

10/16/01 “See News Release for any concurrences and/or dissents.”

**SUPREME COURT OF LOUISIANA**

No. 01-C-1967

***MAGDA SOBHY AHMED AMIN, ET AL***

***versus***

***ABDELRAHMAN SAYED BAKHATY***

ON WRIT OF CERTIORARI TO THE COURT OF APPEAL,  
FIRST CIRCUIT, PARISH OF EAST BATON ROUGE

VICTORY, J., Concurring\*

I concur in the result reached by the majority. The trial court made a finding of fact that the child at issue in this case was relocated to Baton Rouge, Louisiana from Egypt by his mother in good faith with the intent of forming a family unit with the child’s father, who has a residence in this country and is a United States citizen. The child was born in Egypt and had always resided there with his mother. Both mother and father are Egyptian nationals. However, mother and child have an extended family in Baton Rouge. Upon learning of the relocation, father commenced legal proceedings in Egypt and thereafter sought the assistance of our courts to require transfer of the child to him, relying on Egyptian principles of custody and guardianship. By that time, however, mother had already filed a proceeding in this state asking for a determination of custody that pre-dated custody proceedings instituted by the father in Egypt. The father claims that a final Egyptian custody decree has now been issued in this matter, although it does not appear that such had been

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\* Retired Judge Robert L. Lobrano, assigned as Justice *Pro Tempore*, participating in the decision.

rendered at the time of the Louisiana trial of this case, which is not yet final.

Ordinarily, I would be inclined under principles of comity to recognize a foreign custody judgment, particularly where, as here, the child was a habitual resident of another nation before his mother traveled with him to this country. Nevertheless, a body of law has developed in the area of international child custody disputes that impacts my views on the handling of this case. The United States is signatory to the Hague Convention which addresses such issues. Under that Convention, remedies are available in a case such as this when a parent removes a child from his nation of habitual residence. However, that Convention, which might have provided the father a remedy in this case, was not signed by Egypt. Courts in this country have frequently examined the Hague Convention and the United States regulations issued pursuant thereto. It appears to be settled that the Convention applies only when *both* countries involved are signatory nations. Where a parent from a non-signatory nation removes a child to a signatory country, there is no remedy available under the Hague Convention to the parent from the nation of origin. Had Egypt signed the Convention, our Department of State regulations suggest that this country would have cooperated in a request made by the Egyptian government for the return of the child. But Egypt chose not to sign the convention, declining to agree to a set of rules governing international custody disputes. *See Mezo v. Elmergawi*, 855 F. Supp. 59 (E.D. N.Y. 1994) and the materials on international law cited therein. That being the case, I am not persuaded that any judgment of the Egyptian court regarding custody of this child, assuming that one was rendered, is entitled to the same comity that I might otherwise be inclined to extend. Comity is a principle of judicial courtesy that implies mutuality. It does not appear that Egypt would consider itself constrained

to extend comity to a custody determination by a court in the United States of America.

Since I do not believe we are bound to decline jurisdiction under principles of comity, Louisiana courts have subject matter jurisdiction over the minor child now living in this state unless there is a superior claim to jurisdiction by some other state. Even though Louisiana is not the “home state” as that term is defined in the Act, our state has jurisdiction over children present within our borders where no other state has jurisdiction. La. RS.13:1702(4)(i). Egypt is not a State within the meaning of the UCCJA . Thus under the terms of La. R.S. 13:1702(4)(i), Louisiana can assert subject matter jurisdiction over the child in question.

I recognize that Louisiana has adopted Section 1722 of the Uniform Act which provides:

The general policies of this Part extend to the international area. The provisions of the part relating to the recognition and enforcement of custody decrees of other states apply to custody decrees and decrees involving legal institutions similar in nature to custody institutions rendered by appropriate authorities of other nations if reasonable notice and opportunity to be heard were given to all affected persons.

Notwithstanding this general provision, I am satisfied that Louisiana is justified in exercising its jurisdiction in this case. I reach this conclusion because our state was the first jurisdiction in which a custody proceeding was commenced and because the evidence in the record reasonably supports the conclusion of the trial court that the legal precepts under which a custody determination would be made in Egypt differ substantially and materially from our own. Moreover, since Egypt has declined to sign the Hague Convention, I do not feel compelled to exercise our discretion in favor of a nation that has rejected the principles that underlie both the Hague Convention

agreements in this area and the UCCJA.

Accordingly, I concur.