

Every day, inMotion's volunteer attorneys secure significant court victories for our clients. It's not often though that a precedent-setting decision is rendered in one of our cases. On November 14, 2003, **the Honorable Diane Kiesel of the Bronx Integrated Domestic Violence Court issued a 25-page opinion that will allow the Court to modify a child custody order granted by a court in the Dominican Republic.** This landmark decision gives inMotion's client a second chance to prevent her two young children from suffering further abuse at the hands of their father—an option that she didn't have in the Dominican Republic.

Alicia* fled the Dominican Republic after suffering from years of abuse by Patricio, the father of her twin boys. The boys remained behind with Alicia's mother and she planned to bring them to New York once she was able to establish herself. In her absence, in April of 2002, Patricio obtained full custody of the five-year-old boys by default judgment in the Dominican Family Court. Alicia first became aware of the judgment when she returned to the Dominican Republic to visit the children a month after the judgment was issued. She immediately filed an appeal. The Appellate Court upheld the custody decision based, in part, on a forensic evaluation of the father conducted during the lower court proceeding. However, the mother was never interviewed and her accounts of severe abuse were never addressed by either court. Fearing for her children's lives, Alicia took the boys to New York in September 2002. In November 2002, when Patricio tracked them down and threatened to kill Alicia, he was arrested.

At Patricio's arraignment in Bronx Criminal Court, a full order of protection was granted to Alicia. However, based on false information provided by Patricio, the court released him on his own recognizance. Three days later, Patricio, through his New York attorney, filed a *writ of habeas corpus* in Bronx Family Court requesting that, based on the Dominican courts' decisions, the children be immediately returned to him. And four days later, Patricio appeared at Alicia's home brandishing a gun.

When Alicia contacted inMotion, her situation was dire. She was terrified by both the immediate threat of violence and the prospect of having to return the twins to the Dominican Republic to live with their abusive father under the Dominican order. Our staff attorneys immediately assigned the case to Meghan Murphy, our White & Case extern** at the time, who filed custody and family offense petitions on Alicia's behalf in Bronx Family Court. Fortunately for the client, the dueling custody/habeas petitions, the family offense petition and the criminal charges against the father were assigned to the Integrated Domestic Violence Court. Because this Court has concurrent jurisdiction over Criminal and Family Court matters in cases involving domestic violence, one judge decides all matters involving cases involving one family.

* All client names have been changed to protect their identities.

** On a three-month rotation, an associate from White & Case works full-time in our Manhattan office on emergency cases like the one outlined here. We often receive calls from women with pressing, sometimes life-threatening, situations that require the immediate assistance of an attorney. Prior to establishing the externship program, without time to find a volunteer attorney, we could often only provide advice to these women on how to proceed on their own. Now, when inMotion receives a desperate call from a woman like Alicia, we can offer immediate legal representation.

In December 2002, the Court asserted temporary jurisdiction and granted Alicia temporary order of custody of the children with no visitation for the father, as well as a temporary order of protection for her and the twins, while the issue of jurisdiction was considered. Paul Godinez, a second White & Case extern, took over the case in January and successfully argued to have the temporary jurisdiction extended through the spring of 2003.

During this time, Judge Kiesel consulted with the District Court in the Dominican Republic and in July 2003 she received its permission to consider the question of jurisdiction based on the fact that both Alicia and Patricio now reside in the New York. The Court requested a written argument on the issue of jurisdiction in August 2003. The Judge also closely reviewed the recently-enacted Uniform Child Custody Jurisdiction Enforcement Act, known as the UCCJEA, further clarifying its intent to eliminate jurisdictional competition between courts in child custody cases. Beyond this basic mandate, the Act seeks to ensure that issuance and enforcement of child custody and visitation are accomplished "in a manner that ensures the safety of the children is paramount and that victims of domestic violence and child abuse are protected."

Judge Kiesel's decision was based the submissions of White & Case externs Averie Hason and Justin Brown. In their written arguments, Averie and Justin emphasized Patricio's long history of domestic violence against Alicia and the children and the Dominican courts' failure to adequately address these accounts. They also noted the father's sworn statements that he was a resident of New York State (despite his latter claims to the contrary in an attempt to evade jurisdiction). Finally, they argued most persuasively that Alicia's fleeing with the boys could not be considered unjustifiable conduct under the UCCJEA.

Undoubtedly, this landmark victory will help many more women in the years to come. But, unfortunately, Alicia's long struggle is not over. In January 2004, the trial to consider permanent custody and the criminal charges against Patricio will begin—but Alicia will know that she will have the best chance yet of prevailing—the committed, professional White & Case team will be at her side.