

*Custodio v. Torres*

Here we go again, another Hague Convention case, this one involving Mom taking the two kids from Peru to St. Louis and refusing to return them. This one involves an interesting case of first impression in the Eighth Circuit, involving application of the Mature Child Defense under Article 13 of the Hague Convention. This affirmative defense requires that the Respondent must establish, by a preponderance of evidence, that (1) the child “has attained an age and degree of maturity at which it is appropriate to take account of its views” and (2) “that the child objects to being returned.” The District Court held that the testimony of the 15 year old child was credible and sufficiently persuasive to invoke the Mature Child Defense and denied the request for return in the Hague Convention Petition. Given the District Court’s “thorough questioning” of the 15 year old child who explained his reasons for not returning to Father in Peru, and questioning by opposing counsel, deferring to the objections of that child was held not an abuse of discretion. Acknowledging that “This is undoubtedly a close case,” the Circuit Court affirmed.

As if the age factor with the “mature” 15 year old was not enough, the court held that the other child involved, 16 years old, was not subject to the jurisdiction of the Hague Convention, because once a minor attains the age of 16, the Hague Convention no longer applies. The appeal as to that child was dismissed as moot.

Even though conduct of the mother was wrongful in certain respects, it was within the court’s proper discretion to defer to the objections of a mature child; such consideration may but need not be affected by the wrongful conduct of his or her parent.

This case calls attention to the importance of giving proper focus and analysis to the affirmative defenses which are an important component of the Hague Convention protocols.

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