

Commentary: District Court Cases

Nowlan v. Nowlan, Civil Action No. 5:20cv00102, 2021 U.S. Dist. LEXIS 10824 (W.D. Va. Jan. 21, 2021)

Other District Court Cases

Babcock v. Babcock,
No. 3:20-cv-00066, 2020 U.S. Dist.
LEXIS 224778 (S.D. Iowa Nov. 30, 2020)

Adkins v. Adkins,
No. 19-cv-05535-HSG, 2020 U.S. Dist.
LEXIS 207559 (N.D. Cal. Nov. 5, 2020)

Wan v. Debolt,
No. 20-cv-3233, 2020 U.S. Dist. LEXIS
197996 (C.D. Ill. Oct. 26, 2020)

Jacquety v. Baptista,
19 Civ. 9642 (VM), 2020 WL 5946562
(S.D.N.Y. Oct. 7, 2020)

Da Silva v. Vieira,
No. 6:20-cv-1301-Orl-37GJK, 2020 U.S.
Dist. LEXIS 174167 (M.D. Fla. Sep. 23,
2020)

Trott v. Trott,
No. 20-CV-1392 (AMD) (CLP), 2020 U.S.
Dist. LEXIS 151818 (E.D.N.Y. Aug. 21,
2020)

Leon v. Ruiz,
No. MO:19-CV-00293-RCG, 2020 U.S.
Dist. LEXIS 43758 (W.D. Tex. Mar. 13,
2020)

Cunningham v. Cunningham,
237 F. Supp. 3d 1246 (M.D. Fla. 2017)

Marquez v. Castillo,
72 F. Supp. 3d 1280 (M.D. Fla. 2014)

Videoconference Testimony | Sixth Amendment Right to Confront and the Hague Convention

In this case, the petitioner made a pretrial request to appear by videoconference.

Holdings

The district court ruled that the balancing of factors weighed in favor of permitting videoconference testimony. It also ruled that the Sixth Amendment right to confrontation does not apply in civil cases.

Facts

The father, a member of the Canadian armed forces, requested permission from the court to appear via videoconference at the upcoming trial. As a member of the Canadian military, he had been assigned to an Ontario hospital, with curtailed travel options and opportunities. The mother opposed the request. She planned to raise a grave risk defense, alleging that the father sexually abused the child, and she argued that the court must assess the credibility of the father's testimony. The mother also argued that she had a due process right to confront and cross-examine the father in person.

Discussion

The court overruled the mother's objection to permitting the father's testimony by video link, noting his military obligations and the risks of travel during a global pandemic. The court held that the challenges of cross-examination by video were not insurmountable and pointed to its positive experience with video testimony in other cases.¹ The court agreed to permit latitude with cross- and recross-examination.

1. The court did not discuss the applicability of Federal Rule of Civil Procedure 43(a), which provides,

At trial, the witnesses' testimony must be taken in open court unless a federal statute, the Federal Rules of Evidence, these rules, or other rules adopted by the Supreme Court provide otherwise. For

The court also overruled the mother's due process objection, citing *Walden v. City of Chicago*² and *United States v. Cox*³ for the proposition that the Sixth Amendment right to in-person confrontation⁴ does not apply to civil cases.

good cause in compelling circumstances and with appropriate safeguards, the court may permit testimony in open court by contemporaneous transmission from a different location.

2. 846 F. Supp. 2d 963, 971 n.3 (N.D. Ill. 2012).

3. 549 F. App'x 169, 170 (4th Cir. 2013).

4. See *Crawford v. Washington*, 541 U.S. 36 (2004).