. 1017, 1023 (2013) (quoting *Knox v. Service Employees*, 132 S. Ct. 2277, 2287 (2012)).

4. *Knox*, at 2287.

to disagree over the place of the child's habitual residence, and father contested the award of \$94,000 in attorneys' fees to mother accrued as a result of the Hague litigation.

The Court next addressed whether a reversal and remand would amount to effective relief. Mother argued that the case was moot because the district court lacked the authority to order the return of the child to the United States. The Court rejected this argument because it conflated the merits with mootness. Whether father's request for relief was unlikely to succeed had no bearing on whether the case was actually moot. Mother further contended that even if the Eleventh Circuit dismissed the case for mootness, the issuance of an order to return the child would have no effect because the Scottish courts would ignore such an order. The court dismissed this argument as well, noting that U.S. courts had continuing personal jurisdiction over mother and could make orders and enforce them with sanctions.

Although the Court recognized that mother's compliance with a re-return order was uncertain, this uncertainty would not render the case moot. The Court pointed to cases where the insolvency of a defaulting party would not moot a claim for damages and instances where foreign nations may or may not comply with a U.S. court judgment. The parties had a "concrete interest" in the outcome of the case, even if there was uncertainty about whether one party would comply with the re-return order.

**Stays.** On the question of procedure, the Court recognized that "shuttling children back and forth . . . across international borders" may be detrimental and contrary to the Convention's aspiration of promoting a child's prompt return. The Supreme Court noted that lower courts possessed the "familiar judicial tools of expediting proceedings and granting stays where appropriate." If Hague cases were to become moot upon the return of children to their habitual residence, stays may be granted as a matter of course so that appellate rights would not be forfeited. If a stay is entered to preclude mootness, the goal of prompt return would be undermined, children would endure delays in readjusting to their habitual residence, and the number of appeals would increase.

The Court applied the factors courts traditionally invoke when petition for a stay is considered:

- (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.<sup>5</sup>

**Expedited Proceedings.** Finally, the Court reaffirmed the importance of ensuring expeditious proceedings:

In every case under the Hague Convention, the well-being of a child is at stake; application of the traditional stay factors ensures that each case will receive the individualized treatment necessary for appropriate consideration of the child's best interests.

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5. *Chafin*, at 1027 (quotation marks omitted).

Importantly, whether at the district or appellate court level, courts can and should take steps to decide these cases as expeditiously as possible, for the sake of the children who find themselves in such an unfortunate situation. Many courts already do so.<sup>6</sup>

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6. *Id.*