Commentary: Appellate Court Cases

Monzon v. De La Roca, 910 F.3d 92 (3d Cir. 2018)

Other Third Circuit Cases

Didon v. Castillo,
838 F.3d 313 (3d Cir. 2016)

Karpenko v. Leendertz,
619 F.3d 259 (3d Cir. 2010)

Tsai-Yi Yang v. Fu-Chiang Tsui (*Yang II*),
499 F.3d 259 (3d Cir. 2007)

Karkkainen v. Kovalchuk,
445 F.3d 280 (3d Cir. 2006)

***In re* Application of Adan**,
437 F.3d 381 (3d Cir. 2006)

Baxter v. Baxter,
423 F.3d 363 (3d Cir. 2005)

Yang v. Tsui (*Yang I*),
416 F.3d 199 (2005)

Whiting v. Krassner,
391 F.3d 540 (3d Cir. 2004)

Delvoye v. Lee,
329 F.3d 330 (3d Cir. 2003)

Feder v. Evans-Feder,
63 F.3d 217 (1995)

Commencement of Proceedings Defined | Article 12 Defense | Settlement

In this case, a father petitioned for the return of his child to Guatemala sixteen months after the child's removal by its mother. In the father's procedural objections, he sought to establish that the availability of an Article 12 delay defense is triggered by the later of either (1) the filing a civil petition in the court having jurisdiction, or (2) the filing of an administrative petition. He also sought to establish that under the International Child Abduction Remedies Act (ICARA), 22 U.S.C. §§ 9001–9011, a delay defense fails unless an Article 13b or Article 20 defense is also proven, and he argued that the evidence of the child's settlement was insufficient.

Facts

A father and mother, citizens of Guatemala, separated shortly after the birth of their only child in 2010. They divorced in 2014. The mother began a relationship with Deleon, a man who lived in New Jersey. In 2014, she married Deleon and, without the father's consent, brought their child to the United States to live. She disclosed to the father that she was in New Jersey with the child, but she did not disclose their address. The father commenced an administrative application for the child's return to Guatemala in August of 2014. When he discovered that an actual petition to a court in the United States was necessary, he filed his petition for return in the District Court of New Jersey in January of 2016—sixteen months after the child's departure from Guatemala.

The district court denied his petition for return, finding that the child was settled in New Jersey. Neither the mother, her new husband, nor the child had legal immigration status in the United States, but the mother and her husband both had pending petitions for asylum. The Third Circuit affirmed.

Discussion

Commencement of Proceedings. The Third Circuit found that the father had been diligent in attempting to secure the return of his child and acknowledged that he did not

speak English, could not afford counsel, and did not know the child's address. However, the court declined to find that these factors equitably served to extend the requirement that an actual petition be filed in court to commence return proceedings. The plain language of 22 U.S.C. § 9003(f)(3) requires the actual commencement of a civil proceeding for the one-year delay defense to apply under Article 12. The court noted that it does nevertheless have authority to order a child's return even in the face of a successful delay defense.

Delay Defense Does Not Require Proof of Additional Defenses. The father argued that the language of ICARA required an Article 12 defense to be accompanied by proof of an Article 13b or Article 20 defense. This was based on the language in ICARA stating that the person opposing return had the burden of proving

> (A) by clear and convincing evidence that one of the exceptions set forth in article 13b or 20 of the Convention applies; **and**
>
> (B) by a preponderance of the evidence that any other exception set forth in article 12 or 13 of the Convention applies."[1]

He argued that Congress intended to require proof of the existence of multiple defenses by the placement of the word "and" instead of "or" between paragraphs (A) and (B). The court disagreed, pointing to the text of the 1980 Hague Convention, its underlying principles, and precedent.[2] The court also noted that the defenses under the 1980 Convention were meant to apply individually and that it would strain reason to require that a party raising one defense must also establish an independent and potentially unrelated defense.

Settlement of the Child. The father challenged the district court's finding that the child was settled in his new environment, but the Third Circuit reviewed the district court's thorough analysis[3] and summarily disposed of the father's argument.

> [T]he District Court undertook an exceedingly thorough, careful, and thoughtful analysis of the evidence and the various factors that pertain to how well a child is settled in a community and home. We are satisfied that this record supports the District Court's finding that H.C. is well settled in his new environment.[4]

The district court had acknowledged that neither the mother, her husband, nor the child were legal residents in the United States and that all had applied for asylum. But the district court ruled that immigration status was not dispositive of the settlement issue and found that the child in this case was settled,[5] which the Third Circuit affirmed.

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1. 22 U.S.C. § 9003(e)(2) (emphasis added).

2. Monzon v. De La Roca, 910 F.3d 92, 102–105 (3d Cir. 2018) (citing Lozano v. Montoya Alvarez, 134 S. Ct. 1224 (2014)).

3. Castellanos Monzón v. De La Roca, Civil Action No. 16-0058 (FLW)(LHG), 2016 U.S. Dist. LEXIS 45825, at *38–40 (D.N.J. Apr. 5, 2016) ("[T]he factors . . . include: (1) the age of the child; (2) the stability of the child's new residence; (3) whether the child attends school or daycare consistently; (4) whether the child attends church regularly; (5) the stability of the parent's employment or other means of support; (6) whether the child has friends and relatives in the area; (7) to what extent the child has maintained ties to the country of habitual residence; (8) the level of parental involvement in the child's life; (9) active measures to conceal the child's whereabouts (and the possibility of criminal prosecution related thereto); and, (10) the immigration status of the child and parent.").

4. *Monzon*, 910 F.3d at 105–106 (citations omitted).

5. *Monzón*, Civil Action No. 16-0058 (FLW)(LHG), 2016 U.S. Dist. LEXIS 45825, at *46–48.