

2010

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Recommended Citation

Robert G. Spector & Bradley C. Lechman-Su, *Family Law*, 44 INT'L L. 155 (2010)
<https://scholar.smu.edu/til/vol44/iss1/11>

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Family Law

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

This article reviews important developments in treaties and important court decisions on international family law during 2009.

I. International Family Law Treaties

A. HAGUE CHILD SUPPORT CONVENTION

A Special Commission to implement the Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance met in The Hague, November 10-17, 2009.¹ The purpose of the Special Commission was to determine recommended forms to be used with the Convention. The Commission also discussed the development of a Practical Handbook to be used with the Convention and the development of an electronic case management and communication system. In addition, the Special Commission focused on the feasibility of a protocol to the Convention to deal with the recovery of maintenance in respect of vulnerable adults.

B. 1996 HAGUE CONVENTION ON JURISDICTION, APPLICABLE LAW, RECOGNITION, ENFORCEMENT AND CO-OPERATION IN RESPECT OF PARENTAL RESPONSIBILITY AND MEASURES TO PROTECT CHILDREN

The State Department hopes to have the authority by the end of 2009, to sign the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement, and Co-Operation in Respect of Parental Responsibility and Measures for the Protection of Children.²

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1. FINAL ACT OF THE TWENTY-FIRST SESSION (2007), *available at* <http://www.hcch.net/upload/finact21e.pdf>.

2. Convention on Jurisdiction, Applicable Law, Recognition, Enforcement, and Co-Operation in Respect of Parental Responsibility and Measures for the Protection of Children, Oct. 19, 1996, 35 I.L.M. 1391, *available at* http://www.hcch.net/index_en.php?act=conventions.pdf&cid=70.

C. 1965 HAGUE SERVICE CONVENTION

Bosnia-Herzegovina, Macedonia, and Iceland all acceded to the 1965 Hague Service Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters. The treaty went into force between these countries and the United States in 2009.³

D. 1993 HAGUE ADOPTION CONVENTION

Eighty-one countries are now state parties to the 1993 Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.⁴ On May 29, 2009, the Oregon Senate and House unanimously passed bills directing the Oregon state government to implement the Adoption Convention.⁵ This legislative action was prompted by the murder of four-year-old Adrianna Romero Cram after being sent by a state agency to a relative foster placement in Mexico. This is a departure from the usual procedure, as the Convention typically applies to individual adoptions.

E. 1980 HAGUE ABDUCTION CONVENTION

The United States Embassy in Tokyo sponsored a daylong Symposium on International Parental Child Abduction and Japan on May 21, 2009, reflecting continued concern over international child abduction cases and how they are resolved within the Japanese family law system. The Embassies of Canada, France, the United Kingdom, and the United States issued a joint press statement expressing the nations' concern and calling on Japan to join the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

II. International Litigation

A. THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

Most of the international family law cases in the United States in 2009 involved the 1980 Hague Convention on the Civil Aspects of International Child Abduction and its implementing legislation, the International Child Abduction Recovery Act (ICARA).⁶ This treaty has more ratifications and accessions than almost any other treaty concluded under the auspices of the Hague Conference on Private International Law.

The Convention operates to return children to the State from where they were taken so that the State can determine issues of custody and visitation. To obtain a return order, the petitioner must prove that: (1) the child was abducted from (or prevented from returning

3. Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Nov. 15, 1965, available at http://www.hcch.net/index_en.php?act=conventions.status&cid=17.

4. Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, May 29, 1993, 32 I.L.M. 1134, available at http://www.hcch.net/index_en.php?act=conventions.status&cid=69 [hereinafter Intercountry Adoption].

5. 2009 Or. Laws 528.

6. See 42 U.S.C.A. § 11603 *et seq.* (West 2001).

to) the State of the child's habitual residence, (2) the petitioner had a right of custody under the law of the abducted-from the State, and (3) the petitioner was actually exercising that right (or would have exercised that right) but for the abduction.⁷ Jurisdiction is appropriate in either federal or state court.⁸

1. *Applicability of the Convention*

The Convention only applies to children under sixteen years of age. If a child turns sixteen during the return litigation, the Convention no longer applies.⁹ The Convention also applies only to wrongful removals or retentions.¹⁰ Thus, where both parties share custody and the mother elects to return to Israel from the United States without the child, there is no wrongful retention in the United States.¹¹

Japan has not yet ratified the Hague Convention. However, a Nevada court with jurisdiction over the parties could order the return of the child from Japan to Nevada in a custody proceeding.¹²

2. *Habitual Residence*

As in all 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. A woman who moved with her children to Australia to see if her marriage could be saved did not change the children's habitual residence because she purchased a round trip ticket, kept most of her finances in North Carolina, had a prior order from a North Carolina court awarding her custody, and because the children never became acclimated to Australia.¹³ An American couple that traveled to Ecuador so the parents could marry and then have the father sponsor the mother and the children for citizenship did not intend to stay indefinitely but only until their citizenship was resolved, and therefore, the United States remained the habitual residence of the child. Thus, the child did not have to be returned to Ecuador when the father removed the child back to New York.¹⁴

If habitual residence of a young child is to be determined on the basis of shared parental intent, the inquiry is an intensely factual one. Therefore, the trial court's factual determination that an Israeli couple's relocation to New York was meant to be permanent, rather than temporary, had to be affirmed.¹⁵ The same was true with a trial court's determination that an American couple who planned to move indefinitely (or for at least three years) to Australia changed the child's habitual residence.¹⁶

7. *Id.*

8. *Id.*

9. *Mohamad v. Guleed*, No. 09-C-146, 2009 WL 1229986, at *2 (E.D. Wis. May 4, 2009).

10. *Id.*

11. *Jenkins v. Jenkins*, 569 F.3d 549 (6th Cir. 2009).

12. *Ogawa v. Ogawa*, No. 48571, 2009 WL 3851621, at *1 (Nev. Nov. 12, 2009).

13. *Maxwell v. Maxwell*, No. 3:08-CV-254-RJC, 2008 WL 4129507 (W.D. N.C. Sept. 2, 2008).

14. *Ordonez v. Tacuri*, No. 09-CV-1571(FB), 2009 WL 2928903, at *21 (E.D. N.Y. Sept. 10, 2009).

15. *Halaf v. Halaf*, No. 08-CV-4958, 2009 WL 454565, at *24-25 (E.D. N.Y. Feb. 24, 2009).

16. *Sorenson v. Sorenson*, 559 F.3d 871 (8th Cir. 2009).

A child who habitually resides in the United States does not have to be returned to Israel, even though the parent's divorce agreement provided that if one parent moved to Israel, the other parent would also.¹⁷

3. *Rights of Custody*

In a major development, the U.S. Supreme Court granted certiorari in the case of *Abbott v. Abbott*¹⁸ to determine whether a writ of *ne exeat* constitutes a right of custody under Chilean law. The circuit courts have split on the issue of whether a *ne exeat* order is a right of custody.¹⁹ Interestingly, in one of the cases Judge Sotomayor dissented from the majority's holding against recognizing a *ne exeat* order as a right of custody. She will now have the unique opportunity to review this issue from the Supreme Court.

For purposes of determining whether a father had a right of custody, the validity of his marriage was not adversely impacted by the fact that he contended that the marriage was void as bigamous when the child's mother sued for divorce in the United Kingdom.²⁰ A father of a child born out-of-wedlock had custodial rights because he had obtained an English court order granting him parental responsibility and contact with the child and because he had sought to see the child, even though he was unable to do so for seventeen months.²¹ A father who has the right of *patria potestas* under Venezuelan law has a right of custody.²² But a child's aunt who was caring for her niece as a foster parent under English law did not have a right of custody.²³

4. *Defenses*

a. Settled in New Environment

There are a number of defenses that the respondent may assert to prevent the child from being returned. One defense is contained in Article 12 of the Convention. It provides that the judicial authorities of the abducted-to country need not return the child if more than one year has elapsed between the abduction or retention and the filing of the petition for return, and the child is settled in the child's new environment.²⁴ Washington determined that the one-year period could be tolled equitably in a case where the mother concealed the whereabouts of the removed child from the father.²⁵

In an important decision, the Ninth Circuit decided that a determination of the "well settled" defense does not require a consideration of whether the mother and child are

17. *Barzilay v. Barzilay*, 609 F. Supp. 2d 867 (E.D. Mo. 2009).

18. *Abbott v. Abbott*, 542 F.3d 1081 (5th Cir. 2008), cert. granted, 129 S. Ct. 2859 (U.S. 2009).

19. The Second, Fourth, and Ninth Circuits held that a *ne exeat* order is not a right of custody. *Fawcett v. McRoberts*, 326 F.3d 291 (4th Cir. 2003); *Gonzalez v. Gutierrez*, 311 F.3d 942 (9th Cir. 2002); *Croll v. Croll*, 229 F.3d 133 (2d Cir. 2000). The Eleventh Circuit reached the opposite conclusion. *Furnes v. Reeves*, 362 F.3d 702 (11th Cir. 2004).

20. *Lachman v. Lachman*, No. 08-CV-04363 (CPS), 2008 WL 5054198 (E.D. N.Y. Nov. 21, 2008).

21. *Cook v. Scott*, No. 08-12520, 2008 WL 2947692 (E.D. Mich. July 31, 2008).

22. *Vale v. Avila*, 538 F.3d 581 (7th Cir. 2008).

23. *Mohamud v. Guleed*, No. 09-C-146, 2009 WL 1229986, at *3 (E.D. Wis. May 4, 2009).

24. Convention on the Civil Aspects of International Child Abduction Oct. 25, 1980, 1343 U.N.T.S. 89 [hereinafter Convention on Child Abduction].

25. *Perez v. Garcia*, 198 P.3d 539 (Wash. Ct. App. 2009).

illegal aliens.²⁶ Unless the child is currently facing deportation, the child's immigration status should not be a major issue in determining the defense.²⁷ This had the effect of overruling a decision by the Arizona federal district court that determined that a child cannot be settled in because he was an illegal alien, had no I-94 form, and, even in the absence of the Convention, was subject to removal from the United States.²⁸ Other federal district courts continue to consider the child's immigration status. Thus, the fact that the child had a stable immigration status was an important factor in a Delaware District Court determination as to whether the child was well-settled, as well as whether the child's preference should be taken into account.²⁹

b. Preference of the Child

A second 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.³⁰ A teenager who strongly objected to being returned to Greece was entitled to stay in the United States, particularly when he was often truant in Greece but had no problem with school attendance in the United States.³¹ In *Smyth v. Blatt*, the trial court concluded that because two of the three children were of sufficient age and maturity, they did not have to return to Switzerland.³² The trial court also determined, without authority, that the youngest child also should not be returned because the children should not be separated.³³

c. Grave Risk of Harm

A third defense is contained in Article 13(b) and provides that a child need not be returned if the child would be subjected to a great risk of psychological or physical harm if returned.³⁴ The respondent is required to prove this defense by clear and convincing evidence.³⁵ Citing cultural differences in child raising, a federal district court ordered children to be returned to Mexico despite a finding that the father spanked the children.³⁶ However, the court conditioned its order on the father obtaining anger management counseling and the children obtaining counseling on coping with their parents' divorce.³⁷ A Texas court ordered a mother to return a child to Canada because, even though the father had six physical altercations with the mother, there was no evidence of abuse to the children and, therefore, custody should be decided by a Canadian court.³⁸

26. *In re B. Del C.S.B.*, 559 F.3d 999 (9th Cir. 2009).

27. *Id.*

28. Valverde v. Rivas, No. CV-08-1401-PHX-FJM, 2008 WL 4185831, at *2 (D. Ariz. Sept. 5, 2008).

29. Castillo v. Castillo, 597 F. Supp. 2d 432 (D. Del. 2009).

30. Convention on Child Abduction, *supra* note 24.

31. Andreopoulos v. Koutroulos, No. 09-CV-00996-WYD-KMT, 2009 WL 1850928, at *2, 10 (D. Colo. June 29, 2009).

32. *Smyth v. Blatt*, No. CV 09-3423 (ADS), 2009 WL 3786244, at *33 (E.D. N.Y. Nov. 12, 2009).

33. *Id.* at *32.

34. Convention on Child Abduction, *supra* note 24.

35. 42 U.S.C.A. § 11603(e)(2)(A) (West 2001).

36. Jaet v. Siso, No. 08-81232-CIV, 2009 WL 35270, at *8-9 (S.D. Fla. Jan 5, 2009).

37. *Id.* at *9.

38. Stewart v. Marrun, No. 4:09-CV-141, 2009 WL 1530820, at *4 (E.D. Tex. May 29, 2009).

5. Enforcement

A court in a Hague Abduction proceeding may issue a temporary restraining order without notice to the respondent in order to prevent further concealment or abduction of the child;³⁹ however, under Federal Rule of Civil Procedure 65(a)(1), the court can issue a preliminary injunction only after notice to the respondent.⁴⁰ A Pennsylvania federal district court determined that it had the authority to order the abducting husband to surrender his and the child's passport to the U.S. Marshall's Service pending the outcome of the case in order to prevent a further removal of the child.⁴¹ Another federal district court determined that it had the authority to order visitation for the petitioner father during the pendency of the trial when the father had visitation rights under the Mexican divorce decree.⁴²

6. Other Issues Under the Convention and ICARA

A prevailing petitioner in a return action is entitled to attorney fees.⁴³ However, when the prevailing mother did not produce any evidence that attorneys in the geographical area could not handle her case, the fees charged by the out-of-the-area attorneys had to be reduced to fees more commensurate with those charged by local attorneys.⁴⁴

A California federal district court determined that the abstention doctrine of *Younger v. Harris* required it to abstain from exercising jurisdiction over a mother's return petition.⁴⁵ The children were removed from the mother's custody in Germany, where the mother was stationed as a soldier in the U.S. Army, and returned to the United States and placed in the father's custody under state supervision pending juvenile court dependency proceedings.⁴⁶ The mother's return petition in state court was stayed pending resolution of the dependency proceedings, and the federal district court's involvement would inappropriately interfere not only with the resolution of the mother's state court Hague return petition, but also with the juvenile court proceedings involving the protection of the welfare of the children.⁴⁷

B. THE HAGUE SERVICE CONVENTION⁴⁸

State appellate courts continue to find no personal jurisdiction over parties in a divorce case where service of process does not comply with the requirements of the Service Convention. The Texas Court of Appeals reversed and remanded a state court's denial of a motion for a new trial where the petitioner knew the respondent's address, and the Con-

39. See 42 U.S.C.A. §11604(a) (West 2001).

40. *Sullivan v. Sullivan*, 36 BNA FAML 1020 (D. Idaho Nov. 10, 2009).

41. *Axford v. Axford*, No. 09-2914, 2009 WL 2030755, at *5 (E.D. Pa. July 10, 2009).

42. *Jaet*, No. 08-81232-CIV, at *1.

43. 42 U.S.C.A. § 11607(b)(3) (West 2001).

44. *Olesen-Frayne v. Olesen*, No. 2:09-cv-49-FtM-29DNE, 2009 WL 3048451, *3 (M.D. Fla. Sept. 21, 2009).

45. *Younger v. Harris*, 401 U.S. 37, 39-53 (1971).

46. *Witherspoon v. Orange County Dept. of Soc. Serv.*, No. SACV 09-00302-CJC (ANs), 2009 WL 2460889, *1177-79 (C.D. Cal. Aug. 10, 2009).

47. *Id.* at 1179-81.

48. Convention on Child Abduction, *supra* note 24.

vention's requirements of exclusivity were violated by the use of direct mail rather than transmitting through Mexico's designated Central Authority, as the Convention requires.⁴⁹

C. OTHER CASES INVOLVING INTERNATIONAL FAMILY LAW LITIGATION

1. *Premarital Agreements*

The parties' French prenuptial agreement unambiguously precluded equitable distribution of the parties' separate property upon their divorce.⁵⁰ Although the agreement did not expressly waive equitable distribution, it specified that separate ownership of assets applied not only to the property that each party had acquired at the time of the marriage, but also to property that they might come to own subsequently by any means whatsoever.⁵¹ The "parties did not commingle their separately owned assets throughout their 38-year marriage."⁵²

2. *Marriage*

There is a presumption that a second marriage is valid and that the first marriage ended. The burden to disprove the presumption is on the person challenging the second marriage.⁵³ Therefore, even though a wife could produce no evidence that her first Venezuelan marriage ended in divorce, the failure of the husband to produce evidence to show the invalidity of the second marriage meant the second marriage was considered valid because the burden of proof was on the husband.⁵⁴ An Ohio court was required to take judicial notice of the Indian Hindu Marriage Act of 1955 in determining whether the parties had a valid marriage under Indian law.⁵⁵ However, a court may not pass judgment as to whether the Hindu ceremony resulted in a marriage when it took place prior to the passage of the Hindu Marriage Act because that would involve the court in a religious matter.⁵⁶

A benefits claim by a woman who was not married to a veteran for at least one year before he died, but who invoked a provision of 39 U.S.C. §1304 requiring a marriage of a year or more to qualify for survivors' benefits, was revived.⁵⁷ She stated that she did not know about "the laws governing common-law marriage in the Philippines," where the couple lived, and she swore in an affidavit that she and the decedent "lived together as husband and wife for five years before their formal ceremony," which was only nine days before he died.⁵⁸ This may meet the criteria contemplated by the Department of Veter-

49. *Velasco v. Ayala*, No. 01-07-01053-CV, 2009 WL 3931074, *6, 8, 13 (Tex. App.—Houston [1st Dist.] Nov. 19, 2009, no pet.).

50. *Van Kipnis v. Van Kipnis*, 11 N.Y.3d 573, 575 (N.Y. 2008).

51. *Id.* at 575-76.

52. *Id.* at 579.

53. *Cobo v. Sierralta*, 13 So. 3d 493, 496-97 (Fla. Dist. Ct. App. 2009).

54. *Id.* at 497-98.

55. *Verma v. Verma*, 903 N.E.2d 343, 345 (Ohio Ct. App. 2d Dist. Greene County 2008).

56. *Madireddy v. Madireddy*, 886 N.Y.S.2d 495, 496 (N.Y. App. Div. 2d Dept. 2009).

57. *Lamour v. Peake*, 544 F.3d 1317, 1319 (C.A. Fed. 2008).

58. *Id.* at 1323.

ans' Affairs General Counsel Opinion for a purported marriage to be deemed a valid marriage under the statute.⁵⁹

3. *Divorce*

Michigan would not recognize a divorce known as a triple talaq obtained by a man in India, in which a husband divorced his wife by uttering "talaq" ("I divorce you") three times in a row.⁶⁰ The court reasoned that the wife "had no prior notice of [the husband's] pronouncement of the triple talaq," the wife "was not represented by an attorney," the wife "had no right to be present," and the procedure "provided no opportunity for a hearing on the merits."⁶¹ By contrast, a 1961 Urdu document executed by a Sikh man and woman in India provided sufficient evidence to show that there was a divorce and, therefore, that the man's remarriage was valid.⁶² In a case of significance for Indian nationals living in the United States, the Supreme Court of India ruled that irretrievable breakdown is not a statutory ground for divorce under the Hindu Marriage Act of 1955.⁶³ Therefore, a divorce granted on that ground to two Indian foreign nationals originally married under the Act in another jurisdiction, unless done by mutual consent with proper allegations in the dissolution petition, will not be recognized in India.⁶⁴

4. *Property Issues*

According to the trial court in *In re Marriage of Winter*, it had equitable authority in a post-dissolution of marriage proceeding to enter a preliminary injunction that required a public pension fund to make payments to a trustee rather than to the former husband.⁶⁵ The purpose of the injunction was to preserve the former wife's share of the husband's benefits, which had been awarded to her in the dissolution of marriage judgment but which she had not been receiving.⁶⁶ The husband refused to consent to the entry of a Qualified Illinois Domestic Relations Order (QILDRO) effectuating the wife's award of a share of such benefits, and the husband was a permanent resident of England, making the trial court's contempt powers ineffective against him.⁶⁷ With the remedies of a QILDRO and a contempt finding unavailable, the court was able to fall back on its equitable power to do justice between the parties.⁶⁸

59. *Id.*

60. *Tarikonda v. Pinjari*, No. 287403, 2009 WL 930007, *1-2 (Mich. Ct. App. Apr. 7, 2009).

61. *Id.* at *2.

62. *Kaur v. Bharmota*, 914 N.E.2d 1087, 1091, 1096 (Ohio Ct. App. 2009).

63. *Irretrievable breakdown of marriage no ground for divorce*: SC, HINDU, Mar. 4, 2009, <http://www.hindu.com/thehindu/holnus/001200903041211.htm>.

64. *Sharma v. Sharma*, 2009 (7) SC 5 (2000), available at <http://judis.nic.in/supremecourt/helddis.aspx>.

65. *In re Marriage of Winter*, 899 N.E.2d 1080, 1096 (Ill. App. 1st. Dist. 2008).

66. *Id.* at 1087.

67. *Id.* at 1094.

68. *Id.* at 1095.

5. *Children's Issues*

a. Adoption

A Hmong man who, with his former wife, adopted a child in Thailand in accordance with Hmong cultural practice is not liable for child support when it was not shown that the adoption was valid in Thailand.⁶⁹ The Hawaii Court of Appeals affirmed the dismissal of an adoption petition under the Indian Child Welfare Act.⁷⁰ After the initial petition to adopt by German parents, the Hawaii family court allowed them to take the child to Germany.⁷¹ The mother, as authorized by the ICWA, withdrew her consent and filed a Hague return action in Germany that was denied under the well-settled defense.⁷² She then filed an objection to the final adoption in Hawaii.⁷³ The Hawaii family court dismissed the petition under ICWA, and the Hawaii Court of Appeals affirmed.⁷⁴

b. Custody

i. *Jurisdiction*

The Uniform Child Custody Jurisdiction and Enforcement Act requires that foreign countries be treated as states under Articles I and II of the Act.⁷⁵ The Act also provides that in order to determine child custody, preference is given to the state that can exercise home state jurisdiction under the Act.⁷⁶ Therefore, the Supreme Court of New York determined that when a child in question has lived in Iran for several years, it is clear that New York does not have jurisdiction to determine child custody.⁷⁷ A California Court of Appeals similarly determined that when children took a trip from Nevada to Japan with their father, it was meant to be a temporary three-month vacation and, therefore, the six-month extended home-state jurisdictional provision did not begin to run until the father decided not to return from Japan to the United States.⁷⁸

California also decided that if one parent maintains a functioning residence in California, available for his or her use at all times, that parent continues to reside in California, and therefore, the fact that a husband had spent most of three years in Pakistan attempting to obtain custody of his son did not deprive California of its exclusive continuing jurisdiction.⁷⁹ Additionally, a Florida Court of Appeals determined that a father may not modify a Taiwanese custody order in Texas when the mother and child still live in Taiwan and that country has not relinquished jurisdiction.⁸⁰ Another Florida appellate court determined that even if all parties have moved from French Saint Martin, a Florida court may not

69. *Ramsey County v. Lee*, 770 N.W.2d 572, 578-80 (Minn. Ct. App. 2009).

70. *In re Adoption of Female Child*, No. 29147, 2009 WL 2943172, *3 (Haw. Ct. App. Sept. 11, 2009) (Table) (unpublished; text in Westlaw).

71. *Id.* at *1.

72. *Id.* at *1-2.

73. *Id.* at *3.

74. *Id.* at *1, *3.

75. Uniform Child Custody Jurisdiction and Enforcement Act §105.

76. *Id.* §201.

77. *Gharachorloo v. Akhavan*, 889 N.Y.S.2d 256, 256 (N.Y. App. Div. 2009).

78. *Ogawa v. Ogawa*, No. 48571, 2009 WL 3851621, *1 (Nev. Nov. 12, 2009).

79. *Marriage of Nurie*, 98 Cal. Rptr. 3d 200, 218-19 (Cal. Ct. App. 1st Dist. 2009).

80. *In re J.H.*, 2008 WL 3867850, *2-3 (Tex. Ct. App.—Corpus Christi Aug. 21, 2008).

modify the foreign custody determination without communicating with the foreign court in order to determine which forum is most convenient.⁸¹

In another case, Florida enforced a Jamaican custody decree under the Uniform Child Custody Jurisdiction and Enforcement Act because Jamaican law is based on the best interests of the child, and the father could not show that the law violated fundamental principles of human rights.⁸² But another Florida court erred when it enforced a custody determination of the French Republic of Guadeloupe when it was clear that Florida, rather than Guadeloupe, was the child's home state at the time of the commencement of the custody proceeding.⁸³

ii. Relocation

A Tennessee court refused to allow a German mother to relocate with her children to Germany because of her lack of employment prospects there.⁸⁴ A Florida court ruled that a woman, whose decree-incorporated agreement allowed her to move to Turkey so long as she enrolled her child in an English-speaking school, was not entitled to have the decree modified to allow her to send the child to a Turkish school that taught only ten hours of English per week.⁸⁵ The woman argued that she was unaware of changes in Turkish law that limited the number of English-speaking schools.⁸⁶ The court ruled that because the change did not occur post-decree, she could not modify the decree.⁸⁷ Another Turkish woman was held in contempt when she removed her child from Pennsylvania to Turkey in violation of a court order, even though the woman and her child had lived in Turkey for two years.⁸⁸ Failure to rule in this manner would allow the woman to engage unilaterally in disobedience of the court order.⁸⁹

c. Parentage and Child Support

A Florida court had jurisdiction to entertain a parentage action brought by a Guatemala resident against a Florida resident, even though the child resided in Guatemala.⁹⁰ Another Florida man was required to provide a DNA sample pursuant to the Hague Convention on Taking Evidence Abroad⁹¹ for use in a paternity proceeding in Slovakia. The court determined that given the unobtrusive nature of the DNA testing procedure and the

81. *London v. London*, No. 13-07-00373-CV, 2009 WL 3320189, *2-3 (Fla. Ct. App. 2d Dist. Oct. 16, 2009).

82. *Dyce v. Christie*, 17 So. 3d 892, 893 (Fla. Ct. App. 4th Dist. 2009).

83. *Karam v. Karam*, 6 So. 3d 87, 91 (Fla. Ct. App. 3d Dist. 2009).

84. *Rogers v. Rogers*, No. M2008-00918-COA-R3-CV, 2009 WL 1034795, *6-7 (Tenn. Ct. App. Apr. 16, 2009).

85. *Martinez v. Kurt*, 9 So.3d 54, 56-8 (Fla. Ct. App. 3d Dist. 2009).

86. *Id.* at 57.

87. *Id.* at 57-8.

88. *Harcar v. Harcar*, 982 A.2d 1230, 1231-32, 1235 (Pa. Super. Ct. 2009).

89. *Id.* at 1240.

90. *Nissen v. Cortez Moreno*, 10 So. 3d 1110, 1111-12 (Fla. Ct. App. 3d Dist. 2009).

91. Convention adopted at the Eleventh Session of The Hague Conference on Private International Law October 26, 1968, Taking Evidence Abroad, T.I.A.S. No. 7444, 23 U.S.T. 2555.

fact that the father's "physical condition [was] in controversy . . . the requirements of Federal Rule of Civil Procedure 35(a) [were] satisfied."⁹²

Kansas enforced a German parentage and child support order under the Uniform Interstate Family Support Act when a Kansas father failed to object to the registration of the German order.⁹³ But Illinois refused to enforce a German child support order when Germany did not have personal jurisdiction over the American father as determined by American due process standards.⁹⁴

6. *Other Cases*

California determined that an English order requiring a husband to pay his wife's attorney fees is not enforceable under the Uniform Foreign-Money Judgments Act because that Act specifically excludes judgments for "support or family matters."⁹⁵ A Kansas court held that it was unnecessary to enforce a man's immigration affidavit of support following the annulment of his marriage because there was no dispute that the wife earned more than 125% of the federal poverty amount.⁹⁶

92. *In re* Letter of Request from the District Court Stara Lubovna, Slovak Republic, No. 3:09-mc-20-34MCR, 2009 WL 3711924, *1 (M.D. Fla. Nov. 5, 2009).

93. *Dia v. Oakley*, 217 P.3d 1010, 1012 (Kan. Ct. App. 2009).

94. *Dept. of Health Care and Family Serv. v. Heard*, 916 N.E.2d 61, 63-66 (Ill. App. Ct. 3d Dist. 2009).

95. *Marriage of Lyustiger*, 99 Cal. Rptr. 3d 922, 923-24 (Cal. Ct. App. 2009).

96. *Sandhu v. Sandhu*, 207 P.3d 1067, 1070-71 (Kan. Ct. App. 2009).

