

Commentary: Appellate Court Cases

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

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)

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)

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

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

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

Article 20 | Domestic Violence | Degree of Violence | Grave Risk to Child | Syariah Law

This case deals in part with the claim that the prospect of having to litigate custody in Syariah courts violates the provisions of Article 20, prohibiting the return of children if the return would be contrary to the protection of human rights and fundamental freedoms. There is also a substantial discussion as to what constitutes domestic violence sufficient to warrant a refusal to return a child.

Facts

Father and mother lived in Singapore, where they had a child in 2009. Mother obtained custody orders in Singapore, and then absconded with the child to Malaysia. After father located mother and the child, they all returned to Singapore, where custody proceedings continued. Both parents were restrained from removing the child from Singapore without the other's consent. In 2012, mother surreptitiously removed the child to New York. Upon locating mother, father commenced an action in district court for the child's return.

Discussion

Domestic Violence. Each parent claimed to be a victim of domestic violence inflicted by the other. While the court found that actual violence had occurred between spouses, there was no evidence of any violence directed toward the child. Citing to a Tenth Circuit case,¹ the court noted that a 13(b) defense did not lie where an order returning the child might place the abducting parent's safety at risk. Rather, the the court ruled that domestic violence evidence was not relevant to a defense to return unless the violence seriously endangered the child. The court recognized

risk. Rather, the the court ruled that domestic violence evidence was not relevant to a defense to return unless the violence seriously endangered the child. The court recognized

1. Charalambous v. Charalambous, 627 F.3d 462, 468 (1st Cir. 2010) (per curiam) (noting therein that mother's defense failed to "draw a connection . . . that any risk to her constituted a grave risk to the children).

that the test for harm to the child under Article 13(b) was very high, and involved not only the “magnitude of the potential harm, but also the probability that the harm will materialize”.²

The court distinguished the facts in this case from those where there was a stronger showing:

The circuit court cases affirming denial of repatriation cited by Lee are distinguishable in that the petitioning parent had actually abused, threatened to abuse, or inspired fear in the children in question. See *Khan v. Fatima*, 680 F.3d 781, 787 (7th Cir. 2012) (daughter told social worker she was “scared” of her father); *Simcox v. Simcox*, 511 F.3d [598,] 608 [(6th Cir. 2007)] (father subjected children to “repeated beatings, hair pulling, ear pulling, and belt-whipping” and psychological abuse); *Van De Sande v. Van De Sande*, 431 F.3d [567,] 570 [(7th Cir. 2005)] (father spanked daughter and threatened to kill wife and children); *Walsh v. Walsh*, 221 F.3d 204, 221–22 (1st Cir. 2000) (one child diagnosed with PTSD as a result of physical abuse and father repeatedly violated court orders); *Blondin II*, 189 F.3d at 243 (father tied cord around daughter’s neck and threatened to kill mother and daughter); see also *Baran v. Beaty*, 526 F.3d 1340, 1346 (11th Cir. 2008) (despite the absence of any evidence of past abuse of the child by the father, the father was found to be frequently drunk, emotionally unstable, and to have threatened the child and verbally and physically abused the mother in the child’s presence); *Danaipour v. McLarey*, 286 F.3d 1, 5–8 (1st Cir. 2002) (father may have sexually abused the daughter). In distinguishing the foregoing cases, we do not mean to suggest that only evidence of past parental abuse of the child, past parental threats to the child or the child’s fear of a parent can establish a successful Article 13(b) defense. We only hold that in this case, the evidence, which does not match the showing in those cases, does not establish that the child faces a grave risk of physical or psychological harm upon repatriation.³

Article 20: Protection of Human Rights and Fundamental Freedoms. Mother alleged that if the child was ordered returned to Singapore, the case may be sent to the Syariah courts. The Second Circuit held that the simple presence of a Syariah court in Singapore was not per se violation of due process. Also, mother presented evidence that women are disadvantaged in Syariah courts due to their testimony being accorded less weight than that of men and fathers, who are granted a presumption in their favor in custody proceedings. However, the court noted that there was insufficient evidence proffered that custody proceedings would occur in a Syariah court as opposed to a secular court.⁴ The Second Circuit also relied upon the judgment of the State Department in accepting Singapore as a Convention partner, noting that the Department considered Singapore a “role model” among states in the region.⁵ Finally, principles of comity underlie the relationship with treaty partners, since they are expected to approach the question of children’s best interests in the same manner that those interests would be protected under U.S. law.

2. Citing *Van De Sande v. Van De Sande*, 431 F.3d 567, 570 (7th Cir. 2005).

3. *Souratgar v. Lee*, 720 F.3d 96, 105 (2d Cir. 2013).

4. Although people of the Muslim faith are required by statute to have their divorce cases heard in a Syariah court, leave can be granted to transfer the case to secular courts. Additionally, father gave an undertaking that he would pursue his custody rights in a secular court.

5. *Souratgar*, 720 F.3d at 108.