

MOTHER REQUIRED TO RETURN CHILD TO MEXICO BECAUSE NO CLEAR AND CONVINCING EVIDENCE OF GRAVE RISK TO CHILD IN MEXICO.

Soto v. Contreras, ___ F.3d ___, No. 16-11541, 2018 WL 507802 (5th Cir.) (01-23-18).

Facts: Mother and Father, citizens and residents of Mexico, married in Mexico and had three children. Mother fled Mexico with two of the Children to escape alleged abuse by Father. Father sought relief in a Texas court, asking the court to order Mother to return the child to Mexico. (One of the two children was over the age of 16, so the Hague Convention did not apply to her.) At a hearing, the parents presented conflicting evidence about whether Father was abusive to Mother and the children. At the hearing's conclusion, the trial court found Mother failed to establish that the children were at a grave risk in Mexico and that there was no justification for the abduction. Accordingly, the court ordered Mother to return the child to Mexico. Mother appealed.

Holding: Affirmed

Opinion: The Hague Convention on the Civil Aspects of International Child Abduction ("Hague Convention") is based on the principle that the best interests of the child are well served when decisions regarding custody rights are made in the country of habitual residence. Those who abduct a child may assert several narrow affirmative defenses, include the "grave-risk defense," which provides that the abductor is not required to return the child if she establishes by clear and convincing evidence that there is a grave risk that the child's return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

Here, the parents presented conflicting testimony, and the trial court had the discretion to determine which evidence it found to be more credible. Additionally, contrary to Mother's assertion, while spousal abuse can support a finding of a grave risk to a child, spousal abuse does not mandate a grave-risk finding.