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International Family Law

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I. International Conventions

A. THE HAGUE CHILD SUPPORT CONVENTION

On September 29, 2010, the U.S. Senate ratified The Hague Convention on the International Recovery of Child Support and other Forms of Family Maintenance, which concluded on November 23, 2007. Implementing legislation will be needed.[1]

B. THE 1996 CONVENTION ON PARENTAL RESPONSIBILITY AND MEASURES TO PROTECT CHILDREN

On October 22, 2010, the United States signed the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement, and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children, concluded on October 19, 1996. The treaty will be implemented, in part, through a revision of the Uniform Child Custody Jurisdiction and Enforcement Act.

C. THE 1993 HAGUE ADOPTION CONVENTION

From June 17-25, 2010, a Special Commission met in The Hague to consider the operation of the Hague Convention on the Protection of Children and Co-operation in Respect of Intercountry Adoption. The conclusions and recommendations are too lengthy for this short article, but they can be found on the website of the Hague Conference.[2]

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1. Hague Convention on International Recovery of Child Support and Family Maintenance, Nov. 23, 2007, S. TREATY DOC. NO. 110-21.

2. *See* Special Comm'n on the Practical Operation of the Hague Conv. of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption, *Conclusions and Recommendations*, HAGUE CONFERENCE ON PRIVATE INT'L L., (June 25, 2010), http://www.hcch.net/upload/wop/adop2010concl_e.pdf.

D. THE HAGUE ABDUCTION CONVENTION

Morocco became the first North African country to ratify the Hague Convention on the Civil Aspects of International Child Abduction and the treaty came into force between it and the United States on June 1, 2010.[3]

Seeking ways to prevent international child abductions, an international judicial conference on cross-border family relocation met in Washington, D.C. on March 23-25, 2010. The Hague Conference on Private International Law and the National Center for Missing and Exploited Children sponsored the Conference with the assistance of the State Department. "[M]ore than 50 judges and other experts from Argentina, Australia, Brazil, Canada, France, Egypt, Germany, India, Mexico, New Zealand, Pakistan, Spain, [the] United Kingdom, and the United States" attended the Conference.[4] They agreed on the following declaration:

Availability of Legal Procedures Concerning International Relocation

1. States should ensure that legal procedures are available to apply to the competent authority for the right to relocate with the child. Parties should be strongly encouraged to use the legal procedures and not to act unilaterally.

Reasonable Notice of International Relocation

2. The person who intends to apply for international relocation with the child should, in the best interests of the child, provide reasonable notice of his or her intention before commencing proceedings or, where proceedings are unnecessary, before relocation occurs.

Factors Relevant to Decisions on International Relocation

3. In all applications concerning international relocation, the best interests of the child should be the paramount (primary) consideration. Therefore, determinations should be made without any presumptions for or against relocation.
4. In order to identify more clearly cases in which relocation should be granted or refused, and to promote a uniform approach internationally, the exercise of judicial discretion should be guided in particular, but not exclusively, by the following factors listed in no order of priority. The weight given to any one factor will vary from case to case:
   i) the right of the child separated from one parent to maintain personal relations and direct contact with both parents on a regular basis in a manner consistent with the child's development, except if the contact is contrary to the child's best interest;
   ii) the views of the child, having regard to the child's age and maturity;
   iii) the parties' proposals for the practical arrangements for relocation, including accommodation, schooling, and employment;
   iv) where relevant to the determination of the outcome, the reasons for seeking or opposing the relocation;
   v) any history of family violence or abuse, whether physical or psychological;

3. 36 Fam. L. Rep. (BNA) 1287 (Apr. 27, 2010).

4. Int'l Judicial Conference on Cross-border Family Relocation, Washington Declaration on International Family Relocation, HAGUE CONFERENCE ON PRIVATE INT'L L., (Mar. 2010), http://hcch.e-vision.nl/upload/decl_washington2010e.pdf.

vi) the history of the family and particularly the continuity and quality of past and current care and contact arrangements;
vii) pre-existing custody and access determinations;
viii) the impact of grant or refusal on the child, in the context of his or her extended family, education and social life, and on the parties;
ix) the nature of the inter-parental relationship and the commitment of the applicant to support and facilitate the relationship between the child and the respondent after the relocation;
x) whether the parties' proposals for contact after relocation are realistic, having particular regard to the cost to the family and the burden to the child;
xi) the enforceability of contact provisions ordered as a condition of relocation in the state of destination;
xii) issues of mobility for family members; and
xiii) any other circumstances deemed to be relevant by the judge.

5. While these factors may apply to domestic relocation, they are primarily directed to international relocation and thus generally involve considerations of international family law.
6. The factors reflect research findings concerning children's needs and development in the context of relocation.

The Hague Conventions of 1980 on International Child Abduction and 1996 on International Child Protection

7. It is recognized that the Hague Conventions of 1980 and 1996 provide a global framework for international co-operation in respect of cross-border family relocations. The 1980 Convention provides the principal remedy (the order for the return of the child) for unlawful relocations. The 1996 Convention allows for the establishment and (advance) recognition and enforcement of relocation orders and the conditions attached to them. It facilitates direct co-operation between administrative and judicial authorities between the two States concerned, as well as the exchange of information relevant to the child's protection. With due regard to the domestic laws of the States, this framework should be seen as an integral part of the global system for the protection of children's rights. States that have not already done so are urged to join these Conventions.

Promoting Agreement

8. The voluntary settlement of relocation disputes between parents should be a major goal. Mediation and similar services to encourage agreement between the parents should be promoted and made available both outside and in the context of court proceedings. The views of the child should be considered, having regard to the child's age and maturity, within the various processes.

Enforcement of Relocation Orders

9. Orders for relocation and the conditions attached to them should be able to be enforced in the State of destination. Accordingly, States of destination should consider making orders that reflect those made in the State of origin. Where such authority does not exist, States should consider the desirability of introducing appropriate enabling provisions in their domestic law to allow for the making of orders that reflect those made in the State of origin.

Modification of Contact Provisions

10. Authorities in the State of destination should not terminate or reduce the left behind parent's contact unless substantial changes affecting the best interests of the child have occurred.

Direct Judicial Communications

11. Direct judicial communications between judges in the affected jurisdictions are encouraged to help establish, recognize and enforce, replicate and modify, where necessary, relocation orders.

Research

12. It is recognized that additional research in the area of relocation is necessary to analyze trends and outcomes in relocation cases.

Further Development and Promotion of Principles

13. The Hague Conference on Private International Law, in co-operation with the International Centre for Missing and Exploited Children, is encouraged to pursue the further development of the principles set out in this Declaration and to consider the feasibility of embodying all or some of these principles in an international instrument. To this end, they are encouraged to promote international awareness of these principles, for example, through judicial training and other capacity building programmes.[5]

II. International Litigation

A. The 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 ("ICARA").[6] This treaty has more ratifications and accessions that any other family law treaty concluded under the auspices of the Hague Conference on Private International Law.

The Hague Convention (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, first the petitioner must prove that the child was abducted from, or prevented from returning to, the country of the child's habitual residence. Next, the petitioner must prove she had "a right of custody" under the law of the abducted-from State that is recognized under the Convention 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.

5. *Id.*

6. *See* International Child Abduction Recovery Act, 42 U.S.C. §§ 11601-11611 (2011).

1. *Applicability of the Convention*

The Convention applies only to countries that have ratified or acceded to it. It cannot be made applicable to a case by the stipulation of the parties.[7] The Convention ceases to apply when the child in question turns sixteen.[8]

2. *Habitual Residence*

Neither the Abduction Convention nor any other Hague conventions define the term "habitual residence." Courts have determined this "fact-based" issue in a number of cases. Because it is primarily a fact question, a trial court's determination of habitual residence is reviewed using a clearly erroneous standard.[9]

The child, when born, normally has the habitual residence of its parents. The issue rarely comes up, but it did arise in one case during 2010. The First Circuit held that the child's habitual residence was Australia immediately prior to a mother's retention of the child in the United States, notwithstanding the mother's alleged pre-birth declaration to the father that she would move back to the United States and that her alleged intent at the time of the child's birth was not to remain in Australia. The child's father was a citizen of Australia and was obliged to stay there during his military service. The mother, being pregnant, had returned to Australia to marry him. The mother and the father were married in Australia and were living together at the time of the child's birth. Thereafter, the child lived in Australia for several months with both parents. Moreover, the mother was apparently willing to consider reconciliation with the father, even after her arrival in the United States.[10]

A number of cases this year revolved around whether the child's habitual residence changed. Most courts determined that it had not. In a Fourth Circuit case, the Court upheld the lower court's determination that the mother never intended to abandon the United States as the children's habitual residence. The mother sought to return to the United States just five weeks after she arrived in Australia. She left many possessions in the United States and reserved round trip tickets for herself and the children. The mother and the children traveled with Australian tourist visas that limited their stay in Australia to three months. The mother "maintained her local financial accounts, North Carolina Medicare insurance, and the lease and insurance on her vehicle."[11]

Another trial court erred in determining that Mexico was the child's habitual residence because the child was too young to have become acclimatized. In addition, there was no evidence that the parents shared intent to make Mexico the child's habitual residence.[12]

In *Haro v. Woltz*, however, the court determined that the evidence was conflicting concerning whether the child was to stay with the father in Wisconsin for one year and then

7. *In re* Kamstra, No. 12-09-00017-CV, 2010 WL 708857 (Tex. Ct. App. Mar. 2, 2010).

8. *See In re* R.P.B, No. CA2009-07-097, 2010 WL 339812, at *2 (Ohio Ct. App. Feb. 1, 2010).

9. Courdin v. Courdin, No. CA09-780, 2010 WL 1486933 (Ark. App. June 2, 2010).

10. Nicolson v. Pappalardo, 605 F.3d 100, 105 (1st Cir. 2010). *See also* Sewald v. Resinger, 2009 WL 6767881 (11th Cir. Nov. 19, 2009) (child born in Germany to an estranged couple is a habitual resident of that country since the parents must have understood that, absent a reconciliation, the child would be living in Germany).

11. Maxwell v. Maxwell, 588 F.3d 245, 253 (4th Cir. 2009).

12. *In re* J.G., 301 S.W.3d 376, 382 (Tex. App. 2009).

return to Mexico, or whether the child was to stay in Wisconsin for an indefinite period.[13] The court, believing the father, determined that the habitual residence had shifted because there was no shared intent that the child should stay only one year. This seems to turn the *Mozes v. Mozes* approach to habitual residence on its head. *Mozes* required that before the child's habitual residence can shift, the parents must share intent to change the residence.[14] In this case, the court apparently determined that the year the child spent in Wisconsin was sufficient to shift habitual residence absent a shared parental intent that it not shift.

3. *Rights of Custody*

In a major decision, the U.S. Supreme Court determined that a *ne exeat* provision, in a decree or applicable law, is a right of custody under the Convention.[15] Ms. Abbott had claimed that a *ne exeat* right could not qualify as a right of custody because the Convention requires that any such right be capable of "exercis[e]." This argument, the Court concluded, was misplaced. When one parent removes a child without seeking the *ne exeat* holder's consent, it is an instance where the right would have been "exercised but for the removal or retention." The Fifth Circuit's conclusion that a breach of a *ne exeat* right does not give rise to a return remedy would, the court said, "render the Convention meaningless in many cases where it is most needed."[16]

Any suggestion that a *ne exeat* right is only a right of access, or visitation, does not comport with article 5(b) of the Convention that defines a right of access as a "right to take a child for a limited period of time."[17] The Court also noted that the conclusion that a *ne exeat* right is a right of custody, is strongly supported "by the longstanding view of the State Department's Office of Children's Issues . . . that *ne exeat* rights are rights of custody."[18] Finally, the Court found it to be important that most of our treaty partners have also defined a *ne exeat* provision as a right of custody. This view supports uniform international interpretation of the treaty.

Lower federal courts since *Abbott* have followed suit. The effect of these decisions is to provide a right of custody in non-custodial parents where the law of the State is that a child may not be taken out of the State without the consent of the parent or the court.

4. *Consent*

A mother who allowed her daughter to travel to the United States for a two-month stay with the child's paternal grandmother did not consent to the child's staying in the United States with her father at the end of the visit.[19] But, a father who gave the mother his written approval for her to move to the Ukraine with the child, purchased one-way airline

13. Haro v. Woltz, No. 10-C-389, 2010 WL 3279381, at *4 (E.D. Wis. Aug. 19, 2010).
14. Mozes v. Mozes, 239 F.3d 1067, 1074-76 (9th Cir. 2001).
15. Abbott v. Abbott, 130 S. Ct. 1983, 1990 (2010).
16. *Id.*
17. *Id.*
18. *Id.*
19. Sullivan v. Sullivan, No. CV-09-545-S-BLW, 2010 WL 227924, at *6 (D. Idaho Jan. 13, 2010).

tickets for them, provided them money to purchase a home there, and never sought to enforce his custody rights in the Ukraine, clearly consented to the removal.[20]

A father who consented to a Maine "protection from abuse order," which granted temporary custody to the mother, did not acquiesce to the child remaining in Maine. The proceedings were ambiguous on the question of the father's subjective intent to consent to the wife's removal of the child.[21]

5. *Wrongful Retention*

Where the grandparents of the child testified that the Canadian mother would be free to take the child back to Canada if she came to the grandparent's home in Missouri, a court can stay proceedings to see if that is actually the case. If, however, the grandparents refused to allow the child to return with the mother, the court would conclude the child is being retained in Missouri and set the case for a final hearing.[22]

6. *Defenses*

a. Settled in New Environment

A respondent may assert a number of defenses to prevent a child from being returned. One defense in Article 12 of the Convention provides that judicial authorities of the abducted-to country need not return the child if 1) more than one year has elapsed between the abduction or retention and the filing of the petition for return and 2) the child is settled in the child's new environment. The one-year period runs from the wrongful retention or removal. A father who "knew something was wrong" before his wife actually told him she was not returning from the United States was on notice that the mother might not return. The one-year period, therefore, should be measured from that point and not when the mother actually communicated her decision not to return.[23]

Two children, ages first-grade and younger, did not have to be returned to the Bahamas when the trial court found they were well settled in Texas. The children lived "close to extended family with which they had significant contact."[24] They participated in activities, attended Sunday school, and went to church regularly. The older child had already attended one year of school and was enrolled in first grade. "Although the mother and step-father were unemployed at the time of the hearing, they both testified to their efforts to gain employment and are employable."[25]

A two-year-old child was not so settled in a new environment that he could not be returned to Germany, especially when the father did not show that the child had established significant connections to the United States.[26] Similarly, in *Luttman v. Luttman*, even though the child had resided in the United States for almost two years, the child was not well settled. He had resided in three different locations and attended three different

20. Chechel v. Brignol, No. 5:10-cv-164-Oc-10GRJ, 2010 WL 2510391, at *2, *6 (M.D. Fla. June 21, 2010).

21. Nicolson v. Pappalardo, 605 F.3d 100, 108 (1st Cir. 2010).

22. Mitsuing v. Lowry, No. 4:09CV02124ERW, 2010 WL 1610418, at *11-12 (E.D. Mo. Apr. 21, 2010).

23. Etienne v. Zuniga, No. C10-5061BHS, 2010 WL 2262341, at *10 (W.D. Wash. June 2, 2010).

24. Edoho v. Edoho, No. H-10-1881, 2010 WL 3257480, at *6 (S.D. Tex. Aug. 17, 2010).

25. *Id.*

26. Riley v. Gooch, No. 09-1019-PA, 2010 WL 373993, at *12 (D. Or. Jan. 29, 2010).

schools, had a handful of acquaintances, had not established connections to any church or synagogue, and had not engaged in any extracurricular activities. He had no other community involvement in central Pennsylvania and spent most of his time watching television and playing video games.[27] The court also found that even if the child were well settled, the court would exercise its discretion not to return the child because:

> [The father] has engaged in behavior that is manipulative and otherwise contravenes the purposes of the Hague Convention, and he should not be rewarded for such behavior. At the last minute, [he] unilaterally decided not to return D.L. to Israel, and he has confirmed his intent to keep D.L. in the United States permanently, with no regard for [the mother's] custody rights. Worse, [he] brought a baseless complaint of sexual abuse to authorities during [the mother's] visit . . . in a desperate attempt to maintain control of D.L.'s custody. [His] improper conduct also compels the court to exercise its discretion to return D.L. to Israel.[28]

b. Preference of the Child

A second defense, in Article 13, provides that the child need not be returned if "the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views."[29] A trial court acted within its discretion in finding that an eight-year-old child had attained an age and degree of maturity at which it was appropriate to take account of his views on whether he should be returned to Chile. The trial court's finding that the child was sufficiently mature was a factual issue for which deferential appellate review was appropriate. The California Court of Appeals rejected an attempt to establish a bright-line rule that it was not appropriate to take account of the views of children aged nine or younger.[30] In another case, a fourteen-year-old child was found to be of sufficient age and maturity that he did not have to be sent back to Mexico. The retaining parent had not influenced the child's choice and he expressed the view that he "enjoy[ed] the freedom of living in a safe neighborhood where he is allowed to visit friends on his own without fear for his safety," which had concerned him in Mexico.[31] He had also developed a close relationship with his stepmother and his new nine-month-old half-sister.[32]

A federal district court, however, returned a fifteen-year-old child to Germany, even though it found that the child was mature enough to express an opinion and wished to remain in the United States. The court found that the child's decision reflected the product of limited analysis. For example, his primary reason for deciding to stay in the United States was his online computer communication with his brother. The brother reportedly stated that the petitioner, upon learning that respondent had taken the child to the United States, said he would seek to have the child suspended from his German school. Moreover, although the child claimed he received better grades in his new school in Greensboro, the school days were very limited in the three-to-four week period that the child was

27. Lutman v. Lutman, No. 1:10-CV-1504, 2010 WL 3398985, at *6 (M.D. Pa. Aug. 26, 2010).

28. *Id.* at *7.

29. Convention on the Civil Aspects of International Child Abduction art. 13, Oct. 25, 1980, *available at* http://www.hcch.net/upload/conventions/txt28en.pdf.

30. Escobar v. Flores, 107 Cal. Rptr. 3d 596, 605 (Cal. Ct. App. 2010).

31. Haro v. Woltz, No. 10-C-389, 2010 WL 3279381, at *4 (E.D. Wis. Aug. 19, 2010).

32. *Id.*

enrolled. In the end, the court found that the child's decision to remain here might have been influenced in large measure by the fact that his mother, with whom he wished to stay, was staying with a boyfriend in Greensboro.[33]

In yet another case, the preference of the older child to stay in the United States was based on his desire not to be separated from his younger brother. Since the younger child was not of sufficient age to express an opinion and was ordered returned to England, the court found that the older child's preference could be followed by returning him to England also. The court also noted, "[f]rankly, short of opining as to a mental or emotional pathology, it is hard to fathom what a psychologist in a Hague Convention case could opine that is not already within the ken of an ordinary finder of fact."[34] The court had previously determined that the respondent could not call a "marriage and family therapist" to impeach the testimony of petitioner's psychologist since the therapist was not a psychologist.[35]

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.[36] The respondent is required to prove this defense by clear and convincing evidence.[37]

A father did not establish by clear and convincing evidence that there was a grave risk of harm in returning his daughter to Panama, her country of habitual residence, to live with her mother. The father testified that the home where the mother lived had no indoor running water, no climate control, no refrigeration, and very little furniture. He also testified that the child suffered a head injury while in the mother's care and that the child exhibited ataxia. But, the court found that poverty was not a reason to deny relief to the mother, that even well cared for children occasionally had accidents, and there was no evidence the child was undergoing regular medical treatment in the United States. Furthermore, any attachment of the child to the United States and her father was not a valid consideration under the Convention's grave danger exception. Neither was the father's speculative and unsubstantiated concern about whether he could receive a fair trial in the Panamanian courts.[38]

In another case involving Panama, the court found there was not a grave risk of harm to the child because the father had been convicted of felony burglary and stealing firearms fourteen years ago. The evidence showed that the father had been rehabilitated, had no serious law violations since that time, and had become a responsible citizen.[39]

In another case involving Mexico, the mother's testimony concerning the father's alleged physical abuse was rebutted by the fact that she never took the child to a doctor nor was there anything in the child's medical history that indicate that abuse took place.[40]

33. Trudrung v. Trudrung, 686 F. Supp. 2d 570, 577 (M.D. N.C. 2010).
34. Haimdas v. Haimdas, 720 F.Supp. 2d 183, 207 n.17 (E.D. N.Y. 2010).
35. Haimdas v. Haimdas, No. 09-CV-02034, 2010 WL 652823 (E.D. N.Y. Feb. 22, 2010).
36. Convention on the Civil Aspects of International Child Abduction art. 13.
37. 42 USC §11603(e)(2)(A) (2010).
38. Cuellar v. Joyce, 596 F.3d 505, 510 (9th Cir. 2010).
39. Fernandez v. Bailey, No. 1:10CV00084 SNLJ, 2010 WL 3522134, at *2-3 (E.D. Mo. Sept. 1, 2010).
40. Vasquez v. Colores, No. 10-3669, 2010 WL 3717298 (D. Minn. Sept. 14, 2010).

One federal district court found that the child's attachment to the abducting mother meant that the child would be at risk if returned to Spain. Nevertheless, based on the father's undertakings that he would rent an apartment for the mother, agree not to press criminal charges against her, and pay her _500 a month until the Spanish court issued a support order, the court determined that the risk was not "grave" under the Convention and ordered the child returned.[41]

But, another federal district court did not order children returned to Cyprus when the children suffered from post-traumatic stress syndrome after witnessing the father's constant abuse of the mother. The evidence showed that Cyprus authorities were unable to protect the mother from further abuse. The mother had previously been granted asylum in the United States based on the father's physical abuse.[42]

d. Other Attempted Defenses

The fact that a father had a custody order from Pennsylvania did not excuse his self-help removal of the child from the Netherlands. The court held that he should have registered the custody order in the Netherlands and sought to have it enforced there.[43]

7. *Enforcement*

A return order should not generally be stayed pending appeal, unless there is a specific concern as to whether the parent who sought the return will also abscond with the child, instead of having custody determined in the state from which the child was taken.[44] Nor does the fact that children have been returned to their country of origin moot an appeal from a Hague return proceeding.[45]

A federal district court did not have subject matter jurisdiction to enforce a return order from Ukraine, which ordered the child returned to Poland, because Ukraine had not acceded to the Convention when the order was rendered.[46]

8. *Other Issues under the Convention and ICARA*

a. Attorney Fees

A prevailing petitioner in a return action is entitled to attorney fees[47] even if the representation was pro bono.[48] But, because a prevailing mother did not produce evidence that no attorneys in the area could handle her case, fees charged by attorneys from outside the area had to be reduced to be more commensurate with fees charged by local attorneys.[49]

41. Rial v. Rijo, No. 1:10-cv-01578-RJH, 2010 WL 1643995, at *2-3 (S.D.N.Y. Apr. 23, 2010).

42. Miltiadous v. Tetervak, 686 F. Supp. 2d 544, 552 (E.D. Pa. 2010).

43. The court held in a matter of first impression that the equitable doctrine of "clean hands" cannot be used to deny a return order when the petitioner makes a prima facie case and no Convention defenses apply. Karpenko v. Leendert, No. 09-03207, 2010 WL 831269, at *7 (E.D. Pa. Mar. 4, 2010).

44. *See id.*

45. *In re* J.G., 301 S.W.3d 379, 380 (Tex. App. 2009).

46. Czupinka v. Greczuch, No. 09-CV-4454, 2010 WL 3394276, *2 (E.D. N.Y., July 19, 2010).

47. 43 U.S.C. § 11607(b)(3) (2011).

48. Cuellar v. Joyce, 603 F.3d 1142, 1143 (9th Cir. 2010).

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

In another case, the court determined that a fee award that unduly limits respondent's ability to support her children would be "clearly inappropriate." Legal fees billed to a prevailing father by his attorneys were reasonable and appropriate, but were reduced by twenty-five percent for purposes of the fee award. The fees were reduced because the mother was unemployed, had only nominal assets, was a pregnant stay-at-home mother, and was the primary caretaker of her three other children, ages twelve years, two years, and eight months.[50]

Fees awarded to a mother to cover her costs in obtaining the return of her child from Turkey do not constitute "child support" under Maryland law. The mother was not entitled, therefore, to a Qualified Domestic Relations Order to enforce her attorney fee award.[51]

b. Procedural Issues

A petition for the return of a child, filed in North Carolina state court, must be verified for the court to have subject matter jurisdiction.[52] Denial of a petition to return the child does not necessarily give a state court jurisdiction to decide the custody issues. Therefore, when a mother's petition was denied in an Arkansas state court, jurisdiction to decide custody was still appropriate in Missouri.[53]

B. The Hague Service Convention[54]

A husband's failure to serve his wife in Mexico in accordance with the Hague Service Convention, the exclusive means of service upon a Mexican citizen in Mexico, means that court failed to obtain personal jurisdiction over the wife. Therefore, all subsequent actions of the court were a nullity.[55] The failure to serve a husband in accordance with the Convention also meant that a default judgment against the husband must be vacated.[56]

The California Court of Appeals ruled that the Service Convention does not apply to notice of review hearings in juvenile cases.[57] Another California court held that a father who had made a general appearance in juvenile dependency proceedings filed by the county was not entitled to receive notice of a dispositional hearing. After the father was deported to Mexico, the court held that his general appearance was equivalent to personal service of summons and waived any right, pursuant to The Hague Service Convention, to challenge adequacy of notice to subsequent and supplemental petitions filed in the proceedings.[58]

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50. Salinier v. Moore, No. 10-cv-00080-WYD, 2010 WL 3515699, *4 (D. Colo. Sept. 1, 2010).

51. Roosevelt v. Corapcioglu, 2 A.3d 1095, 1101 (Md. 2010).

52. Obo v. Steven B., 687 S.E. 2d 496, 500 (N.C. Ct. App. 2009).

53. *Courdin*, 2010 WL 1486933.

54. *See generally* Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Nov. 15, 1965, 20 U.S.T. 361.

55. Velasco v. Ayala, 312 S.W. 3d 783, 799 (Tex. Ct. App. 2010).

56. *In re* Marriage of Li, No. A124639, 2010 WL 9071, at *3 (Cal. Ct. App. Jan. 4, 2010).

57. *In re* Jennifer O., 108 Cal. Rptr. 3d 846, 847 (Cal. Ct. App. 2010).

58. Kern Cnty. Dep't of Human Serv. v. Superior Court, 113 Cal. Rptr. 3d 735, 737 (Cal. Ct. App. 2010). *See also In re* B.C., No. F07939, 2010 WL 2282055, at *12 (Cal. Ct. App. June 8, 2010) (the provisions of the Service Convention are waived when an individual acquiesces to the juvenile court's jurisdiction and actively

Based on the discovery of a mistranslation of Mexico's original declarations to Articles 10, service under the Convention through Mexico's Central Authority (no mail) is the exclusive means of service in Mexico.[59]

C. Other Cases Involving International Family Law Litigation

1. *Premarital Agreements*

A *mahr* agreement is a prenuptial agreement based on Islamic law that provides an immediate and long-term dowry to the wife. A *mahr* was declared invalid under Washington's contract law because there was no meeting of the minds on the essential terms of the agreement, no term promising to pay, and no term explaining why or when the money would be paid to the wife. The husband was not told that he would be required to participate in a ceremony that would include the signing of a *mahr* until fifteen minutes before he signed it and was unaware of the terms of the agreement until an uncle explained them to him after the *mahr* had been signed.[60]

2. *Divorce-Recognition of Foreign Judgments and Divorce*

A couple's domesticated Canadian divorce decree that provided for attorney fees to the prevailing party in any support action survived a subsequent Canadian order annulling the marriage.[61]

Quasi-estoppel barred a motion for post-decree relief to vacate a divorce decree. The wife brought the action against her husband on the grounds that a Dominican Republic divorce decree from his previous marriage was invalid, and thus that their own marriage was void. The court held that it would decline to recognize the decree on the basis of comity, as neither the husband nor his former wife were domiciled in the Dominican Republic at the time of the divorce. The court held, however, that the wife was quasi-estopped from prevailing on her claim. She waited eleven years from the time they were married, and over four years after their divorce decree was entered, to bring her action to vacate the decree, even though she had full knowledge of the Dominican Republic divorce decree and had met the former wife after marrying her husband.[62]

3. *Children's Issues*

a. Adoption

A California court lacked jurisdiction to vacate a California couple's adoption of a Ukrainian child that took place in Ukraine.[63]

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participates in proceedings); *In re* Vanessa Q., 114 Cal. Rptr. 3d 294, 300 (Cal. Ct. App. 2010) (defendant's entry of a general appearance in the trial court cures the defective service).

59. OGM, Inc. v. Televisa, SA. DE C.V., No. CV 08-5742-JFW (JCx), 2009 WL 1025971, at *3 (C.D. Cal. Apr. 15, 2009).

60. *In re* Marriage of Obaidi, 226 P.3d 787, 788 (Wash. Ct. App. 2010).

61. Deegan v. Taylor, 28 So.3d 227, 229 (Fla. Dist. Ct. App. 2010).

62. Cvitanovich-Dubie v. Dubie, 231 P.3d 983, 997 (Haw. Ct. App. 2010).

63. Adoption of M.S. v. Cal. Dep't of Social Serv., 103 Cal. Rptr. 3d 715, 723 (Cal. Ct. App. 2010).

Under Michigan choice of law principles, Virginia law applied to tort claims asserted by Virginia adoptive parents against a Michigan adoption agency over the adoption of a Russian child. Virginia's interest in having its substantive law applied to its citizens' claims was greater than Michigan's interest in having its substantive law applied to nonresidents' claims against its corporate domiciliaries. The Virginia parents reviewed, signed, and submitted their international adoption agreements in Virginia, to an adoption agency licensed and registered in Virginia. The office presentation and face-to-face discussions before the parents entered into the contract took place in Virginia, as did the communication and contact between the parties for the family adoption assessment, and where complaint did not allege that any tortuous conduct was committed in Michigan.[64]

Documents issued by the Cambodian government could not nullify the father's parental rights in New York because the documents were not "acts of state" under the act of state doctrine. The documents were not acts done within Cambodia's own territory because all three of the people the documents would have affected were living in New York. The documents purported to terminate a New York adoptive father's parental rights over Cambodian child who was living with the father in New York and to authorize the child's adoption by another New York citizen.[65]

b. Criminal Law

In *United States v. Newman*, the defendant was properly convicted of violating the International Parental Kidnapping Crime Act.[66] He took his three-year-old son out of the country after a divorce court awarded custody to his ex-wife. The "father's disregard of the custody order and removal of [the] child in direct violation thereof was [a] 'substantial interference with the administration of justice' of [the] kind warranting a three-level increase in his base offense level. His conduct was calculated to thwart the legal custody process and to ensure that he, and not [the] judge with jurisdiction over [the] custody matters, would be [the] ultimate decision maker about who had custody of child."[67]

c. Custody

i. Jurisdiction

A trial court has no jurisdiction to determine the custody of a child whose home state is Japan.[68]

California properly refused to recognize a Russian order modifying a California custody determination. The father continued to reside in California, and there was no decision by a California court holding that California had lost jurisdiction. The court also found that the mother did not defeat California's continuing jurisdiction by unilaterally removing the child from California to Russia in violation of a court order not to remove the child from the state.[69]

64. Harshaw v. Bethany Christian Serv., 714 F. Supp. 2d 751, 752 (W.D. Mich. 2010).

65. *In re* Adoption of Doe, 923 N.E.2d 1129, 1132-33 (N.Y. 2010).

66. *See* 18 U.S.C. § 1204 (2011).

67. *See* United States v. Newman, 614 F.3d 1232, 1232 (11th Cir. 2010).

68. *In re* Marriage of Richardson, 102 Cal. Rptr. 3d 391, 392 (Cal. Ct. App. 2009). *See also* Sanjuan v. Sanjuan, 892 N.Y.S.2d 146 (N.Y. App. Div. 2009) (New York may not determine the custody of a child whose home state is the Philippines).

69. *In re* Marriage of Ozerets, No. DO56210, 2010 WL 2473259, at *13 (Cal. Ct. App. June 18, 2010).

A California juvenile court abused its discretion by failing to order measures to enforce its continuing jurisdiction when it retained dependency jurisdiction over a child, but placed her with her noncustodial father in Peru. The record did not show that the Hague Convention on the Civil Aspects of International Child Abduction would necessarily guarantee the child's return to California upon the juvenile court's petition. On remand, the juvenile court was required to consider evidence regarding recognition and enforcement of the juvenile court's continuing jurisdiction under the laws of Peru. At a minimum, its measures to ensure enforceability of its continuing jurisdiction and orders should include a requirement that the "father . . . expressly concede the juvenile court's jurisdiction throughout the pendency of the dependency case."[70]

A California trial court abused its discretion by requiring a mother to post a $50,000 bond before relocating with the child to her home country of South Korea. The mother was unemployable in the United States. To insist upon the bond would mean she would be unable to relocate.[71]

An Illinois court erred in finding that it had exclusive, continuing jurisdiction over its 2002 custody decree where the subject child's divorced father had filed a 2009 custody action in India. The Indian court had found that the parents and child were "now ordinarily residing" in that country; therefore, Illinois lost its exclusive continuing jurisdiction.[72]

ii. Substantive Custody Determinations

It is not error to award joint custody even though the mother had previously abducted her child to Germany and was ordered to return to the United States.[73]

iii. Visitation

A trial court did not err in awarding the father custody and the mother-supervised visitation because she posed a risk of abducting the child. The mother was a citizen of Morocco, which at the time was not a signatory of the Hague Abduction Convention. Her father was a law enforcement officer in Morocco, her sister worked for an airline servicing the Middle East, and the mother had obtained a Moroccan passport.[74]

d. Parentage and Child Support

Even though California had no jurisdiction to determine custody of a child whose home state was Japan, it did have jurisdiction to determine support for the child under the Uniform Interstate Family Support Act ("UIFSA").[75]

A New York court has jurisdiction under UIFSA to determine if a Canadian biological mother's same-sex partner should be responsible for child support.[76]

70. *In re* Karla C., 113 Cal. Rptr. 3d 163, 189 n.26 (Cal. Ct. App. 2010).
71. *In re* Marriage of Mundkowsky, No. B215472, 2010 WL 3278964, at *7 (Cal. Ct. App. Aug. 20, 2010).
72. *In re* Marriage of Akula, 935 N.E.2d 1070, 1079 (Ill. App. Ct. 2010).
73. *See* White v. White, 898 N.Y.S.2d 8 (N.Y. App. Div. 2010).
74. Lee v. Lee, No. 2080905, 2010 WL 1539733, at *3 (Ala. Civ. App. Apr. 16, 2010).
75. *In re* Marriage of Richardson, 102 Cal. Rptr. 3d 391, 392 (Cal. Ct. App. 2009).
76. H.M. v. E.T., 930 N.E.2d 206, 209 (N.Y. 2010).

A Bermuda child support order is enforceable in Pennsylvania even though the order came from a country that was not in a reciprocal agreement with the United States. Under principles of comity, the case should be set for a hearing.[77]

4. *Other Cases*

In Alaska, courtship debts, including the expenses of bringing the wife from Belarus to the United States, are the separate debt of the person who incurred them because the first date a marital debt can be incurred is the date of the marriage.[78] The husband, however, was not required to pay alimony under an Affidavit of Support, because the wife earned more than 125% of the federal poverty level. The husband had executed an Affidavit of Support pursuant to the Immigration and Nationality Act as part of the wife's application for permanent residency in the United States. Even though no support was required under the affidavit, the court remanded the case to determine whether the wife would be entitled to alimony under Alaska state law.[79]

In Tennessee, a court enforced, in a divorce proceeding, the husband's affidavit of support for his immigrant wife. The court stressed that this was not alimony and ordered the wife to find a job and apply to become a United States citizen.[80]

A California court determined that an English order requiring a husband to pay his wife's attorney fees was not enforceable under the Uniform Foreign-Country Money Judgments Act because that Act specifically excludes judgments for "support in matrimonial or family matters."[81]

A Florida appellate court vacated an ex parte injunction in the wife's divorce case, which enjoined access to $100 million on deposit in Florida banks. The money belonged to international companies, owned in part by the woman's Taiwanese husband. The court determined that the injunction violated the rights of the companies and the wife failed to show irreparable harm that was necessary for the ex parte injunction.[82]

In Maine, it is permissible to appoint a receiver to sell the property ordered sold by the court, especially when the husband is out of the country with no intention of returning.[83]

77. Scully v. Scully, No. FD 09-4807-003, 2010 WL 1444838, at *395 (Pa. Com. Pl. Jan. 6, 2010).

78. *Id.*

79. Barnett v. Barnett, 238 P.3d 594, 603 (Alaska 2010).

80. Baines v. Baines, No. E2009-00180-COA-R3-CV, 2009 WL 3806131, at *5 (Tenn. Ct. App. Nov. 13, 2009).

81. *In re* Marriage of Lyustiger, 99 Cal. Rptr. 3d 922, 923 (Cal. Ct. App. 2009). *See also* Sanchez v. Palau, 317 S.W.3d 780 (Tex. Ct. App. 2010) (Mexican divorce cannot be recognized under the Uniform Foreign-Country Money Judgments Act.).

82. American Univ. of the Caribbean v. Tien, 26 So.3d 56, 59 (Fla. Dist. Ct. App. 2010).

83. Howard v. Howard, 2 A.3d 318, 321 (Me. 2010).