



***Taglieri v. Monasky*, No. 16-4128, 2018 U.S. App. LEXIS 5408 (6th Cir. Mar. 2, 2018) (en banc).**

(The first Habitual Residence Case under The Hague Convention to be heard en banc by a US Court of Appeals in history and only the second Hague Case ever to be heard by an en banc court of appeals panel because of its exceptional public importance”.)

An *en banc* session of a United States Court of Appeals is a case that involves complex issues or involving matter of exceptional public importance. In fact, it is so exceptional it is practically the last appellate step before the court of last resort—the United States Supreme Court. *Taglieri v. Monasky*, 2017 U.S. App. LEXIS 24292 (6th Cir., Nov. 29, 2017); 876 F.3d 868 (6th Cir.2017), is one such case. In *Taglieri v. Monasky*, Zashin & Rich defended Ms. Monasky at the trial court level and have been actively involved at all appellate levels. This is a case which has squarely turned on, to date, an open legal question in the 6th Circuit: how do courts determine the habitual residence of an extremely young child?

All areas of law develop over time, and that is true for how United States courts address the determination of a child’s habitual residence pursuant to the 1980 Hague Convention on the Civil Aspects of International Child Abduction. One particularly challenging aspect of making those determinations occurs when the child at issue is unable to meaningfully form connections to any particular location, whether that is due to being extremely young or disabled. The facts in *Taglieri v. Monasky* are heart-wrenching and on-point: a child is born in Italy to an American mother (Monasky) and Italian father in the midst of a disintegrating marriage fraught with spousal abuse perpetrated against Ms. Monasky, even while pregnant. While Ms. Monasky made clear to Dr. Taglieri her intentions to leave Italy with the child as soon as possible after her birth, Ms. Monasky was effectively trapped in Italy for several weeks awaiting the child’s passport. After the marital situation came to a head, resulting in Ms. Monasky and the child being placed in a domestic violence safe house, Ms. Monasky is finally able to secure the child’s passport and leave Italy for the US with her then-8-week-old daughter.

In *Taglieri v. Monasky*, although the trial court ordered the child to be returned to Italy primarily because the court had no direct guidance on the appropriate legal standard from its superior courts. On appeal, Ms. Monasky’s counsel tirelessly pressed what should be the proper legal standard, a standard which had been applied by every other US circuit to have addressed the issue. Namely, when a child is too young to form meaningful connections and acclimatize to a particular place in order to establish a habitual residence, courts must look to the parents’ shared intent as to where the child would be raised as a proxy. Notwithstanding Ms. Monasky’s fervent efforts, a sharply divided appellate court meted out yet another blow by erroneously fashioning a legal standard at odds with both controlling 6th Circuit precedent, as well as with virtually all precedent in any prior case from the 6th Circuit and all other circuits to have addressed the issue. In effect, the appellate panel majority created both an inter- and intra-circuit split on what is the proper legal standard for determining the habitual residence of a very young child.

Undeterred, counsel sought and obtained an en banc rehearing of Ms. Monasky’s appeal by the 6th Circuit—an accomplishment achieved only once before in a United States Hague Convention case (*see Silverman v. Silverman*, 338 F.3d 886 (8th Cir.2003)), and the first ever on the issue of determining habitual residence. Zashin & Rich has had two goals from the beginning: to ensure a just and proper outcome for Ms. Monasky and her daughter, and also to advance the adoption of the proper legal standard in such cases. With oral argument before the 6th Circuit set for June 13, 2018, Ms. Monasky’s legal fate and that of similarly situated parents hangs in the balance.