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

International Family Law

ROBERT G. SPECTOR AND MELISSA A. KUCINSKI*

I. International Conventions-Developments

A. THE HAGUE CHILD SUPPORT CONVENTION

On June 18, 2013, the House of Representatives passed the International Child Support Recovery Improvement Act of 2013,[1] amending Part D of Title IV of the Social Security Act, which will enable the United States to implement the Hague Convention on the International Recovery of Child Support Convention of 2007.

B. HAGUE CONVENTION ON JURISDICTION, APPLICABLE LAW, RECOGNITION, ENFORCEMENT AND CO-OPERATION IN RESPECT OF PARENTAL RESPONSIBILITY AND MEASURES FOR THE PROTECTION OF CHILDREN (THE 1996 CHILD PROTECTION CONVENTION)

The Uniform Law Commission revised the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) to incorporate the Child Protection Convention, adding a completely new Article IV. Once federal implementing legislation is drafted, the convention will be sent to the Senate for advice and consent for ratification.

C. HAGUE CONVENTION ON THE PROTECTION OF CHILDREN AND CO-OPERATION IN RESPECT OF INTERCOUNTRY ADOPTION (THE ADOPTION CONVENTION)

On January 14, 2013, the President of the United States signed the Intercountry Adoption Universal Accreditation Act of 2012 (UAA).[2] The UAA applies universal accreditation standards to any person offering or providing adoption services in connection with a foreign orphan under the age of sixteen adopted, or to be adopted, by a U.S. citizen in the

* Robert G. Spector is the Glenn R. Watson Chair and Centennial Professor of Law Emeritus at the University of Oklahoma Law Center. Melissa A. Kucinski is a private practice family lawyer and mediator in Washington, D.C. and Maryland. This article reviews developments in 2013. For developments in 2012, see Robert G. Spector, *International Family Law*, 47 INT'L L. 147 (2013). For developments in 2011, see Robert. G. Spector & Bradley C. Lechman-Su, *International Family Law*, 46 INT'L L. 155 (2012).

1. H.R. 1896, 113th Congress, 2013–2015 (June 19, 2013).

2. S. 3331 B 112th Congress (2011–2012).

PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW

same manner that these accreditation standards are applied under the Adoption Convention.

II. International Litigation

A. The Hague Child Abduction Convention

Much U.S. international family law litigation involved the Child Abduction Convention and its implementing legislation, the International Child Abduction Remedies Act (ICARA).[3] Jurisdiction is appropriate in either federal or state court.

The Child Abduction Convention operates to promptly return children to their habitual residence, so the habitual residence may determine issues of custody and visitation. To obtain an order returning the child, the petitioner must prove that the child was wrongfully removed from or retained outside of the child's habitual residence, and that the petitioner had "a right of custody," which he/she was actually exercising (or would have exercised but for the abduction), under the law of the habitual residence.

1. *Applicability of the Child Abduction Convention*

The Child Abduction Convention only applies to countries that have ratified and acceded to it. It cannot be made applicable to a case by the stipulation of the parties. The convention ceases to apply when the child in question becomes sixteen years old.

2. *Habitual Residence*

The Child Abduction Convention does not define the term "habitual residence." Therefore, courts have been left to make this fact-based determination in a number of cases, leading to a split among the circuits as to its definition. The majority view among the circuits looks to the parents' shared intent in determining their child's habitual residence. This view was accepted by the Fifth Circuit in *Larbie v. Larbie*.[4] In Florida, a district court held that the parties never shared a mutual intent to abandon Germany as their child's habitual residence, even though they lived in Florida for over three years.[5] In Wisconsin, a father was pursuing his medical residency in Italy, when the family agreed that they would relocate to the United States to ease their financial burden.[6] The mother moved to the United States with the child before the father finished his residency and the father sought the child's return to Italy. The court concluded that habitual residence shifted from Italy to the United States, based on the parents' shared intent.

Where very young children are concerned, habitual residence is often determined by the parents acting out of necessity. A court found that the father's native England was the couple's home throughout their marriage and the child's habitual residence and that the mother's unilateral changed intentions were the sole reason that the child did not return

3. International Child Abduction Remedies Act, 42 U.S.C. § 11603 (2012).

4. Larbie v. Larbie, 690 F.3d 295, 310 (5th Cir. 2012). The leading case is Mozes v. Mozes, 239 F.3d 1067 (9th Cir. 1999).

5. Hamprecht v. Hamprecht, No. 2:12-cv-125-FtM-29DNF, 2012 WL 1890857, at *8 (M.D. Fla. May 24, 2012).

6. Prouse v. Thoreson, No. 12-cv-644-bbc, 2012 WL 5199182, at *6 (W.D. Wis. Oct. 22, 2012).

from Kansas to the United Kingdom at the conclusion of a trip.[7] In another case, a Puerto Rican child's habitual residence shifted from Puerto Rico to England after the child lived in the United Kingdom with her parents for fourteen months prior to the mother's removal of the child back to Puerto Rico. In finding that the United Kingdom became the child's new habitual residence, the court cited the fact that the mother had obtained a relocation order for the child's step-brother from a local court in Puerto Rico so that he could accompany the family to their new home in the United Kingdom.[8]

In yet another case, during a family's move from Belgium to Scotland, the parents left their child in Georgia for six weeks, but this stay did not establish the United States as her habitual residence. When the mother removed the child from the United States, the court granted the father's petition for the child's return to Scotland. The court rejected the mother's claim that her agreement to live in Scotland was conditional, and that the parents therefore did not have a shared intent that Scotland would be the child's habitual residence.[9]

In another case, the evidence indicated that the children had not acclimated to their new location in New York, which would be required to overcome the parties' latest shared intent that the children reside in Canada; therefore Canada was their habitual residence. Although the children had been in New York for over one year and the older child was in school, the children had recently moved to a new community in New York, and the school-aged child had recent close ties to friends and caretakers in Canada.[10] In another Second Circuit case, even if the parties' child was previously habitually resident in Italy, the child's habitual residence changed to the United States after the parties reached a settlement agreement that demonstrated the parents' shared intent for the child, who was then less than three years old and had been living with the mother in New York for several months.[11]

The parties' last shared intent does not always govern habitual residence. In a Seventh Circuit case, the son's habitual residence was found to be in Illinois, although the American mother and the Irish father had agreed that their son should be raised in Ireland. The son was born in Illinois, and except for seven and a half months of his infancy, he lived continuously in Illinois with only periodic, brief visits to Ireland. In addition, he had frequent contact with his extended family in Illinois, received regular care from an Illinois pediatrician and an Illinois dentist, went to daycare, preschool, and church in Illinois, had neighborhood friends, and played on a children's baseball team in the area.[12]

Some circuits look to the child's acclimatization more than the parents' intent. An Ohio court ruled that Canada became a young child's habitual residence shortly after she arrived there from the United States with her parents. Therefore, when her mother removed the child from Canada four months later, it was wrongful. In granting the father's petition for the child's return, the court determined that living arrangements in Canada evinced a settled purpose from the three-year-old child's view and that she was acclima-

7. Lyon v. Moreland-Lyon, No. 12-2176-JTM, 2012 WL 1970363 at *4 (D. Kan. June 1, 2012).
8. Patrick v. Rivera-Lopez, 708 F.3d 15, 17 (1st Cir. 2013).
9. Ross v. Worley, No. 1:13-cv-60-WSD, 39 FLR 1185 (N.D. Ga. Feb. 19, 2013).
10. Hofmann v. Sender, 716 F.3d 282, 294 (2d Cir. 2013).
11. Guzzo v. Cristofano, 719. F.3d 100, 110 (2d Cir. 2013).
12. Redmond v. Redmond, 724 F.3d 729, 743 (7th Cir. 2013).

tized to her life there.[13] Another Sixth Circuit opinion held that the child's eighteen-month stay in Michigan turned that state into the child's habitual residence regardless of the fact that the father continuously maintained that the child's presence in Michigan was temporary.[14]

3. *Rights of Custody*

Rights of custody can exist in agencies as well as individuals. When a court order prohibited a mother from removing her child from Great Britain without the consent of the social service agency, the writ of *ne exeat* in the order gave the agency a right of custody.[15] In another case, a mother's removal of a child from Switzerland to the United States did not breach the father's custody rights. The father's rights were subject to the mother's sole right to remove the child under a governing court order. Although the father retained parental authority rights, parental authority rights alone did not provide any basis for a wrongful removal action under the convention.[16] In a First Circuit case, the court applied the law of Puerto Rico to determine whether a father had a right of custody when the child was born out of wedlock. The parents married after the birth of the child, therefore the father obtained a right of custody.[17]

A removal or retention is only wrongful if the left-behind parent who had a right of custody was actually exercising that right at the time of removal or would have exercised that right but for the removal. An Australian father did not clearly and unequivocally abandon his children at the time of their alleged wrongful retention in the United States, and therefore could establish a prima facie case under ICARA to compel the American mother to return the children to Australia, where the family had lived for twelve years. The father had not been to the United States for several months prior to the alleged wrongful retention and ceased supporting the mother financially after the retention began. But the father kept regular contact with the children by speaking to them weekly and sought to secure custody and visitation when first learning the mother intended to file for divorce.[18]

4. *Defenses*

There are a number of defenses that a respondent may assert in arguing that a child should not be returned to his or her habitual residence.

a. Child Is Settled in a New Environment

Article 12 of the Child Abduction Convention provides that the authorities need not return a child if more than one year has elapsed between the child's abduction or retention, and the child is now settled in the child's new environment. The one-year period runs from the date the retention or removal became wrongful.

13. Bedder v. Bedder, No. 1: 13-cv-02, 2013 WL 504022, at *6 (S.D. Ohio Feb. 8, 2013).
14. Selo v. Selo, 929 F. Supp. 2d 718, 729–31 (E.D. Mich. 2013).
15. E. Sussex Child. Servs. v. Morris, 919 F. Supp. 2d 721, 732 (N.D. W.Va. 2013).
16. White v. White, 718 F.3d 300, 308 (4th Cir. 2013).
17. Patrick v. Rivera-Lopez, 708 F.3d 15, 21 (1st Cir. 2013).
18. Walker v. Walker, 701 F.3d 1110, 1121 (7th Cir. 2012).

Granting certiorari from a Second Circuit decision, the U.S. Supreme Court has agreed to address whether a court may equitably toll the running of the one-year period associated with the "now settled" defense when the abducting parent has concealed the whereabouts of the child from the left-behind parent. This issue has split the circuits.[19] The First Circuit, in *Yaman v. Yaman*, agreed with the Second Circuit that the one-year time period in Article 12 could not be tolled.[20] In *Yaman*, the First Circuit affirmed the decision of the district court not to order return but held that the district court erred in determining that a court lacks authority to return a child when the one-year time period has passed. The First Circuit further determined that the district court had correctly evaluated the question of return using principles of equity consistent with the purpose of the conventions in holding that the child need not be returned to Turkey.[21]

In one case, a federal district court held that children (ages eight and six) who had been wrongfully removed from Turkey and retained in New York by their mother were not so well-settled in New York that returning them to Turkey for visitation with their father would be disruptive and have harmful effects. The children had spent the majority of their lives in Turkey, regularly traveled between Turkey and New York, were accustomed to spending several months in both countries, and had friends, family, and schools in both countries.[22]

In another case, children were settled in their father's residence in the United States, and thus, the children would not be returned to Mexico where their mother resided, despite the father's uncertain immigration status. The children had resided with their father for more than two years in the same residence, had strong bonds with their teachers, made significant progress in their education, and attended church every Sunday.[23]

In the Eleventh Circuit, the one-year period in article 12 is subject to tolling. Accordingly, the court has held that a mother who hid the child from the father upon her arrival in Florida in 2011 cannot take advantage of the defense.[24]

b. Grave Risk of Harm

The Second Circuit, in *Souratgar v. Fair*, concluded that prior instances of spousal abuse by a father against the mother did not rise to level necessary to establish an article 13(b) defense in a case where the mother took the child from Singapore. The child expressed unqualified love for both parents. The father had complied with prior custody orders issued by Singaporean courts, and there was no showing that the child was ever physically disciplined by the father, that he witnessed any spousal abuse, or that he would likely lose his mother upon repatriation.[25]

A Texas court has found that it would constitute a grave risk of harm to return the child to her mother in Germany because the mother repeatedly neglected the child by leaving

19. Lozano v. Alvarez, 697 F.3d 41, 41 (2d Cir. 2012).

20. Yaman v. Yaman, 730 F.3d 1, 16 (1st Cir. 2013).

21. *Id.*; *see also* Matas-Vidal v. Libbey-Aguilera, No. 2: 13CV422 DAK, 2013 WL 3995300, at *15 (D. Utah Aug. 5, 2013) (rejecting tolling).

22. *In re* S.E.O., 873 F. Supp. 2d 536, 544–45 (S.D.N.Y. 2012).

23. Aranda v. Serna, 911 F. Supp. 2d 601, 614 (M.D. Tenn. 2013).

24. Fernandez-Trejo v. Alvarez-Hernandez, No. 8: 12-cv-02634-EAK-TBM, 1, at *3 (M.D. Fla. Dec. 10, 2012).

25. Souratgar v. Fair, 720 F.3d 96, 105–06 (2d Cir. 2013).

her (and her now deceased sister) unattended on various occasions, which caused the child to suffer panic attacks.[26] The court also found that placing an eight-year-old child in a situation where she was a caregiver to a baby constituted physical and psychological abuse. Another court found that it would be a grave risk to a child, who was severely autistic, to return that child to Italy where the Italian programs to help autistic children were significantly worse than such programs the child was using in the United States. In addition, the court found that the autistic child's brother would be placed in an intolerable situation if he were separated from his brother. Interestingly, the court provided that the father could renew his petition if the autistic child could no longer participate in special education in the United States or if the Italian court issued a final order for the return of the child.[27]

In a case rejecting the mother's claim that the child would be placed in an intolerable situation if returned to Mexico because of drug trafficking activity in the proximate location of the family's home, the court said that other than oblique references to the quality of life, the mother failed to show that the child would be personally threatened or in immediate danger if returned.[28]

In *Acosta v. Acosta*, the Eighth Circuit sustained an article 13(b) defense, affirming the district court's finding that a father's inability to control his temper outbursts presented a significant danger that he would act irrationally toward himself and his children, exposing the children to a grave risk of harm were they returned to Peru.[29] Although there was little evidence that the father physically abused the children, there was evidence that the father assaulted a taxi driver in the children's presence, verbally abused the mother in their presence, and shoved one of the children.

c. Other Attempted Defenses

A New York court rejected an argument that Singaporean law violated fundamental freedoms because it was not clear that the Sharia courts in Singapore would be the forum to determine custody.[30]

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

a. Attorneys' Fees

The prevailing petitioner in a return action is entitled to attorneys' fees, unless the recovery is clearly inappropriate.[31] The fact that the prevailing petitioner's attorneys were employed by a legal aid entity did not preclude an award of attorneys' fees to the petitioner. Given that the text of ICARA's fee-shifting provision did not, in any way, limit the scope of entities that could recover under it, this suggests that Congress did not intend to cut off recovery by legal aid entities.[32] In another case, the Second Circuit found that the mother had maintained an objectively reasonable legal position throughout the case and

26. Londres v. Mateo, No. SA-13-CA-201-XR, 2013 WL 1741979, at *8–9 (W.D. Tex. Apr. 23, 2013).
27. Ermini v. Vittori, No. 12 Civ. 6100 (LTS), 2013 WL 1703590, at *16–17 (S.D.N.Y. Apr. 19, 2013).
28. Fernandez-Trejo v. Alvarez-Hernandez, No. 8: 12-cv-02634-EAK-TBM, 2012 WL 6106418, at *4 (M.D. Fla. Dec. 10, 2012); *see also* Rovirosa v. Paetau, 2012 WL 6087481, at *7 (S.D. Tex. 2012).
29. Acosta v. Acosta, 725 F.3d 868, 876 (8th Cir. 2013).
30. Souratgar v. Fair, 720 F.3d 96, 108 (2d Cir. 2013).
31. 42 U.S.C. § 11607(b) (3) (2012).
32. Saldivar v. Rodela, 519 F. App'x. 245, 246 (5th Cir. 2013); *see also* Geiger v. Herbeck, Civ. No. 12-1588 (MJD/TNL), 2012 WL 5994935, at *23 (D. Minn. July 31, 2012).

subsequently vacated the district court's award of necessary costs to the father. In so deciding, the Second Circuit noted its concerns that, by bringing a Hague action rather than filing a proceeding in a Turkish court, the father may have been forum shopping. After reviewing various Turkish court orders issued prior to the father's Hague action, the Second Circuit determined that the mother had a reasonable basis for believing that she could remove the children from Turkey without his consent. Although such a mistake of law was not a defense to the return action itself, it is a relevant equitable factor when considering whether a costs award is appropriate.[33] Therefore, the Second Circuit vacated the award of any necessary costs.

In a fairly comprehensive Louisiana district court opinion in a case where a mother was granted the return to Honduras of her wrongly retained child, the court ordered an award of fees and costs for items that were clearly verified by receipts and detailed line item legal bills. The court noted that attorneys' fees were to be calculated at prevailing market rates for similar services by attorneys of comparable skills and reputation. The court did not allow fees incurred by Louisiana counsel's associate because the associate had not provided an affidavit in support of her qualifications, education, and experience. The court also allowed costs incurred in the transportation of a third party who returned the child, as well as for the mother's Honduran counsel to travel to Louisiana to participate as a witness since he had helped facilitate the return of the child.[34]

b. Access

The Second Circuit held that ICARA gives rise to a federal right of action to secure "effective exercise of rights of access under the [c]onvention," and that "the facilitative role that [c]entral [a]uthorities assume under the [c]onvention displace or inhibit the ability of a party to vindicate his or her rights directly in federal or state court."[35] The Fourth Circuit has held to the contrary.[36]

c. Procedural Issues

Mootness: the U.S. Supreme Court vacated and remanded an unreported Eleventh Circuit Court opinion, holding that the return of a child to the country deemed to be her habitual residence by the trial court, pursuant to a return order issued under the Child Abduction Convention did not render an appeal of that order moot.[37]
Bonds: the First Circuit held that it is improper to require the petitioner in a Hague return proceeding to post a bond.[38]
Temporary Restraining Order: in a Nevada district court, a father was able to obtain a temporary restraining order to ensure his two children remained in Nevada pending the Hague return proceeding because he would likely succeed on the merits and the mother was a flight risk.[39]

33. Ozaltin v. Ozaltin, 708 F.3d 355, 375 (2d Cir. 2013).
34. Haylock v. Ebanks, No. 13-432, 2013 WL5410463, at *9–10 (E.D. La. Sept. 25, 2013).
35. Ozaltin v. Ozaltin, 708 F.3d 355, 374 (2d Cir. 2013).
36. Cantor v. Cohen, 442 F.3d 196, 206 (4th Cir. 2006).
37. Chafin v. Chafin, 133 S. Ct. 1017, 1028 (2013).
38. Patrick v. Rivera-Lopez, 708 F.3d 15, 23 (1st Cir. 2013).
39. Culculoglu v. Culculoglu, No. 2: 13-cv-00446-GMN-CWH, 2013 WL 1413231, at *11 (D. Nev. Aug. 8, 2013).

Intervention: in New York, a fifteen-year-old girl intervened through her next friend asking that the court deny her father's petition to have her returned to Hungary. Noting that the father opposed the intervention and the mother had not taken a position on it, the court allowed the intervention, finding that the girl satisfied the standards of both intervention as a matter of right and permissive intervention, and thereby appointed an attorney for the child.[40]

Abstention: a district court found that abstention was inappropriate under both the *Younger* and *Colorado River* doctrines. Applying *Younger*, the court held abstention inappropriate because the instant claim filed pursuant to the Child Abduction Convention would not interfere with the custody proceeding in state court. Applying *Colorado River*, the court held abstention inappropriate because the two suits were not parallel, and there were no exceptional circumstances that would warrant abstention in the case.[41]

B. The Hague Service Convention

A court found that a wife did not comply with the Hague Service Convention's provisions and, therefore, her attempted service on her husband was invalid. The court suggested that either she serve the husband (1) by substituted service personal delivery to husband, a Japanese citizen, at his place of work in Japan, followed by ordinary mail addressed to him at the same address or (2) by ordinary mail to the husband at an address in Japan that was suspected, but not known, to be his residence, in the absence of any receipt or written record showing that husband actually received the service documents.[42]

C. Other Cases Involving International Family Law Litigation

1. *Marriage*

A man who participated in his Central African Republic marriage by telephone and had a proxy stand in for him is validly married in Maryland if the marriage was valid in the Central African Republic.[43] This case has been appealed and was argued in October 2013 before Maryland's highest court.

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

An Abu Dhabi civil decree granting parties, who had been married in New York, a divorce was entitled to recognition, registration, and entry in New York, based on the principles of comity. The foreign court had jurisdiction over the parties who were residing there at the time of the decree. There was no indication that the decree had been fraudulently obtained. The divorce decree entered in Abu Dhabi did not violate New York public policy. In addition, the court recognized as valid the terms of the parties' *Mahr* agreement, entered into two months following the marriage, which provided that the husband would pay to the wife, upon divorce, the amount of $250,000.[44]

40. Jakubik v. Schmirer, No. 13 Civ. 4087 (PAE), 2013 WL 3465857, at *1 (S.D.N.Y. July 9, 2013).
41. Biel v. Bekmukhamedova, 2:2013cv05399, 2013 WL 4574161, at *1 (E.D. La. 2013).
42. Kita v. Superior Court of Los Angeles, No. B239971, 2013 WL 164707, at *7 (Cal. Ct. App. 2013).
43. Tshiani v. Tshiani, 56 A.3d 311, 322 (Md. Ct. App. 2012).
44. S.B. v. W.A., 959 N.Y.S.2d 802, 819 (N.Y. Sup. Ct. 2012).

A Connecticut trial court properly granted a man's motion to dismiss his wife's divorce action after concluding that their Lithuanian divorce decree was entitled to comity and that the Connecticut court therefore lacked subject-matter jurisdiction over the wife's suit. The court noted that the wife had accepted the benefits of the Lithuanian decree and only filed in Connecticut to avoid payments under it.[45] But Connecticut also ruled that it would not recognize a Kenyan divorce when the husband had become a U.S. citizen and was domiciled in Connecticut.[46] Also, a divorce action filed in Illinois by an Illinois resident after her Illinois husband filed for divorce in India need not be dismissed on procedural, *forum non conveniens*, or comity grounds, nor in order to avoid duplicative litigation, particularly when the entire Indian proceeding was by proxy.[47]

Florida interprets its durational residency to obtain a divorce to require domicile in addition to six months in the state. Therefore, a German woman in Florida on a tourist visa that required her to leave did not qualify as a resident of the state for divorce purposes.[48]

3. *Children's Issues*

a. Adoption

The entry of an adoption decree qualifies as the placement of a child under the custody of an individual appointed by a state court for purposes of determining a Guatemalan child's eligibility for special immigrant juvenile status under federal law.[49]

4. *Jurisdiction and Enforcement*

California found it had jurisdiction when the husband represented that the family's trip to Iran was for a vacation, making the child's absence from California temporary, even though the husband remained in Iran with the child, and only the mother returned to California.[50] Also in California, when a child did not live in that state with her mother for at least six consecutive months immediately before the commencement of a dependency proceeding, California did not have jurisdiction. The mother was arrested in California and deported to Mexico, to be tried for murdering the child's father, twenty-eight days before the dependency proceeding was commenced. The passage of twenty-eight days between the date the child ceased living with the mother and the date the County Department of Children and Family Services filed its dependency petition was not immediate under any sensible interpretation of the word. The mother's deportation and incarceration in Mexico for murdering the child's father did not qualify as a temporary absence, and thus, did not interrupt the consecutive six-month period.[51] But a child who was born in Costa Rica to Kansas residents, who returned to Kansas with him when he was six weeks

45. Zitkene v. Zitkus, 60 A.3d 322, 331 (Conn. App. Ct. 2013).
46. Juma v. Aoma, 68 A.3d 148, 153 (Conn. App. Ct. 2013).
47. *In re* Marriage of Murugesh and Kasilingam, 993 N.E.2d 1109, 1121 (Ill. App. Ct. 2013).
48. Rudel v. Rudel, 111 So. 3d 285, 290 (Fla. Dist. Ct. App. 2013).
49. *In re* C.G.H., 75 A.3d 166, 173 (D.C. 2013).
50. Marriage of Abolghasemi, No. A134427, 2013 WL 179169, at *5 (Cal. Ct. App. Jan. 17, 2013).
51. *In re* Gloria A., 152 Cal. Rptr. 3d 550 (Cal. Ct. App. 2013).

old, was temporarily absent from that state for purposes of determining its home state jurisdiction over the parents' subsequent custody dispute.[52]

As a matter of first impression, the Arizona Court of Appeals held that two children, who had lived in the state for less than six months and were alleged to have been abused and neglected by their parents, had a significant connection with the state for purposes of its jurisdiction under the UCCJEA. Although the state was not the children's UCCJEA home state, and despite the fact that the alleged abuse and neglect had occurred primarily in Japan during the father's prior military assignment, the children and their parents lived in the state by virtue of the father's most recent military assignment and would presumably remain there until such time as the father's military reassignment or the end of his military obligation. Moreover, the children's paternal grandfather, who assisted with their caretaking, lived in the state, the state had received a report about the children from an abuse and neglect investigation that took place in Japan, and the state conducted its own investigation of the abuse and neglect allegations, which investigation included a forensic evaluation of the children and a new investigation of more recent abuse and neglect that allegedly took place in-state.[53]

Even though a mother and child were in Florida for six months, a trial court was correct in dismissing her custody petition on forum *non conveniens* where it found that most of the issues in the mother's divorce case would have to be tried in Germany.[54]

Georgia determined that the child's fear of violence if returned to Nigeria did not create emergency jurisdiction in Georgia and, therefore, it enforced a New Jersey custody determination that required the mother to return the child to the father in Nigeria.[55]

Illinois enjoined an Indian father from participating in a divorce action he instituted in India, where both he and wife resided in Illinois, the wife faced criminal prosecution in India, custody issues must be decided in Illinois, and the husband filed an action in India solely to take advantage of India's laws.[56]

A federal district court refused to enjoin a custody proceeding in Prague, Czech Republic, and assume jurisdiction over the proceedings, as requested by the U.S. father, because federal courts have no subject matter jurisdiction to decide substantive custody matters.[57]

New York determined that an Israeli father could agree that New York would have exclusive continuing jurisdiction over the issue of visitation with the child's maternal grandparents even though the father and child had moved to Israel, and the child's mother was deceased.[58]

---

52. *In re* Marriage of McDermott, 307 P.3d 717, 727–28 (Wash. Ct. App. 2013).

53. Arizona Dep't of Econ. Sec. v. Grant *ex rel.* Cnty. of Maricopa, 307 P.3d 1003, 1005 (Ariz. Ct. App. 2013).

54. Rudel v. Rudel, 111 So. 3d 285, 290 (Fla. Dist. Ct. App. 2013) *review denied*, 129 So. 3d 1069 (Fla. 2013).

55. Jackson v. Sanomi, 742 S.E.2d 717, 718 (Ga. 2013).

56. *In re* Marriage of Murugesh and Kasilingam, 993 N.E.2d 1109, 1121 (Ill. App. Ct. 2013).

57. Cronin v. Circuit Court for Prague 5, Czech Republic, No. 3: 13-mc-117 (SRU), 2013 WL 4609663, at *1 (D. Conn. Aug. 29, 2013).

58. People *ex rel.* Libiav. Berkovitch, 971 N.Y.S. 2d 161, 163 (App. Div. 2013).

5. *Relocation*

In Virginia, the trial court did not abuse its discretion in prohibiting the mother from taking her child to Japan but did not prohibit her from taking the child to any other country.[59] The evidence established that the mother had every intention to remain in the United States for the long term. The mother resided in the United States since 1991, her career was in the United States, and she became a U.S. citizen.

An Indiana trial court did not abuse its discretion in granting a mother's request to relocate to China with her child because the remarried mother's husband was offered a job in China by his employer that would last for three years, during which time the family would live in a special compound, and the nine-year-old child would attend an international school. The family would be able to return to the United States twice a year for three or four weeks where the father could have visitation.[60]

In another Indiana case, an appellate court held that the trial court's restriction on international travel to two weeks after the child's eighth birthday, and not to a country that had not ratified the Child Abduction Convention, was within the court's discretion.[61]

6. *Substantive Custody Determinations*

A divorce court erred in awarding a father parenting time subject to supervision, without sufficient evidence in the record. It had based on findings of uncertainty regarding his Mali citizenship status and alleged risk of flight.[62]

a. Parentage

Tennessee upheld a traditional surrogacy contract between a Tennessee woman and an Italian couple.[63]

b. Juvenile Cases

Georgia had jurisdiction to terminate the rights of adoptive parents of a child who came from Zambia to Georgia for extensive medical procedures and had lived in Georgia for more than six months with persons acting as parents.[64] But California had only emergency jurisdiction over a child whose Mexican mother was arrested in California and whose parental rights were sought to be terminated by the juvenile authorities because Mexico was the child's home State.[65]

California approved of the placement of a child, who was dependent because of alcohol abuse by the mother, with the father residing in Palestine. But the case was remanded to determine exactly how the mother would exercise her visitation.[66]

59. Wiencko v. Takayama, 745 S.E.2d 168, 177 (Va. Ct. App. 2013).
60. Kietzman v. Kietzman, 992 N.E.2d 946, 947 (Ind. Ct. App. 2013).
61. *See* Gulati v. Gujral, No. 29A02-1301-DR-144, 2013 WL 3832278, at *1 (Ind. Ct. App. July 23, 2013).
62. Keita v. Keita, 823 N.W.2d 726, 732 (N.D. 2012).
63. *In re* Baby, No. M2012-01040-COA-R3-JV, 2013 WL 245039, at *1 (Tenn. Ct. App. Nov. 16, 2012).
64. *In re* E.E.B.W., 733 S.E.2d 369, 372 (Ga. Ct. App. 2012).
65. *In re* J.R., D063639, 2013 WL 4647793, at *6 (Cal. Ct. App. Aug. 30, 2013).
66. *In re* E.A., A136944, 2013 WL 1715808, at *15 (Cal. Ct. App. Apr. 22, 2013).

New Hampshire state social service officials are entitled to qualified immunity in a father's civil rights action for the violation of his constitutional rights arising from their failure to make reasonable efforts to accommodate his religious preference of a Hindu home and instead placed the children in a Christian home.[67]

c. Torts Exit Controls

A Massachusetts father with sole legal custody and shared physical custody was unable to sue the airline that flew his ex-wife to Egypt when she abducted their two children. The father's claim against Egyptair was pre-empted by the Airline Deregulation Act and, further, the father's claims that Egyptair should have taken additional precautions prior to letting the mother and children board the plane imposed duties beyond what is expected of other businesses.[68]

D. Other Cases

1. *Alimony and Child Support*

New Jersey may exercise personal jurisdiction over the husband who has since returned to Singapore when he previously lived in the state with his wife and their children.[69] An Illinois trial court did not abuse its discretion by ordering a divorced father to make his child support payments into a trust account to be established for his children's benefit after their mother took them to Uruguay in violation of its custody order.[70]

2. *Affidavit of Support-Immigration*

A Florida federal district court concluded that there is no federal jurisdiction to enforce an affidavit of support.[71] A Utah resident's action against his former mother-in-law to enforce the federal affidavit of support she executed in connection with his immigration to the United States must be dismissed for lack of personal jurisdiction when the mother-in-law lived in Montana and had no real connections with Utah.[72]

3. *Property*

In Alabama, the trial court erred in awarding the wife a share of apartments built by the husband in Iran because the evidence showed that the husband had transferred title of the apartments and because the new owners were Iranian citizens, and the possibility of making those new owners parties to the divorce action was remote at best.[73] The case was remanded to resolve a new property division.

In Michigan, the court determined that the property provisions of a German decree should be recognized in Michigan as a matter of comity because it was undisputed that

67. BK v. Toumpas, 909 F. Supp. 2d 60, 64 (D. N.H. 2012).
68. Bower v. Egyptair, 731 F.3d 85, 92, 96 (1st Cir. 2013).
69. Tatham v. Tatham, 60 A.3d 522, 526 (Super. Ct. App. Div. 2013).
70. *In re* Popa and Garcia, 995 N.E.2d 521, 526 (Ill. App. Ct. 2013).
71. Junior v. Junior, No. 6: 13-cv-1116-Orl-36DAB, 39 Fam. L. Rep (BNA) 1471 (M.D. Fla. Aug. 14, 2013).
72. DeLima v. Burres, No. 2: 12-cv-00469-DBP, 2013 WL 690536, at *5 (D. Utah Feb. 26, 2013).
73. Heyat v. Rahnemaei, No. 2120256, 2013 WL 2130928, at *7–8 (Ala. Civ. App. May 17, 2013).

both parties were represented by counsel in Germany, the process was fair, the terms of the divorce settlement were negotiated between the parties, and the negotiations culminated in an agreement and, thereafter, a judgment.[74]

4. *Domestic Violence*

Even though a Florida court correctly dismissed a German visitor's divorce and custody proceeding, it was error to dismiss her petition for a protective order.[75]

5. *Procedure*

In New York, the court authorized the husband to use alternative means of serving his wife in Iran due to the fact that Iran was not a member of the Hague Service Convention, ultimately authorizing the use of service by email.[76]

6. *Marital Torts*

The Massachusetts federal district court held that a father may not proceed with his suit against his child's mother in Canada for allegedly violating their separation agreement and posting defamatory statements on Facebook. The parties entered into a privately negotiated separation agreement in Canada with the father thereafter moved to Massachusetts. He later filed suit against the mother, claiming that she had breached the agreement by relocating their daughter years earlier and failing to apprise him of his daughter's whereabouts. He further alleged that the mother used Facebook to post defamatory statements about him, causing damage to his reputation and emotional distress. The court found that the mother's sporadic and tenuous contacts with Massachusetts did not constitute continuous and systematic activity sufficient to give rise to general jurisdiction.[77]

74. Zehender v. Zehender, No. 146602, 2012 WL 6604686, at *2 (Mich. May 28, 2013).
75. Rudel v. Rudel, 111 So. 3d 285, 290 (Fla. Dist. Ct. App. 2013).
76. Safadjou v. Azine Mohammadi, 964 N.Y.S.2d 801, 803–04 (App. Div. 2013).
77. Farquharson v. Metz, No. 13-10200-GAO, 2013 WL 3968018, at *1 (D. Mass. July 30, 2013).

THE YEAR IN REVIEW

AN ANNUAL PUBLICATION OF THE ABA/SECTION OF INTERNATIONAL LAW

PUBLISHED IN COOPERATION WITH
SMU DEDMAN SCHOOL OF LAW