

11-1347 CHAFIN V. CHAFIN

DECISION BELOW: 11-15355-CC slip

LOWER COURT CASE NUMBER: 11-15355-CC

QUESTION PRESENTED:

Under the International Child Abduction Remedies Act 42 U.S.C. §§ 11601-11610 (2000) and the Hague Convention on the Civil Aspects of International Child Abduction a parent may file a petition for return of their minor child/custodian to the child's country of habitual residence if it appears that the child has been wrongfully abducted. Once an Order has issued from the District Court returning the child to the petitioning custodian and an appeal has been filed by the respondent the Circuits are split as to whether the return of the child to the country of habitual residence renders the appeal moot. The Eleventh Circuit, in *Bekier v. Bekier*, 248 F.3d 1051 (2001), held that such an appeal is clearly moot since the relief sought by petitioner has been granted and the Court had "no authority 'to give opinions on moot questions or abstract propositions ... which cannot affect the matter in issue in the case before [the Court]'" *Bekier* at 1054. The Court provided that no actual affirmative relief could be provided to the appellant. However, this decision and others like it has come under great scrutiny by other Circuits. Specifically the Fourth Circuit, in *Fawcett v. McRoberts*, 326 F.3d 491 (2003), has held that "[c]ompliance with a trial court's order does not moot an appeal (of a Petition for Return of Custody under the aforementioned Acts) if it remains possible to undo the effects of compliance or if the order will have a continuing impact on future action." *Fawcett* at 494. The Fourth Circuit in *Fawcett* held that even after the return of a child in compliance with the lower court's order that "this Court can [affect the matter in issue]." *Id.* To consider the merits of an appeal and potentially reverse the lower court's decision would have a considerable effect. In contrast, the Eleventh Circuit's unfathomable position on this particular matter eliminates the basis and purpose of the appeal process.

Whether an appeal of a District Court's ruling on a Petition for Return of Children pursuant to International Child Abduction Remedies Act and the Hague Convention on the Civil Aspects of International Child Abduction becomes moot after the child at issue returns to his or her country of habitual residence, as in the Eleventh Circuit's *Bekier* case, leaving the United States Court system lacking any power or jurisdiction to affect any further issue in the matter or should the United States Courts retain power over their own appellate process, as in the Fourth Circuit's *Fawcett* case, and maintain jurisdiction throughout the appellate process giving the concerned party an opportunity for proper redress.

CERT. GRANTED 8/13/2012