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International Family Law

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This past year saw a significant number of developments in the area of international family law. In addition to a significant treaty ratification by the United States, the federal courts have issued decisions in numerous cases brought under international conventions and federal statutes, and state courts have continued to deal with issues relating to marriage, divorce, child custody, and a host of related issues.

I. International Conventions, Federal Law

On September 7, 2016, the United States deposited its instrument of ratification of the Child Support Convention, which entered into force on January 1, 2017.¹ Every United States jurisdiction enacted the 2008 amendments to the Uniform Interstate Family Support Act (UIFSA) to comport with the Child Support Convention.²

II. International Litigation

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

Much of the international family law litigation in the United States involved the Child Abduction Convention³ and its implementing legislation, the International Child Abduction Remedies Act (ICARA).⁴ United States

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1. Press Statement, John Kerry, Sec’y, U.S. Dep’t of State, United States Deposits Its Instrument of Ratification for the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (Sept. 7, 2016), <https://2009-2017.state.gov/secretary/remarks/2016/09/261631.htm>.

2. OFFICE OF CHILD SUPPORT ENF’T, DEP’T OF HEALTH & HUMAN SERV., IM-15-01, INFORMATION MEMORANDUM ON UNIFORM INTERSTATE FAMILY SUPPORT ACT (2008) AND HAGUE TREATY PROVISIONS (Apr. 13, 2015), <https://www.acf.hhs.gov/css/resource/uniform-interstate-family-support-act-2008-and-hague-treaty-provisions>.

3. Hague Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No. 11,670, 1343 U.N.T.S. 89 [hereinafter Hague Convention].

4. International Child Abduction Remedies Act, 42 U.S.C. § 11601 (2015).

federal and state courts have concurrent jurisdiction to decide a request for return of a child under the Child Abduction Convention.⁵

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.⁶

1. *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. Regardless of the test used, a child can have only one habitual residence. In a Third Circuit case, the family resided in Dutch Sint Maarten, but the children attended school and saw doctors in French Saint Martin.⁷ The Third Circuit found that the child was habitually resident in Dutch Sint Maarten, a country that does not recognize the Abduction Convention, and could not have two habitual residences to permit a petition for return to French Saint Martin, where the Abduction Convention is in force.⁸

a. Intent Cases

The majority view, pioneered by the Ninth Circuit, looks to the parents' shared intent in determining their child's habitual residence. Under this approach, the fact that a very young child remained in Mexico for two years did not qualify Mexico as the child's habitual residence because the child's parents still had significant ties to the United States, and therefore had not clearly abandoned the United States as their habitual residence.⁹

On the other hand, when the parents hired an architect to remodel a family residence in Sri Lanka, obtained the necessary authorization to transport the family pets to that country, sold or shipped to Sri Lanka a majority of their possessions, enrolled the children in school upon arrival, and lived with both sets of grandparents until their home renovations were complete, they demonstrated an intent to abandon the United States and make Sri Lanka the child's habitual residence.¹⁰

5. International Child Abduction Remedies Act, 42 U.S.C. § 9003(a) (2015).

6. Hague Convention, *supra* note 3, at art. 13.

7. *Didon v. Castillo*, 838 F.3d 313, 316 (3d Cir. 2016).

8. *Id.*

9. *Wild v. Elliott*, 147 F. Supp. 3d 49, 54–55 (D. Conn. 2015). *See also* *Martinez v. Cahue*, 826 F.3d 983, 990–94 (7th Cir. 2016) (lack of a shared intent of the parties to change the child's habitual residence to Mexico outweighs the child's acclimatization to Mexico). Note, however, if the father of the child does not have a right of custody at the time the child moves with the mother to Mexico, then his intent regarding the child's habitual residence does not matter. *Id.*

10. *Kulapala v. Delgoda*, No. 3:15-cv-01890-BR, 2016 WL 107958, at *1–2, *3 (D. Ore. Jan. 8, 2016).

In another case, a child's habitual residence shifted to Singapore from California. The parties moved furniture and personal items to Singapore, turned their San Diego house into a vacation rental, and held a good-bye party. The father resigned from his job in the United States and the mother gave her employer notice to leave. In Singapore, the parents rented a four-story apartment, opened bank accounts, enrolled the child in preschool, and purchased more furniture to complete their home.¹¹ When the marriage fell apart, the couple sought the assistance of a Singapore law firm to facilitate their separation. Although each parent had significant ties to the United States, they intended that San Diego be their vacation destination, not the city that would remain their habitual residence. The court held that their actions demonstrated intent to leave San Diego behind. The court also noted that the child had become acclimatized to Singapore.¹²

A court also found that a child's habitual residence changed from Honduras to the United States because, even though the parents agreed that the child should live in Honduras, the child had in fact lived in the United States from the time it was eighteen-months-old until the case was decided, when the child was five.¹³ In another case, a child had relocated from Israel to the United States, but the parties disputed whether that was intended to be permanent. When the parties jointly applied for their child's naturalization as a United States citizen, the court determined that the child's habitual residence had changed from Israel to the United States.¹⁴

The newborn child's habitual residence may be difficult to determine because there is often no shared parental intent. A court determined that when a mother gave birth to a child in the United States, the United States did not become the child's habitual residence, particularly when the child had resided in Guatemala for four months.¹⁵

b. Acclimatization Cases

A federal district court in Tennessee declined to use the parental intent test, and determined that it must consider all available evidence—looking backward and focusing on the child's past experience, and looking closely at the facts and circumstances of each case—to determine the child's habitual residence.¹⁶

2. *Rights of Custody*

A child's 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

11. *Albani v. Albani*, No. 15cv1980, 2016 WL 158583, at *5–6 (S.D. Cal. Jan. 12, 2016).

12. *Id.* at *8–9, *11–12.

13. *In re R.C.G.J.*, No. 5:16cv69-RH/GRJ, 2016 WL 3198285, at *4 (N.D. Fla. June 8, 2016).

14. *Cohen v. Cohen*, No. 4:15–CV–01756 JAR, 2016 WL 4546980, at *5–6 (E.D. Mo. Sept. 1, 2016).

15. *Ovalle v. Perez*, No. 16-cv-62134-BLOOM, 2016 WL 6082404, at *8, *10 (S.D. Fla. Oct. 17, 2016).

16. *Ahmed v. Ahmed*, No. 3:16-CV-142, 2016 WL 4691599, at *9 (E.D. Tenn. Sept. 7, 2016).

removal, or would have exercised that right but for the removal. A court refused to terminate, suspend, or limit a parent's *patria potestas* rights under Mexican law for unmarried parents, and found that neither a custody agreement nor anything like one could do so. The court read Mexican law as not containing a general provision for the judicial surrender of parental authority and responsibility.¹⁷ In so holding, the court disagreed with decisions to the contrary from other circuits.¹⁸

The Fifth Circuit reaffirmed the traditional American position that a father who appeared about once every six weeks was still exercising his custody rights.¹⁹

3. *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 or 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 its new environment.²⁰ The one-year period runs from the date the retention or removal became "wrongful."²¹ The factual findings used in determining the "now settled" defense are reviewed under the clear error standard.

In one case, even though the child had been in the United States for more than one year, the trial court found he was not settled there because he had not been enrolled in or attended a traditional school, had very little in-person interaction with other children, did not participate in any team sports, clubs, or other activities aside from those that met online, and did not have any friends locally.²²

However, a court found that a child, who, in one year had become proficient in English, was doing well in school, and who had extensive family in the area was settled, even though his immigration status was uncertain.²³

Although normally children who are settled in their new environment are not returned to their habitual residence, trial courts still have discretion to do so.²⁴

17. *Garcia v. Pinelo*, 808 F.3d 1158, 11967 (7th Cir. 2015).

18. *See, e.g., Gonzalez v. Gutierrez*, 311 F.3d 942, 954 (9th Cir. 2002).

19. *Rodriguez v. Yanez*, 817 F.3d 466, 473 (5th Cir. 2016).

20. Hague Convention, *supra* note 3, at art. 12.

21. *Id.*

22. *In re K.J.*, No. 9:16-CV-80177-RLR, 2016 WL 874360, at *5 (S.D. Fla. Mar. 8, 2016).

23. *Alcala v. Hernandez*, 826 F.3d 161, 172–74 (4th Cir. 2016).

24. *Fuentes-Rangel v. Woodman*, 617 Fed. Appx. 920, 922–23 (11th Cir. 2015).

b. Grave Risk of Harm/Intolerable Situation

Under Article 13(b) of the Child Abduction Convention, a court need not return 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.”²⁵ In one case, a trial court violated a mother’s due process rights when it ordered a child returned to Denmark without holding a hearing on the mother’s Article 13(b) defense.²⁶

Sometimes courts will return children, even where there is a risk of harm, if the respondent pledges certain undertakings. However, when crafting undertakings to ensure the safe return of a child, the court may not require the abducting parent to return with the child, nor condition the return on that parent obtaining a protective order from a court of the habitual residence.²⁷

A court determined that a “grave risk of harm” existed in Venezuela based on evidence of the mother’s death threats against the father, as well as evidence of her and her new husband’s likely involvement in acts of violence directed against the father and his immediate circle of friends and relatives.²⁸

It is not uncommon that a taking parent pleads a grave risk of harm if the family situation involved some type of abuse. In the Seventh Circuit, a grave risk of harm occurred when there was credible testimony of spousal abuse that was carried out in the presence of the child at issue.²⁹ A child’s return may also be denied because of sexual abuse,³⁰ or because of physical abuse to the mother and the children.³¹

In a case rejecting an Article 13(b) defense, a court found that returning an American-born child to Mexico was not akin to sending him to a war zone. Rebuffing this “grave risk” defense, the court held that no credible evidence was presented supporting the claim.³²

c. Mature Child’s Objection

In applying this defense, the court must consider whether the child objects to being returned to the child’s habitual residence, and not whether the child has a preference to live in one country.³³

A court determined that two children, one fifteen-and-a-half-years-old and the other fourteen-and-a-half, should not be returned to Peru, noting that the closer the children are to the age of sixteen, the more their wishes

25. Hague Convention, *supra* note 3, at art. 13(b).

26. *Noergaard v. Noergaard*, 197 Cal. Rptr. 3d 546, 559 (Ct. App. 2015).

27. *L.G. v. M.M.*, No. D067027, 2015 WL 8296831, at *4–5 (Cal. Ct. App. Dec. 9, 2015).

28. *Gomez v. Fuenmayor*, 812 F.3d 1005, 1015 (11th Cir. 2016).

29. For a recent case see *Hernandez v. Cardozo*, No. 15-cv-11460, 2016 WL 3742858, at *2 (N.D. Ill. July 13, 2016).

30. *Gonzalez v. Pena*, 194 F. Supp. 3d 897, 902 (D. Ariz. 2016).

31. *Sadoun v. Guigui*, No. 1:16-cv-22349-KMM, 2016 WL 4444890, at *4–5 (S.D. Fla. Aug. 22, 2016).

32. *Mendoza v. Pascual*, No. CV 615-40, 2016 WL 320951, at *6 (S.D. Ga. Jan. 26, 2016).

33. *Rodriguez v. Yanez*, 817 F.3d 466, 476–77 (5th Cir. 2016).

should be respected.³⁴ Another court held that, although it was a close case, a trial court had the discretion to send an objecting thirteen-year-old boy back to Mexico with his father.³⁵ In yet another case, the court found that a nine-year-old who was immature for his age should be returned to Mexico even though the child wished to stay in the United States.³⁶

d. Human Rights and Fundamental Freedoms

Article 20 of the Child Abduction Convention provides that the return of a child may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.³⁷

e. Consent/Acquiescence to the Removal

The left-behind parent's consent (or acquiescence) is also a defense to returning a child to his or her habitual residence.³⁸ A court noted that "consistent attempts to secure the return of his child defeats [the mother's] postulation that [the father] has acquiesced to the child's removal."³⁹ Consent remains a defense even if it was obtained by a misrepresentation.⁴⁰

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

a. Attorney's Fees

Section 9003 of ICARA provides:

Any 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.⁴¹

Under this provision, courts carefully scrutinize attorney fee requests to ensure that awards are reasonable. For example, a mother was entitled to a fee award after successfully petitioning for her children's return to Germany. But the amount requested for her pro bono counsel was reduced because the hours claimed by the mother's attorneys were excessive, and the fee award was not necessary to restore her to the position she would have been in had

34. *Custodio v. Samillan*, No. 4:15-CV-01162 JAR, 2015 WL 9477429, at *4-6 (E.D. Mo. Dec. 29, 2015).

35. *Garcia v. Pinelo*, 808 F.3d 1158, 1168 (7th Cir. 2015).

36. *Pascual*, 2016 WL 320951, at *6.

37. Hague Convention, *supra* note 3, art. 20.

38. *Id.* art. 13(a).

39. *Toufighjou v. Tritschler*, No. 8:16-cv-1709-T-33JSS, 2016 WL 3883193, at *3 (M.D. Fla. July 18, 2016).

40. *Flores-Aldape v. Kamash*, 202 F. Supp. 3d 793, 800-01 (N.D. Ohio 2016).

41. International Child Abduction Remedies Act, 42 U.S.C. § 9007(b)(3) (2015).

there been no retention.⁴² In a different case considering the good faith factor, however, a federal district court in New York concluded that attorney's fees were inappropriate because the retaining father had a good faith belief that it was lawful for him to retain the child.⁴³

Determining whether fees are "clearly inappropriate" requires a review of equitable considerations, including factors such as intimate partner violence. In one case, the court determined that "because [the respondent] established that [the petitioner] had committed multiple unilateral acts of intimate partner violence against her, and that her removal of the child from the habitual country was related to that violence, an award of expenses to [the petitioner], given the absence of countervailing equitable factors, was clearly inappropriate."⁴⁴ In another case, the fee award was temporarily denied because the petitioner presented no evidence as to the prevailing hourly rate for attorneys and as to the reasonableness of the hours expended by her counsel.⁴⁵

In yet another case, six years after the district court issued an order establishing the petitioner's entitlement to fees and costs, and five years after the Eleventh Circuit's affirmance on the merits, the petitioner renewed her application for fees and costs. The district court denied the respondent's motion to dismiss because he had not suffered actual prejudice from the unreasonable delay.⁴⁶ When a respondent argues that a fee award is "clearly inappropriate," he ought to, at a minimum, submit a financial affidavit to show his inability to pay.⁴⁷

Petitioners should also be careful not to neglect state statutes that may provide some relief for them. For example, an abducting mother was ordered to pay restitution to the left-behind father for expenses incurred in obtaining the return of the children.⁴⁸

b. Procedural Issues

A Hague return petition must be filed in the place where the child is located. If it is filed in the wrong district, the court may transfer the case to the correct federal district court.⁴⁹ An attorney can be appointed for the

42. *Smedley v. Smedley*, No. 7:14-CV-66-F, 2015 WL 5139286, at *3-4 (E.D. N.C. Sept. 1, 2015).

43. *Onrust v. Larson*, No. 15 Civ. 122(PAE), 2015 WL 6971472, at *10-11 (S.D. N.Y. Nov. 10, 2015).

44. *Souratgar v. Lee Jen Fair*, 818 F.3d 72, 75, 81 (2d Cir. 2016).

45. *Cillikova v. Cillik*, No. 15-2823 (MCA) (LDW), 2016 WL 541134, at *4 (D. N.J. Feb. 9, 2016).

46. *Sewald v. Reisinger*, No. 8:08-cv-2313-T-27TBM, 2015 WL 6964290, at *1-2 (M.D. Fla. Nov. 10, 2015).

47. *Godoy v. De Batres*, No. 15-cv-00568-MSK-CBS, 2016 WL 397471, at *1 (D. Colo. Feb. 2, 2016).

48. *Strout v. Florida*, 180 So. 3d 1052, 1054-55 (Fla. Dist. Ct. App. 2015). For another case where attorney fees were permitted, see *Albani*, 2016 WL 3074407, at *2.

49. *Flores Perla v. Perla Velasquez*, No. PWG-16-95, 2016 WL 3878495, at *7-8 (D. Md. July 18, 2016).

respondent in a Hague return case after the court considers all the appropriate reasons for appointing counsel.⁵⁰ The petitioner in a Hague return action may join the respondent's father to prevent him from concealing the child in the future, and that father could possibly be responsible for the petitioner's expenses and fees.⁵¹ A father's petition for the return of his child may be served on the defendant by alternative methods, including email and Facebook, but the petitioner must also effect service by certified mail, return receipt requested, on defendant's last known address, and on the defendant's relative residing at the same location.⁵²

A petitioner may compel the respondent to produce documents relating to her immigration status in the United States because "the mother cannot use information about her immigration proceedings as a defense to the father's petition seeking return of the children to Honduras, and hide behind the confidentiality of this evidence as a shield to allowing the father's opportunity to challenge the evidence."⁵³

c. Stays

In determining whether to stay a return order pending appeal, a 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."⁵⁴ 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.⁵⁵

d. Injunctive Relief

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. Of particular importance is respondent's history in secreting the child.⁵⁶ A federal district court in North Carolina noted that a temporary restraining order prohibiting a mother (or anyone acting on her behalf) from removing her son, pending disposition of his father's Hague Convention petition for the child's return to France, was "more appropriate" than a show cause order barring such

50. *Shafaq v. Malik*, No. 15-7645 (RMB/JS), 2015 WL 6739797, at *2 (D. N.J. Nov. 4, 2015).

51. *Litowchak v. Litowchak*, No. 2:15-cv-185, 2015 WL 7428573, at *2 (D. Vt. Nov. 20, 2015).

52. *Ferrarese v. Shaw*, 164 F. Supp. 3d 361, 367-68 (E.D.N.Y. 2016).

53. *Garcia v. Padilla*, No. 2:15-cv-735-FeM-29CM, 2016 WL 881143, at *5 (M.D. Fla. Mar. 8, 2016).

54. *Neumann v. Neumann*, 197 F. Supp. 3d 977, 979 (E.D. Mich. 2016) (quoting *Chafin v. Chafin*, 133 S. Ct. 1017, 1027 (2013)).

55. *Id.* at 990.

56. *Guevara v. Soto*, No. 3:15-CV-548-TAV-CCS, 2015 WL 9484502, at *2, *4-5 (E.D. Tenn. Dec. 29, 2015).

removal. If the mother violated the temporary restraining order, then she would be in criminal contempt and the court would have reason to take custody of the child.⁵⁷

e. Other Procedural Issues

During the past year, the courts have dealt with a variety of other procedural issues relating to the transnational aspects of child custody. In one case, for example, the fact that the state court awarded custody to the father pending the mother's appeal from an order refusing return did not render the appeal moot.⁵⁸ In other cases, courts held that a question of foreign law arising in a Hague return proceeding is to be treated as any other issue of foreign law under the Federal Rule of Civil Procedure 44.1.⁵⁹ And that a mother who received only two days' notice of a Hague return hearing, and failed to object to such at trial, was not entitled to a reversal of the return order.⁶⁰

A federal court should abstain from deciding a Hague return petition when it is clear that the state proceeding is one in which the petitioner has raised, litigated, and been given a ruling on the Hague Convention claim, because any subsequent ruling by the federal court on these same issues would constitute interference.⁶¹

B. THE HAGUE SERVICE CONVENTION

If not raised at trial, issues involving the Hague Service Convention cannot be raised for the first time on appeal.⁶² Failure to serve a father, who was in England, for example, required vacating a default judgment against him for child support arrears.⁶³ A court also held that a Mexican father's objection that he was not served in accordance with the Hague Service Convention was waived because he participated in the dependency proceeding for more than two years without raising his objection to the sufficiency of service.⁶⁴

57. *Smith v. Smith*, No. 1:16-cv-00264-MOC-DLH, 2016 WL 4154938, *2-3 (W.D.N.C. 2016).

58. *Tann v. Bennett*, 807 F.3d 51, 52-53 (2d Cir. 2015).

59. *Garcia v. Pinelo*, 808 F.3d 1158, 1162-63 (7th Cir. 2015).

60. *Bounouar v. Fa'alofa*, No. D066948, 2016 WL 192677, at *8-9 (Cal. Ct. App. Jan. 14, 2016).

61. *Minette v. Minette*, 162 F. Supp. 3d 643, 652 (S.D. Ohio 2016).

62. *In re Marriage of Yacoub & Dawoud*, No. B261334 c/w B262471, 2016 WL 1179057, at *5 (Cal. Ct. App. Mar. 25, 2016).

63. *State ex rel. Creighton v. Hayner*, No. M2014-02503-COA-R3-JV, 2016 WL 1222619, *2-3 (Tenn. Ct. App. Mar. 28, 2016).

64. *Dep't of Human Serv.s v. M.C.-C. (In re A.C.-E.)*, 365 P.3d 533, 124-25 (Ore. Ct. App. 2015).

III. Other Cases Involving International Family Law Litigation

During the past year, U.S. federal and state courts have dealt with numerous other family law issues—notably marriage, divorce, child custody, and miscellaneous related issues—in addition to cases involving the international conventions and ICARA, discussed above.

A. MARRIAGE AND DIVORCE—JURISDICTION AND RECOGNITION OF FOREIGN MARRIAGES AND DIVORCE

Federal and state courts dealt with issues this year involving waiver, sufficiency of evidence, laches, comity, public policy, and default judgments.

A Dominican citizen did not qualify for a waiver from removal because he failed to show that his marriage to a U.S. citizen, since ended, was in “good faith” because he could not remember any details of his marriage ceremony.⁶⁵ In another immigration case, the Seventh Circuit held that, because a man’s first marriage was fraudulent, his second marriage, although legitimate, was ineffective for immigration purposes.⁶⁶

In another case, a wife presented sufficient evidence in a divorce action that her proxy marriage to her husband in Nigeria was valid and existing at the time that the divorce action was filed. In so doing, she overcame a presumption of validity for her later marriage to her husband’s co-worker, which was entered into for immigration purposes. An expert on Nigerian matrimonial law testified regarding the requirements and validity of proxy marriages (where the parties are not physically present at the ceremony) under Nigerian customary law. The wife testified that her first marriage (the proxy marriage) took place, and also introduced contemporaneous letters supporting that fact. The wife testified that the couple lived together, moved together, bought a home together, had three children, and held themselves out as being married. The wife testified that she only met the co-worker once, their marriage was never consummated, and the co-worker had subsequently died. Her husband’s brother testified that he attended the couple’s traditional wedding in Nigeria.⁶⁷ A trial court in Ohio did not err in finding that a couple’s 1992 religious marriage in India was valid for purposes of establishing its validity in Ohio in connection with the wife’s petition to dissolve it.⁶⁸

In a case in the District of Columbia, a court opined that the trial court should have applied a preponderance of the evidence standard when determining the date on which a couple was married. The couple had

65. Valdez v. Lynch, 813 F.3d 407, 411–12 (1st Cir. 2016).

66. Sehgal v. Lynch, 2016 WL 696565 (7th Cir. 2016).

67. Adeleye v. Driscoll, No. 14-14-00822-CV, 2016 Tex. App. LEXIS 2386, at *25–29 (App.—Houston [14th Dist.] Mar. 8, 2016), *withdrawn, reb’g granted*, 488 S.W.3d 498 (Tex. App.—Houston [14th Dist.] 2016) (withdrawn and superseded based on concurrent pendency of bankruptcy proceeding in a different jurisdiction involving husband).

68. Hussain v. Hussain, No. CA2015-07-127, 2016 WL 3057493, at *3 (Ohio Ct. App. May 31, 2016).

cohabitated in Serbia as a non-married couple, and in the District of Columbia as a common law marriage, before holding a marriage ceremony in Las Vegas.⁶⁹

In a case regarding the doctrine of laches as applied to void orders, the evidence was sufficient to support a finding that a wife, who lived in Albania, lacked notice of her husband's divorce until the husband's death approximately fifty years later. Thus, laches did not bar the wife's action to vacate the divorce judgment. The wife testified that she first learned of the divorce when her husband died. The wife was still receiving social security benefits on the husband's account. She further testified that when he visited her in Albania—in years after entry of the divorce judgment—they had lived as a married couple.⁷⁰

In a Hawaiian court decision, a court applied principles of comity to a Taiwanese non-judicial divorce agreement that, following its registration, was recognized in Taiwan as having dissolved the parties' marriage. The trial court properly dismissed the husband's subsequent Hawaiian petition to dissolve their marriage; however, the court may have erred in finding it lacked jurisdiction to divide property owned by the spouses in the state, where the Taiwan divorce only addressed their property in that country.⁷¹

Regarding service of process, a default judgment against a wife who had returned to her native Poland had to be vacated because there was no evidence that the husband tried to serve her in Poland even though he knew she was residing there, was in regular contact with her by email, and had sent items to her home in Poland.⁷²

B. CHILDREN'S ISSUES

As with issues of marriage and divorce, courts were faced with a broad variety of international law-related issues relating to the custody and well-being of children.

1. *Custody*

Maine cannot adjudicate custody for a child whose home is Guatemala and who has never been in Maine.⁷³ Maryland adopted a "totality of circumstances" test for determining whether an absence from Maryland is temporary when looking at the mother's postings to Africa as part of her job with the United Nations, that are, by definition, temporary in nature. (The mother went to each country for a year at a time, each assignment being finite in duration, and she had been posted to at least three different

69. *Cerovic v. Stojkov*, 134 A.3d 766, 774–78 (D.C. 2016).

70. *Panagiotis v. Panagiotis (In re Estate of Panagiotis)*, No. 1–14–2244, 2016 WL 1622508, at *12 (Ill. App. Ct. Apr. 22, 2016).

71. *Hseih v. Sun*, 365 P.3d 1019, 1024–25 (Haw. Ct. App. 2015).

72. *Cancino v. Cancino*, No. 03-14-00115-CV, 2016 WL 234514, at *5–7 (Tex. App.—Austin Jan. 13, 2016, no pet.) (mem. op.).

73. *Seckins v. Hamm*, 129 A.3d 940, 943 (Me. 2015).

countries over the life of the case).⁷⁴ And a Nevada court did not abuse its discretion in holding that Nevada was an inconvenient forum for determining the custody of a Polish child without having held an evidentiary hearing.⁷⁵

Rhode Island determined that a trial court gave insufficient credit to the parties' "agreed to" divorce decree when the trial court determined that Ireland would be a more convenient forum for future child custody determinations. The divorce decree provided that the mother could relocate to Ireland, but that Rhode Island would retain jurisdiction.⁷⁶

Texas cannot exercise emergency jurisdiction over a Finnish child who is subject to the continuing jurisdiction of a Finnish court and who could not be proved to be in Texas.⁷⁷

2. *Relocation*

California allowed a mother to relocate to Ireland with her child when the Irish court accorded "grave consideration" to the California visitation orders and imposed substantially equivalent orders in Ireland. The Irish court, however, would not promise that it would not, under any circumstances, issue orders to protect the child's best interest, if such orders appeared to be necessary.⁷⁸ A New Jersey attorney representing a mother was held responsible for the father's attorney's fees, in addition to damages, when the attorney violated an escrow agreement by returning the child's passports to the mother, resulting in her fleeing the country with her child.⁷⁹ In a case where a mother sought the return of her children to Ethiopia from Washington, D.C., a trial court committed reversible error when it did not consider the wishes of the children, received no evidence relating to the children's wishes, and did not interview the children, the oldest of whom was fourteen-years-old.⁸⁰

3. *Parentage, Child Support, and Juvenile Cases*

Florida cannot exercise jurisdiction for child support over a Swedish defendant who has never visited Florida.⁸¹ A Colorado trial court's decision to register an English support order was reversed and remanded the for a

74. *Garba v. Ndiaye*, 132 A.3d 908, 914–15 (Md. Ct. Spec. App. 2016).

75. *Adamski v. Adamska*, No. 67328, 2016 WL 3488597, at *1 (Nev. June 23, 2016).

76. *Hogan v. McAndrew*, 131 A.3d 717, 726 (R.I. 2016).

77. *In re Salminen*, 492 S.W.3d 31, 41 (Tex. App.—Houston [1st Dist.] 2016, no pet.).

78. *S.K. v. E.L.*, No. C074407 and C076695, 2016 WL 770017, at *6 (Cal. Ct. App. Feb. 29, 2016).

79. *Innes v. Marzano-Lesnevich*, 136 A.3d 108, 116–17 (N.J. 2016).

80. *Duguma v. Ayalew*, 145 A.3d 517, 521 (D.C. 2016). The District's custody statute specifically provides for consideration of children's wishes, where practicable. D.C. Code § 16-914(a)(3)(A) (2013).

81. *Gustafsson v. Levine*, 186 So. 3d 562, 564 (Fla. Dist. Ct. App. 2015).

determination as to whether an English court exercised jurisdiction in a manner consistent with the U.S. view of due process of law.⁸²

A German court that entered an arrearage order against a Florida father lacked jurisdiction over the father according a Florida court. Although the father had married the subject child's mother in Germany, and their first child was born there, the child who was the subject of the arrearage order was born a decade later in the U.S.⁸³

When a Swiss judgment establishing paternity and child support is registered in California for enforcement purposes under the Uniform Interstate Family Support Act ("UIFSA"), a California court order may not order genetic testing to challenge registration of that order.⁸⁴

New York did not have jurisdiction to modify a Swedish child support order, because, even though the father lived for a number of years in Singapore, he kept his Swedish residence.⁸⁵

The Connecticut Supreme Court reversed a parental rights termination order after finding that the state failed to make reasonable efforts to unite an American-born, adjudicated dependent child with his father in Nigeria. It said the state should have provided the trial court with post-petition evidence concerning the ill child's ability to travel and the medical care available in Nigeria.⁸⁶ A German father's parental rights were properly terminated even though Iowa authorities did not contact the German Consulate, as required by the Vienna Convention on Consular Relations, because the father could not show that notification would have had any effect on the decision.⁸⁷

4. *Immigration Issues*

A child hoping to avoid deportation may obtain "special immigrant juvenile" (SIJ) status⁸⁸ in a parentage proceeding, but must join the father when he is known, even though he is in another country.⁸⁹ However, a guardian *ad litem* can be appointed for the child in such a proceeding without notice to the other parent.⁹⁰ Massachusetts determined that state

82. *In re Marriage of Lohman*, 361 P.3d 1110, 1120 (Colo. App. 2015).

83. *Server v. Dep't of Revenue*, 189 So. 3d 997, 1000-01 (Fla. Dist. Ct. App. 2016).

84. *Cty. of L.A. Child Support Serv.s Dep't v. Super. Ct.*, 196 Cal. Rptr. 3d 345, 350 (Ct. App. 2015).

85. *Ardell v. Ardell*, 34 N.Y.S.3d 106, 108 (App. Div. 2016).

86. *In re Oreoluwa O.*, 139 A.3d 674, 686-87 (Conn. 2016).

87. *In re J.O.*, No. 16-1101, 2016 WL 4803714, at *3-4 (Iowa Ct. App. 2016) (disposition referenced at 886 N.W.2d 618 (Table)).

88. "Special immigrant juvenile" status is a classification created by Congress (William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, Pub. L. No. 110-457, § 235, 122 Stat. 5044) to provide special immigration protection to undocumented, unaccompanied children entering the United States who have been the victims of parental abuse, neglect, abandonment or some similar circumstance. See 8 U.S.C. § 1101(a)(27)(J) (2015).

89. *Bianka M. v. Super. Ct.*, 199 Cal. Rptr. 3d 849, 856-67 (Ct. App. 2016).

90. *Alex R. v. Super. Ct.*, 203 Cal. Rptr. 3d 251, 256-60 (Ct. App. 2016).

juvenile, probate, and family courts have general equity jurisdiction over undocumented youths between the ages of eighteen and twenty-one to make the special findings necessary in applying for “special immigrant juvenile” status. Normally their jurisdiction would end when a child turns age eighteen.⁹¹ However, a Minnesota court ruled that a district court’s exercise of jurisdiction over an undocumented Mexican teenager’s juvenile traffic offenses, and his resulting placement on probation, did not satisfy federal law requirements for “special immigrant juvenile” status.⁹²

IV. Other Cases

A. CRIMINAL LAW

Another chapter was entered in the long-running saga of the Miller-Jenkins case when the Second Circuit upheld the conviction of Kenneth Miller for aiding and abetting an international parental kidnapping. The court held that when the essence of a crime is committed overseas, venue will lie in the district where the defendant is arrested.⁹³

B. AGREEMENTS

A German woman that did not understand the purpose and consequences of the premarital agreement presented by the man she was dating—to whom she became engaged after she signed it—is not bound by the agreement in their later divorce.⁹⁴

C. PROPERTY DIVISION

A Florida court held that an ex-wife should not have been ordered to either sell three Cayman Islands properties or purchase her ex-husband’s interest in those parcels upon his death. Under Cayman law, the properties were still jointly owned after their divorce, which had occurred three years prior to his death.⁹⁵

91. *Recinos v. Escobar*, 46 N.E.3d 60, 65–66 (Mass. 2016).

92. *In re Welfare of A.S.*, 882 N.W.2d 633, 639 (Minn. Ct. App. 2016).

93. *United States v. Miller*, 808 F.3d 607, 620 (2d Cir. 2015).

94. *In re Marriage of Porter*, 381 P.3d 873, 879–80 (Or. Ct. App. 2016).

95. *Ebanks v. Ebanks*, 198 So. 3d 712, 715–16 (Fla. Dist. Ct. App. 2016).