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Case of the contested Elizabeth girl is a litmus test for Alito

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It was a disorienting moment for Elena Mazza, as if the television -- tuned to a chatty morning show while she dressed for work -- were speaking directly to her. Because she heard a familiar name.

Samuel Alito.

"What does this mean?" she asked aloud to no one.

Mazza was chilled with fear, and she could hardly be blamed. While Samuel Alito is, for most of us, merely a name in the news -- one of many that flits through our thoughts occasionally, only to disappear -- he is, to her, a central part of life.

Alito, of course, has just been nominated to the U.S. Supreme Court.

But, more important to Mazza, Alito also is one of three judges on a federal 3rd Circuit Court of Appeals panel that will determine whether her 5-year-old daughter, an American citizen, will be deported to Argentina.

"I couldn't figure out whether this was good or bad," says Mazza, 41, who drives an ice cream delivery truck. The Elizabeth resident says she called nearly everyone she knew to ask, "What does this mean?"

Mazza's concern has nothing to do with the Big Issues discussed by the talking heads on television. Whether Alito's nomination will provoke an ideological battle in the Senate, or whether the court will shift its philosophical core dramatically to the right.

For her, the rulings of this judge have become personal. "What I want to know is whether my daughter can stay with me. Here, at home, in the United States."

Mazza, also an American, has appealed a decision by federal District Court Judge Williams Walls, who ordered her daughter Arianna deported to Argentina. The child's father, Ariel Adan, had invoked the Hague Convention, an international treaty designed to return abducted children to their home countries.

Walls dismissed as unproven Mazza's contentions she fled Argentina because Adan abused her and her child, despite restraining orders she produced from courts in two countries.

Adan denies the allegations, but while he was here to argue his case, he was arrested and charged with violating a restraining order directing him to stay away from Mazza and her child. He burst into a safe room for domestic-violence plaintiffs in the Union County courthouse and had to be restrained by a sheriff's officer. Adan pleaded guilty. Adan also admitted he has a drug problem.

Hague Convention cases are heard in federal court. Unlike state court cases, the best interest of the child is not an issue -- Walls, for example, did not order an investigation into charges of

abuse, something that would happen automatically in state court. Neither is citizenship an issue, nor that Mazza, never married to Adan, has custody of Arianna. The only issue is jurisdiction and Walls ruled Argentinian, not American, courts should decide Arianna's fate.

Arianna was born in Elizabeth and is now a kindergarten student at St. Anthony's school there. Although Mazza took her to Argentina a few months after Arianna was born, the little girl has spent about an equal amount of time in each country.

"My daughter is an American," says Mazza. "How she can be deported?"

Elliot Gourvitz of Springfield, Mazza's lawyer, calls Alito "the kind of compassionate conservative the president is always talking about" and says he is hopeful the court will reverse Walls' decision.

"He was clearly a leader on that panel, and I think he will pay close attention to the evidence of abuse," Gourvitz says.

Walter Lesnevich of Hackensack, Adan's lawyer, declined to comment on Alito.

But his decision in the Mazza case might be a clue to the sort of justice Alito will be. The terms of the Hague Convention are stark -- once a jurisdictional decision is made, as Walls made it, not much else matters unless a judge wants it to matter. One federal judge who insists on looking into the best interests of children -- Denny Chin in New York -- has been criticized as the sort of "activist" judge Alito is not supposed to be.

Both Gourvitz and Lesnevich expect a decision soon and doubt Alito's nomination would delay a ruling. Oral arguments were held Sept. 29 in Philadelphia. The panel did grant an expedited hearing; federal marshals already warned Mazza to arrange for Arianna's return to Argentina or they would seize and return her involuntarily.

"The tension is really getting to me," says Mazza. "I want a decision, I want to get on with my life, my daughter's life -- but not if it means Arianna will be deported."

Mazza also is running out of money to pay her legal expenses -- now up to \$75,000. Adan, who owns three apartment buildings in Buenos Aires, gets his legal work done for free through a provision of the Hague Convention.

"I just hope this judge believes in fairness," says Mazza.

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