



CASE ALERT

New Hague Convention Case Explains Importance of Balancing a Quick Resolution with Allowing Survivors to Gather Evidence of Abuse and the “Grave Risk of Harm” to Their Children

Colchester v. Lazaro, 16 F.4th 712 (2021)

How Could This Case Help? This case may help if a parent has fled to the United States with a child because of alleged domestic violence and wants to prove that returning the child to the other parent would present a “grave risk” of psychological or physical harm to the child.

Summary of the Case Father, who lives in Spain, was given sole custody of the child. Mother observed aggressive behavior and testified about several detailed instances of child abuse by Father. Mother fled with the child to Washington state. Father filed a request under the Hague Convention to have the child returned to him in Spain. In her defense, Mother argued that returning the child to Father, would present a “grave risk” of psychological or physical harm to the child. Mother asked for a psychologist to examine the child and give an expert opinion about abuse and harm to the child. The trial court did not allow it and then granted the Father’s request to return the child to him in Spain. Mother appealed. The 9th Circuit Court of Appeals said that there should be a balance between deciding these types of cases quickly and allowing a parent to gather evidence in support of their defense. This could include expert testimony, but not always. Here, the trial court said there would be no “discovery” of evidence and did not support its reasons why. The trial court did not allow Mother the opportunity to make her case that the child was at grave risk of harm if returned to the Father. Also, the trial court did not independently support its reasons for granting the Father’s request, which is required.

Practice Tips

1. You have to show that the child will be at “grave risk” of harm, because of the abuse, if they return to their home country. Present all evidence of domestic violence to the trial court, including when the children were abused or were witnesses to the abuse. Include times the children heard the abuse or saw the aftermath if they were not present.
2. Provide the trial court any evidence that the children are showing signs of stress or trauma because of the abuse that occurred. This can include testimony from their caretakers, and from their medical and mental health care providers. Ask for the chance to have an “expert” talk to the child and testify.
3. If the trial court does not allow you to gather evidence about the abuse and the effects of the abuse so you can prove your case, show them a copy of this case.
4. Reach out to organizations that may be able to provide expert evidence about the conditions in the home country relating to domestic violence such as the [Center for Gender and Refugee Studies](#). The [Hague Domestic Violence Project](#) has webinars, manuals and other assistance to help present these cases in court.

For questions or clarifications, email or call Family Violence Appellate Project at infoWA@fvaplaw.org or (360) 680-1030. Thank you!