

V I R G I N I A:

IN THE JUVENILE AND DOMESTIC RELATIONS DISTRICT COURT
OF ARLINGTON COUNTY

MONIKA M. PARSON,)
)
Petitioner,)
)
v.)
)
RONALD S. PARSON,)
)
Respondent.)

Docket Nos. J-20468-1-C
& J-20469-1-C

FILED

IN RE: REBECCA ELIZABETH PARSON
Born December 23, 1984

NOV 13 1997

and

CHRISTINA DONNA PARSON
Born December 18, 1987

*Arlington Juvenile & Domestic
Relations District Court
Arlington, Virginia
By Carol Kowalski, Deputy Clerk*

STATEMENT OF INTEREST OF THE UNITED STATES

The United States appears in this matter pursuant to 28 U.S.C. § 517¹ to inform the Court of its interpretation of the Hague Convention on the Civil Aspects of International Child Abduction ("Hague Convention"), Oct. 25, 1980, T.I.A.S. No. 11670, in light of the Vienna Convention on Diplomatic Relations ("Vienna Convention"), Apr. 18, 1961, T.I.A.S. No. 7502. The United States submits that there is no legal basis for this Court to order the return to the United Kingdom of Rebecca and Christina Parson because there was no basis on which any court of the United Kingdom

¹ Under 28 U.S.C. § 517, the United States may appear in any court in the United States "to attend to the interests of the United States in a suit pending in a court of the United States, or in a court of a State, or to attend to any other interest of the United States."

could have adjudicated their custody prior to their departure from that country. A decision by this Court to order the return of the children to the United Kingdom would have profound negative implications for the United States in conducting foreign relations throughout the world.

The case arises out of the efforts of Petitioner Monika M. Parson to invoke the provisions of the Hague Convention to return the Parson children to their country of diplomatic assignment, from which the entire Parson family departed when the Department of State curtailed Mr. Parson's assignment there and ordered his return to the United States. Mrs. Parson's request is fundamentally at odds with the fact that she, Mr. Parson, and the Parson children were cloaked with diplomatic immunity while in the United Kingdom. The United States submits that, because the Hague Convention did not vest jurisdiction over this custody dispute with the courts of the United Kingdom, the Hague Convention equally provides no basis for treating the departure of the Parson children from the United Kingdom as a "wrongful removal." A contrary ruling would be directly at odds with settled principles of diplomatic law, and would significantly impair the United States' ability to conduct its foreign relations. The United States takes no position with respect to the ultimate issue of custody.²

² The Department of State Bureau of Consular Affairs, Office of Children's Issues, serves as the United States Central Authority for purposes of the Hague Convention. Hague convention arts. 6-7; 22 C.F.R. Part 94 ("International Child Abduction"). Consistent with the views expressed herein, the U.S. Central Authority is returning to the U.K. Central Authority a petition for return of the Parson children to the United Kingdom which Mrs. Parson filed with the U.K. Central Authority and that that entity forwarded to the Department of State.

BACKGROUND FACTS

Based on review of the petitions and other materials submitted to this Court, the United States relates its understanding of the factual background of the case as follows. Mr. Parson is a Foreign Service Officer employed by the Department of State. He and Mrs. Parson were married October 1, 1982, in Dusseldorf, Germany. They have two daughters - Rebecca, born December 23, 1984, in Virginia, and Christina, born December 18, 1987, in Sweden. Mr. Parson is a United States citizen; Mrs. Parson is a German national and not a U.S. citizen; and the children are both United States citizens and possibly German nationals. The family has lived in various countries around the world as a result of Mr. Parson's diplomatic assignments. From August, 1994 until August, 1997, Mr. Parson served as an economic officer in the U.S. Embassy in London. As such, he was a diplomatic agent and, together with his wife and children, was accorded full diplomatic privileges and immunities.

While Mr. Parson was assigned to the U.S. Embassy in London, he, Mrs. Parson, and their daughters lived in London in embassy-provided housing. On July 24, 1997, Mrs. Parson filed for divorce in Germany. On July 25, 1997, she filed a petition before the United Kingdom's High Court of Justice, Family Division, in which she sought, *inter alia*, an order preventing Mr. Parson from bringing the children to the United States and permitting her to take them to Germany. The United States retained a British solicitor and barrister who successfully argued that the British court lacked jurisdiction over Mr. Parson and the children due to their diplomatic immunity. (See Ex. 1 [Order of U.K. High Ct. of

Justice, Fam. Div. of Aug. 7, 1997, at 5,9].) The British court dismissed Mrs. Parson's petition for want of jurisdiction. (Id.)

On August 7, 1997, the Embassy informed Mr. Parson that the Department of State had curtailed his tour of duty in London, effective immediately, and that he was reassigned to Washington, D.C. (Ex. 2 [Decl. of James William ¶ 6].) The Embassy arranged for him, Mrs. Parson, and the children to travel to the United States. (See id. [Decl. of James William ¶ 7].) Mrs. Parson alleges that she objected to the children's coming to this country. (Pet. ¶ 9(m) [filed in Juv. and Dom. Rel. Dist. Ct. of Arlington County].) Nevertheless, on August 8, 1997, Mr. Parson, Mrs. Parson, and the children flew here together at U.S. Government expense. Mrs. Parson and the children currently reside in Falls Church, Virginia. Mr. Parson lives in a separate residence in Falls Church.

In September, 1997, Mrs. Parson filed a petition with this Court in which she seeks to have the children returned to the United Kingdom. She filed the petition under the Hague Convention, the International Child Abduction Remedies Act, 42 U.S.C. §§ 11601-10, which implements the Hague Convention in the United States, and the Uniform Child Custody Jurisdiction Act. Her argument focuses on the Hague Convention. Mrs. Parson contends that Mr. Parson wrongfully abducted the children within the meaning of the Hague Convention when he brought them to the United States following the curtailment of his diplomatic assignment to London.³

³ The United States is aware that on November 7, 1997, the U.K. High Court of Justice issued an *ex parte* order of wrongful removal. As explained herein, the United States disagrees that a

THE HAGUE CONVENTION

The Hague Convention, ratified by the United States in 1988, is designed to "protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access [i.e., visitation]." Hague Convention, Preamble (Copy of Hague Convention attached as Ex. 3). The Hague Convention seeks to prevent forum-shopping for the resolution of custody disputes by establishing a rule of jurisdiction - i.e., that custody jurisdiction generally lies with the country of the child's place of habitual residence prior to any wrongful removal of the child by a parent. H.R. Rep. No. 100-525 (1988), reprinted in 1988 U.S.C.C.A.N. 386, 386-87. The purpose of this rule is to deter parents from abducting children across international boundaries in the hope of securing a court sympathetic to their position regarding custody. H.R. Rep. No. 100-525 (1988), reprinted in 1988 U.S.C.C.A.N. 386, 386-87 ("The international abductor is denied legal advantage from the abduction to or retention in the country where the child is located") (quoting President Ronald Reagan's Letter of Transmittal to U.S. Senate of 10/30/85); Rydder, 49 F.3d at 372. The fundamental premise of the rule, however, is that the place of habitual residence prior to any wrongful removal

wrongful removal occurred and is intervening in an appeal to be filed on November 4, 1997.

therefrom was a place with jurisdiction over any custody issues. See Hague Convention.

THE VIENNA CONVENTION

The Vienna Convention extends to diplomatic officers, as well as family members forming part of their households, immunity from the jurisdiction of courts in the "receiving state," in this case the United Kingdom. Vienna Convention, arts. 31, 37 (Copy of Vienna Convention attached as Ex. 4). The special privileges and immunities accorded diplomatic agents by the Vienna Convention reflect a set of international standards developed by the world's community of nations to regulate and shape the conduct of international relations. See *id.* The underlying concept of the Vienna Convention's treatment of privileges and immunities is that foreign diplomatic representatives cannot effectively carry out their responsibilities unless they are accorded a certain degree of insulation from the application of the laws of the host country. See *id.* One of the most basic attributes of diplomatic immunity is that neither a diplomatic agent nor any member of his or her household is subject to the jurisdiction of the courts of the "receiving state." See *id.*

ARGUMENT

I. THE UNITED STATES' INTERPRETATION OF THE HAGUE CONVENTION IS ENTITLED TO SUBSTANTIAL DEFERENCE

The United States' interpretation of the Hague Convention's applicability to this case in light of the Vienna Convention is entitled to substantial deference. See Sumitomo Shoji Am., Inc. v. Avagliano, 457 U.S. 176, 184-85 (1982) ("Although not conclusive,

the meaning attributed to treaty provisions by the Government agencies charged with their negotiation and enforcement is entitled to great weight."); Tabion v. Mufti, 73 F.3d 535, 538 (4th Cir. 1996) (according "substantial deference" to United States Statement of Interest, filed on Department of State's behalf, in interpreting provision of Vienna Convention).

II. THE VIENNA CONVENTION'S GRANT OF DIPLOMATIC IMMUNITY TO MR. PARSON AND THE CHILDREN PREVENTS THE HAGUE CONVENTION FROM VESTING JURISDICTION OVER THE CUSTODY OF THE CHILDREN IN THE BRITISH COURTS

The United Kingdom was not a jurisdiction that could have resolved the Parsons' custody dispute. Accordingly, Mr. Parson's return to the United States with his family upon the curtailment of his diplomatic assignment to the United Kingdom was wholly outside the scope of the Hague Convention. The Hague Convention does not operate to vest jurisdiction over child custody issues in a court that could not otherwise exercise jurisdiction. Rather, it is a choice-of-forum convention that operates in the context of competing possible jurisdictions and provides that, when a child is wrongfully removed from a jurisdiction of habitual residence to a second jurisdiction, the child custody issues should be decided by the jurisdiction of habitual residence. In the case of a diplomat's child, however, even leaving aside the substantial question of whether a "receiving state" could be a diplomatic child's "habitual residence," the Vienna Convention's grant of diplomatic immunity prevents the exercise of jurisdiction by the courts of the receiving state. Absent express waiver by the "sending state" (here, the United States) or applicability of certain enumerated exceptions not relevant here, the Vienna

Convention prevents jurisdiction over any matter involving a diplomat or members of his/her household from vesting in the receiving state's courts (here, the British courts). Vienna Convention arts. 31-32, 37. The United States did not waive the diplomatic immunity conferred on Mr. Parson and his household while they were in the United Kingdom. Thus, as the British High Court of Justice found, Mr. Parson and the children were diplomatically immune from British courts' jurisdiction while they were in that country.

The Vienna Convention prevented the British courts from exercising jurisdiction over the custody of the children based on the children's presence in the United Kingdom. Because the Hague Convention does not create jurisdiction where it would not otherwise exist, there is no basis under the Hague Convention for regarding the United Kingdom as a place that, but for the removal of the Parson children, could have exercised jurisdiction over their custody.

III. MR. PARSON'S RETURN TO THE UNITED STATES WITH HIS FAMILY UPON THE CURTAILMENT OF HIS DIPLOMATIC ASSIGNMENT TO THE UNITED KINGDOM WAS NOT A "WRONGFUL REMOVAL" UNDER THE HAGUE CONVENTION

Because the United Kingdom had no jurisdiction over the Parson family and because the Parsons left the United Kingdom in conjunction with the termination of Mr. Parson's diplomatic assignment, there is no basis for a finding that the children's departure from that country constituted a "wrongful removal" under the Hague Convention. Clearly, this is not a situation to which the Hague Convention was intended to apply. As noted above, the Convention is designed to undo a wrongful act by one parent and restore jurisdiction, where there has been a wrongful removal, to

the habitual residence of children so that that jurisdiction's courts may decide issues of custody and visitation. As discussed above, because the British courts lacked jurisdiction over Mr. Parson and the children by virtue of their diplomatic immunity, there was no legal basis on which the custody of the children could have been determined if they had remained in the United Kingdom. Moreover, to find a "wrongful removal" in this case would create a direct conflict with long-standing diplomatic practices, and the Vienna Convention. The Court should not permit this result. It is legally incorrect and would not serve the policy objective of the Hague Convention, which is to deter parents from crossing international boundaries in search of a sympathetic court. There was no court of jurisdiction in the United Kingdom, and the Parsons returned to the United States because of Department of State travel orders. Given these circumstances, the Court should not find that Rebecca and Christina Parson were wrongfully removed from the United Kingdom or that they should therefore be returned.

Finally, the Court should not consider the Parsons' children "habitually resident" of the United Kingdom for the purposes of the Hague Convention. They are not British nationals. They resided in that country only temporarily during their father's diplomatic assignment and were, at all times, immune from that country's jurisdiction.

IV. A FINDING THAT MR. PARSON VIOLATED THE HAGUE CONVENTION WOULD IMPAIR THE UNITED STATES' ABILITY TO CONDUCT ITS FOREIGN RELATIONS

The United States' ability to conduct its foreign relations would be significantly compromised if the Hague Convention were found to apply in instances such as this, where children depart

from a foreign country because the Department of State curtails a parent's diplomatic assignment or the assignment otherwise ends. To staff overseas U.S. missions, the Department of State and other U.S. foreign affairs agencies assign and reassign employees according to applicable laws and regulations, reflecting relevant personnel policies and agency needs. (Ex. 2 [Decl. of James Williams ¶ 8].) Applying the Hague Convention's terms in circumstances such as these would impair the ability of the Department of State, as well as other U.S. foreign affairs agencies, to assign employees with families to overseas posts by enabling officers' spouses to attempt to control such relocations by invoking the Hague Convention.

In addition, application of the Hague Convention to situations such as this would subject U.S. Foreign Service Officers and other foreign affairs personnel to accusations of international child abduction if they take their children from a foreign post when leaving that post on reassignment in compliance with official U.S. Government travel orders. This result would undermine the privileges and immunities that the United States is entitled to have protect its diplomatic personnel, and ultimately would make it difficult for the Department of State to recruit, assign, and retain employees with families for service overseas. (Id.) The United States submits that this result was not intended by the Hague Convention's drafters.

CONCLUSION

For the foregoing reasons, the United States respectfully submits that Mrs. Parson's petition should be dismissed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing STATEMENT OF INTEREST OF THE UNITED STATES was served on the 13 day of November, 1997, by facsimile and first-class mail upon counsel for the petitioner and respondent as follows:

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