

*Chafin v. Chafin*

In this interesting and groundbreaking Hague Convention case, the unanimous Supreme Court opinion authored by Chief Justice Roberts brings to mind the famous quote from noted legal philosopher, Yogi Berra: “It’s not over ‘till it’s over.” [The Jurisprudence of Yogi Berra, 46 Emory Law Journal 697, Spring 1997 (footnotes 10, 84)].

In mother’s Hague Convention action for return of the parties’ daughter to Scotland, the District Court determined Scotland to be the child’s habitual residence and ordered her return, father’s request for a stay was denied, the child was returned to Scotland with the mother; the Eleventh Circuit affirmed the return order, the Supreme Court granted cert. Mom contended the case was moot because the child had already been returned to Scotland, and any further orders of the U.S. courts would be ineffectual. Meanwhile, the Alabama state court dismissed father’s custody case for lack of jurisdiction, noting the return order of the U.S. District Court; that dismissal was affirmed on appeal. Did the child’s return to the foreign jurisdiction render the case moot, or did the U.S. Federal courts retain jurisdiction to deal with the merits of the case? Confusion of “mootness with the merits” was how the issue was framed by the Chief Justice. A unanimous Supreme Court held that the U.S. courts retained jurisdiction, rejected the claim that the controversy was moot, and determined that the child’s return to the foreign jurisdiction did not mean that appeal of the return order was moot.

While prompt adjudication of Hague Convention claims is a recognized goal of the statute, re-return jurisdiction continues so long as a dispute continues between the parents regarding custody, where the child will be raised, issues regarding attorney’s fees and costs, and attendant competing claims concerning the child. The Supreme Court remanded the case to the District Court for further proceedings on the merits of the competing claims.

Justice Ginsburg’s Concurring Opinion emphasized the need for both speed and certainty in Hague Convention decision making. She pointedly suggested that legislators and rulemakers pay sustained attention to address prompt return of children wrongfully removed to or retained in the United States, and to ensure that rights of custody under the law of one Contracting State are effectively respected in the other Contracting States.

Thus, the *Chafin* saga is not over “til it’s over.” But its lesson is clear and now becomes part of every Hague case analysis.

MARSHALL S. ZOLLA