

CNOTICE: THIS IS AN UNPUBLISHED OPINION.

(The Court's decision is referenced in a "Table of Decisions Without Reported Opinions" appearing in the Federal Reporter. Use FI CTA6 Rule 28 and FI CTA6 IOP 206 for rules regarding the citation of unpublished opinions.)

United States Court of Appeals, Sixth Circuit.
Richard Charles Patrick SINCLAIR, Plaintiff-
Appellee,

v.

Lana Marie SINCLAIR, Defendant-Appellant.
No. 96-1015.

Decided July 30, 1997.

Before [MERRITT](#), [BOGGS](#), and [DAUGHTREY](#),
Circuit Judges.

ORDER

*1 Lana Marie Sinclair appeals a district court judgment granting her ex-husband's petition filed under the Hague Convention on the Civil Aspects of International Child Abduction and the International Child Abduction Remedies Act, [42 U.S.C. §§ 11601-610](#). This case has been referred to a panel of the court pursuant to [Rule 9\(a\), Rules of the Sixth Circuit](#). Upon examination, this panel unanimously agrees that oral argument is not needed. [Fed. R.App. P.34\(a\)](#).

Richard Charles Patrick Sinclair, a resident of Canada, filed his petition and an ex parte motion for a temporary restraining order in the district court seeking the return of his two youngest minor children over whom he had custody pursuant to a Canadian judgment. Mr. Sinclair alleged that Ms. Sinclair abducted the two youngest of their four children from Canada and brought them to her parents' house in the Western District of Michigan. The district court issued a temporary restraining order the following day and federal marshals took the two children into protective custody. After an in camera interview with the children, the district court continued a preliminary

hearing at the request of Ms. Sinclair and her attorney, and returned custody of the children to Mr. Sinclair pending the hearing. When the hearing was reconvened, the district court heard evidence presented by the parties, rendered its opinion from the bench, and entered a judgment for Mr. Sinclair.

Ms. Sinclair filed a timely notice of appeal pro se, and the district court granted her leave to proceed in forma pauperis. However, the district court denied Ms. Sinclair's motion for a transcript at government expense. Thereafter, this court ordered that the district court proceedings be transcribed at government expense.

In her brief on appeal, Ms. Sinclair contends that the district court: (1) ignored evidence that her children needed protection from abuse suffered in Canada; and (2) refused to hear testimony from two key witnesses. Appellee is also proceeding pro se and has notified the court that he does not intend to submit a brief on appeal.

This court reviews the district court's findings of fact for clear error and its conclusions of law de novo. See [Friedrich v. Friedrich, 78 F.3d 1060, 1064 \(6th Cir.1996\)\(Friedrich II\)](#). Pursuant to [42 U.S.C. § 1603\(e\)\(1\)\(A\)](#), Mr. Sinclair had the burden of proving by a preponderance of the evidence that the children were wrongfully removed from Canada. See [Friedrich II, 78 F.3d at 1064; Prevot v. Prevot, 59 F.3d 556, 560 \(6th Cir.1995\), cert. denied, 116 S.Ct. 1048 \(1996\); Friedrich v. Friedrich, 983 F.2d 1396, 1400 \(6th Cir.1993\)\(Friedrich I\)](#). However, Ms. Sinclair admitted all of the elements of a prima facie case, but asserted that an exception to the requirement that the children be returned to Mr. Sinclair is applicable in this case. In particular, Ms. Sinclair argued that return of the children to Mr. Sinclair would expose them to a grave risk of physical or psychological harm or otherwise place them in an intolerable situation. See [Prevot, 59 F.3d at 561; Friedrich I, 983 F.2d at 1400](#). Pursuant to [42 U.S.C. § 11603\(e\)\(2\)\(A\)](#), Ms. Sinclair had the burden of proving by clear and convincing evidence that this exception applies. See [Prevot, 59 F.3d at 560-61, Friedrich I, 983 F.2d at 1400](#) Here, the district court's conclusion that Ms. Sinclair did not carry her burden of

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showing that return of the children to Canada would expose them to a grave risk of harm or an intolerable situation is supported by the record and is not clearly erroneous. Further, Ms. Sinclair's contention that the district court refused to hear the testimony of two important witnesses lacks merit. See [Cooley v. Carmike Cinemas, Inc.](#), 25 F.3d 1325, 1330 (6th Cir.1994).

*2 For the foregoing reasons, the judgment of the district court is affirmed. [Rule 9\(b\)\(3\), Rules of the Sixth Circuit.](#)

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