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International Family Law

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I. International Conventions and Federal Law Developments

A. THE HAGUE CHILD SUPPORT CONVENTION

On September 29, 2014, the President signed the Preventing Sex Trafficking and Strengthening Families Act, the implementing legislation for the Hague Convention on the International Recovery of Child Support and Maintenance. As of the President's signature, 12 states had already enacted UIFSA 2008, which implements the Convention at the state level. When enacted by all states and territories, the United States will deposit its instrument of ratification for the Child Support Convention in The Hague.

In a statement issued on September 30, 2014, U.S. Secretary of State John Kerry said that: "The United States has a comprehensive system to establish, recognize and enforce domestic and international child support obligations. The Convention just requires that all treaty partners have similar systems in place and, as a result, more children in the United States and abroad will be receiving more support, more expeditiously than ever before."[1]

B. HAGUE CONVENTION ON THE PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION

Haiti, Croatia, and Serbia joined the Hague Convention on the Protection of Children and Co-Operation in Respect of Adoption Convention in 2014.[2] The Hague Conference on Private International Law also announced that it will hold a Special Commission meeting on the practical operation of the Adoption Convention from June 8 to 12, 2015.

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1. *See* http://www.state.gov/secretary/remarks/2014/09/232337.htm.

2. *See Status Table*, HAGUE CONFERENCE ON PRIVATE INTERNATIONAL LAW WEBSITE, http://www.hcch.net/index_en.php?act=conventions.status&cid=69 (last visited Apr. 29, 2015).

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C. HR 3212: The "Goldman Act"

On August 8, 2014, the President signed the Sean and David Goldman International Child Abduction Prevention and Return Act of 2013.[3] The Goldman Act's goal is to establish measures that the U.S. government can take when countries are non-cooperative in resolving international parental child abduction cases. It also mandates detailed compliance reports by the U.S. Department of State.

II. International Litigation

A. The Hague Child Abduction Convention

Most U.S. international family law litigation involved the 1980 Hague Convention on the Civil Aspects of International Child Abduction[4] its implementing legislation, the International Child Abduction Remedies Act (ICARA).[5] A request for return of a child under the Child Abduction Convention is appropriate in either a U.S. federal or state court.

The Child Abduction Convention operates to promptly return children to their habitual residence. To obtain an order returning the child, the petitioner must prove that the child was wrongfully removed from or retained outside of the child's "habitual residence" and that the petitioner had "a right of custody," which he or she was "actually exercising" (or would have exercised but for the abduction), under the law of the habitual residence.

1. *Applicability of the Child Abduction Convention*

The Child Abduction Convention only applies to countries that have ratified or acceded to it. It cannot be made applicable to a case by the parties' stipulation. The Convention ceases to apply when the child in question turns sixteen.

2. *Jurisdiction*

In *Gee v. Hendroff*,[6] the court determined that the children must be present in the same state where the Hague return petition is filed. If the petition is filed in Nevada while the children are on a two-week visit to California, the district court in Nevada has no subject matter jurisdiction.

3. *Habitual Residence of the Child*

The Child Abduction Convention does not define the term "habitual residence." Therefore, courts have made this "fact-based" determination in a number of cases, leading to a split among the circuits as to its definition. The majority view, pioneered by the Ninth Circuit, looks to the parents' shared intent in determining their child's habitual residence. True to precedent, the Ninth Circuit found the parents' shared intent for their

3. *H.R. 3212 (113th): Sean and David Goldman International Child Abduction Prevention and Return Act of 2014*, GovTrack.us, https://www.govtrack.us/congress/bills/113/hr3212 (last visited Apr. 29, 2015).
4. T.I.A.S. No. 11670, S. Treaty Doc. No. 99-11.
5. ICARA, 42 U.S.C. § 11603 *et seq.* (2012).
6. Gee v. Hendroff, 2014 WL 60325 (D. Nev. 2014).

daughter to be habitually resident in the United States, even though she had been living with her Mother in Ireland for three years with the Father's agreement to see how "it worked."[7]

However, in *Seaman v. Peterson*[8] a couple clearly intended to abandon the United States as their child's habitual residence. The parents seldom, if ever, returned to the United States, they enrolled their children in a Mexican school, they established legal, temporary residency in Mexico intending to become Mexican citizens, and their fourth child was born and raised in Mexico and had never been to the United States prior to her removal from Mexico.[9]

In *Valenzuela v. Michel*[10], Mexican-born children split their time with their father in the United States and their mother in Mexico. The court found the parents shared the intent to abandon Mexico as the children's sole habitual residence and, therefore the court concluded that the children had alternating habitual residences. In *Berezowsky v. Ojeda*,[11] the parents separated prior to the child's birth and engaged in litigation concerning the child for years. The child was born in Texas and therefore had a habitual residence there. Given that the parents were in constant litigation, there could be no shared intent that Mexico would become the child's habitual residence.

After the U.S. Supreme Court permitted the father's appeal in *Chafin v. Chafin*,[12] the Eleventh Circuit decided that the child was properly returned to her habitual residence of Scotland. Affirming the District Court's 2011 grant of the mother's Hague Convention petition, the court said that the parents had not agreed to make the United States their daughter's habitual residence, abandoning her habitual residence in Scotland and that, therefore, the father's retention of the child in Alabama was wrongful.

The Central District of California found Sweden to be a child's habitual residence, despite the child being born in California and having lived in California his entire 10-month life because the last location of shared parental intent for the child's habitual residence was Sweden, and the Court believes that a "location of some stability is more likely to be a child's habitual residence." Habitual residence is not determined automatically because it is the infant's birthplace or solely because of the location of its mother.[13]

In *Hollis v. O'Driscoll*,[14] the parents' lack of stable accommodations after their separation did not affect, much less negate, clearly establishing the child's habitual residence in New Zealand. The parents lived together in New Zealand for approximately nine months prior to the child's birth and for the first six months of the child's life, and they considered New Zealand home.

Even if a child's relocation is time-limited, habitual residence may shift. In *Neergaard v. Colon*,[15] the parents shared an intent to live in Singapore as a family only for the three

7. Murphy v. Sloan, 764 F.3d 1144 (9th Cir. 2014).
8. Seaman v. Peterson, 766 F.3d 1252 (11th Cir. 2014).
9. On somewhat similar facts, a Florida federal court determined that the parties had not agreed to abandon Mexico as the child's habitual residence in favor of the United States. *See In re* S.L.C., 4 F. Supp. 3d 1338 (M.D. 2014).
10. Valenzuela v. Michel, 736 F.3d 1173 (9th Cir. 2013).
11. Berezowsky v. Ojeda, 765 F.3d 456 (5th Cir. 2014).
12. Chafin v. Chafin, 742 F.3d 93424 (11th Cir. 2013).
13. *In re* ALC and ERSC, Carlwig v. Carlwig, 2014 WL 1571274 (C.D. Cal. 2014).
14. Hollis v. O'Driscoll, 739 F.3d 108 (2d Cir. 2014).
15. Neergaard v. Colon, 2014 WL 936691 (D. Mass. 2014).

years the father was assigned to work there. However, it was their shared intent that the children reside in Singapore coupled with the fact that the children—now ages two and three—"have spent a substantial amount of time in Singapore" that made Singapore the main station of the children's lives and made it their habitual residence. On appeal,[16] however, this determination was reversed because the trial court failed to determine whether the parties had agreed to abandon their habitual residence in the United States and, therefore, remanded the case to determine the child's habitual residence. The First Circuit contrasted *Neegard* with *Sanchez-Londono v. Gonzalez*,[17] where the father's retention of his child in the United States following her two-and-a-half year stay in Colombia with her mother was not wrongful because the parents intended for the United States to be her habitual residence.[18]

Some courts look to the child's acclimatization more than the parents' intent. In *Langa v. Langa*,[19] the court noted that a child's three-month stay with grandparents in South Africa could not possibly change the child's habitual residence.

In another case, the court returned children to Canada from Massachusetts because Quebec was the place where the children had been physically present for a sufficient time to acclimatize and Quebec has a degree of settled purpose from the children's perspective. Even though the Mother was American, and eventually had a desire to move to Massachusetts with the children, the children lived much of their lives in Quebec and even after the parents separated, the Mother remained in Quebec for a period of time before electing to move to the United States.[20]

The Fourth Circuit used both an intent and acclimatization analysis in *Reyes v. Jeffcoat*,[21] and found that the child's habitual residence did not shift to Venezuela from South Carolina. The court analyzed the parents' immigration statuses, real estate purchases, job movement, studies, and the children's homeschooling under South Carolina law.

A child's parents had a conditional agreement for the child's mother to move him to the Bronx in May 2010 and for the child to remain in the United States if he were granted permanent residency and he would adjust to and like his new life in the United States (conditions that were met).[22] Therefore, the United States was the child's habitual residence, which was further clarified when the father signed a consent form for the child to leave the Dominican Republic on a one-way ticket.

4. *Rights of Custody*

A removal or retention is only wrongful if the left-behind parent had a right of custody and was "actually exercising" that right at the time of removal, or would have exercised that right, but for the removal. A determination by a Brazilian court that the mother

16. Neergaard v. Colon, 752 F.3d 526 (1st Cir. 2014).

17. Sanchez-Londono v. Gonzalez, 752 F.3d 533 (1st Cir. 2014).

18. *See* Mauvais v. Herisse, 2014 WL 5659412 (1st Cir. 2014).

19. Langa v. Langa, 549 Fed. Appx. 114 (3d Cir. 2014).

20. Mauvais v. Herisse, 2014 WL 1454452 (D. Mass. 2014).

21. Reyes v. Jeffcoat, 548 Fed. Appx. 887 (4th Cir. 2013).

22. In the Matter of a Custody Proceeding MG, Petitioner, against WZ, Respondent, 2014 N.Y. Misc. LEXIS 4386; 2014 NY Slip Op 24296 (9/30/14).

could not remove the children from Brazil without the father's consent (i.e., a *ne exeat* right[23]) gave the father a right of custody.[24]

In *Slight v. Noonkester*,[25] a "chasing order" obtained from an Irish court after the mother left with the child does not affect her right to custody, nor give her a right of custody, since a parent's custody rights must be determined as the time of the abduction.

5. *Defenses*

There are a number of defenses that a respondent may assert in arguing that a child should not be returned to his or her habitual residence.

a. Child Is Settled in a New Environment

Article 12 of the Child Abduction Convention provides that the authorities need not return a child if more than one year has elapsed between the child's abduction or retention and the child is now settled in the child's new environment. The one-year period runs from the date the retention or removal became "wrongful."

The First Circuit followed the 2nd Circuit and held that the one-year period for bringing the petition for return is not subject to equitable tolling.[26] This split in the circuits was resolved by the U.S. Supreme Court in *Lozano v. Alvarez*,[27] which held that even though "equitable tolling is part of the established backdrop of American law," the United States cannot "export such background principles of our law to contexts outside their jurisprudential home." Treaties are "contracts" between signatory nations, the court said, and therefore must be read to incorporate their "shared" expectations. Not only did the father fail to identify a shared "background principle of equitable tolling," but many intermediate courts in contracting states—including England, Canada, and Hong Kong—have explicitly refused to apply the principle in Hague Convention cases. Not only that, but the one year period is not really a statute of limitations because it does not offer certainty or repose. Three justices concurred emphasizing that even though the one-year period cannot be tolled, courts have the discretion to return the child after one year.

In *Cascio v. Pace*,[28] the court found the children to be settled when the testimony revealed that they resided at the same place since they relocated to the United States, their residence was stable, one child was halfway through a second school year at the same school, the children enjoyed their school, they made numerous friends in the area, and have been active in school and church functions.

A wrongfully retained child who had resided in the United States for two and a half years must be returned to her father in Colombia because she is not "settled" in her new environment. The child had lived in three different locations, attended three different schools, the mother's employment and financial situation were unstable, and both she and the child were in the United States illegally.[29] Also not settled was a child from Mexico

23. Abbott v. Abbott, 542 F.3d 1081 (2010).
24. Sanchez v. Suasti, 140 So.3d 658 (Fla. Ct. App. 2014).
25. Slight v. Noonkester, 2014 WL 282642 (D. Mont. 2014).
26. Yaman v. Yaman, 730 F.3d 1 (1st Cir. 2013).
27. Lozano v. Alvarez, 134 S. Ct. 1224 (2014).
28. Cascio v. Pace, 992 F. Supp. 2d 856 (N.D. Ill. 2014).
29. Buenaver v. Vasquez, 2014 WL 3058250 (E.D. N.Y. 2014).

who needed therapy because of his parents' separation, lacked English as a primary language and had an uncertain immigration status.[30]

b. Grave Risk of Harm/Intolerable Situation

An authority is not bound to order the return of a child if "there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation."

The Fifth Circuit remanded a case to determine whether three Mexican children, who were granted asylum in the United States subsequent to their mother obtaining their return under the Hague Convention, would be exposed to a grave risk of harm if returned.[31]

A grave risk of harm must be presented through clear and convincing evidence. A court found no grave risk in returning a child to Comos, Peru, even after the respondent presented evidence that the child's cousin was kidnapped in Peru, a child was killed by a car in that town, and there was a lot of criminal activity.[32] A "grave risk" of harm does not exist when the respondent is only able to show five or six instances of violence over a ten-year period and there had never been any violence directed toward the child.[33]

The Second Circuit determined that an autistic child would suffer harm if removed from his New York therapy program, and therefore there was grave risk to him if returned to Italy.[34] In another case the court found a grave risk despite having no documentary or physical evidence of the father's alleged abuse because multiple witnesses, including the child, corroborated his abusive behavior.[35]

c. Mature Child's Objection

A court has discretion to raise a child's stated objection to being returned on its own, without a party raising the objection.[36]

Even though a New York family court judge found one of two children to be mature, and to have stated a preference to remain in New York at the time of her *in camera* interview, the judge found that her "objection" was not within the scope of this defense. "[A]n objection within the meaning of the Convention and ICARA refers to a more substantial basis, such as fear of physical, emotional or psychological harm, or some substantive basis other than enjoying the activities in which they are engaged or liking their friends in their new environment or the opportunities that new environment presents."[37]

d. Other Attempted Defenses

i. Human Rights and Fundamental Freedoms

A mother argued that Sweden is a racist country that would not welcome her mixed race children, but this was insufficient to demonstrate that returning her children to Sweden

30. Bobadilla v. Cordero, 2014 WL 3869998 (M.D. N.C. 2014).
31. Sanchez v. R.G.L., 761 F.3d 495 (5th Cir. 2014).
32. San Martin v. Moquillaza, 2014 WL 3924646 (E.D. Tex. 2014).
33. Rodriguez v. Romero, 2014 WL 4063112 (S.D. Fla. 2014).
34. Ermini v. Vittori,758 F.3d 153 (2d Cir. 2014).
35. Ortiz v. Martinez, 2014 WL 1409446 (N.D. Ill. 2014).
36. *Id.*
37. RB v. KG, 2014, 2014 WL 5347587 (N.Y. Fam. Ct. 2014).

would violate fundamental principles relating to human rights and fundamental freedoms. Not only were there few examples of hate crimes and racism, but those instances did not shock the conscience and Sweden is not the only country where this is a problem.[38]

ii. Consent/Acquiescence

A family bought one-way tickets for everyone to travel from Northern Ireland to the United States. The mother was unable to go because of visa problems but planned to join the father and the other child when the visa problems were settled. This constituted her consent and acquiescence to the child's removal and therefore the child need not be returned.[39]

6. *Other Issues Under the Child Abduction Convention and ICARA*

a. Attorney's Fees

A trial court properly ordered a father to pay the legal fees and costs incurred by the child's mother in connection with her petition under the Convention for the child's return to Venezuela. The parents voluntarily settled the underlying custody dispute and because the settlement agreement was incorporated into a court order and ICARA authorizes fees when a court orders a child to be returned, fees were proper.[40]

A father's fee request was granted in part, but denied for fees expended for an uncertified translator and fees relating to the underlying custody proceeding. The court also reduced the father award by 25% given the mother's financial status.[41]

However, in *Aguilera v. De Lara*,[42] the father was denied all fees because the mother had little ability to pay, partly as a result of the father's failure to pay child support, and his disinterest in the child, leaving it in the mother's sole custody.

b. Procedural Issues

When a petition for return is denied, the case should be dismissed with prejudice.[43]

i. Stays

An Iowa court found the stay of a return order to Mexico was not warranted past the 30-day appeal period. The father would not be irreparably injured absent a stay, a claim for relief on appeal consisting of an order for "re-return" was not so implausible as to be nugatory, the children would lose precious time when they could be readjusting to life in Mexico, and the public interest favored the expeditious resolution of petitions for return of children.[44] However, where a federal case for the return of the child is pending, a state

38. *In re* ALC and ERSC, 2014 WL 1571274 (C.D. Cal. 2014).
39. Bowen v. Bowe, 2014 WL 2154905 (W.D. Penn. 2014).
40. Salazar v. Maimon, 750 F.3d 514 (5th Cir. 2014).
41. Larrategui v. Laborde, 2014 WL 2154477 (E.D. Cal. 2014).
42. Aguilera v. De Lara, 2014 WL 4204947 (D. Ariz. 2014).
43. Ermini v. Vittori,758 F.3d 153 (2d Cir. 2014).
44. Mendoza v. Silva, 987 F. Supp. 2d 883 (N.D. Iowa 2013).

court should, according to Nevada, stay its proceedings until the federal matter is decided.[45]

ii. Temporary Restraining Orders

A federal court in Nevada determined that it could issue a temporary restraining order without notice to the mother, restraining her from removing the children from Nevada pending a hearing on the father's petition for a preliminary injunction.[46]

iii. State Proceedings

When a Hague petition is filed, it is improper for a federal district court to abstain in favor of a custody proceeding in state court. However, a federal district court in New York determined it was inappropriate to enjoin a state custody proceeding because no act expressly gave the court the authority to do so and the outcome of the custody proceeding could not affect the return proceeding.[47]

iv. Undertakings

Parents who stipulated that their five children should be returned from the United States to Singapore submitted a request for the court to order certain undertakings related to the children's return. The court assessed each parent's specific undertaking request and selected those undertakings that were "limited in scope and further the Convention's goal of ensuring the prompt return of the child." Therefore, the court ordered undertakings for ensuring school enrollment, payment for travel costs, payment for the taking parent's housing upon return to Singapore, cooperating in obtaining visas, restraint from physical violence, and maintaining health insurance policies, but did not order child support (which was covered under a London order) or legal expenses for the taking parent to litigate custody in Singapore.[48]

v. Enforcement

A trial court did not err when it accorded comity to a German decision to not return the children to the United States on the basis that the father consented to it, the decision did not clearly misinterpret the Convention, or contravene its fundamental premises or objectives, and the decision was reasonable.[49]

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45. Gabrielle v. Eighth Judicial Dist. Court of State, ex rel. County of Clark, 2014 WL 5502460 (Nev. 2014).

46. Rocha v. Florez, 2014 WL 317779 (D. Nev. 2014). *See also* Alcala v. Hernandez, 2014 WL 5506739 (D. S.C. 2014) (the court also took judicial notice of Mexican law but refused to seal the record as requested by the petitioner).

47. Matter of A.A.S., 2014 WL 840010 (S.D. N.Y. 2014).

48. Skolnick v. Wainer, 2014 WL 1513997 (D. Conn. 2014).

49. Smedley v. Smedley, 2014 WL 5647426 (4th Cir. 2014).

B. Other Cases Involving International Family Law Litigation

1. *Marriage*

A marriage ceremony conducted in the Congo, in which the groom was not physically present but participated by telephone, was not repugnant to Maryland's public policy and would therefore be recognized under the doctrine of comity in a divorce action by the wife. The husband's argument that a telephone marriage "clearly goes against the solemnity of marriages" was not sufficient by itself to leap over the high bar of repugnancy that is required in order to overcome the comity doctrine.[50]

2. *Divorce–Jurisdiction and Recognition of Foreign Judgments and Divorce*

A woman was entitled to an annulment when her husband married her solely for a green card and then obtained a Muslim divorce immediately after he received the green card.[51]

A deceased woman's estate brought an action to enforce the monetary provisions of her Japanese divorce decree. When the trial court denied recognition of her decree under comity principles, it abused its discretion. Her American ex-husband was not given notice of a post-divorce Japanese guardian proceeding involving their child where the maternal grandmother in Japan was made the child's guardian after the custodial mother's death. However, this had no effect on the husband's legal obligations (including child support) under the earlier divorce decree.[52]

The first wife of a retired union worker was entitled to a portion of her ex-husband's pension benefits because the court found that their divorce was valid, despite it being declared invalid on the TV show "The People's Court." The couple was married in Chile in 1975, and they divorced in Mexico in 1983. He married his second wife in 1983 in Los Angeles, and that marriage ended in 2006. The man retired in 2010. The court said, "after thirty years of silence, to permit [the first wife] to now raise an issue challenging the validity of that second marriage would be plainly inequitable.[53]

3. *Children's Issues*

a. Custody

i. Jurisdiction and Enforcement

New Jersey did not have jurisdiction to issue an initial custody determination when it had been five years since the mother and child left for Germany and have had no contacts with New Jersey since then. The father never sought to have the child returned under the Child Abduction Convention.[54] Mississippi determined that after three years, Canada was a more appropriate forum to hear the mother's motion to modify the father's visitation.[55]

50. Tshiani v. Tshiani, 81 A.3d 414 (Md. 2013).
51. Manjlai v. Manjlai, 2014 WL 4199201 (Tex. Ct. App. 2014).
52. Estate of Toland, 329 P.3d 878 (Wash. 2014).
53. Bd. of Trs. of the Masters, Mates & Pilots Pension Plan v. Carney, 2013 WL 6260538 (D. Md. 2013).
54. Brown v. Brown, 2014 WL 1174538 (N.J. Super. Ct., App. Div. 2014).
55. Hersey v. Gratton, 136 So.3d 1085(Miss. Ct. App. 2014).

However, an eighteen-month stay in Canada was insufficient to convince a Pennsylvania court to relinquish jurisdiction.[56]

New York continues to have jurisdiction to decide custody as the child's home state, even though the child was not returned to the United States from the Dominican Republic under the Abduction Convention.[57]

ii. Relocation

The mother's desire to live with her deported husband is a legitimate reason to relocate and therefore the case had to be remanded to determine whether it was in the best interests of the child to move.[58]

A trial court's order authorizing a mother to relocate with her child to Israel contained adequate protections for the father. The court found that the mother did not have adequate resources to post a monetary bond, but the order did require the mother to file a stipulation consenting to California's continuing jurisdiction and further stipulate that she would not file any action seeking modification in any but a California court. The court required the mother to register the judgment with the Israeli court system and submit and file proof of such registration, and ordered that all child support paid by the father would be deposited into a trust account established and owned by the father with the mother as a beneficiary, to be used to pay for the costs of any litigation, and that anything left over would be paid to the mother. The Court of Appeal rejected the father's argument that the absence of a bond was fatal.[59]

iii. Substantive Custody Determinations

The Third Circuit dismissed an action brought by a group of fathers against Israeli officials and charities. It found that neither the Alien Tort Statute[60] nor the Torture Victim Protection Act ("TVPA")[61] authorized their action, which alleged that Israel's family law system discriminated against fathers in custody and support disputes.[62]

A divorce court acted within its discretion when, in determining custody of the parties' twins, it declined to assign any significant weight to the children's French citizenship.[63]

iv. Enforcement

In the long-running battle of Maria Carrascosa's custody case, a federal district court denied her application for *habeas corpus* to be released from a New Jersey jail, where she was convicted of felony child abduction, because she had not exhausted her state remedies.[64]

56. S.K.C. v. J.L.C., 94 A.3d 402 (Pa. Super. Ct. 2014).
57. Matter of Katz, 986 N.Y.S.2d 611 (N.Y. App. Div. 2014).
58. Daniels v. Maldonado-Morin, 847 N.W.2d 79 (Neb. 2014).
59. J.M. v. G.H.,175 Cal. Rptr. 3d 371 (Cal. Ct. App. 2014).
60. 28 U.S.C. § 1350.
61. 106 Stat. 73, note following 28 USC § 1350.
62. Ben-Haim v. Neeman, 543 Fed. Appx. 152 (3d Cir. 2014).
63. Harignordoquy v. Barlow, 313 P.3d 1265 (Wyo. 2013).
64. Carrascosa v. Hauck, 2013 WL 6816177 (D. N.J. 2013).

v. Visitation

The Georgia Supreme Court affirmed a trial court's ruling that the husband not be permitted to take the children out of Georgia because of the mother's fear that he would take them to Pakistan where she would have a very limited right to seek their custody.[65] In *Cooper v. Fewer*,[66] the trial court refused to allow the mother's request to take her child to Japan because of concerns that the Japanese courts would not cooperate in returning the child. However, the appellate court did reverse the trial court's order that the father to purchase six return trip airfares so that the mother's relatives could visit the child in Arizona.[67]

A trial court erred in permitting visitation between a Jamaican father and his children because the father had been deported to Jamaica after being convicted of two batteries on the mother, and he allegedly repeatedly threatened to kidnap the children. In its decree, the trial court required him to post a $50,000 bond for each child before each visit to discourage him from kidnapping them and to ensure that sufficient funds were available for the mother to retrieve them if he did not return them. The appellate court found this insufficient to protect the children and reversed.[68]

In *Aristizabal v. Aristizabal*,[69] the trial court allowed a father to take his child to Colombia for ten days each year over the mother's objections because Colombia's record for returning children under the Hague Abduction Convention had improved, the father had substantial ties to Arizona—specifically ongoing employment in Arizona, permanent resident status, and an immediate intention to apply for citizenship—and the father was willing to travel with a third-party companion.

4. *Other Cases*

a. Alimony and Child Support

An Illinois trial court properly awarded a woman temporary maintenance after she registered a Polish divorce judgment from a court that lacked jurisdiction over her.[70]

A New York trial court determined that a woman was entitled to collect on a money judgment entered by a Hong Kong court for child support totaling over half a million dollars since the husband could not show that the judgment was obtained by fraud, or that recognition of the judgment would violate some strong public policy. Therefore, comity required recognition.[71]

A Texas trial court properly refused to register and enforce a 1993 Israeli child support order against a Texas resident after finding that he had never been served in the foreign support action. The court was not persuaded by the state's arguments that the support

65. Sahibzada v. Sahibzada, 757 S.E.2d (Ga. 2014).

66. Cooper v. Fewer, 2014 WL 1388378 (Ariz. Ct. App. 2014).

67. The issue of whether visitation should be allowed to non-Hague countries continues to split the courts. *Compare* Shaowei Dai v. Maxson, 2014 WL 2931949 (Mo. Ct. App. 2014) (allowing mother to take the son to China for visitation) *with* Davis v. Ewalefo, 2014 WL 3809493 (Nev. 2014)(affirming order not allowing visitation to Rwanda).

68. Matura v. Griffith,135 So.3d 377 (Fla. Ct. App. 2014).

69. Aristizabal v. Aristizabal , 2014 WL 47345 (Ariz. Ct. App. 2014).

70. *In re* Lasota and Luterek, 17 N.E.3d 690 (Ill. Ct. App. 2014).

71. Bond v. Lichtenstein, 40 Fam. L. Rep. (BNA) 1477 (N.Y. Sup. Ct. 2014).

order was entitled to either full faith and credit under the Uniform Interstate Family Support Act or comity. It also rebuffed the argument that a best interests of the child analysis trumps UIFSA's statutory scheme.[72]

b. Affidavit of Support–Immigration

A man and his uncle are liable for the support of his ex-wife pursuant to the federal affidavits of support they executed in connection with her immigration to the United States even though the marriage was never consummated and the husband contended he was fraudulently induced to marry the wife.[73] In another case, a court decided that a woman's waiver of spousal support in her premarital agreement did not nullify her ex-husband's obligations under the federal affidavit of support he signed after their 1998 wedding in connection with her immigration from the Ivory Coast.[74]

A Washington State Court determined that a trial court may refuse to consider a federal obligation in setting the wife's alimony amount. The court found the obligation could be entertained in a separate action.[75] If, however, the trial court did consider the affidavit of support in awarding alimony, then a federal court in California decided that a man's motion to dismiss his ex-wife's complaint for enforcement of the affidavit that he signed in connection with her immigration from the Philippines should be granted because the issue of support was litigated in their state divorce action.[76]

A man who obtained a dismissal of his ex-wife's complaint for enforcement of the federal affidavit of support he signed in connection with her immigration to the United States may not recoup the legal fees he expended in that action.[77]

c. Attorney Malpractice

In *Innes v. Marzano–Lesnevich*,[78] the husband brought a legal malpractice action against the wife's attorney and law firm arising out of the attorney and firm's release of his daughter's passport to the wife, in contravention of an agreement for the passport to be held by the attorney in trust during the custody dispute, resulting in the wife's out-of-country removal of their daughter and separation of the husband from his daughter. The trial court ruled for the husband; the appellate court affirmed holding that the attorney's release of the daughter's American passport to the wife was a proximate cause of any damages suffered by the husband as a result of her subsequent removal of their daughter from the country. The conduct of the attorney and law firm was sufficiently egregious and extraordinary so as to warrant an award of emotional distress damages.

72. *In re* E.H., 41 Fam. L. Rep. (BNA) 1005 (Tex. Ct. App. 2004).
73. Matloob v. Farhan, 2014 WL 1401924 (D. Md. 2014).
74. Toure-Davis v. Davis, 2014 WL 1292228 (D. Md. 2014).
75. Khan v. Khan, 332 P.3d 1016 (Wash. Ct. App. 2014).
76. Yaguil v. Lee, 2014 WL 1400959 (E.D. Cal. 2014).
77. Yaguil v. Lee, 2014 WL 3956693 (E.D. Cal. 2014).
78. Innes v. Marzano–Lesnevich, 87 A.3d 775 (N.J. Super. Ct. App. Div. 2014).