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Summary of Beau Davis v. Andrea Ewalefo, 131 Nev. Adv. Op. 45 (July 02, 2015)

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FAMILY LAW: CHILD CUSTODY & VISITATION OVERSEAS

Summar

On appeal from a child custody decree, the Court found the District Court did not have specific findings of fact to support the restriction of travel and visitation outside of the United States and its territories. The Court granted en banc reconsideration, reversed and remanded the case for further fact finding considerations concerning whether the minor child can safely travel overseas for parental visitation.

Background

On appeal from a child custody decree, the appellant, Beau Davis, petitioned the Court for reconsideration of an en banc panel decision that restricted his visitation rights with his son, E.D. The district court granted Respondent, Andrea Ewalefo, E.D.'s mother, primary physical custody, while granting both parents joint legal custody of E.D. The dispute at issue concerns the child custody decree granting Davis unsupervised visitation but specifies that visitation cannot occur in Africa, where Davis lives, works, and is married to E.D.'s stepmother Marilena Davis. The Court noted that both parents are highly educated American citizens, and both with significant international ties. Before separating, E.D. traveled to Kenya for vacation to visit family, and traveled to Europe with his mother on vacation.

At the time of the evidentiary hearing in the district court, the Democratic Republic of Congo (DRC), where Davis works, was the subject of a U.S. State Department travel warning, cautioning against nonessential travel to the DRC. Out of safety concerns, Davis did not propose that E.D. visit him and Marilena in the DRC, but rather that his visitation occur in Rwanda or Uganda – both countries that neighbor the DRC but have stable governments and resort cities. Neither country was or is currently on the U.S. State Department warning list. In fact, Davis made proper arrangements with his employer, Texas A&M which does project management construction work in the DRC. Texas A&M granted Davis permission to work in one of the neighboring countries since his work did not entail hands-on construction. Ewalefo objected to visitation in Rwanda and Uganda on the grounds that neither country is a signatory to the Hague Convention on the Civil Aspects of International Child Abduction. Ewalefo also cited safety concerns based on her internet research, but presented no expert proof on contemporary turmoil or threats.

At the conclusion of the hearing, the district court denied Davis permission to have E.D. visit him in Africa, refused to grant summer visitation and limited Davis' visitation to five two-week blocks of time per year. Without request from either party, the court prohibited either parent from traveling with E.D. outside of the United States or its territories, absent court order or signed consent. These restrictions carried no expiration date, and would last until E.D. reached the age of majority. In its ruling, the district court did not explain or make particularized findings

¹ By Daven P. Cameron.

as to why the international travel and visitation restrictions imposed were in the best interest of the child. The court found that both parents were capable and fit to parent, no signs of abuse were present, E.D. was capable and has already traveled to Africa in the past, nothing suggests anything but a healthy relationship exists between E.D. and Davis, there was no evidence of domestic violence, and no evidence of a parental abduction. As far Africa, the court made only the cryptic findings that “I should note that the world is a dangerous place as we’ve learned even in the United States terrorism can occur, that the proposed countries are not Hague signatories nor Hague compliant.” It did not offer any findings to justify its larger prohibition on international travel for E.D.

Discussion

The Court began its discussion by addressing the District Court’s “broad discretionary power” in determining child custody, including visitation. The Court, however, found the decree in this case deficient in many regards. First, the decrees does not explicitly address the best interest of E.D. Second, it does not include findings of fact to support its implicit conclusion that E.D.’s best interest is served by forbidding visitation in Africa or travel outside the U.S. or its territories absent a written agreement or a court order. These deficiencies violate Nevada law which requires express findings as to the best interest of the child in custody and visitation matters.²

The Court found the decree deficient because the decree does not give a factual basis for denying Davis’ request for visitation in Africa, much less on its ban on E.D. traveling anywhere outside of the United States and its territories. Additionally, the decree does not address whether visitation in Africa would or would not be in E.D.’s best interest or explain why it is not in E.D.’s best interest for Davis to be able to exercise visitation even during one of the two-week visitation periods allotted to him, outside the U.S. The decree also did not address parental fitness or other factors that could be informative in a custody determination. The Court did not find any oral or written observations to explain why the district court ruled as it did, aside from the statement “the world is a dangerous place . . . not Hague signatories nor Hague compliant.” This reasoning was insufficient to the Court who explained that unless a credible threat exists that a parent would abduct or refuse to return a child, courts have declined to adopt a bright line rule prohibition out-of-country visitation by a parent whose country has not adopted the Hague Convention or executed an extradition treaty with the United States.³

The Court went on to explain that Nevada has adopted the Uniform Child Abduction Prevent Act, NRS Chapter 125D, to address concerns of child abduction or concealment overseas. This Act articulates the factors a district court should consider in making such a determination, ranging from providing the other parent with detailed itineraries for the child, to the posting of a bond to ensure the child’s return, to complete prohibition on travel outside the U.S. However, the Court noted that no evidence of abduction was suggested in the record to warrant E.D.’s ban on international visitation. The Court reversed and remanded as to the visitation and travel restrictions imposed in the decree, directing the district court to reopen the proceedings to take evidence and make findings concerning whether E.D. may safely visit his

² NEV. REV. STAT. §§ 125.480(4); 125.510(5); 125C.010(1).

³ Abouzahr v. Matera-Abouzahr, 824 A.2d 268, 281 (N.J. Super Ct. App. Div. 2003).

father in Rwanda or Uganda, whether it is in the child's best interest, and if necessary, whether abduction prevention measures are appropriate.

Dissent:

The dissent found that the district court did not abuse its discretion by denying Davis' request for prolonged visitation in Africa. The dissent argued that the majority overlooked factual considerations the district court took in making its decision including Ewalefo's belief that E.D. would be uncomfortable spending more than three-months at a time in Africa, that Davis failed to exercise 50% of his Skype and telephone visitation privileges, and that the district court concluded that Ewalefo's testimony was more credible than Davis' testimony. The dissent found that the district court did not abuse its discretion in prohibiting international visitation, because the district court was tasked with determining if it was in the best interest of the then six-year-old child to spend three months a year in a foreign country with a father with whom he has had limited contact with. Additionally, the dissent noted that the decree allowed for E.D. to travel outside the U.S. so long as there was mutual written consent from both parents. Considering the low level of conflict between the parties, and Ewalefo's own testimony that as E.D. grows older it may become more appropriate for him to spend extended periods of time with Davis, international visitation is still possible. Moreover, the dissent also noted that the decree can be modified as the child's age and circumstances change.

Conclusion

The Court reversed and remanded as to the visitation and travel restrictions imposed in the decree, directing the district court to reopen the proceedings to take evidence and make findings concerning whether E.D. may safely visit his father in Rwanda or Uganda, whether it is in the child's best interest, and if necessary, whether abduction prevention measures are appropriate.