

Commentary: District Court Cases

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

Other District Court Cases

Pope v. Lunday,
No. CIV-19-01122-PRW, 2019 WL
711615 (W.D. Okla. Dec. 23, 2019)

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

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

Defenses | General Denial

In this case, a father presented a prima facie case for the return of his child, but the mother waited until her opening statement at trial to present her affirmative defenses.

Holding

The district court held that the mother's general denial to the father's petition for return waived her right to present affirmative defenses when she at-

tempted to raise them for the first time in her opening statement. The father was prejudiced by her failure to raise the defenses earlier.

Facts

A mother and father, an unmarried couple, lived in Cancún, Mexico. Their only child, E.A.O., was born there in 2014. The parents' relationship began to deteriorate when their daughter was a toddler, and the couple separated in January 2018. The father moved to a nearby apartment after the separation, and he continued to see his daughter frequently and be involved in her life, paying for piano lessons, private school tuition, and sometimes rent for the mother's apartment. In July 2019, the mother took their child to Texas, where she took up residence with a boyfriend in Odessa. The child had been a resident of Mexico her entire life up to the time her mother took her to Texas.

In response to the father's timely petition for return of the child, the mother filed a general denial and did not raise any affirmative defenses. At trial, however, she raised the following affirmative defenses for the first time as part of her opening statement: (1) the child was settled in her new environment; (2) the father had consented to the child's removal from Mexico; and (3) a return would subject the child to grave risk due to the father's violence toward the mother.

Discussion

The trial court ruled that pursuant to Federal Rule of Civil Procedure 8(c)(1),¹ the mother's failure to assert her affirmative defenses prior to trial constituted a waiver, and this delay

1. "In responding to a pleading, a party must affirmatively state any avoidance or affirmative defense."

resulted in the father not having “pragmatically sufficient time”² to respond. The court noted that

failure to timely plead an affirmative defense may result in waiver and the exclusion of the defense from the case. However, “a technical failure to comply with Rule 8(c) is not fatal.” A defendant does not waive a defense if it is raised with “pragmatically sufficient time” and does not prejudice the plaintiff in its ability to respond. A district court has discretion to determine whether the party against whom the defense was raised suffered prejudice or unfair surprise as a result of the delay in asserting the defense.³

The court found that the mother failed to present any defenses to the prima facie case established by the father. Although this constituted a waiver, as a matter of caution, the district court allowed the mother to present evidence of her untimely affirmative defenses. After the evidence was heard, the court found that her defenses lacked merit and ordered the child returned.

2. Leon v. Ruiz, No. MO:19-CV-00293-RCG, 2020 U.S. Dist. LEXIS 43758, at *17 (W.D. Tex. Mar. 13, 2020) (quoting Rogers v. McDorman, 521 F.3d 381, 386 (5th Cir. 2008)).

3. *Id.* (citations omitted).