

Supreme Court of the United States of America delivers judgment in Abbott v Abbott

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The United States of America's Supreme Court has handed down its decision in the case of Abbott v Abbott. The case is highly important as it enunciates the United States of America's interpretation of article 3 of the Hague Convention 1980, an issue that has been unclear in the lower courts of the United States of America for some time. Further, the outcome bolsters the international consensus on the interpretation of article 3 of the Hague Convention 1980.

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Henry Setright QC, Marcus Scott-Manderson QC, Dr Marilyn Freeman and Jacqueline Renton filed a neutral, amicus curiae brief on behalf of Reunite for the Supreme Court hearing providing submissions as to the position in English Hague jurisprudence and commenting on the impact of EU law. The brief discussed the international law consensus on the interpretation of article 3, together with the approach taken in English jurisprudence.

Facts

The Defendant Mother had removed the child from Chile to Texas, United States of America. The Plaintiff Father applied for the summary return of the child to Chile. At first instance, the United States District Court for the Western District of Texas refused the Father's application on the ground that his *ne exeat* right did not constitute a Right of Custody, pursuant to article 3 of the Hague Convention 1980 and therefore he had no locus to bring Hague Convention 1980 proceedings. On appeal, the United States Court of Appeals for the Fifth Circuit affirmed the judgement at first instance, expressing agreement with the majority of the Court of Appeal for the Second Circuit in *Croll v Croll* 229 F. 3d 133 [2000]. The Father then appealed to the Supreme Court of the United States of America. The Father's appeal was successful, thus quashing the decisions of the lower courts and enabling the Father to pursue his Hague Convention 1980 proceedings.

Opinion

The majority of the court, on a 6 – 3 split, determined that a *ne exeat* right (or a 'right of veto') is a Right of Custody within the meaning of article 3 of the Hague Convention 1980. The lead opinion was delivered by Justice Kennedy. Justice Sotomayor, who had delivered the dissenting judgement in *Croll v Croll*, accorded with the majority.

The court determined that to hold that a *ne exeat* right was not a "right of custody" would be to fetter the purpose of the Hague

Convention 1980 which was to deter parents abducting their child to a state with a friendlier forum.

The court's decision was also informed by the jurisprudence of other states that are signatories to the Hague Convention 1980. Having reviewed the international community's case law, the court accepted that there was a broad acceptance that a ne exeat right is a Right of Custody.

Dissent

The dissenting opinion was given by Justice Stevens who commented that the majority's decision obliterated the distinction in the Hague Convention 1980 between Rights of Custody and Rights of Access. Further, it was not accepted there was an international consensus on the interpretation of article 3.