APPENDIX A

Filed 2/11/21 Minkiewitz v. Becker CA2/3

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

JOHN MINKIEWITZ, Plaintiff and Respondent, v. TIFFANY BECKER, Defendant and Appellant.	B299073 (Los Angeles County Super. Ct. No. 18STHC00011)

APPEAL from a judgment of the Superior Court of Los Angeles County, Thomas Trent Lewis, Judge. Affirmed.

Tiffany Becker, in pro. per.; and Channa Weiss for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

Tiffany Becker (mother) appeals from a judgment of the Los Angeles County Superior Court granting John Minkiewitz's (father) petition under the Hague Convention on the Civil

Aspects of International Child Abduction, October 25, 1980, T.I.A.S. No. 11670 (Hague Convention), as implemented by the International Child Abduction Remedies Act, title 42 United States Code section 11601 et seq., to return their son, C.M., to Mexico. She contends that the trial court erred in finding Mexico to be C.M.'s country of habitual residence. As the evidence in the record reveals no clear error in the trial court's factual findings and the trial court correctly applied the Hague Convention to those facts, we affirm the judgment.

BACKGROUND

C.M. is the seven-year-old son of mother and father. C.M. was born in Santa Monica, California and both parents are United States citizens. The family lived together on their boat, which was docked in Marina del Rey. Mother and father began to equip their boat for a potential trip around the world. Father sold his properties in the United States to fund the repair to and to equip the boat for the trip.

In December 2016, the family set sail for Mexico, and, by January 2017, C.M. and his parents had set up residency on their boat while moored to the harbor in Ensenada, Baja California. Once in Ensenada, the parents enrolled C.M. in school, where he made friends and was learning Spanish. Although the family was living on their boat, they drove back and forth between Ensenada and Los Angeles to receive specialized medical care. They maintained insurance for cars registered in the United States so they could drive back and forth between the two countries.

Mother and father took all necessary steps to acquire the necessary permits and visas for them to reside in Mexico indefinitely. While mother and father only had temporary visas, they renewed their visas and father applied for permanent residency in Mexico. Father also had bank accounts in Mexico and the United States. The parents socialized, participated in

clubs, and enjoyed various entertainment and social events in Ensenada. The family resided continuously in Ensenada from January 2017 to February 2018.

In February 2018, mother left Mexico with C.M. without father's consent and returned to California. There, mother filed a request for a domestic violence restraining order against father. Mother's request was denied for lack of personal jurisdiction over father.

In October 2018, father petitioned the trial court for the return of C.M. to his custody under the Hague Convention and title 22 United States Code section 9003(b), the International Child Abduction Remedies Act. After a multiday hearing that included extensive witness testimony from the parents and others, the trial court granted father's request, finding that C.M.'s habitual residence was Mexico. The trial court rejected mother's contentions that Ensenada was only a temporary stop for the family during a longer trip around the world. Rather, the evidence showed that they took short trips to Ensenada and other ports beyond Ensenada, but all of their trips were in the waters adjacent to Mexico. Even "if the parties had left the United States with the idea that they were going to cruise the world, their intentions changed once they landed in Ensenada, once they establish[ed] themselves there, once they placed [C.M.] in school, and once they applied for all of the various government documents and permits they needed to remain indefinitely in Mexico."

The trial court issued its statement of decision and ordered C.M. returned to Mexico in the care, custody and control of his father. Mother appealed.

DISCUSSION

"Adopted in 1980, the [Hague Convention] is intended to prevent 'the use of force to establish artificial jurisdictional links on an international level, with a view to obtaining custody of a

child.' [Citation.] Despite the image conjured by words like 'abduction' and 'force,' the [Hague] Convention was not drafted in response to any concern about violent kidnappings by strangers. It was aimed, rather, at the 'unilateral removal or retention of children by parents, guardians or close family members.' [Citation.] Such an abductor 'rarely seeks material gain; rather, he or she will aspire to the exercise of sole care and control over a son or daughter in a new jurisdiction.' [Citation.] The preamble to the [Hague] Convention describes the signatory states as 'desiring to protect children internationally from the harmful effects of their wrongful removal or retention,' effects which are thought to follow when a child 'is taken out of the family and social environment in which its life has developed.' [Citation.] This may occur either through the 'removal [of a child] from its habitual environment,' or by 'a refusal to restore a child to its own environment after a stay abroad.' " (*Mozes v. Mozes* (9th Cir. 2001) 239 F.3d 1067, 1069–1070, fns. omitted.)

"The [Hague] Convention seeks to deter those who would undertake such abductions by eliminating their primary motivation for doing so. Since the goal of the abductor generally is 'to obtain a right of custody from the authorities of the country to which the child has been taken' [citation], the signatories to the [Hague] Convention have agreed to 'deprive his actions of any practical or juridical consequences.' [Citation.] To this end, when a child who was habitually residing in one signatory state is wrongfully removed to, or retained in, another, Article 12 [of the Hague Convention] provides that the latter state 'shall order the return of the child forthwith.' [Citations.] Further, Article 16 [of the Hague Convention] provides that 'until it has been determined that the child is not to be returned under this [Hague] Convention,' the judicial or administrative authorities of a signatory state 'shall not decide on the merits of rights of

custody.' " (*Mozes v. Mozes*, *supra*, 239 F.3d at p. 1070.) Both the United States and Mexico are contracting states to the Hague Convention. (*Bardales v. Duarte* (2010) 181 Cal.App.4th 1262, 1270.)

After the trial court issued its statement of decision, the United States Supreme Court in *Monasky v. Taglieri* (2020) ___ U.S. ___ [140 S.Ct. 719, 727] held that the determination of a child's habitual residence depends on the totality of the circumstances specific to each case, rather than on any express agreement between the parents on where to raise their child. *Monasky*, at page 730, also held that, the "habitual-residence determination . . . presents a task for factfinding courts, not appellate courts, and should be judged on appeal by a clear-error review standard deferential to the factfinding court." Under this standard, we may not reverse the finding of the trier of fact simply because we are convinced that we would have decided the case differently. (*Anderson v. City of Bessemer City* (1985) 470 U.S. 564, 573.) Where there are two permissible views of the evidence, the trial court's choice between them cannot be clearly erroneous. (*Ibid.*)

Mother cannot overcome this highly deferential standard of review. First and foremost, her contentions are disagreements with the trial court's findings of fact including her lack of credibility. For example, mother asserts that she and father did not intend to abandon the United States and to settle in Mexico as shown by the family's significant ties to the United States. Mother points to the fact that C.M. had health issues that required treatment in the United States and that the family maintained car insurance and driver's licenses in the United States. However, the trial court considered this evidence and still found that C.M.'s habitual residence was in Mexico based on other facts, including C.M.'s enrollment in school, the family's continuous residence in Mexico for over a year, and their

participation in the local community. Moreover, to the extent the family maintained ties to the United States through bank accounts and mailing addresses, the trial court found that these were common practices of expatriates and not determinative of a child's habitual residence.

On appeal, mother repeats her assertion that Mexico was only a temporary stop on the family's way around the world. However, the trial court expressly rejected this testimony as not credible, finding that, once the family established residency in Ensenada, their intent to travel changed. Mother's reliance on her witness's testimony that the family's intention was to sail around the world is unavailing. The trial court gave the witness's testimony on this disputed fact little weight as the witness's knowledge of the parents' intent was more than five years old.

As stated above, our role is not to reweigh the evidence and decide whether the evidence supports a different conclusion than the one reached by the trial court. We are limited to a determination of whether the trial court's findings are supported by the record, which they are.

Also, mother has not cited to any legal error committed by the trial court that would warrant reversal. Mother argues that the trial court placed too much emphasis on the fact that the family lived in Ensenada for over the six-month period under the Uniform Child Custody Jurisdiction and Enforcement Act which defines a child's " '[h]ome state' " as "the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding." (Fam. Code, § 3402, subd. (g).) Without making any conclusions on the trial court's emphasis on the six-month period, the trial court clearly relied on other factors in making its determination that C.M.'s habitual residence was Mexico. These included C.M.'s enrollment in school and his

socialization, as well as the parents' intent to remain in Mexico and their involvement in the local community.

Finally, mother's argument that the totality of the circumstances test articulated in *Monasky v. Taglieri*, *supra*, 140 S.Ct. 719 requires reversal is without merit. Because *Monasky* had yet to be decided, the trial court followed the Ninth Circuit Court of Appeals's decision in *Mozes v. Mozes*, *supra*, 239 F.3d 1067, which emphasized the importance of the parents' mutual intent to establish a new habitual residence and abandon the old one, and the Sixth Circuit Court of Appeals's decision in *Friedrich v. Friedrich* (6th Cir. 1993) 983 F.2d 1396, 1401, which directed courts to focus on the past experience of the child, rather than the parents' future intentions. The trial court found under either standard that C.M.'s habitual residence was Mexico. Even though the trial court did not have the guidance of *Monasky* at the time of its decision, we conclude that it based its decision on all relevant circumstances. Nothing in the record suggests that remanding the matter back to the trial court to apply *Monasky* would result in a different outcome. A remand would only consume more time and thwart the Hague Convention's objective of a swift resolution to these custody disputes. (See *Monasky*, at p. 731.)

DISPOSITION

The judgment is affirmed. No costs are awarded.
NOT TO BE PUBLISHED.

DHANIDINA, J.

We concur:

EDMON, P. J.

EGERTON, J.

APPENDIX B

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT

Petitioner:	) LASC Case No.: 18STHC 00011 (Related and Consolidated) Cases: 18CHRO 00212 and 18STPT 00689)
JOHN MICHAEL MINKIEWITZ,	) **STATEMENT OF DECISION** (Petitioner's Hague Convention) on the Civil Aspects of International Child Abduction
vs.	) Application)
Respondent:	) Hearing Dates: January 8--11, 14, 17, 23, 28 and 29, 2019) Location: Dept. "2" (Central District)
TIFFANY CHRISTINE BECKER	) Judge: Thomas Trent Lewis

On January 8, 9, 10, 11, 14, 17, 23, 28 and 29, 2019, Petitioner's Hague Convention on the Civil Aspects of International Child Abduction Application ("Hague application") came on for regular hearing before the Honorable Thomas Trent Lewis, Dept. 2, Superior Court for the County of Los Angeles, located at 111 N. Hill Street, Los Angeles, CA 90012. Present in court were: TAL KAHANA, Deputy, and NORMA SERNA, Deputy, for the Central Authority of the District Attorney's Office, 210 W. Temple Street, Suite 1138C, Los Angeles, CA 90012; Respondent, TIFFANY CHRISTINE BECKER; Respondent's attorney, KURT E. BIER of the Law Offices of Kurt E. Bier, 1295 West Sunset Boulevard, Los Angeles, CA 90026; Petitioner, JOHN MICHAEL MINKIEWITZ; and Petitioner's attorney, CLARKE L. YOUNG. After reviewing all of the pleadings submitted by both of the parties and the Central Authority, hearing the testimony of

the parties and various witnesses, reviewing all of the evidence admitted into evidence, and hearing the arguments of counsel, the Court made the following findings of fact and conclusions of law and issued the following ORDERS:

1. The Court finds that the habitual residence of Colt Minkiewitz (DOB 3/4/2013) is Mexico.

2. "Domicile" is not the same as "residency" under the law. Moreover, some ambiguity exists concerning the term "habitual residence"in the published authorities, and differences exist between the various U.S. district courts concerning what the focus of the "habitual residence" inquiry should be.

3. For example, the Ninth Circuit rationale places its initial focus on parental intent concerning the acquisition of a new habitual residence or the abandonment of an old habitual residence. The Ninth Circuit in *Mozes v. Mozes*, 239 F.3d 1067 (9th Cir. 2001) (*"Mozes"*) held that one may not acquire a new habitual residence unless there is a mutual intent to abandon the old one. Applying the *Mozes* standard to the instant action, the Court finds that by March 2017 Respondent and Petitioner ("Mother" and "Father" respectively), had a settled mutual intention to abandon their old habitual residence in the United States and adopt Mexico as the country of new habitual residence for themselves and for Colt.

4. Other District Courts reject *Mozes'* emphasis on parental intent. Most specifically, the Sixth Circuit in the case of *Friedrich v. Friedrich*, 983 F.2d 1396 (6th Cir. 1993) (*"Friedrich 1"*) directs courts to focus on the past experiences of the child and not on the intention of the parents. It so happens in this case, whether under the *Mozes* standard or the *Friedrich 1* standard, the habitual residence of Colt is Mexico in that his parents clearly intended to leave the United States and relocate in Mexico. While it is true the parties discussed the possibility of being what Father described as "cruisers" who intended to sail around the world, no evidence exists that they actually lived that lifestyle. Instead, the evidence shows they took short trips to Ensenada and other ports beyond Ensenada, but all of their trips were in the waters adjacent

to Mexico.

5. The evidence clearly shows that the duration of habitual residence in Mexico went well beyond the minimum six-month period. The Court finds the parties continuously lived in Mexico for 13 months, that Colt was enrolled in school in Mexico, and that his parents took all of the necessary steps to acquire all necessary permits and Visas for them to reside in Mexico. These actions also show the intent of the parties.

6. The Court also finds that the evidence clearly shows that the parties maintained connections with United States. After all, they are U.S. citizens. Both parties came to the United States for medical care for themselves and for Colt but the parties obtained additional medical care for Colt in Mexico. The evidence showed Colt came to the United States for medical care in large part due to the fact that he was born prematurely.

7. Both parties put a great deal of effort into describing how well-equipped Petitioner's boat, the Iolair Mara ("the Mara"), was as well as its suitability for sailing around the world. The Court gave little weight to Mr. Bennatts' testimony because it eventually became clear that what he knew about the Mara and the parties' intent as expressed by both of them was more than five years old.

8. The Court finds that the Mara's home port is not determinative. Where a boat is registered is not relevant. Where the parties live is relevant. The issue is whether the parties established their lives in Ensenada.

9. The Court finds that Mother's testimony, namely, that she did not intend to establish habitual residency in Ensenada, is not credible. The Court finds the parties socialized, participated in clubs, enjoyed various entertainment and social events, and enrolled Colt in school while living on the Mara in Ensenada. In addition, Colt was involved in numerous activities and he became acclimated to living in Mexico as the term "acclimated" is defined under *Friedrich 1.* There was plenty of photographic evidence showing the parties living a normal lifestyle in Ensenada.

10. Mothers' theory is that the parties had something of a brief stay in Mexico, but the evidence does not support Mother's claim. On the contrary, the evidence supports that the parties had fully moved to Ensenada.

11. The Court took judicial notice of, and consolidated, Mother's domestic violence action, LASC Case No. 18CHRO 00212, and Mother's paternity action, LASC Case No. 18STPT 00689, into this case. As to Mother's domestic violence application, Judge David Rosen found that California had no jurisdiction over Father. Thus, it is not consistent with the underlying facts of the domestic violence case that Judge Rosen would find that a person who was briefly in Mexico was somehow no longer subject to the jurisdiction of California. For this reason ~~I am~~ The court gives giving weight to Judge Rosen's finding and his decision to grant Father's Motion to Quash Mother's DVRO action.

12. ~~It would be great if the issues with the DVRO action ended there. Instead, what I can only describe as a comedy of errors took place thereafter. Firstly, in his minute order,~~ Judge Rosen found that Colt had resided in Mexico at least from January 2017 into February 2018--clearly more than six months required by law.

13. Judge Rosen did not make a finding concerning Colt's habitual residence. Indeed, the Order After Hearing that Judge Rosen signed on April 24, 2018 is entirely inconsistent with his minute order and the transcript of the proceedings of March 12, 2018, both of which the Court took judicial notice of. Nowhere in the transcript does Judge Rosen indicate that he intended to find that the United States was Colt's country of habitual residence. Judge Rosen made no such finding. Judge Rosen then entered an order, under what he styled as the emergency jurisdiction of the court, to avoid issues between the parents concerning removal of the minor child pending a further court of competent jurisdiction taking action. Other than this proceeding before Judge Rosen, no other California or other U.S. court has taken any other action. However, the Mexican court in Ensenada, Baja, California has taken action by issuing a temporary order.

14. Mother, who was self represented at the DVRO hearing in March 2018, prepared and submitted to Judge Rosen the Order After Hearing that Judge Rosen signed on April 24, 2018. By mother's own testimony, she *admitted* checking the box stating that the habitual residence of Colt was the United States. This Court specifically finds that language in the order was improvidently signed by Judge Rosen. The Court agrees with Respondent that it is problematic for Petitioner that Petitioner made no motion to set aside this erroneous portion of the order, but that is not determinative here. This Court's overall finding is that because Judge Rosen found (1) that Father was no longer subject to the jurisdiction of the California court and, therefore, granted Father's Motion to Quash and (2) that the parties had resided in Mexico from at least January 2017 into February 2018, there was no reason for Judge Rosen to check the box that stated California is the minor child's habitual residence. Both the transcript and the minute order correctly reflect Judge Rosen's findings. If Judge Rosen intended to make additional and further findings that deviated from the transcript and his minute order, he could not have done so without first giving notice to the parties. Moreover, it was fairly obvious that the parties were going to be litigating the issue of jurisdiction elsewhere. If, indeed, California had home state jurisdiction, then it would have been very simple for Judge Rosen to have said, "I find that the home state of Colt is California." Indeed, prior to the parties going to Mexico, the home state of Colt was California.

15. The Court finds, that on the record Judge Rosen had before him, Judge Rosen did not intend to make a finding as to Colt's habitual residence, but did make a specific finding that California was not Colt home state.

16. Respondent places some reliance on language contained in *Marriage of Nurie*, 176 Cal.App.4th 478 ("*Nurie*"). The court does not adopt Respondent's reading of ~~I respectfully disagree with Respondent's counsel as to the holding in~~ *Nurie*. In *Nurie*, father filed an action in California claiming California was the minor child's home state. Mother then removed the minor child to Pakistan. Father traveled to Pakistan, litigated against Mother, and became subject to orders issued by the Pakistani court. Father

then returned to the United States and obtained an order giving him sole legal and physical custody of the minor child. In doing so the *Nurie* courts simply said, "[y]ou can't confer jurisdiction on another jurisdiction even by consent." The California Court went on to hold that California always had jurisdiction under the UCCJEA and that Father could not confer jurisdiction upon Pakistan. The holding in *Nurie* is substantially different from the interpretation Respondent's counsel gave it ~~and, therefore, I reject counsel's argument with respect~~.

17. Respondent also relies on *Ruiz vs. Tenorio* 392 F.3rd 1247 (11th Cir. 2004). *Ruiz* involves parties who had vacillating decisions about whether or not to relocate. As Petitioner's counsel noted, *Ruiz* turns primarily on Father's promises that they were going to, "Try it out in Mexico." Here, no credible evidence exists supporting Respondent's claim that the parties were going into Mexico just to try it out. On the contrary, the evidence shows the parties had, in fact, a settled intent to relocate to Mexico and Colt was well acclimated to life in Ensenada.

18. Petitioner requested a Statement of Decision in this matter pursuant to the Civil Aspects of International Child Abduction statute, which is embodied in the U.S. Code and which is also part of the California Family Code. This statute is commonly referred to as the "Hague Convention Concerning Children in Family Court."

19. The Court respectfully declines Petitioner's request to take judicial notice that Judge Rosen held that California lacked jurisdiction entirely. The court concludes ~~I think~~ Judge Rosen ~~felt a~~ found sufficient emergency existed to allow him to exercise emergency jurisdiction under the UCCJEA. Nevertheless, the Court finds that the gravamen of Judge Rosen's holding is the converse, namely, that California was not the home state at the time Mother's DVRO request was filed, nor was California the home state at the time mother filed her Petition for Determination of Paternity–albeit Mother's paternity proceeding had not been filed at the time Judge Rosen made his emergency jurisdiction finding.

20. The Court is not satisfied that Petitioner proved by a preponderance of the

evidence that Respondent intentionally misled Judge Rosen. Therefore, the Court makes no such finding. The Order After Hearing was inaccurate, but the Court cannot find that Respondent made an intentional misrepresentation. The Court believes Mother presented a document to Judge Rosen that was inaccurate, but the Court cannot find that Mother's inaccuracy was an intentional misrepresentation.

21. The Court declines to make any findings beyond the issue of Colt's habitual residence at this time because Mother waived her grave risk of harm defense. In her DVRO action, Mother claimed she was imprisoned in Ensenada, but that position is inconsistent with testimony given during this Hague proceeding on the issue of habitual residence. Even if Mother were imprisoned in Ensenada–and this Court is not finding that mother was imprisoned–Ensenada was nevertheless Colt's habitual residence and he was acclimated and settled in Ensenada. Perhaps Mother did not feel like she could leave, but the evidence clearly showed that Mother went to Ensenada with Father knowingly, with the intention of making a new life in Ensenada living on the Mara, and with plans to do other and additional travel as weather, time and health permitted.

22. The Court finds Petitioner established by a preponderance of the evidence the necessary facts to establish: (1) That the parties left Marina del Rey, California for to Mexico in December 2016; (2) That they left the United States in the Mara with the intention of establishing permanent residency in Baja, California, Mexico; (3) That they arrived in Ensenada in January 2017; (4) That Colt and his parents continued to live in Ensenada and established Ensenada as their residence continuously from January 2017 into February 2018; and (5) That Mother wrongfully left Ensenada with Colt in February 2018, came back to the United States, and initiated her DVRO proceeding and Petition for Determination of Paternity proceeding in the U.S.

23. The Court finds that the work done on the Mara was begun at Marina del Rey, California and that work continued to be done on the Mara in Ensenada. While the plan was to

fully outfit the Mara, the Court is not satisfied that there was sufficient evidence to determine that the parties intended to cruise the world. Moreover, even if the parties had left the United States with the idea that they were going to cruise the world, their intentions changed once they landed in Ensenada, once they establish themselves there, once they placed Colt in school, and once they applied for all of the various government documents and permits they needed to remain indefinitely in Mexico. Applying for various permits and Visas to remain in Mexico indefinitely is some indicia of intent, but is not necessary proof of habitual residence; otherwise children who are undocumented would not be habitual residents simply because they were undocumented, and that most certainly is not the law.

24. Enrolling Colt at the Green Hands College evidences an overall plan to establish a new life for the parties and Colt in Ensenada.

25.The Court finds that, at or about the time Father applied for permanent residency for himself, he intended to apply for permanent residency for Respondent in Colt, but the relationship between Father and Mother had reached a nadir that resulted in Mother eventually leaving. It seems the parties had some disagreement about what the nature of their relationship was going to be and how they were going to move forward as a couple, and that disagreement led to Mother leaving.

26. The Court gave very little weight to the fact that Mother explored the possibility of teaching yoga classes in Ensenada.

27. The Court gave some weight to the fact that Petitioner had established a bank account in Mexico. The Court is also mindful of the fact that the parties were living a life where they were maintaining bank accounts and receiving some mail in the United States, not an uncommon practice for what are sometimes called "ExPats", meaning expatriates. The Court finds that maintaining one or two bank accounts in the United States and the use of the U.S. Postal System to forward mail to the parties in Mexico does not detract from the settled intent of the parties, which was to relocate to Mexico.

28. The Court specifically finds Colt was acclimated to life in Ensenada. He was attending school. He made friends. He was learning Spanish. And he was living on the Mara with his parents.

29. The evidence shows Petitioner sold properties he owned in the United States and used those proceeds to repair and equip the Mara to make her seaworthy. The Court gave very little weight to this argument. On the other hand, the Court gave substantial weight to the decision to make the Mara the most " tricked out boat in Ensenada", harbored at its mooring in Ensenada, so it would support the life that the parties established for themselves in Ensenada.

30. The Court gives very little weight to the import permit Petitioner obtained because many people go to Ensenada without intending to establish Mexico as their habitual residences, but obtain an import permit for the convenience of having one. The same is true of fishing licenses. Moreover, without a fishing license you cannot fish or even have a rod and reel on a boat in Mexican waters without facing some very substantial fines, including the possibility of Mexican officials requisitioning your boat.

31. Judge Rosen never made any findings about the viability of Mother's claims concerning domestic violence. His dismissal of Mother's DVRO application was based on lack of personal jurisdiction. Judge Rosen made no findings on the nature or extent of the relationship between the parties and this Court draws no conclusions as to the sufficiency of Mother's DVRO pleadings.

32. Petitioner asks the Court to find that Mother was in the process of securing a job in Hawaii around the time Mother wrongfully removed Colt from Ensenada and traveled with him to the United States. The Court declines to make such a finding. Nevertheless, the evidence clearly shows that Mother left Mexico with Colt without Father's consent.

33. The Court finds that Father's trips from Ensenada to the United States for specialized medical care for himself and Colt does not in and of itself show a change in the

settled intent of the parties to remain in Mexico. It is also true Colt was receiving medical care in Mexico.

34. Maintaining automobile insurance for cars registered in the United States that were driven back and forth between Mexico and the United States is simply commonsense. The Court finds that having insurance in Mexico is a neutral factor because, even if the parties were not habitual residents of Mexico, one does not drive in Mexico without appropriate insurance.

35. Petitioner requested extensive credibility findings. The Court declines to make credibility findings. The Court thinks Petitioner is overreaching when saying that Mother's testimony is self-serving and disingenuous but, that said, the preponderance of the evidence shows that the minor child's habitual residence was and remains in Ensenada, Baja California, Mexico.

36. The Court finds Mother's decision to file her Petition for Determination of Paternity in the United States is an ancillary issue in that it does not have any bearing on determining what Colt's habitual residence was on the day Mother wrongfully removed him from Ensenada, Baja, Mexico in February 2018.

37. The Court orders that Colt Minkiewitz shall return to his country of habitual residence in the care, custody and control of his father. Colt will leave at the conclusion of the hearing today, January 29, 2019. All of the restrictions on Colt remaining in the United States are lifted. Because Code of Civil Procedure § 917.7 specifically says so, it does not apply here and, therefore, there is no stay and Colt may leave for Mexico as soon as he is checked out of the waiting room and released into his father's custody.

38. If Mother submits to the jurisdiction of the courts in Mexico, surrenders her passport to the court in Mexico, agrees to be restrained from applying for any other travel documents for herself or Colt, then she will be allowed reasonable, interim access to Colt pending the issuance of superceding orders a Mexican court. Specifically, pending a Mexican court order superceding this order, with five days prior written notice to Father, Mother shall have three consecutive days of visitation with Colt in February 2019. If a court in Mexico

enters an order superseding this order, then the Mexican order prevails. Mexico alone has jurisdiction to enter a child custody and visitation order that it determines what custody and visitation arrangements is in the best interest of the child and to order any restrictions on Mother's access to Colt that it deems appropriate.

39. Mother is ordered to deliver Colt's global entry pass to father's attorneys office no later than 5:00 PM on January 30, 2019.

40. Attorney's fees will be address in a separate order.

Executed this 9TH day of ~~March~~ May 2019 at Los Angeles, California.

IT IS SO ORDERED.

DATED: MAY 09 2019

THOMAS TRENT LEWIS, Judge
Los Angeles County Superior Court

APPENDIX C

CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

(Concluded 25 October 1980)

The States signatory to the present Convention,
Firmly convinced that the interests of children are of paramount importance in matters relating to their custody,
Desiring 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,
Have resolved to conclude a Convention to this effect, and have agreed upon the following provisions -

chapter i - scope of the convention

Article 1
The objects of the present Convention are -
a) to secure the prompt return of children wrongfully removed to or retained in any Contracting State; and
b) to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.
Article 2
Contracting States shall take all appropriate measures to secure within their territories the implementation of the objects of the Convention. For this purpose they shall use the most expeditious procedures available.
Article 3
The removal or the retention of a child is to be considered wrongful where -
a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and
b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.
The rights of custody mentioned in sub-paragraph *a)* above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.
Article 4
The Convention shall apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years.
Article 5
For the purposes of this Convention -
a) "rights of custody" shall include rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence;
b) "rights of access" shall include the right to take a child for a limited period of time to a place other than the child's habitual residence.

chapter ii - central authorities

Article 6

A Contracting State shall designate a Central Authority to discharge the duties which are imposed by the Convention upon such authorities.
Federal States, States with more than one system of law or States having autonomous territorial organisations shall be free to appoint more than one Central Authority and to specify the territorial extent of their powers. Where a State has appointed more than one Central Authority, it shall designate the Central Authority to which applications may be addressed for transmission to the appropriate Central Authority within that State.

Article 7

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention.
In particular, either directly or through any intermediary, they shall take all appropriate measures -
a) to discover the whereabouts of a child who has been wrongfully removed or retained;
b) to prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures;
c) to secure the voluntary return of the child or to bring about an amicable resolution of the issues;
d) to exchange, where desirable, information relating to the social background of the child;
e) to provide information of a general character as to the law of their State in connection with the application of the Convention;
f) to initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organising or securing the effective exercise of rights of access;
g) where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisers;
h) to provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child;
i) to keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

chapter iii - return of children

Article 8

Any person, institution or other body claiming that a child has been removed or retained in breach of custody rights may apply either to the Central Authority of the child's habitual residence or to the Central Authority of any other Contracting State for assistance in securing the return of the child.
The application shall contain -
a) information concerning the identity of the applicant, of the child and of the person alleged to have removed or retained the child;
b) where available, the date of birth of the child;
c) the grounds on which the applicant's claim for return of the child is based;
d) all available information relating to the whereabouts of the child and the identity of the person with whom the child is presumed to be.
The application may be accompanied or supplemented by -
e) an authenticated copy of any relevant decision or agreement;
f) a certificate or an affidavit emanating from a Central Authority, or other competent authority of the State of the child's habitual residence, or from a qualified person, concerning the relevant law of that State;

g) any other relevant document.

Article 9

If the Central Authority which receives an application referred to in Article 8 has reason to believe that the child is in another Contracting State, it shall directly and without delay transmit the application to the Central Authority of that Contracting State and inform the requesting Central Authority, or the applicant, as the case may be.

Article 10

The Central Authority of the State where the child is shall take or cause to be taken all appropriate measures in order to obtain the voluntary return of the child.

Article 11

The judicial or administrative authorities of Contracting States shall act expeditiously in proceedings for the return of children.

If the judicial or administrative authority concerned has not reached a decision within six weeks from the date of commencement of the proceedings, the applicant or the Central Authority of the requested State, on its own initiative or if asked by the Central Authority of the requesting State, shall have the right to request a statement of the reasons for the delay. If a reply is received by the Central Authority of the requested State, that Authority shall transmit the reply to the Central Authority of the requesting State, or to the applicant, as the case may be.

Article 12

Where a child has been wrongfully removed or retained in terms of Article 3 and, at the date of the commencement of the proceedings before the judicial or administrative authority of the Contracting State where the child is, a period of less than one year has elapsed from the date of the wrongful removal or retention, the authority concerned shall order the return of the child forthwith.

The judicial or administrative authority, even where the proceedings have been commenced after the expiration of the period of one year referred to in the preceding paragraph, shall also order the return of the child, unless it is demonstrated that the child is now settled in its new environment.

Where the judicial or administrative authority in the requested State has reason to believe that the child has been taken to another State, it may stay the proceedings or dismiss the application for the return of the child.

Article 13

Notwithstanding the provisions of the preceding Article, the judicial or administrative authority of the requested State is not bound to order the return of the child if the person, institution or other body which opposes its return establishes that -

a) the person, institution or other body having the care of the person of the child was not actually exercising the custody rights at the time of removal or retention, or had consented to or subsequently acquiesced in the removal or retention; or

b) there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation.

The judicial or administrative authority may also refuse to order the return of the child if it finds that the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views.

In considering the circumstances referred to in this Article, the judicial and administrative authorities shall take into account the information relating to the social background of the child provided by the Central Authority or other competent authority of the child's habitual residence.

Article 14

In ascertaining whether there has been a wrongful removal or retention within the meaning of Article 3, the judicial or administrative authorities of the requested State may take notice directly of the law of, and of judicial or administrative decisions, formally recognised or not in the State of the habitual residence of the child, without recourse to the specific procedures for the proof of that law or for the recognition of foreign decisions which would otherwise be applicable.

Article 15

The judicial or administrative authorities of a Contracting State may, prior to the making of an order for the return of the child, request that the applicant obtain from the authorities of the State of the habitual residence of the child a decision or other determination that the removal or retention was wrongful within the meaning of Article 3 of the Convention, where such a decision or determination may be obtained in that State. The Central Authorities of the Contracting States shall so far as practicable assist applicants to obtain such a decision or determination.

Article 16

After receiving notice of a wrongful removal or retention of a child in the sense of Article 3, the judicial or administrative authorities of the Contracting State to which the child has been removed or in which it has been retained shall not decide on the merits of rights of custody until it has been determined that the child is not to be returned under this Convention or unless an application under this Convention is not lodged within a reasonable time following receipt of the notice.

Article 17

The sole fact that a decision relating to custody has been given in or is entitled to recognition in the requested State shall not be a ground for refusing to return a child under this Convention, but the judicial or administrative authorities of the requested State may take account of the reasons for that decision in applying this Convention.

Article 18

The provisions of this Chapter do not limit the power of a judicial or administrative authority to order the return of the child at any time.

Article 19

A decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue.

Article 20

The return of the child under the provisions of Article 12 may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.

chapter iv - rights of access

Article 21

An application to make arrangements for organising or securing the effective exercise of rights of access may be presented to the Central Authorities of the Contracting States in the same way as an application for the return of a child.

The Central Authorities are bound by the obligations of co-operation which are set forth in Article 7 to promote the peaceful enjoyment of access rights and the fulfilment of any conditions to which the exercise of those rights may be subject. The Central Authorities shall take steps to remove, as far as possible, all obstacles to the exercise of such rights.

The Central Authorities, either directly or through intermediaries, may initiate or assist in the institution of proceedings with a view to organising or protecting these rights and securing respect for the conditions to which the exercise of these rights may be subject.

chapter v - general provisions

Article 22

No security, bond or deposit, however described, shall be required to guarantee the payment of costs and expenses in the judicial or administrative proceedings falling within the scope of this Convention.

Article 23

No legalisation or similar formality may be required in the context of this Convention.

Article 24

Any application, communication or other document sent to the Central Authority of the requested State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the requested State or, where that is not feasible, a translation into French or English.

However, a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either French or English, but not both, in any application, communication or other document sent to its Central Authority.

Article 25

Nationals of the Contracting States and persons who are habitually resident within those States shall be entitled in matters concerned with the application of this Convention to legal aid and advice in any other Contracting State on the same conditions as if they themselves were nationals of and habitually resident in that State.

Article 26

Each Central Authority shall bear its own costs in applying this Convention.

Central Authorities and other public services of Contracting States shall not impose any charges in relation to applications submitted under this Convention. In particular, they may not require any payment from the applicant towards the costs and expenses of the proceedings or, where applicable, those arising from the participation of legal counsel or advisers. However, they may require the payment of the expenses incurred or to be incurred in implementing the return of the child.

However, a Contracting State may, by making a reservation in accordance with Article 42, declare that it shall not be bound to assume any costs referred to in the preceding paragraph resulting from the participation of legal counsel or advisers or from court proceedings, except insofar as those costs may be covered by its system of legal aid and advice.

Upon ordering the return of a child or issuing an order concerning rights of access under this Convention, the judicial or administrative authorities may, where appropriate, direct the person who removed or retained the child, or who prevented the exercise of rights of access, to pay necessary expenses incurred by or on behalf of the applicant, including travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child.

Article 27

When it is manifest that the requirements of this Convention are not fulfilled or that the application is otherwise not well founded, a Central Authority is not bound to accept the application. In that case, the Central Authority shall forthwith inform the applicant or the Central Authority through which the application was submitted, as the case may be, of its reasons.

Article 28

A Central Authority may require that the application be accompanied by a written authorisation empowering it to act on behalf of the applicant, or to designate a representative so to act.

Article 29

This Convention shall not preclude any person, institution or body who claims that there has been a breach of custody or access rights within the meaning of Article 3 or 21 from applying directly to the judicial or administrative authorities of a Contracting State, whether or not under the provisions of this Convention.

Article 30

Any application submitted to the Central Authorities or directly to the judicial or administrative authorities of a Contracting State in accordance with the terms of this Convention, together with documents and any other information appended thereto or provided by a Central Authority, shall be admissible in the courts or administrative authorities of the Contracting States.

Article 31

In relation to a State which in matters of custody of children has two or more systems of law applicable in different territorial units -

a) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit of that State;

b) any reference to the law of the State of habitual residence shall be construed as referring to the law of the territorial unit in that State where the child habitually resides.

Article 32

In relation to a State which in matters of custody of children has two or more systems of law applicable to different categories of persons, any reference to the law of that State shall be construed as referring to the legal system specified by the law of that State.

Article 33

A State within which different territorial units have their own rules of law in respect of custody of children shall not be bound to apply this Convention where a State with a unified system of law would not be bound to do so.

Article 34

This Convention shall take priority in matters within its scope over the *Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors*, as between Parties to both Conventions. Otherwise the present Convention shall not restrict the application of an international instrument in force between the State of origin and the State addressed or other law of the State addressed for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organising access rights.

Article 35

This Convention shall apply as between Contracting States only to wrongful removals or retentions occurring after its entry into force in those States.

Where a declaration has been made under Article 39 or 40, the reference in the preceding paragraph to a Contracting State shall be taken to refer to the territorial unit or units in relation to which this Convention applies.

Article 36

Nothing in this Convention shall prevent two or more Contracting States, in order to limit the restrictions to which the return of the child may be subject, from agreeing among themselves to derogate from any provisions of this Convention which may imply such a restriction.

chapter vi - final clauses

Article 37

The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Fourteenth Session.

It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 38

Any other State may accede to the Convention.

The instrument of accession shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

The Convention shall enter into force for a State acceding to it on the first day of the third calendar month after the deposit of its instrument of accession.

The accession will have effect only as regards the relations between the acceding State and such Contracting States as will have declared their acceptance of the accession. Such a declaration will also have to be made by any Member State ratifying, accepting or approving the Convention after an accession. Such declaration shall be deposited at the Ministry of Foreign Affairs of the Kingdom of the Netherlands; this Ministry shall forward, through diplomatic channels, a certified copy to each of the Contracting States.

The Convention will enter into force as between the acceding State and the State that has declared its acceptance of the accession on the first day of the third calendar month after the deposit of the declaration of acceptance.

Article 39

Any State may, at the time of signature, ratification, acceptance, approval or accession, declare that the Convention shall extend to all the territories for the international relations of which it is responsible, or to one or more of them. Such a declaration shall take effect at the time the Convention enters into force for that State.

Such declaration, as well as any subsequent extension, shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.

Article 40

If a Contracting State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that this Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

Any such declaration shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands and shall state expressly the territorial units to which the Convention applies.

Article 41

Where a Contracting State has a system of government under which executive, judicial and legislative powers are distributed between central and other authorities within that State, its signature or ratification, acceptance or approval of, or accession to this Convention, or its making of any declaration in terms of Article 40 shall carry no implication as to the internal distribution of powers within that State.

Article 42

Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 39 or 40, make one or both of the reservations provided for in Article 24 and Article 26, third paragraph. No other reservation shall be permitted.

Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands.
The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.
Article 43
The Convention shall enter into force on the first day of the third calendar month after the deposit of the third instrument of ratification, acceptance, approval or accession referred to in Articles 37 and 38.
Thereafter the Convention shall enter into force -
(1) for each State ratifying, accepting, approving or acceding to it subsequently, on the first day of the third calendar month after the deposit of its instrument of ratification, acceptance, approval or accession;
(2) for any territory or territorial unit to which the Convention has been extended in conformity with Article 39 or 40, on the first day of the third calendar month after the notification referred to in that Article.
Article 44
The Convention shall remain in force for five years from the date of its entry into force in accordance with the first paragraph of Article 43 even for States which subsequently have ratified, accepted, approved it or acceded to it.
If there has been no denunciation, it shall be renewed tacitly every five years.
Any denunciation shall be notified to the Ministry of Foreign Affairs of the Kingdom of the Netherlands at least six months before the expiry of the five year period. It may be limited to certain of the territories or territorial units to which the Convention applies.
The denunciation shall have effect only as regards the State which has notified it. The Convention shall remain in force for the other Contracting States.
Article 45
The Ministry of Foreign Affairs of the Kingdom of the Netherlands shall notify the States Members of the Conference, and the States which have acceded in accordance with Article 38, of the following -
(1) the signatures and ratifications, acceptances and approvals referred to in Article 37;
(2) the accessions referred to in Article 38;
(3) the date on which the Convention enters into force in accordance with Article 43;
(4) the extensions referred to in Article 39;
(5) the declarations referred to in Articles 38 and 40;
(6) the reservations referred to in Article 24 and Article 26, third paragraph, and the withdrawals referred to in Article 42;
(7) the denunciations referred to in Article 44.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.
Done at The Hague, on the 25th day of October, 1980, in the English and French languages, both texts being equally authentic, in a single copy which shall be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Fourteenth Session.

22 U.S. Code § 9001

The Congress makes the following findings:
(1) The international abduction or wrongful retention of children is harmful to their well-being.
(2) Persons should not be permitted to obtain custody of children by virtue of their wrongful removal or retention.
(3) International abductions and retentions of children are increasing, and only concerted cooperation pursuant to an international agreement can effectively combat this problem.
(4) The Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980, establishes legal rights and procedures for the prompt return of children who have been wrongfully removed or retained, as well as for securing the exercise of visitation rights. Children who are wrongfully removed or retained within the meaning of the Convention are to be promptly returned unless one of the narrow exceptions set forth in the Convention applies. The Convention provides a sound treaty framework to help resolve the problem of international abduction and retention of children and will deter such wrongful removals and retentions.
(b) Declarations
The Congress makes the following declarations:
(1) It is the purpose of this chapter to establish procedures for the implementation of the Convention in the United States.
(2) The provisions of this chapter are in addition to and not in lieu of the provisions of the Convention.
(3) In enacting this chapter the Congress recognizes—
(A) the international character of the Convention; and
(B) the need for uniform international interpretation of the Convention.
(4) The Convention and this chapter empower courts in the United States to determine only rights under the Convention and not the merits of any underlying child custody claims.
(Pub. L. 100–300, §2, Apr. 29, 1988, 102 Stat. 437.)

22 USC §9003. Judicial remedies

(a) Jurisdiction of courts
The courts of the States and the United States district courts shall have concurrent original jurisdiction of actions arising under the Convention.
(b) Petitions
Any person seeking to initiate judicial proceedings under the Convention for the return of a child or for arrangements for organizing or securing the effective exercise of rights of access to a child may do so by commencing a civil action by filing a petition for the relief sought in any court which has jurisdiction of such action and which is authorized to exercise its jurisdiction in the place where the child is located at the time the petition is filed.
(c) Notice
Notice of an action brought under subsection (b) shall be given in accordance with the applicable law governing notice in interstate child custody proceedings.
(d) Determination of case
The court in which an action is brought under subsection (b) shall decide the case in accordance with the Convention.
(e) Burdens of proof
(1) A petitioner in an action brought under subsection (b) shall establish by a preponderance of the evidence-

(A) in the case of an action for the return of a child, that the child has been wrongfully removed or retained within the meaning of the Convention; and
(B) in the case of an action for arrangements for organizing or securing the effective exercise of rights of access, that the petitioner has such rights.

(2) In the case of an action for the return of a child, a respondent who opposes the return of the child has the burden of establishing-
(A) by clear and convincing evidence that one of the exceptions set forth in article 13b or 20 of the Convention applies; and
(B) by a preponderance of the evidence that any other exception set forth in article 12 or 13 of the Convention applies.

(f) Application of Convention

For purposes of any action brought under this chapter-
(1) the term "authorities", as used in article 15 of the Convention to refer to the authorities of the state of the habitual residence of a child, includes courts and appropriate government agencies;
(2) the terms "wrongful removal or retention" and "wrongfully removed or retained", as used in the Convention, include a removal or retention of a child before the entry of a custody order regarding that child; and
(3) the term "commencement of proceedings", as used in article 12 of the Convention, means, with respect to the return of a child located in the United States, the filing of a petition in accordance with subsection (b) of this section.

(g) Full faith and credit

Full faith and credit shall be accorded by the courts of the States and the courts of the United States to the judgment of any other such court ordering or denying the return of a child, pursuant to the Convention, in an action brought under this chapter.

(h) Remedies under Convention not exclusive

The remedies established by the Convention and this chapter shall be in addition to remedies available under other laws or international agreements.
(Pub. L. 100–300, §4, Apr. 29, 1988, 102 Stat. 438 .)

Court of Appeal, Second Appellate District, Division Three - No. B299078

S267789

IN THE SUPREME COURT OF CALIFORNIA

En Banc

JOHN MINKIEWITZ, Plaintiff and Respondent,

v.

TIFFANY BECKER, Defendant and Appellant.

The petition for review is denied.

CANTIL-SAKAUYE

Chief Justice