Commentary: Appellate Court Cases

Blondin v. Dubois (*Blondin I*), 189 F.3d 240 (2d Cir. 1999)
Blondin v. Dubois (*Blondin II*), 238 F.3d 153 (2d Cir. 2001)

Other Second Circuit Cases

Marks v. Hochhauser,
876 F.3d 416 (2d Cir. 2017)

Tann v. Bennett,
648 F. App'x 146 (2d Cir. 2016)

Ermini v. Vittori,
758 F.3d 153 (2d Cir. 2014)

Hollis v. O'Driscoll,
739 F.3d 108 (2d Cir. 2014)

Souratgar v. Lee,
720 F.3d 96 (2d Cir. 2013)

Guzzo v. Cristofano,
719 F.3d 100 (2d Cir. 2013)

Hofmann v. Sender,
716 F.3d 282 (2d Cir. 2013)

Ozaltin v. Ozaltin,
708 F.3d 355 (2d Cir. 2013)

Mota v. Castillo,
692 F.3d 108 (2d Cir. 2012)

Duran v. Beaumont,
622 F.3d 97 (2d Cir. 2012)

Gitter v. Gitter,
396 F.3d 124 (2d Cir. 2005)

Grieve v. Tamerin,
269 F.3d 149 (2d Cir. 2001)

Diorinou v. Mezitis,
237 F.3d 133 (2d Cir. 2001)

Grave Risk | Domestic Violence

Blondin I and *Blondin II* stand as authority for determining the depth and nature of domestic violence, and the efforts that courts should undertake to determine if, and under what circumstances, children should be ordered returned.

Blondin I and *Blondin II* held that courts should take into account any ameliorative measures, on the part of the parents or the government of the habitual residence, that might alleviate the existence of grave risk. This finding is the subject of a split between the circuits. The *Blondin* approach has been followed in the Third and Seventh Circuits and one appellate division in California.[1] The First, Sixth, and Eleventh Circuits rejected this approach, at least insofar as *Blondin* suggests that courts must determine whether the government of the habitual residence (and presumably the courts thereof) have the ability to provide measures that will assure the safety of the child upon return.[2]

Blondin I

In *Blondin I*, the district court found that returning the two children to France would place the children in "grave risk" of harm from their father. On this basis, return was denied. On appeal, the First Circuit did not disturb the district court's conclusion that the children should not be released into

1. *In re* Application of Adan, 437 F.3d 381 (3rd Cir. 2006); Van De Sande v. Van De Sande, 431 F.3d 567 (7th Cir. 2005); Maurizio R. v. L.C., 201 Cal. App. 4th 616, 637–638 (2011).

2. Danaipour v. McLarey (*Danaipour II*), 386 F.3d 289, 303 (1st Cir. 2004) (disagreeing that a court is required to make findings about the institutional capacity of a government to protect); Walsh v. Walsh, 221 F.3d 204, 219 (1st Cir. 2000); Friedrich v. Friedrich (*Friedrich II*), 78 F.3d 1060, 1069 (6th Cir. 1996) (dicta); Simcox v. Simcox, 511 F.3d 594, 608 (6th Cir. 2007) ("Once the district court determines that the grave risk threshold is met, only then is the court vested by the Convention with the discretion to refuse to order return. It is with this discretion that the court may then craft appropriate undertakings. Given the intensely fact-bound nature of the inquiry, district courts should be allowed adequate discretion."); Baran v. Beaty, 526 F.3d 1340 (11th Cir. 2008) (holding that the court is not required on finding of grave risk to also find that courts of habitual residence are incapable of protecting the child); Seaman v. Peterson, 766 F.3d 1252 (11th Cir. 2014).

the custody of their father, but remanded the case to the district court to determine the "fully panoply of arrangements that might allow the children to be returned to the country from which they were . . . abducted, in order to allow the courts of that nation an opportunity to adjudicate custody."

The facts underlying the 13(b) defense involved repeated beatings of the mother, with some of the blows falling on the daughter, and repeated threats to kill the mother and the children, with medical attention being necessary on two occasions, and the intervention of law enforcement on one occasion.

Blondin II

In *Blondin II*, the trial court again found that return of the children to France, "under any arrangement"[3] would expose the children to a grave risk of harm based upon the interruption of their recovery from the trauma suffered by them in France, uncertain custody proceedings in France, and the objection of one of the children to a return to France. The court additionally noted that the children would face a recurrence of "acute, severe traumatic stress disorder."[4]

The Second Circuit affirmed. The court revisited the scope of harm that constitutes a grave risk under Article 13(b), observing,

> [A]t one end of the spectrum are those situations where repatriation might cause inconvenience or hardship, eliminate certain educational or economic opportunities, or not comport with the child's preferences; at the other end of the spectrum are those situations in which the child faces a real risk of being hurt, physically or psychologically, as a result of repatriation. The former do not constitute a grave risk of harm under Article 13(b); the latter do.[5]

At the second trial in district court, mother presented expert testimony that the children would suffer psychological harm. That testimony was uncontroverted, as father produced no contrary evidence on the extent of any likely harm. Consequently, the Second Circuit affirmed the trial court's findings of grave risk that could not be ameliorated by any known measures.

Blondin II went on to reiterate the substance of its holding in *Blondin I* by explaining,

> We reiterate this requirement here: In cases of serious abuse, before a court may deny repatriation on the ground that a grave risk of harm exists under Article 13(b), it must examine the full range of options that might make possible the safe return of a child to the home country. Second, we do not read *Friedrich* as narrowly as the District Court seems inclined to do. As we have explained, in the instant case we confront a situation involving allegations of serious abuse and in which the authorities, through no fault of their own, may not be able to give the children adequate protection. *See Friedrich*, 78 F.3d at 1069. Although the wording in *Friedrich* might seem somewhat narrow, we believe the facts in the case at bar fall within the second standard set forth in that opinion. *See id.* (noting that grave risk of harm exists "in cases of serious abuse or neglect, or extraordinary emotional dependence, when the court in the country of habitual res-

3. Blondin v. Dubois, 78 F. Supp. 2d 283, 294 (S.D.N.Y. 2000).
4. *Id.* at 295.
5. Blondin v. Dubois (*Blondin II*), 238 F.3d 153, 162 (2d Cir. 2001).

idence, *for whatever reason*, may be incapable or unwilling to give the child adequate protection") (emphasis added).[6]

6. *Id.* at 163 n.11.