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International Family Law

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THE YEAR IN REVIEW
AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

International Family Law

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This article discusses the significant legal developments that occurred in the area of family law in 2015.

I. INTERNATIONAL CONVENTIONS AND ORGANIZATIONS

A. HAGUE CONVENTION OF 23 NOVEMBER 2007 ON THE INTERNATIONAL RECOVERY OF CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE (“THE CHILD SUPPORT CONVENTION”)

Forty-nine states have enacted the Uniform Interstate Family Support Act 2008 (“UIFSA 2008”), which is the state implementing legislation for the Child Support Convention.

B. HAGUE CONVENTION OF 29 MAY 1993 ON PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION (“THE ADOPTION CONVENTION”)

In June 2015, the Hague Conference on Private International Law held its fourth Special Commission on the practical operation of the Adoption Convention in the Netherlands. Among other things, the Special Commission concluded that implementation of the principle of subsidiarity should not “unintentionally harm children by delaying unduly a permanent solution through intercountry adoption.”¹

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1. Conclusions and Recommendations adopted by the Fourth Meeting of the Special Commission on the practical operation of the 1993 Hague Intercountry Adoption Convention. Recommendation 5, *available at* http://www.hech.net/index_en.php?act=progress.listing&cat=8. (last accessed 10/27/2015)

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C. ORGANIZATION OF AMERICAN STATES AND THE INTER-AMERICAN HUMAN RIGHTS COMMISSION

After a father retained his children in Mexico, the Inter-American Human Rights Commission requested that Mexico issue precautionary measures guaranteeing the children's right to family and ensuring their well-being, including having access to their mother.²

II. INTERNATIONAL LITIGATION

A. THE HAGUE CONVENTION OF 25 OCTOBER 1980 ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION ("THE CHILD ABDUCTION CONVENTION")

During 2015, most United States international family law litigation involved the Child Abduction Convention and its implementing legislation, the International Child Abduction Remedies Act (ICARA).³ United States federal and state courts have concurrent jurisdiction to decide a request for return of a child under the Child Abduction Convention.

The Child Abduction Convention operates to promptly return children to their habitual residence. To obtain an order returning the child, a 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/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, and between countries that have accepted the other as a treaty partner. 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. *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.

This year all the cases concerning habitual residence involved the "shared parental intent" approach to habitual residence. Because the determination of habitual residence is fact based, it is rarely possible to sustain a summary judgment motion on the issue.⁴

2. PM 314/13 – X, Y, and Z, Mexico, <http://www.oas.org/en/iachr/decisions/precautionary.asp> (last accessed 4/18/2015)

3. Originally codified at 42 USC §11603 et seq., recodified as 22 U.S.C. §§ 9001 -9011.

4. *Pliego v. Hayes*, No. 15-cv-00667-MSK-MJW, 2014 WL 6796537, at *2 (W.D. Ky. Dec. 2, 2014).

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In *Rebder v. Rebder*,⁵ the court noted that, in order to change a child's habitual residence, the parents' agreement and the circumstances surrounding it must enable the court to infer a shared intent to abandon the previous habitual residence. In *Rebder*, the parents had an effective agreement for the child to stay for an indefinite duration, and, therefore, when one parent made statements such as "use my card and f'ing go to America and never come back" and "please respect that I want no further contact anymore," the statements were to be taken in a fit of anger and not meant to literally consent to a new habitual residence.

In *Guerrero v. Oliveros*,⁶ the court found that the parents "consented to let the child stay abroad for some period of ambiguous duration" and "the circumstances surrounding the child's stay . . . suggest that, despite the lack of perfect consensus, the parents intended the stay to be indefinite." Therefore, the court found that the child's prior country of habitual residence was abandoned for their new country of habitual residence and while there may have been a shared intent for the child to return to Chicago at some point to attend school, this understanding did not prevent a finding that the habitual residence in the United States had been abandoned for Mexico.

In another case, the court determined that, with proof of acquiescence, a change in geography, and the child's acclimation over the passage of a substantial amount of time, the child's habitual residence changed to Mexico.⁷

Finally, in *Mendez v. May*,⁸ the court determined that an actual change in geography is not necessary for a change in habitual residence and is only one factor for the court to consider.

3. *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. German law recognizes that a child born into a bigamous marriage is still a child of the marriage and therefore the father has a right of custody.⁹ Custody law in Mexico includes the concept of "patria potestas" and, therefore, petitioner had custody rights since he was the biological father and none of the three exceptions to the doctrine—cessation, termination, or suspension—were applicable.¹⁰

A mother who signed a travel authorization and a rights-termination form prepared by her husband prior to his removal of their children from Mexico to the United States did not cede her rights of custody. The father had fraudulently induced the Spanish-speaking mother to sign the forms, which he had drafted in English, and she believed the forms were necessary to facilitate the family's immigration to the United States. The court said the documents did not constitute an agreement under Mexican law to modify her custody

5. *Rebder v. Rebder*, No. C14-1242 RAJ, 2014 WL 6982530, at *5 (W.D. Wash. Dec. 9, 2014).

6. *Guerrero v. Oliveros*, No. 15 C 2422, 2015 WL 4755437, at *7 (N.D. Ill. Aug. 11, 2015).

7. *Roque-Gomez v. Tellez-Martinez*, No. 2:14-cv-398-FtM-29DNF, 2014 WL 7014547, *11 (M.D. Fla. Dec. 11, 2014); *Loftis v. Loftis*, 67 F.Supp.3d 798, 808 (S.D. Tex. 2014) (parents last shared agreement was that Denmark would be the child's habitual residence).

8. *Mendez v. May*, 778 F.3d 337, 346 (1st Cir. Feb 13, 2015).

9. *Rebder*, 2014 WL 6982539, at *7.

10. *Marquez v. Castillo*, 72 F.Supp.3d 1280 (M.D. Fla. 2014); *Martinez*, 2014 WL 7014547, at *11.

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rights, and, since she was exercising those rights when the children were removed, the court granted her petition for their return.¹¹

4. *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 His/Her 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 factual findings used in determining the "now settled" defense are reviewed under the clear error standard.¹²

In *Roque-Gomez v. Tellez-Martinez*,¹³ the child was not returned to his habitual residence because the only reason provided by petitioner for the delay in initiating the return petition was the time required to find an attorney to handle the matter.

In two cases, the children were not returned because the Article XII defense was established. First, in *Gwiazdowski v. Gwiazdowska*,¹⁴ the children had "significant emotional and physical connections demonstrating security, stability, and permanence in its new environment [of New York]." The children's father filed his petition for return more than three years after their wrongful removal, and, after considering the seven factors outlined in *Lozano v. Alvarez*,¹⁵ the court found the children to now be settled in their new home.

Second, in *Alcala v. Hernandez*,¹⁶ the court determined the children were settled, despite their immigration status, because the children were now fluent in English, doing well in school, had substantial family ties and friends in South Carolina, and a stable residence.

b. Grave Risk of Harm/Intolerable Situation

Under Article 13(b), a court is not bound to order a child returned 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."

In *Moura v. Cunha*,¹⁷ respondent was unsuccessful in arguing a 13(b) defense when the basis of the argument was that the child's siblings in Brazil were aggressive toward her.

11. *Gonzalez v. Preston*, No. 3:15cv282-MHT (WO), 2015 WL 2402659, at *6-7 (M.D. Ala. May 20, 2015).

12. *Fuentes-Rangel v. Woodman*, No. 14-12659, 2015 WL 3405132, at *922 (11th Cir. May 28, 2015).

13. *Martinez*, 2014 WL 7014547, at *11.

14. *Gwiazdowski v. Gwiazdowski*, No. 14-CV-1482 (FB)(RER), 2015 WL 1514436, at *1, *4 (E.D. N.Y. April 3, 2015). The seven factors outlined by prior case law are: "(1) the age of the child; (2) the stability of the child's residence in the new environment; (3) whether the child attends school or day care consistently; (4) whether the child attends church [or extracurricular school activities] regularly; (5) the respondent's employment and financial stability; (6) whether the child has friends and relatives in the new area; and (7) the immigration status of the child and the respondent."

15. *Lozano v. Alvarez*, 134 S. Ct. 1224, 1231 (2014).

16. *Alcala v. Hernandez*, No. 4:14-cv-04176-RBH, 2015 WL 4429425, at *16-17 (D.S.C. July 20, 2015).

17. *Moria v. Cunia*, 67 F. Supp. 3d 493, 502 (D. Mass. 2014).

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The court found the aggression shown the child by her brothers was more akin to typical sibling disputes than to something more deeply troubling. Another unsuccessful case involved a mother who proffered evidence that her child had been abused. However, no evidence was present demonstrating the time frame for the bruises or any evidence as to how the child became bruised.¹⁸

The United States District Court for the District of Maryland found that a Peruvian father's alleged psychological abuse of his sons and their mother was so "significant and unusual" that a grave risk was found to exist and the children would be exposed to harm if returned to Peru. The court ruled, however, that the children had been wrongfully removed by their mother, and that they would be ordered returned to Peru, provided that the father complied with a specific list of undertakings. The undertakings required the father to return the "legal landscape" in Peru to what it had been when the mother removed the children to the United States, at which time she had been awarded temporary custody by a court in Lima. The district court also ordered that Peruvian criminal charges against the mother be withdrawn. If the undertakings were met, the court would order the return of the children to Peru, at the father's expense, to reside with the mother, her parents, or another third party custodian designated by the mother, at a location selected by her, during the pendency of the custody proceedings. If the conditions were not met, the children would not be returned.¹⁹

The Seventh Circuit determined that a mother had met her burden of proof in an Article 13(b) defense in showing that the father had sexually abused her child while in Mexico. Evidence included the trial court's expert psychologist's testimony that the child had been abused by the father. The mother and child also testified in detail concerning the abuse.²⁰

The United States District Court for the Western District of Kentucky found no intolerable situation when the diplomat father was immune from some charges and/or lawsuits, such as a domestic violence charge, in Turkey, and therefore granted the father's request to return his child to Turkey. The father had waived immunity for purposes of the Turkish custody case only.²¹

c. Mature Child's Objection

Article 13 also provides that a child does not have to be returned if the child is of a sufficient age and maturity where it is appropriate to take the child's views into account. A twelve-year-old child was found to be sufficiently mature to object to his return to Greece after being interviewed by the Court in the presence of the parents' counsel. The court found him to be "exceptionally bright, thoughtful, sociable and well-adjusted"

18. *De Souza v. Negri*, No. 14-13788-DJC, 2014 WL 7330770, at *6 (D. Mass. Dec. 19, 2014).

19. *Sabogal v. Velarde*, No. TDC-15-0448, 2015 WL 2452702, *12, *19 (D. Md. May 20, 2015).

20. *Ortiz v. Martinez*, 789 F.3d 722, 729 (7th Cir. 2015).

21. *Piiego*, 2014 WL 6796537. In a later order the court determined that the scant evidence of the potential for corruption or undue influence in Turkey does not rise to the level required for this affirmative defense. [The respondent] did not provide evidence that the political climate, judicial system, or conditions in Turkey would place the child in an 'intolerable situation.' Thus, she has not satisfied her burden under this affirmative defense. The same is true for a father who argued that returning the child to the Slovak Republic would put them in an intolerable situation because of the proximity of that country to the Ukraine. *Cillikova v. Cillik*, No. 15-2823, 2015 WL 4654339, at *7 (D. N.J. Aug. 5, 2015).

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Separate from the child's objection, the Court found the father had consented to the child's relocation from Greece to the United States.²²

d. Human Rights and Fundamental Freedoms

Article 20 provides that the return of the child may be refused if the return would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms. In *Guerrero v. Oliveros*,²³ the respondents attempted to argue that Article 20 applied because "social conditions in Mexico are abysmal in comparison to the United States and violence and corruption relating to drug trafficking and gangs is rampant," and that "Mexican laws do not adequately protect women and girls from domestic violence and sexual violence." The court rejected the argument, noting that respondents were essentially asking the Court to use Article 20 to pass judgment on the social and political system of Mexico. The evidence presented by respondents regarding Mexico's high crime rate and the legal system's inadequacies at protecting women from domestic violence did not meet the "shocks the conscience" standard required under Article 20. "The facts of this case certainly do not warrant this Court to be the first to invoke the Article 20 exception. Invoking Article 20 for anything less than gross violations of human rights would seriously cripple the purpose and efficacy of the Convention."

e. Consent/Acquiescence to the Removal

Consent to removal was at issue in *Gallagher v. Gallagher*. The court determined that consent is a fact-intensive inquiry "that focuses on [the petitioner's] intent prior to the child's retention," and which "may be evinced by the petitioner's statements or conduct, which can be rather informal." The court found that there was no joint consent that the mother should permanently move from Ireland to the United States, but only an agreement that she could move if the father could join her, which he could not.²⁴

In *Warren v. Ryan*, the court found there was no consent or acquiescence because, while the father consented to the children's traveling to the United States on a family vacation, there was no evidence that he acquiesced in their staying. The court rejected the mother's claim that, upon arriving in the United States, her purchase of large bottles of shampoo and conditioner, an electric toothbrush, car seats for the children, and business cards with a U.S. phone number was a "sign" to the father of her intent to remain indefinitely and that his failure to object constituted acquiescence.²⁵

In *Moura v. Cunha*, a mother, who removed her three children from their habitual residence in Ireland to the United States, was unable to establish that the children's father consented to their retention in the United States. Although the father may have consented to the children's moving to the United States *so long as he would be able to join them*, it ultimately became clear that his joining the family would be impossible, especially

22. *In re Adamis v. Lampropoulou*, 14-CV-5836 (PKC), 2015 U.S. Dist LEXIS 63698, *22, *24 (U.S. Dist. E.D.N.Y., May 14, 2015).

23. *Guerrero*, 2015 WL 4755437, at *14.

24. *Gallagher v. Gallagher*, 67 F. Supp. 3d 493, 501, 507 (D. Mass. 2014).

25. *Warren v. Ryan*, No. 15-cv-00667-MSK-MJW, 2015 WL 3542681, at *5 (D. Colo. June 5, 2015).

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when the mother refused to sponsor a visa for him because their marriage had fallen apart.²⁶

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

a. Attorney's Fees

Section 9003 of ICARA provides that “[a]ny court ordering the return of a child pursuant to an action brought under this [Act] shall order the respondent to pay necessary expenses incurred by or on behalf of the petitioner, including court costs, legal fees, foster home or other care during the course of proceedings in the action, and transportation costs related to the return of the child, unless the respondent establishes that such order would be clearly inappropriate.”²⁷ In *Rebder v. Rebder*,²⁸ the court found that an abducting parent’s good faith belief that she had permission to take the child to the United States could indicate that an attorney fee award would be clearly inappropriate. However, in *Warren v. Ryan*,²⁹ the court determined an abducting parent’s good faith in leaving the child’s habitual residence did not impact an attorney fee award.

In *Dawson v. McPherson*, the district court determined that the amount of attorneys’ fees requested by the prevailing parent may be reduced because of the attorneys’ inadequate documentation, duplicative or excessive hours, and above-market billing rate.³⁰

b. Procedural Issues

During 2015, two courts analyzed procedural issues surrounding child custody. The United States Court of Appeals for the Second Circuit held that when a petition for return is denied, the case should be dismissed with prejudice.³¹ In another case, an Illinois state court held that a return petition that is brought in the context of a divorce case, the result of which is to require the child to return to Poland, survives a voluntary dismissal of the divorce.³²

i. Stays

In determining whether to stay a return order pending appeal, the court should consider four factors: (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies. Where the respondent is asserting consent as a defense, the trial court’s factual determinations are likely to be conclusive and thus denying a stay based on those facts is justified.³³

26. *Moura*, 67 F. Supp. 3d at 493.

27. Originally codified at 42 USC §11607 (b)(3) et seq., recodified as 22 U.S.C. § 9007.

28. *Rebder*, 2015 WL 4624030, at *9.

29. *Warren v. Ryan*, No. 15-cv-00667, 2015 WL 4365489, at *2 (D. Colo. July 15, 2015).

30. *Dawson v. McPherson*, No. 1:14CV225, 2014 WL 4748512, *5 (M.D. N.C. Sept. 23, 2014).

31. *Ermini v. Vittori*, 758 F.3d 153 (2nd Cir. 2014).

32. *In re Marriage of Krol*, 29 N.E.3d 433 (Ill. Ct. App. 2015).

33. *Rebder*, 2014 WL 7240662, at *4.

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ii. Temporary Restraining Orders (TRO)

A petitioner seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest. In *Velasquez v. Velasquez*, a mother had already wrongfully retained her daughters in the United States for close to ten months after the father's numerous attempts to exercise his custodial rights. This action suggested to the Court that the mother could possibly seek to remove the daughters from the jurisdiction, or further conceal their whereabouts, and therefore the TRO was proper.³⁴

iii. Evidentiary and other Procedural Issues

In the case of *In re Application of Stead v. Menduno*,³⁵ the Court determined that the expert witness offered by the mother, who would testify to the effect of relocation to New Zealand on the child, was not relevant to determining whether there was a grave risk to the child. The evidence only addressed the effects of economic deprivation on the mother, which were not at issue in Hague return proceedings. The other matters that the expert would testify to concerned the best interest of the child, which was also not at issue.

In *Garcia v. Pinelo*, equitable defenses such as "clean hands" were not available in return proceedings under ICARA.³⁶

In *Karl v. Dominguez*,³⁷ the federal District Court determined that it should abstain from hearing the Hague return petition in light of the ongoing state custody proceedings.

The United States District Court for the District of Kansas in *Baker v. Baker* determined that when the court orders children returned, it may also order how the costs of the return shall be apportioned, as well as at what point in the return the children are to be exchanged.³⁸

In *Lawrence v. Lewis*,³⁹ the court, noting that it is permitted to take "measures under Federal or State law, as appropriate, to protect the well-being of the child involved or to prevent the child's further removal or concealment before the final disposition of the petition,"⁴⁰ entered an order prohibiting the mother from removing the child from the Southern District of Ohio absent further order of the court.

In *Sanchez v. Lopez-Sanchez*, the litigation ended when the petitioner mother voluntarily dismissed her request to return her three children to Mexico. The Court was therefore not required to reach the interesting question of the relationship between asylum and the grave risk of harm defense.⁴¹ The petitioner requested permission to amend her

34. *Velasquez v. Velasquez*, No. 14cv1688, 2014 WL 7272934, * 3 (E.D. Va. Dec. 15, 2014).

35. *Garcia v. Pinelo*, No. 14C09644, 2014 WL 6819547, (D. Colo. Aug. 16, 2014).

36. *Pinelo*, 2014 WL 4910654.

37. *Baker v. Baker*, No. 14-2629, 2015 WL 4461836 (E.D. Pa. Jan. 20, 2015); *see also* *Karl v. Marina Belen Dominguez Cifuentes*, 2015 WL 4940613 (E.D. Pa. 2015) (Younger abstention applicable when there is an ongoing custody proceeding in state court).

38. *Baker*, 2015 WL 4461836.

39. *Lawrence v. Lewis*, No. 1:15-cv-191, 2015 WL 1299285, *2 (S.D. Ohio Mar. 23 2015).

40. 22 U.S.C. § 9004(a) (2012).

41. *Sanchez v. Lopez Sanchez*, No. SA-12-SA-568-XR, 2015 WL 3448009, *8 (W.D. Tex. May 27 2015).

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complaint to request access rights to the children, which was denied because the Court determined that it did not have the authority to grant access rights.

C. THE HAGUE SERVICE CONVENTION

In a dependency proceeding, a California court held that the Hague Service Convention did not apply when the address of the party was not known, and further whether the address was or was not known was a question of fact.⁴² In another California case, the court ruled that in a controlling-order proceeding under UIFSA, compliance with The Hague Service Convention was required when one party lived in Norway. The Court decided that the request for a controlling order determination was a new request for relief by the father as to which notice was expressly required and personal jurisdiction over the mother had not been previously established.⁴³

D. OTHER AREAS OF INTERNATIONAL FAMILY LAW LITIGATION

1. *Divorce*

a. Jurisdiction and Recognition of Foreign Divorce Judgments

An Alabama court determined that a Saudi family that moved to Alabama for the husband to complete his education was not domiciled in Alabama for purposes of obtaining a divorce, particularly when the wife left Alabama for Texas after residing for only six months in Alabama.⁴⁴

A Texas trial court did not abuse its discretion in dismissing, for want of jurisdiction, a woman's divorce petition after determining that a divorce decree obtained in Pakistan by her husband was valid and entitled to comity.⁴⁵

A Tennessee court found that a husband and wife were validly married when the parties had wed after a German court had pronounced the wife divorced from her prior husband, but arguably before the divorce became binding under German law.⁴⁶

b. Affidavit of Support - Immigration

In the United States District Court for the Northern District of California, in order to invoke federal jurisdiction to enforce an affidavit of support, the pleading must include the allegation that the sponsor has failed to support the immigrant.⁴⁷

In another United States District Court case, a man who had agreed to support his now former wife in connection with her immigration to the United States was ordered to pay her damages for the years he failed to provide the support. After the parties divorced, the wife—a legal permanent resident of the United States—sued to enforce the husband's obligation to support her in accordance with the federal Form I-864 Affidavit of Support

42. *In re Alberto F*, 2015 WL 477349 (Cal. Ct. App. Feb. 4 2015).

43. *Vaile v. Porsboll*, A140465, 2015 WL 2454279, (Cal. Ct. App. 2015).

44. *Alsaikhan v. Alakel*, 173 So. 3d 925 (Ala Ct. Civ App. 2015).

45. *Ashfaq v. Ashfaq*, 467 S.W. 3d 539 (Tex. App.—Houston [1st Dist.] 2015); *see also* *Gosbee v. Gosbee*, 2015 WL 3634561 (Vt. 2015) (a nebulous intent to return to Vermont sometime in the future is not enough to maintain a Vermont domicile for purposes of divorce after living six years in Germany).

46. *Echols v. Echols*, 2015 WL 571935 (Tenn. Ct. App. Sep. 29, 2015).

47. *Courtade v. Pappalardo*, No. 14-cv-01592-JCS, 2014 WL 6450040, *3 (N.D. Cal. Nov. 14, 2014).

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he signed after they married, in which he undertook to maintain her income at a minimum of 125% of the poverty line for a one-person household.⁴⁸

c. Property Division

A man's parents had provided jewelry to his wife on their wedding day was her property because the couple married in India. In India, "Stridhan" provides that items of value given to a wife on the day of the wedding remain her property.⁴⁹

In Marriage of Ruppert,⁵⁰ the court approved recognition of a German divorce decree and property division because the defendant participated through his attorney and the judgment was otherwise non-objectionable.

d. Attorney Fees

The Uniform Foreign Country Money Judgments Recognition Act was properly applied by a trial court in recognizing a Scottish judgment for attorneys' fees awarded to a man when a North Carolina woman with whom he had cohabited in Scotland lost her lawsuit there for support. The North Carolina version of the Act differs from the Uniform Act in that it does not have the phrase "arising out of a domestic relations" action. Therefore, the judgment "for" legal fees does not fall within the Act's exemption of judgments "for" support.⁵¹

2. *Children's Issues*

a. Jurisdiction and Enforcement

A New Hampshire state court determined that a father, whose Hague Convention petition for the return of his children to Turkey was denied, was still entitled to enforcement of a Turkish order granting him custody. The Court rejected the mother's claim that New Hampshire was not obligated to enforce the order under the UCCJEA because she was denied due process in the Turkish proceeding and Turkish custody law violates fundamental principles of human rights. The Court added that the children's best interests were not part of the jurisdictional inquiry.⁵²

In *Baxter v. Baxter*, the Louisiana state Court determined that a mother and child's move to Canada was not temporary and therefore, Canada became the child's home state.⁵³

In *Ciausova v. Eighth Judicial Dist.*,⁵⁴ the Nevada Supreme Court affirmed a trial court's dismissal of the custody proceedings upon determining that the child's home state was Moldova.

Custody jurisdiction was determined to exist in Massachusetts over a Mexican-born teenager who was sent to Massachusetts by a federal agency after being designated an

48. Toure-Davis v. Davis, No. WGC-13-916, 2015 WL 3891744, *1 (D. Md. June 23, 2015).

49. Sandhu v. Sandhu, No. 27207, 2015 WL 160781, *2 (Ohio Ct. App. Jan. 14, 2015).

50. *In re Ruppert*, A137751, 2014 WL 6853696 (Cal. Ct. App. Dec. 5, 2014).

51. *Savage v. Zelent*, 777 S.E.2d 801 (N.C. Ct. App. 2015).

52. *In re Yaman*, 105 A.3d 600 (N.H. 2014).

53. *Baxter v. Baxter*, 171 So.3d 1159 (La. Ct. App. 2015).

54. *Ciausova v. Eighth Judicial Dist. Court of State, ex rel. County of Clark*, No. 68287, 2015 WL 4137219 (Nev. July 6, 2015).

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unaccompanied refugee minor when she became a victim of human trafficking while living in Texas. Under the UCCJEA, the Court found that the girl had no home state and that Massachusetts thus could exercise jurisdiction pursuant to the Act's "significant connection" provision.⁵⁵

In California, a court determined that the failure of a Japanese court to communicate with a California trial court should be interpreted to mean that Japan would not exercise its home state jurisdiction. The inquiry from the California court was met with the following response from the Japanese court: "[U]nder the Japanese legal system a Japanese judge is not allowed to discuss issues concerning jurisdiction over an individual case with a judge of another state. Accordingly, it will be quite difficult to response [sic] to your request even if you use diplomatic channels in this case."⁵⁶

b. Relocation

A Washington state court allowed a mother to move to Australia with her child when she stipulated that Washington would retain continuing jurisdiction and perhaps with a bond required.⁵⁷

c. Visitation

A trial court erred in restricting a divorced father's visitation with his child to the United States until the child turned sixteen, rather than allowing the child to spend time with him in Israel because Israel ratified the Child Abduction Convention and was in compliance with its terms.⁵⁸ In a Nevada case involving overseas visitation, an overseas American father's proposal that visitation with his non-marital child take place in African countries that are not signatories to the Child Abduction Convention should not have been rejected for that reason alone.⁵⁹ The trial court's determination that the father could not take the child to Rwanda or Uganda during his visitation was reversed and remanded with the trial court directed to make factual findings as to whether such visitation was in the child's best interest.⁶⁰

An Alaska trial court did not abuse its discretion in refusing to restrict a father's foreign travel with his child during visitation to countries with which the Child Abduction Convention is in force. Upholding a visitation order allowing a former service member to take his child to Micronesia (where he had been stationed), the Court explained that "although the Hague Convention is one factor that courts can look to in determining whether international visitation is appropriate when there are concerns about the safety and return of a child, it is simply one factor among many and is not dispositive."⁶¹

55. *In re Custody of Victoria*, 473 Mass. 64 (2015).

56. *In re M.M.*, 192 Cal. Rptr. 3d 849 (Cal. Ct. App. 2015).

57. *In re Marriage of Rostrom*, 339 P.3d 185 (Wash. Ct. App. 2014).

58. *In re Stern*, No. 13-2078, 2015 WL 568584 (Iowa Ct. App. Feb. 11, 2015).

59. *Davis v. Ewalefo*, 352 P.3d 1139 (Nev. 2015).

60. *Ewalefo*, 352 P.3d 1139.

61. *Moore v. Moore*, No. S-15712, 2015 WL 3452474 (Alaska May 29, 2015). For other cases involving international visitation, see also *In re Marriage of Ben-Artzi*, 2015 WL 4730179 (Wash. Ct. App. 2015) (upholding a prohibition on foreign travel because the undisputed record established that the father willfully disregarded court orders "is likely to violate any court order to permit travel"); *In re Paternity of Y.K.S.*, 2015 WL 3619310 (Wis. Ct. App. 2015).

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d. Adoption

In *Adoption of Child A*,⁶² the trial court determined, as a preliminary matter, that the parent's lawsuit to vacate the adoption would be considered in open court because of the great public interest in the problems of Russian adoptions. In a later opinion, the court concluded that the practice of "re-homing" children adopted in Russia was improper and called for legislative action to regulate the process.⁶³ Subsequent to this decision, the Court determined that Russia and the United States Department of State were not necessary parties.⁶⁴

E. Uniform Laws

1. *Recognition and Enforcement of Canadian Domestic Violence Protection Orders*

The Uniform Law Commission completed its work on a uniform act that will provide for recognition and enforcement of Canadian civil domestic violence protection orders in the United States. The Uniform Law Commission approved the Act at its annual meeting in July 2015.

62. *In re Adoption of Child A*, 994 N.Y.S.2d 832 (Sup. Ct. Nas. Co. 2014).

63. *In re Adoption of Child A*, 997 N.Y.S.2d 312 (Sur. Ct. Nas. Co. 2014).

64. *In re Adoption of Child A*, 9 N.Y.S.3d 592 (Sur. Ct. Nas. Co. 2015).

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