

Abbott v. Abbott (2010) 130 S.Ct. 1983

We last encountered a Hague Convention case in *Barzilay v. Barzilay* from the 8th Circuit [2008 Cal. Fam. Law Monthly 381 (November 2008)]. In *Abbott*, we have an important Hague Convention interpretation from the U.S. Supreme Court.

A *ne exeat* order is a parent's right to consent before the other parent may take a child to another country. The question in this case was whether a *ne exeat* right confers a "right of custody." There exists in the Hague Convention a provision providing that a child abducted in violation of a "right of custody" must be returned to the child's habitual residence, absent certain exceptions. So when the mother took son Alex from Chile to Texas without the consent of either the father or the Chilean court, did that violate father's "right of custody" under the *ne exeat* order he had been granted by the court? The U.S. District Court denied relief, holding that the *ne exeat* right did not constitute a right of custody under the provisions of the Hague Convention and the return remedy was not authorized. The 5th Circuit affirmed the denial, determining that the *ne exeat* right was merely a "veto right" over his son's departure from Chile. The U.S. Supreme Court granted cert. and, in a 6-3 opinion, reversed.

The majority held that, pursuant to the Hague Convention, a right of custody includes rights relating to the care of the child's person, including the right to determine the child's place of residence. A *ne exeat* right is a custody right, not merely relating to access. The majority determined that "Requiring a return remedy in cases like this one helps deter child abductions and respects the Convention's purpose to prevent harms resulting from abductions." These cases are fact specific and not free from differing interpretations. Justice Stevens' dissent, with extensive word-smithing, reached a different result, holding that a *ne exeat* right is a travel restriction, not a custody right, would have denied return of the child, and concluded: "...the Court has upended the considered judgment of the Convention's drafters in favor of protecting the rights of noncustodial parents."

As our inter-connected and increasingly global society spawns more international custody disputes, including move-away cases as well as Hague Convention disputes, attorneys handling these cases need to be aware that the legal complexities and the often unbelievable factual circumstances deserve equal attention. *Abbott* is the latest word in an evolving saga.

MARSHALL S. ZOLLA