

Commentary: Appellate Court Cases

Berenguela-Alvarado v. Castanos, 950 F.3d 1352 (11th Cir. 2020)

Other Eleventh Circuit Cases

Grau v. Grau,
780 F. App'x 787 (11th Cir. 2019)

Palencia v. Perez,
921 F.4d 1333 (11th Cir. 2019)

Pfeiffer v. Bachotet,
913 F.3d 1018 (11th Cir. 2019)

Fernandez v. Bailey,
909 F.3d 353 (11th Cir. 2018)

Gomez v. Fuenmayor,
812 F.3d 1005 (11th Cir. 2016)

Seaman v. Peterson,
766 F.3d 1252 (11th Cir. 2014)

Baran v. Beaty,
526 F.3d 1340 (11th Cir. 2008)

Pielage v. McConnell,
516 F.3d 1282 (11th Cir. 2008)

Hanley v. Roy,
485 F.3d 641 (11th Cir. 2007)

Ruiz v. Tenorio,
392 F.3d 1247 (11th Cir. 2004)

Furnes v. Reeves,
362 F.3d 702 (11th Cir. 2004)

Pesin v. Rodriguez,
244 F.3d 1250 (11th Cir. 2001)

Lops v. Lops,
140 F.3d 927 (11th Cir. 1998)

Factual Error | Burden of Proof

This case examined whether a court commits clear error when it relies on facts that were never presented and whether a parent petitioning for a child's return has the burden of disproving the opposing parent's factually unsupported defense.

Holding

The Eleventh Circuit ruled that the district court's denial of a petition for return was based on factual and legal findings that relied on the father's defense of consent. This case was reversed and remanded.

Facts

The mother in this case was a Chilean citizen, and the father was a citizen of the United States. They had a child, born to the mother in Chile in 2012. Their child, EICB, lived there with her mother her entire life. The father lived in the United States and made several annual visits to Chile to visit his daughter. The child first visited the United States in February 2018, for a two-month limited stay with her father before returning to Chile. The mother allowed the child to travel to the United States for a second limited stay beginning December 30, 2018. The father purchased a round-trip ticket for the child with a scheduled return to Chile on February 28, 2019, and the mother gave permission for the child to extend her trip until the end of March. In early February 2019, the father began to propose that EICB remain permanently with him in the

United States. When he continued to pressure the mother to let the child remain with him, she "tentatively" agreed to allow the child to remain until July 2019, when he and the child would return to visit the mother. The plan he purported was for the child to live primarily with him, and the mother could visit the child once a year in Miami. However, the mother said that she had agreed to the father's plan only because she wanted to make sure that her child would return to Chile in July 2019.

She soon began to express opposition to the father's proposed custody arrangement and pressed him for clarification of the plan. When she showed hesitation, he threatened to withhold the child permanently and prevent the mother from ever seeing the child again. To execute his plan, he enlisted the help of his friend Doris Baquero who worked at the Florida Department of Juvenile Justice. Baquero prepared a consent agreement effectively giving the father custody of the child and allowing the mother visitation in Chile during the child's summer break. The document required the mother's notarized signature. On two occasions the mother made arrangements to meet with a notary at the U.S. embassy in Chile but then skipped those appointments. Instead, she signed the original document, took a photo of it, and texted the photo of the signed document to Baquero, but the mother retained the original document. She feared that if she did not provide the father with a signed consent agreement, he would not bring the child to Chile in July and would prevent the mother from seeing her child again, as he had threatened. Baquero notarized the photo of the signed consent agreement without the mother's presence.

In March 2019, the mother wrote to Baquero, "Doris, good afternoon, I appreciate everything, but I changed my mind. I have everything ready for [EICB] to return. Her uniform and school supplies, she starts classes on March 4th at Primary school. It is very important that she starts when it's appropriate so she won't fall behind."

The father retained the child in Miami after the travel authorization period and did not return her to Chile. In June 2019, the mother filed a petition in the Southern District of Florida for the child's return.

At trial, the father asserted a grave risk defense, arguing that the child's mental and physical health would suffer if she were returned to Chile, and that she would enjoy a better quality of life in the United States. He failed to produce any evidence on the issue of consent. In a subsequent briefing, the father alleged that the mother's own evidence established consent by virtue of the written agreement and that the mother's message to Baquero was evidence that mother "changed" her mind.

The mother argued that her signature on the consent document was not proof of her subjective intent; instead, she was stalling for time in an effort to ensure the child's return. The district court found that the father's conduct did not amount to duress, that the mother consented to him having primary custody, and that she could not withdraw this consent. The district court denied mother's petition for return.

Discussion

Both parties agreed that the mother presented a prima facie case for return and that the only issue was the mother's alleged consent. Quoting the Third Circuit in *Baxter v. Baxter*,¹ the Eleventh Circuit observed,

The petitioning parent's consent needn't be formal, but "it is important to consider what the petitioner actually contemplated and agreed to in allowing the child to travel outside its home country." The focus of the court's inquiry should be on the petitioning parent's "*subjective intent*," and should take into account "[t]he nature

1. *Baxter v. Baxter*, 423 F.3d 363, 371 (3d Cir. 2005).

and scope of the petitioner’s consent, and any conditions or limitations” on that consent.²

The district court had concluded that the issue of consent was “dispositive” of the case³ and had focused almost exclusively on the consent letter that the mother signed. It had accepted the father’s denial that he threatened to retain the child. Reviewing the record, however, the Eleventh Circuit concluded that this latter finding was in error. In fact, the record established that while the father denied making threats in his pleadings, he did not deny the threats during his court testimony. The question of whether he made threats was material; the district court had acknowledged that if the mother’s allegations that she was threatened were true, this “would amount to duress.”⁴ The Eleventh Circuit held that the district court expressly imposed the burden of proof on the mother, requiring her to disprove the father’s claim of consent, and this amounted to clear error.

The Eleventh Circuit reversed the return order and remanded the case back to the district court for further proceedings consistent with its opinion.

2. *Berenguela-Alvarado v. Castanos*, 950 F.3d 1352, 1359 (11th Cir. 2020) (citations omitted).

3. *Id.*

4. *Id.*