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Robert G. Spector

Bradley Lechman-Su

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ROBERT G. SPECTOR AND BRADLEY C. LECHMAN-SU*

I. International Developments: Hague Conventions

A. THE HAGUE CONVENTION ON THE INTERNATIONAL RECOVERY OF CHILD SUPPORT AND OTHER FORMS OF FAMILY MAINTENANCE.

The most significant development of 2007 was the successful completion of the negotiations for the Hague Convention on the Recovery of Child Support and Other Forms of Family Maintenance in November.[1] The focus of the treaty is on administrative cooperation between central authorities and the recognition of maintenance judgments. In the United States, the vast majority of cases for recognition of maintenance judgments as well as the establishment of judgments will be handled by the IV-D[2] agencies. Nonetheless, there are aspects of the treaty with regard to private international law that are of importance to private attorneys because it will be possible under the treaty for a citizen of another country to hire a private attorney to enforce a child support order that was issued in another country in the United States. The United States took the extraordinary step of signing the treaty at the end of the Diplomatic Session.[3] Ratification efforts are expected to begin in 2008.

In April 1999, the Hague Conference on Private International Law's Special Commission on Maintenance Obligations voted to begin work on a new convention. It was a difficult challenge. All states generally have the same approach to jurisdiction, applicable law, and the enforcement of judgments in cases concerning children and incapacitated adults, specifically in regards to child support and maintenance; however, there are large

* Robert G. Spector is the Glenn R. Watson Chair and Centennial Professor of Law at the University of Oklahoma Law Center. Professor Spector was a member of the United States delegation that negotiated the Convention. The views expressed in this article are those of the authors and do not necessarily represent the view of the Department of State or the U.S. government. Bradley C. Lechman-Su is a shareholder at Johnson, Renshaw & Lechman-Su PC, Portland, Oregon.

1. Convention on the International Recovery of Child support and Other Forms of Family Maintenance, Nov. 23, 2007, available at http://www.hcch.net/upload/wop/FinalAct21e_provisional.pdf.

2. Title IV-D of the Social Security Act, 42 U.S.C. §§ 301-06 (2008) (setting statutory guidelines for federally mandated State plans for child support services).

3. Press Release, Embassy of the United States, The Hague, Child Support Convention, Signing of the Final Act of the New Convention on International Child Support (Nov. 23, 2007), *available at* http://the hague.usembassy.gov/child_support.html.

differences between common law countries, particularly the United States, and the civil law countries of the European Union. As a consequence, the negotiations for the Convention took eight years to complete, and in the end, a number of important issues were unable to be resolved.

1. *Direct Rules of Jurisdiction*

In 1978, the Supreme Court in *Kulko v. California*[4] applied the rules of personal jurisdiction to child support. The parents lived in New York and divorced in Haiti. The mother moved to California, and the father returned to New York. The children ultimately came to live with their mother. The mother sued the father for maintenance in California. The father resisted, arguing that California did not have personal jurisdiction over him.

The United States Supreme Court agreed. It noted that due process requires that the defendant have minimum contacts with the forum. Purchasing the ticket to send his daughter to California did not satisfy this requirement. The mother argued that California should have jurisdiction because it had substantial interests in protecting the welfare of its minor residents. The court responded that:

> These interests are unquestionably important. But while the presence of the children and one parent in California arguably might favor application of California law in a lawsuit in New York, the fact that California might be the "center of gravity" for choice-of-law purposes does not mean that California has personal jurisdiction over the defendant. And California has not attempted to assert any particularized interest in trying such cases in its courts by e.g., enacting a special jurisdictional statute.[5]

In response to the decision in *Kulko*, Section 201 of the Uniform Interstate Family Support Act (UIFSA)[6] provides a list of bases upon which a state may establish long arm jurisdiction. Many of these bases address cases where the child is in the forum state and the defendant/debtor resides outside the state. The section lists permissible bases that are drafted to assert jurisdiction to the limits of the U.S. Constitution.

Conspicuously absent from the list is the exercise of jurisdiction based on the residence of the creditor. The notion that a creditor can sue for maintenance at the place of the creditor's habitual residence or, at the creditor's option, at the habitual residence of the debtor is mandated in the European Union.[7] It is difficult to harmonize two such disparate approaches to jurisdiction.[8] Therefore, the Special Sessions ultimately concluded that there should be no rules on direct jurisdiction in the Convention.

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4. Kulko v. Superior Court of California, 436 U.S. 84 (1978).

5. *Id.* at 170.

6. Uniform Interstate Family Support Act § 201 (1996).

7. Council Regulation 44/2001, On Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, art. 5.2, 2001 O.J.(L12) 1 (EC). The discussions at the special sessions indicated that, with the possible exception of Korea, the United States is the only country that does not accept the principle of allowing the creditor to sue at home.

8. *See* Robert G. Spector, *Toward an Accommodation of Divergent Jurisdictional Standards for the Determination of Maintenance Obligations in Private International Law*, 36 FAM. L.Q. 273 (2002).

2. *Indirect Rules of Jurisdiction*

An indirect rule of jurisdiction indicates when a judgment will be enforced. Under UIFSA, U.S. courts will enforce a support order if jurisdiction is proper under Section 201. Conversely, if none of the jurisdictional bases of Section 201 are present, then the court cannot enforce a maintenance decision.

Again, there is a dichotomy between the United States and civil law countries. Current rules on recognition of maintenance decisions in civil law are contained in Articles 7 and 8 of the 1973 Hague Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations.

Some of the indirect jurisdictional rules of Articles 7 and 8 of the 1973 Convention would be unconstitutional in the United States, including the rule recognizing a maintenance judgment from the country of the creditor's habitual residence. Some of the jurisdictional rules of UIFSA would be unacceptable to the states that are parties to the 1973 Hague Convention, such as "tag" jurisdiction, where the mere act of service of process in the forum state establishes jurisdiction.

This dichotomy presented a very difficult problem for the Special Sessions drafting the new maintenance convention. The United States proposed that recognition and enforcement of a foreign maintenance decision should not be conditioned on specific rules of indirect jurisdiction but should be recognized if, under the facts and circumstances of the case, jurisdiction would have been proper under the law of the state addressed.

Ultimately, the Special Sessions compromised and adopted a combined approach in Article 20. This article has specific rules for the recognition of maintenance orders, including those from the habitual residence of the creditor. But a state is allowed to make a reservation to that section. If a state does make a reservation, then it shall enforce a maintenance order if, under the facts and circumstances of the case, jurisdiction would be proper under its own law.

This successful harmonization only applies to recognition of the original maintenance decision. There are still significant problems with regard to recognizing modifications of the original decision.

3. *Applicable Law*

Unlike civil law countries, the United States and the other common law systems apply the law of the forum in matrimonial cases. When an order from one state is sought to be enforced in another state, choice-of-law problems can arise. Section 604 of UIFSA provides that the law of the issuing state governs the duration of the order, the computation and payment of arrears, and the accumulation of interest. There is a special rule on the statute of limitations for the collection of arrears, which provides that the enforcing tribunal shall apply either the statute of limitations of the forum or that of the issuing state, whichever is longer.

The Special Commission established a Working Group on the Law Applicable to Maintenance Obligations. In its report, the Working Group concluded that compromise was not possible between the common law and civil law states and therefore recommended that the proposed convention not include an applicable law article but that an optional protocol be drafted. The protocol was concluded, but the United States is not expected to

become a party to this protocol, although it will be important for Americans who divorce abroad.

4. *Modifications of the Original Support Order*

In the United States, Section 205 of UIFSA provides that the state that issued the original support order retains continuing exclusive jurisdiction to modify the order if that state remains the residence of the debtor, the individual creditor, or the child. If the creditor, debtor, and the child all reside in another state, then Section 613 provides that the new state may modify the original order and may assume continuing exclusive jurisdiction over the support order.

If both parties leave the original state and each move to a different state, Section 611 provides that a state may modify a child support order of another state if the person seeking the modification is a non-resident of the state and the state would have jurisdiction over the nonmoving party under Section 201. If the debtor is seeking a downward modification of the order, it must be done in the creditor's state of residence. If the creditor is seeking an upward modification, it must be done where the debtor resides. A spousal maintenance order can only be modified by the issuing state.

Conspicuously missing from the grounds for modification under UIFSA is the option given to the creditor by civil law countries of the European Union to modify the support order where the creditor is habitually resident or, at the creditor's option, where the debtor is habitually resident. This dichotomy proved to be impossible to harmonize in the new Convention. Currently, the only provision in the draft of the proposed convention on modification is Article 18, which, with a few minor exceptions, provides:

> Where a decision is made in a Contracting State where the creditor is habitually resident, proceedings to modify the decision . . . cannot be brought by the debtor in any other Contracting State as long as the creditor remains habitually resident in the State where the decision was made.[9]

This article is uncontroversial because it involves the situation where both the civil and common aw systems agree. Under UIFSA, the restriction on the debtor is appropriate because the state of the creditor's habitual residence has continuing exclusive jurisdiction. The solution is also appropriate under the civil law rules because the modification proceeding would take place where the creditor habitually resides.

Article 18 only covers the situation where the creditor remains in the original state. There are a large number of fact patterns that are not covered by Article 18. Assume, for example, that a Texas couple divorces in Texas with a child support order. Suppose the creditor and the child then move to France and wish to modify the support order. Under the EU regulation, jurisdiction to modify would be proper in France, as it is habitual residence of the creditor. The debtor, however, has not moved. Under UIFSA, therefore, only Texas would have modification jurisdiction. If an EU country modifies a U.S. support order when the creditor is habitually resident there, the United States will not recog-

9. Convention on the International Recovery of Child Support and Other Forms of Family Maintenance art. 18, ¶ 1, Nov. 23, 2007, *available at* http://www.hcch.net/upload/wop/FinalAct21e_provisional.pdf.

nize the order if the debtor still resides in the issuing state. Thus, two valid orders would be in existence.

But suppose the child and creditor move from Texas to France, and the debtor moves to Oklahoma. Under the EU regulation, modification would be proper in France because it is the habitual residence of the creditor. Under UIFSA, however, the support order can only be modified in a state where the petitioner is a non-resident. UIFSA would require that the debtor modify the order in France and that the creditor do so in Oklahoma. If the creditor obtained a modification in France, then the United States would not recognize the modification. The parties could only avoid two orders by complying with the UIFSA system. If the creditor modifies in Oklahoma, then the United States would recognize the modification under UIFSA, and France would recognize it because French law allows the creditor to modify where the debtor resides. Both France and the United States would also recognize a modification instituted by the debtor in France.

These and other fact patterns are not addressed under Article 18. It is now clear that the convention will not cover all problems involving modifications. This is unfortunate. Not deciding modification problems leads the international support system to one of two undesirable results. The first is that, for a large number of cases, there will be two valid support orders in existence. The second is that creditors will have to modify where the debtor habitually resides in order to avoid duplicate enforceable orders. This means that creditors of limited resources will face significant burdens in pursuing a modification.

B. The 1965 Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commerical Matters

In 2007, two more countries became parties to this convention.[10] The Republic of India's accession was accepted by the United States, and the treaty relationship entered into force on August 1, 2007. In its accession, India formulated reservations of opposition to the methods of service provided in Article 10 of the convention, which is of particular importance to international family law practitioners because of the time and expense it adds to a case. The United States accepted Albania's accession, and the treaty relationship began on July 1, 2007.

C. The 1993 Hague Convention on Protection of Children and Co-Operation in Respect of Intercountry Adoption

On December 12, 2007, the United States deposited its instrument of ratification for the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.[11] The Convention provides that it shall enter into force on the first day of the month following the expiration of three months after the deposit of the instru-

10. Hague Conference on Private International Law, Status Table 14: Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, http://www.hcch.net/index_en.php?act=conventions.status&cid=17 (last visited Mar. 23, 2008).

11. *See* Maura Harty, Assistant Sec'y of State for Consular Affairs, Remarks at the Ceremony to Deposit the United States' Ratification of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Dec. 12, 2007), *available at* http://travel.state.gov/law/legal/testimony/testimony_3899.html.

ment of ratification. It also provides enhanced protections for adopted children, birth parents, and adoptive parents participating in intercountry adoptions. The United States signed the treaty in 1994 and passed implementing legislation in 2000.

II. International Family Law Litigation

A. The 1980 Hague Convention on the Civil Aspects of International Child Abduction

As usual, most of the international family law cases in the United States involved the 1980 Hague Convention on the Civil Aspects of International Child Abduction and its implementing legislation, the International Child Abduction Recovery Act.[12] This treaty has more ratifications and accessions than almost any other treaty concluded under the auspices of the Hague Conference on Private International Law. In 2007, the United States accepted the accessions of Estonia, Latvia, Lithuania, Peru, El Salvador, Dominican Republic, Ukraine, San Marino, Costa Rica, Sri Lanka, Paraguay, and Guatemala[13] to the Convention.

The Convention operates to return children to the State from where they have been taken, giving that State the ability to determine issues of custody and visitation. In order to obtain a return order, the petitioner must prove that the child was abducted from the country of the child's habitual residence, that the petitioner had "rights of custody" under the law of the abducted-from State, and that the petitioner was actually exercising those rights or would have exercised those rights but for the abduction. Jurisdiction is appropriate in either federal or state court.

1. *Habitual Residence*

As in most Hague conventions, the Abduction Convention does not define the term "habitual residence." Therefore, courts have had to determine this fact-based issue in a number of cases. This year's cases included one in which a federal court in Michigan found that the habitual residence of two young children was Australia, and consequently the mother who had removed the children to the United States was required to return them.[14] The court noted that when the family moved to Australia from Michigan, they sold their home, moved all their physical belongings, and retained only a single bank account for resolving remaining business. The family bought a house in Australia and enrolled the children in school. Overheard comments made by the father to the mother that they were living in Australia on a trial basis were insufficient to change the result.

Conversely, the Ninth Circuit Court of Appeals held that the habitual residence of two children did not change from the United States to Greece, and thus their removal from Greece by their mother was not wrongful. Some of the factors influencing the decision included that the children spoke little Greek, their life was unsettled, the father's mistress

12. International Child Abduction Recovery Act, 42 U.S.C.A. §§ 11601-10 (West 2002).

13. The Convention between the United States and the latter five countries is in force as of January 1, 2008.

14. Maynard v. Maynard, 484 F. Supp. 2d 654 (E.D. Mich. 2007).

exacerbated tensions between the father and mother, and only four months in Greece gave little time for the children to develop deep ties there.[15]

2. *Rights of Custody*

There were a number of cases in 2007 where the issue centered on whether the left-behind parent had "rights of custody" bestowed by the law of the abducted-from state. A mother who stayed in the United States with the child beyond the time allowed her by a Chilean court wrongfully retained the child in violation of the father's *ne exeat* right, which, in the Eleventh Circuit,[16] constitutes a right of custody.[17] An ex parte order from Canada modifying the parties' Canadian joint custody arrangement by granting sole custody to the mother did not have to be recognized, and therefore the mother's refusal to return the child did not violate the father's right of custody.[18] But a decision by a court of the child's habitual residence awarding custody to the father mooted the mother's appeal on that issue.[19] The doctrine of *la patria potesta*, which grants both parents custody rights under Mexican law, did not apply after a divorce decree awarded custody to the mother; therefore, the left behind father did not have a right of custody.[20]

A New York federal district court determined that Polish statutory law and case interpretation of it that required parents to jointly resolve "vital matters" relating to their child, meant that the father had rights of custody, and therefore the mother could not unilaterally move with the child to New York. Therefore, the child had to be returned to Poland.[21]

Pursuant to a deceased mother's will, the status of grandparents as testamentary guardians of their grandchildren under Irish law was sufficient to create "rights of custody." Therefore, the grandparents could bring an action under the Convention alleging that the children's father wrongfully removed the children from Ireland to Florida. Under Irish law, guardianship status gave the grandparents certain rights relating to the "care of the person of the child" under the Convention. These rights included the duty to maintain and properly care for each child, as well as the right to make decisions about each child's religion and secular education, health requirements, and general welfare.[22]

3. *Actual Exercise of Custody Rights*

A German father was exercising his custodial rights at the time of his daughter's removal by her mother to the United States. The father had actual physical custody of the child on at least three occasions during the three months between his release from prison

15. Papakosmas v. Papakosmas, 483 F.3d 617,628 (9th Cir. 2007).

16. The Second, Fourth, and Ninth Circuits have held that *ne exeat* rights are not "rights of custody." Fawcett v. McRoberts, 326 F.3d 491 (4th Cir. 2003); Gonzalez v. Gutierrez, 311 F.3d 942 (9th Cir. 2002); Croll v. Croll, 229 F.3d 133 (2d Cir. 2000).

17. *See* Reyes Pasten v. Ruiz Velasquez, 462 F. Supp. 2d 1206 (M.D. Ala. 2006).

18. *In re* Roux v. Roux, No. CV 06-2203-PHX-JAT, 2007 WL 329138 (D. Ariz. Feb. 2, 2007).

19. Navani v. Shahani, 496 F.3d 1121 (10th Cir. 2007).

20. Ibarra v. Quintanilla Garcia, 476 F. Supp. 2d 630, 634-35 (S.D. Tex. 2007).

21. *In re* Skrodzki, No. 06-CV-3428(IMA), 2007 WL 1965391 (E.D.N.Y. July 2, 2007).

22. Hanley v. Roy, 485 F.3d 641 (11th Cir. 2007).

and the child's removal. He paid child support when ordered to do so, and he financially supported the child during times when she was in his custody.[23]

4. *The Defenses*

There are a number of defenses that the respondent may assert to prevent the child from being returned. The first of these defenses is acquiescence. In one case, the court held that the father was not entitled to have his children returned to Mexico when the children were brought to the United States at his request shortly before he was arrested for murdering the children's mother.[24]

The second defense is contained in Article 12 of the Convention. It provides that the judicial authorities of the abducted-to country need not return a child who has settled into a new environmenet if more than one year has elapsed between the abduction or retention and the filing of the petition for return. A current controversial issue concerning this provision is whether the one year period can be tolled if the abducting parent has secreted the child during that period of time. A federal district court in Ohio joined the list of courts that approve of the doctrine of equitable tolling. It found that the doctrine applied when a mother wrongfully conceals concealed her child and that the court could not, therefore, consider whether the child was well settled in its new environment.[25]

A third defense is provided in Article 13. The child need not be returned if the child objects to being returned and has attained an age and maturity where it is appropriate to take account of the child's views. In *de Silva v. Pitts*,[26] the court determined that a fourteen-year-old boy did not have to be returned to his mother in Canada. The judge interviewed the child *in camera*. The child indicated that while he had "a lot of friends up in Canada" and got along well with his sister living there, he had also made friends in Ardmore, Oklahoma, where he played team sports. He described his father's house in Oklahoma as "really big" and "a great place" where he had a computer and everything he needed for school. He indicated that he wanted to remain in Oklahoma because he thought the school was better. The Tenth Circuit decided that this was a considered decision on the child's part and represented his honest wishes. The court also noted that the magistrate judge had an opportunity to observe the child in person and accorded great deference to the judge's findings based on that experience.

In another case, an Ohio federal district found that two children ages twelve and ten were of sufficient age and maturity for the court to sustain their objections to returning to their father in Mexico; however, the court held that their four and eight-year-old siblings were not of sufficient maturity and, therefore, had to be returned.[27] By contrast, a court rejected a twelve-year-old child's desire to stay in the United States because his statements only expressed a preference for the luxuries available in the country.[28] Likewise, the

23. Bader v. Kramer, 484 F.3d 666 (4th Cir. 2007).

24. March v. Levine, No. 3:06-0878, 2006 WL 3805665 (M.D. Tenn. Dec. 22, 2006).

25. Wasniewski v. Grzelak-Johannsen, No. 5:06-CV-2548, 2007 WL 2071957 (N.D. Ohio July 13, 2007).

26. de Silva v. Pitts, 481 F.3d 1279 (10th Cir. 2007).

27. Simcox v. Simcox, No. 1:07CV096, 2007 WL 2156383 (N.D. Ohio July 26, 2007). *See also* Kofler v. Kofler, No. 07-5040, 2007 WL 2081712 (W.D. Ark. July 18, 2007) (finding fifteen, thirteen, and eleven-year-olds were of sufficient age and maturity to object to being returned to Germany although it was a close case with the eleven-year-old).

28. *In re* Skrodzki, 2007 WL 1965391.

Third Circuit upheld a district court's decision to grant a petition for return despite a proffer of the child's objection defense,[29] where the trial court found that the child's testimony did not include objections to returning to Canada but merely indicated that she possessed a more generalized desire to remain in Pittsburgh similar to that of any ten-year-old having to move to a new location. In yet another case, even though a fifteen-year-old was found to be mature and intelligent, the trial court did not honor her request to stay in the United States because of her uncertain immigration status and concern that the mother may have exercised unusual influence over her wishes to stay in the United States.[30]

Article 13(b) contains a final defense, providing that a child need not be returned if doing so would subject the child to a great risk of psychological or physical harm. The respondent is required to prove this defense by clear and convincing evidence.[31] Applying this article, an Alabama federal district court found that a child should not have been returned to his abusive father in Australia because the evidence demonstrated that no undertakings[32] would successfully protect the child.[33] A California state court of appeals reversed a trial court's order to return children to a mother on active military duty who wanted her children returned to Germany. The court reversed the order because the trial court failed to consider evidence that a German social service agency had previously removed the children from the mother and placed them with father who took them to California, which set the Hague action in motion.[34]

5. *Other Issues Under the Abduction Convention*

A father petitioning for the return of his children to Australia was permitted to appear at trial via a live video link from Australia, but his witnesses could not similarly testify.[35] The Alien Tort Claims Act did not authorize the U.S. courts to hear a claim for the return of a child by a non-custodial father from the Dominican Republic, a country that was not a signatory to the Convention at the time the case was decided.[36]

B. Custody Jurisdiction: Uniform Child Custody Jurisdiction and Enforcement Act and Uniform Child Custody Jurisdiction Act

Under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), Section 105, a foreign country is treated as a state of the United States for the purposes of Articles 1 and 2 of the UCCJEA. Foreign custody orders will be enforced in the United States if they were made in accordance with the jurisdictional standards of the UCCJEA,

29. Yang v. Tsui, 499 F.3d 259 (3rd Cir. 2007).

30. Casimiro v. Chavez, No. Civ.A.1:06CV1889-ODE, 2006 WL 2938713 (N.D. Ga. Oct, 13, 2006).

31. International Child Abduction Recovery Act, 42 U.S.C.A. § 11603(e)(2)(A).

32. For a thorough discussion of undertakings in Hague Abduction Convention cases, *see* Danaipour v. McLarey, 386 F.3d 289 (1st Cir. 2004) and Danaipour v. McLarey, 286 F.3d 1 (1st Cir. 2002).

33. Baran v. Beaty, 479 F. Supp. 2d 1257, 1275-76 (S.D. Ala. 2007).

34. *In re* Marriage of Witherspoon, 66 Cal. Rptr. 3d 586, 592-93 (Ct. App. 2007). This case is also notable as the Hague action, brought in state court, was also decided in conjunction with the court declaring it had temporary emergency jurisdiction and finding California was an inconvenient forum.

35. Matovski v. Matovski, No. 06 Civ. 4258(PKC), 2007 WL 1575253 (S.D. N.Y. May 31, 2007).

36. Taveras v. Taveraz, 477 F.3d 767, 782 (6th Cir. 2007).

and the custody law of the country does not violate fundamental principles of human rights.

In one case this past year, a California appeals court determined that it had child custody jurisdiction even though the husband had started divorce and custody proceedings in India. India was not the home state of the child under the UCCJEA because the husband had filed his custody petition in India only nine days after the family arrived there. Moreover, the undisputed evidence showed that the wife had family, work, and financial ties to California while the child had family relationships, friends, and daycare, thus establishing the child's significant connections with California.[37]

In a case involving continuing jurisdiction in Nebraska, the court determined that Canada had exclusive continuing jurisdiction under the UCCJEA, and when Canada declined to defer to a Nebraska court, the Nebraska court was without jurisdiction to modify the Canadian decree.[38]

In a case decided under the predecessor of the UCCJEA, a Massachusetts court held that Massachusetts could be the home state even though the child attended school in China for a year pursuant to the parents' agreement because this could constitute a temporary absence. The case was remanded to the trial court to reconsider its decision to defer to a Chinese custody determination.[39]

C. Other International Family Law Cases

1. *Agreements*

An antenuptial agreement signed by a Ukrainian "mail order" bride shortly before the expiration of her visa when she did not have an attorney and had to decipher the agreement by using an English-Russian dictionary was unforceable.[40] A New York court upheld a French marriage contract entered into in 1965, which provided that each party would retain separate ownership of their own assets, because the clear language of the agreement excluded their property from equitable division even though the parties both testified that they did not intend the agreement to govern in case of a divorce.[41]

2. *Criminal Problems*

A man who kidnapped his child in violation of a custody order and took the child to Egypt was properly convicted of causing risk of injury to a child.[42]

3. *Jurisdiction and Procedure*

A wife who had no notice of a motion filed by her husband in Canadian divorce proceedings, which resulted in a Canadian judgment of discovery sanctions against her, did not receive notice of the proceedings, as defined by the Uniform Foreign Money Judg-

37. *In re* Marriage of Sareen, 62 Cal. Rptr. 3d 687, 695 (Cal. Ct. App. 2007).
38. Susan L. v. Steven L., 729 N.W.2d 35, 40-41 (Neb. 2007).
39. Shao v. Ma, 861 N.E.2d 788, 794 (Mass. App. Ct. 2007).
40. Azarova v. Schmitt, No. C-060090, 2007 WL 490908, at *5 (Ohio Ct. App. Feb. 16, 2007).
41. Van Kipnis v. Van Kipnis, 840 N.Y.S.2d 36, 40-41 (App. Div. 2007).
42. State v. Gewily, 911 A.2d 293, 294, 296 (Conn. 2006).

ments Recognition Act (UFMJRA). As a result, the UFMJRA exception applied, allowing a Michigan trial court to decline recognition of the Canadian judgment even though the wife had notice of the overall Canadian court proceedings from which the judgment arose.[43] In another case, a California court ruled that a dependent child could be placed with his Mexican grandfather over the objections of the child's parents.[44] And a Washington court determined that a couple's Mexican divorce had to be recognized even though the couple went through a second marriage in the United States for immigration purposes because the second marriage did not void their Mexican marriage.[45]

In *MacKinnon v. MacKinnon*, the New Jersey Supreme Court decided that the same standards as would apply in interstate cases applied to a custodial mother who sought to relocate to Japan.[46] The U.S. Supreme Court declined a stay in the case that would have prevented the custodial mother from leaving the country with the child.[47] The New Jersey Supreme Court pointed out that it relied on the custodial parent's past behavior and did not rule on the adequacy of parental access in the located-to country, as any evidence on that issue was not developed at the trial court level.[48]

A German mother who was in the United States involuntarily due to a Hague return order issued by a German court was immune from service of process in a custodial interference case.[49]

4. *Marriage*

In 2007, the Cour de Cassation, France's highest court, ruled that same-sex couples do not have the right to marry in France and that this ruling does not conflict with the European Convention on Human Rights or the European Union Charter of Fundamental Freedoms.[50]

A woman's divorce proceeding was properly dismissed because the parties did not have a valid marriage under Korean law because they failed to comply with Korean formalities. The court rejected the woman's argument that they had a de facto marriage because, even though Korea has cases recognizing such marriages, it is a civil law country, so the prior cases are not controlling precedent.[51]

A district court issued a preliminary injunction prohibiting a Pennsylvania register of deeds from enforcing a policy requiring foreign nationals to prove lawful presence in the United States in order to obtain a marriage license. The plaintiffs, an undocumented alien and his U.S. citizen fiancé, demonstrated a reasonable probability that the policy

43. Isack v. Isack, 733 N.W.2d 85, 89 (Mich. Ct. App. 2007).

44. *In re* Sabrina H., 57 Cal. Rptr. 3d 863, 866-67, 877 (Ct. App. 2007).

45. Tostado v. Tostado, 151 P.3d 1060, 1061 (Wash. Ct. App. 2007).

46. MacKinnon v. MacKinnon, 922 A.2d 1252, 1258-59 (N.J. 2007).

47. MacKinnon v. MacKinnon, 128 S.Ct. 7 (U.S. 2007). For a background that might assist in developing such evidence, a recent article on Japanese family law seeks to fill the void in the family law attorney's knowledge of the Japanese family law system. The author concludes that the non-custodial parent often loses contact with the child in Japan, whether the parent is Japanese or foreign, due to inherent characteristics of the system. *See* Colin P.A. Jones, *In the Best Interests of the Court: What American Lawyers Need to Know about Child Custody and Visitation in Japan*, 8 ASIAN- PAC. L. & POL. J. 167, 168 (2007).

48. *MacKinnon*, 922 A.2d at 1260-62.

49. Golodner v. Women's Ctr. of Se. Conn., 917 A.2d 959, 962 (Conn. 2007).

50. Marriage-Homosexuality-Validity-France, BNA, 33 FAM. L. REP. 1226, 1226 (2007).

51. Lee v. Melanson, No. 2006-T-0098, 2007 WL 1114012, at *1 (Ohio Ct. App. 2007).

violated their equal protection and due process rights. The policy lacked a clear connection to the asserted interests of identifying foreign nationals and preventing marriage fraud.[52]

52. Buck v. Stankovic, 485 F. Supp. 2d 576, 584-85 (M.D. Pa. 2007).