

Commentary: Appellate Court Cases

Padilla v. Troxell, 850 F.3d 168 (4th Cir. 2017)

Other Fourth Circuit Cases

Alcala v. Hernandez,
826 F.3d 161 (4th Cir. 2014)

Smedley v. Smedley,
772 F.3d 184 (4th Cir. 2014)

Reyes v. Jeffcoat,
548 Fed. Appx. 887 (4th Cir. 2013)

White v. White,
718 F.3d 300 (4th Cir. 2013)

Maxwell v. Maxwell,
588 F.3d 245 (4th Cir. 2009)

Bader v. Kramer (*Bader II*),
484 F.3d 666 (4th Cir. 2007)

Bader v. Kramer (*Bader I*),
445 F.3d 346 (4th Cir. 2006)

Cantor v. Cohen,
442 F.3d 196 (4th Cir. 2006)

Humphrey v. Humphrey,
434 F.3d 243 (4th Cir. 2006)

Miller v. Miller,
240 F.3d 392 (4th Cir. 2001)

Defenses | Consent – Facts Supporting Consent

This case involves whether mother consented to the removal of the child from Mexico to the United States. The opinion focuses upon the sufficiency of the facts supporting the defense of consent and the district court’s credibility findings.

Facts

The child in question was born in Oaxaca, Mexico, in 2011.¹ He was primarily raised by his maternal grandmother. Although father provided financial support for the child, he had little to no physical contact with the child until age two. In December 2014, mother and father went to the passport office in Oaxaca, where the parents signed for the child’s passport, and mother indicated that she agreed to sign over custody of the child to father because she believed that father would be able to get the child “on the right track.” After that, the child went to live with father at his home in Acapulco. In February 2015, the child was detained by Border Patrol agents after having entered the United States illegally with other undocumented individuals. Father

admitted that he had paid to have the child smuggled into the United States. The child was ultimately released to father.

After this, mother and father corresponded by text messages. Mother initially indicated that the child was better off with father in the United States and agreed to the child’s presence there, if she was permitted to see the child. The child’s maternal grandmother, however, was attempting to arrange the child’s return to Mexico. As late as a year after the child entered the United States, mother conceded to father that the best place for the child was the United States and that she was opposed to the maternal grandmother’s efforts to have the child returned to Mexico. At one point, mother indicated that she would support father’s continued custody of the child in the United States as long as father continued to provide mother with money. One message read “you for-

1. Respondent was designated as the child’s legal father by stipulation, although respondent was not the child’s biological father.

ward 3,000 please and I will give the guardian and custody, . . . I will do everything for [Child] to be with you but I really need the money.” Mother changed her position in February 2016 and requested the return of the child. Mother filed her petition for return in May 2016.

The district court denied mother’s petition for return, finding that the child had been wrongfully removed by father but sustaining father’s Article 13² defense of consent to removal. The Fifth Circuit affirmed.

Discussion

The court distinguished between the defenses of consent (permission given before the child is removed) and acquiescence (more formalized conduct occurring after the removal). Finding that father’s defense was properly characterized as consent, the court focused upon the subjective intent of the party allegedly giving consent, in this case, the mother. The Fourth Circuit upheld the district court’s finding of consent based upon the district court’s factual determinations, including mother’s lack of credibility. The facts supporting father’s defense were as follows:

- Mother willingly accompanying father to obtain the child’s passport
- Mother agreeing to assign custody of the child over to father
- Mother agreeing to grant custody of the child to father to enable child to have a better life
- Text messages from mother supporting father’s continued custody of the child in Virginia
- Mother’s repeated statements that the child was better off with father
- Lack of mother’s objection to the child remaining in the United States for over six months after his removal from Mexico
- Corroborating testimony of father’s fiancée and mother’s half-sister

2. Hague Convention on the Civil Aspects of International Child Abduction art. 13, Oct. 25, 1980, T.I.A.S. No. 11670, 19 I.L.M. 1501 (“[T]he judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that—a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention. . . .”).