Update on the case Monasky v. Taglieri on the determination of habitual residence under the Hague Child Abduction Convention currently before the US Supreme Court

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For those of you who are interested in the case Monasky v. Taglieri currently before the US Supreme Court, please note that an extremely useful amicus curiae brief was filed this week by Reunite International Child Abduction Centre (as stated on its website Reunite is the "leading UK charity specialising in parental child abduction and the movement of children across international borders"). This brief will certainly help put things into perspective with regard to the weight that should be given to parental intent when determining the habitual residence of the child under the Hague Child Abduction Convention (but it only answers the second question presented).

Other amicus curiae briefs have also been filed this week (incl. the one for the United States, which addresses accurately, in my view, the first question presented with regard to the standard of review of the district court's determination of habitual residence; such determinations should be reviewed on appeal for *clear error* – and ***not*** de novo, which is more burdensome-). This reasoning is in line with the Balev case of the Canadian Supreme Court (2018 SCC 16, 20 April 2018).

For more information on this case, see my previous post here.

I include some excerpts of the brief of Reunite below (p. 18):

“It can therefore be seen that, while still important, parental intention is not necessarily given greater weight in English and Welsh law than any other factor when determining a child’s habitual residence. Further, the court evaluates parental intention in relation to the nature of the child’s stay in the country in question (by way of example, whether it was for a holiday, or some other temporary purpose, or whether it was intended to be for a longer duration).

“In that way, parental intention is treated as one factor within a broad factual enquiry, rather than as separate and, perhaps, determinative enquiry that precedes or is separate from an evaluation of the child’s circumstances. Within such an enquiry, the factors that are relevant to the habitual residence determination will vary in terms of the weight that they are given depending on the circumstances of the case. Lord Wilson’s judgment in Re B provides an example of how those facts might be weighed up against each other.”