NOT FOR PUBLICATION

FILED

JAN 9 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

THEA MARIE ROSASEN, Plaintiff-Appellee, v. MARLON ABRAHAM ROSASEN, Defendant-Appellant.	No. 20-55459 D.C. No. 2:19-cv-10742-JFW-AFM MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
John F. Walter, District Judge, Presiding

Submitted January 5, 2023**
San Francisco, California

Before: HAWKINS, THOMAS, and McKEOWN, Circuit Judges.

Marlon Abraham Rosasen appeals pro se the district court's judgment in favor of Thea Marie Rosasen on her petition under the Convention on Civil Aspects of International Child Abduction ("Hague Convention") and the

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* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

International Child Abduction Remedies Act. We have jurisdiction under 28 U.S.C. § 1291. We review the district court's fact findings for clear error, and we review de novo the district court's application of the Hague Convention to those facts. *In re ICJ*, 13 F.4th 753, 760–61 (9th Cir. 2021). We affirm.

The district court properly exercised its broad discretion in deciding that an evidentiary hearing was not necessary because the parties presented evidence and argument and received a meaningful opportunity to be heard. *See* Hague Convention art. 2, Oct. 25, 1980, 19 I.L.M. 1501 (in deciding Hague Convention petitions, courts must "use the most expeditious procedures available"); *Colchester v. Lazaro*, 16 F.4th 712, 729 (9th Cir. 2021) (courts "are accordingly vested with broad discretion to fashion appropriate procedures").

The district court did not clearly err in finding that Norway was the habitual residence of the parties' children. *See Monasky v. Taglieri*, 140 S. Ct. 719, 723 (2020) (habitual residence determination is reviewed for clear error). Any agreement between the parents to raise the children in the United States was not dispositive. *See id.* at 726. The district court properly found that the children were "at home" in Norway because they attended daycare there, the majority of their close relatives lived there, and they had close relationships with Thea Rosasen's parents and other family members in Norway who helped to care for them. *See id.*

The district court properly found that the exception to the remedy of return

set forth in Hague Convention Article 13(a) did not apply because Thea Rosasen did not consent to the children's relocation to the United States. *See Asvesta v. Petroutsas*, 580 F.3d 1000, 1004 (9th Cir. 2009) (itemizing consent or subsequent acquiescence as one exception to the Hague Convention's "rule of return").

Marlon Rosasen did not establish that the district court's grant of the petition violated his fundamental rights under Hague Convention Article 20. *See* Hague International Child Abduction Convention; Text and Analysis, 51 Fed. Reg. 10,494, 10,510 (Mar. 26, 1986) (advising that the Article 20 exception is to be "invoked only on the rare occasion that return of a child would utterly shock the conscience of the court or offend all notions of due process").

AFFIRMED.[1]

[1] Marlon Rosasen's motion for return of the children pending appeal (Dkt. No. 59) is denied.

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THEA MARIE ROSASEN, Plaintiff-Appellee, v. MARLON ABRAHAM ROSASEN, Defendant-Appellant.	No. 20-55459 D.C. No. 2:19-cv-10742-JFW-AFM Central District of California, Los Angeles ORDER

Before: HAWKINS, S.R. THOMAS, and McKEOWN, Circuit Judges.

The panel has unanimously voted to deny appellant's petition for rehearing. Judge Thomas has voted to deny the petition for rehearing en banc, and Judge Hawkins and Judge McKeown so recommend. The full court has been advised of the petition for rehearing en banc, and no judge has requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35.

The petitions for rehearing and rehearing en banc (Dkt. 63) are DENIED.