

UNITED STATES CODE SERVICE
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*** THIS SECTION IS CURRENT THROUGH 106-228, APPROVED 6/29/00 ***
*** WITH A GAP OF 106-224 ***

TITLE 42. THE PUBLIC HEALTH AND WELFARE

CHAPTER 121. INTERNATIONAL CHILD ABDUCTION REMEDIES

42 USCS § 11601 (2000)

§ 11601. Findings and declarations

(a) Findings. The Congress makes the following findings:

(1) The international abduction or wrongful retention of children is harmful to their well-being.

(2) Persons should not be permitted to obtain custody of children by virtue of their wrongful removal or retention.

(3) International abductions and retentions of children are increasing, and only concerted cooperation pursuant to an international agreement can effectively combat this problem.

(4) The Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980, establishes legal rights and procedures for the prompt return of children who have been wrongfully removed or retained, as well as for securing the exercise of visitation rights. Children who are wrongfully removed or retained within the meaning of the Convention are to be promptly returned unless one of the narrow exceptions set forth in the Convention applies. The Convention provides a sound treaty framework to help resolve the problem of international abduction and retention of children and will deter such wrongful removals and retentions.

(b) Declarations. The Congress makes the following declarations:

(1) It is the purpose of this Act to establish procedures for the implementation of the Convention in the United States.

(2) The provisions of this Act are in addition to and not in lieu of the provisions of the Convention.

(3) In enacting this Act the Congress recognizes--

(A) the international character of the Convention; and

(B) the need for uniform international interpretation of the Convention.

(4) The Convention and this Act empower courts in the United States to determine only rights under the Convention and not the merits of any underlying child custody claims.

HISTORY: (April 29, 1988, P.L. 100-300, § 2, 102 Stat. 437.)

HISTORY; ANCILLARY LAWS AND DIRECTIVES

References in text:

"This Act", referred to in this section, is Act April 29, 1988, P.L. 100-300, 102 Stat. 437, which generally appears as 42 USCS § § 11601 et seq. For full classification of such Act, consult USCS Tables volumes.

Short titles:

Act April 29, 1988, P.L. 100-300, § 1, 102 Stat. 437, provides: "This Act may be cited as the 'International Child Abduction Remedies Act'."

Other provisions:

Report on compliance with the Hague Convention on international child abduction. Act Oct. 21, 1998, P.L. 105-277, Div G, Subdivision B, Title XXVIII, § 2803, 112 Stat. 2681--846; Nov. 29, 1999, P.L. 106-113, Div B, § 1000(a)(7), 113 Stat. 1536 (enacting into law § 202 of Subtitle A of Title II of Division A of H.R. 3427 (113 Stat. 1501A-420), as introduced on Nov. 17, 1999), provides:

"(a) In general. Beginning 6 months after the date of the enactment of this Act and every 12 months thereafter during the period ending September 30, 2001, the Secretary of State shall submit a report to the appropriate congressional committees on the compliance with the provisions of the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980, by the signatory countries of the Convention. Each such report shall include the following information:

"(1) The number of applications for the return of children submitted by applicants in the United States to the Central Authority for the United States that remain unresolved more than 18 months after the date of filing.

"(2) A list of the countries to which children in unresolved applications described in paragraph (1) are alleged to have been abducted, are being wrongfully retained in violation of United States court orders, or which have failed to comply with any of their obligations under such convention with respect to applications for the return of children, access to children, or both, submitted by applicants in the United States.

"(3) A list of the countries that have demonstrated a pattern of noncompliance with the obligations of the Convention with respect to applications for the return of children, access to children, or both, submitted by applicants in the United States to the Central Authority for the United States.

"(4) Detailed information on each unresolved case described in paragraph (1) and on actions taken by the Department of State to resolve each such case, including the specific actions taken by the United States chief of mission in the country to which the child is alleged to have been abducted.

"(5) Information on efforts by the Department of State to encourage other countries to become signatories of the Convention.

"(6) A list of the countries that are parties to the Convention in which, during the reporting period, parents who have been left-behind in the United States have not been able to secure prompt enforcement of a final return or access order under a Hague proceeding, of a United States custody, access, or visitation order, or of an access or visitation order by authorities in the country concerned, due to the absence of a prompt and effective method for enforcement of civil court orders, the absence of a doctrine of comity, or other factors.

"(7) A description of the efforts of the Secretary of State to encourage the parties to the Convention to facilitate the work of nongovernmental organizations within their countries that assist parents seeking the return of children under the Convention.

"(b) Definition. In this section, the term 'Central Authority for the United States' has the meaning given the term in Article 6 of the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980.".

NOTES:

RESEARCH GUIDE

Federal Procedure:

13 Fed Proc L Ed, Foreign Relations § 36:146.

Am Jur:

1 Am Jur 2d, Abduction and Kidnapping § 35.

65 Am Jur Trials, Relocation of Children by the Custodial Parent, p. 127.

Annotations:

Construction and application of International Child Abduction Remedies Act (42 USCS § § 11601 et seq.). 125 ALR Fed 217.

INTERPRETIVE NOTES AND DECISIONS

District Court properly concluded that it need not vacate its prior award of costs to father, although underlying judgment had been vacated as moot due to child's death; father was prevailing party between time court dismissed mother's petition for return of child and time Court of Appeals vacated judgment as moot. *Slagenweit v Slagenweit* (1995, CA8 Iowa) 63 F3d 719.

Father is not ordered to return his minor daughter to her mother under 42 USCS § 11601(b)(4), where father--who has legal custody--took daughter from location in foreign country where mother was hiding her after requesting that her daughter visit, because daughter was not "habitual resident" of location, and thus protections of Hague Convention are not triggered. *Meredith v Meredith* (1991, DC Ariz) 759 F Supp 1432.

German mother's petition for return of young daughter must be denied, where (1) couple met and married in Germany, had 3 children there, then father returned to Iowa and (2) after about one year, couple agreed that daughter could stay with father in Iowa indefinitely but would return to Germany eventually, but (3) father then established relationship with girlfriend, filed for divorce, and made clear his intention to keep daughter on permanent basis, because daughter could no longer be considered habitual resident of Germany at time of demand for her return, so she could not be considered wrongfully removed or retained within meaning of 42 USCS § 11601(a)(4). *Slagenweit v Slagenweit* (1993, ND Iowa) 841 F Supp 264, app dismd without op (1994, CA8 Iowa) 43 F3d 1476.

Mother's action to obtain injunction ordering Secretary of State to perform his duties under international treaty known as Hague Convention on Civil Aspects of International Child Abduction, is dismissed, where children's father took children, of whom mother had custody, from United States to Egypt and then to Libya, and where United States is signatory to Hague Convention but Egypt and Libya are not, because remedy is available under 42 USCS § § 11601-11610 and Hague Convention only when child is wrongfully removed from signatory country and retained in another signatory country. *Mezo v Elmergawi* (1994, ED NY) 855 F Supp 59.

French doctor has claim under International Child Abduction Remedies Act (42 USCS § § 11601 et seq.) dismissed, even though children had lived in France since birth before being removed to Puerto Rico by mother in 1994, where doctor's petition was predicated on divorce and custody proceedings pending before French court, because his voluntary dismissal of those proceedings amounted to waiver of his right to pursue this claim. *Journe v Journe* (1995, DC Puerto Rico) 911 F Supp 43.

Minor child must return to Israel with her natural father pursuant to petition under International Child Abduction Remedies Act (42 USCS § § 11601 et seq.), where family lived together in Israel since child's birth until mother took her to Michigan for routine summer vacation then decided not to go back, even though Israel is experiencing some unrest in relative proximity to father's home, because Israel is not "zone of war," mother has lived and raised children there for number of years, and it appears fighting is limited to certain areas and does not directly involve city where child will reside. *Freier v Freier* (1996, ED Mich) 969 F Supp 436.

Argentinean father is denied return of child now living in U.S. with American mother, where child was born in New York City in June 1993 and split time between U.S. and Argentina until June 1996, mother and child have lived in Massachusetts since then, and father filed petition in September 1997, because, regardless of whether wrongful retention of child is deemed to have occurred in July 1996 or later, Massachusetts became child's habitual place of residence no later than February 1997 and he was truly settled in that new environment by September. *Zuker v Andrews* (1998, DC Mass) 2 F Supp 2d 134.

Under 42 USCS § 11601(a)(4), "grave risk" exception to requirement that child be returned to country from which it was abducted must be narrowly construed. *Blondin v Dubois* (1998, SD NY) 19 F Supp 2d 123.

Post-divorce father, now residing in England, has no recourse under International Child Abduction Remedies Act (42 USCS § § 11601 et seq.), but must proceed in state court, even though he has, allegedly, repeatedly been denied access to his children and seeks "partial custody," where he has only visitation rights during weekends, summers, and holidays, because type of relief requested by father would require modification of custody rights not authorized under Act. *Bromley v Bromley* (1998, ED Pa) 30 F Supp 2d 857.

Mother's petition for return of child to Switzerland is denied, where family moved from Colorado to Switzerland for father's 10-month sabbatical at Swiss university, and planned to return to Colorado, because child's "habitual residence" never shifted to Switzerland, and father's swift return to Colorado with child at conclusion of his teaching duties was not wrongful. *Carothers v Click* (1840, Iowa) 1 Morris 54.

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JUDICIAL COMMUNICATION MEMORANDUM

TO: JUDGE OF: *INSERT OFFICIAL TITLE OF JUDGE JURISDICTION A (ADDRESS AND PHONE/FAX/E-MAIL*

TO: JUDGE OF: *INSERT OFFICIAL TITLE OF JUDGE JURISDICTION B (ADDRESS AND PHONE/FAX/E-MAIL*

SUBJECT: SUMMARY IN SUPPORT OF SCHEDULED TELEPHONE CONFERENCE REGARDING THE EXERCISE OF SUBJECT MATTER JURISDICTION PURSUANT TO THE UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT

DATE: SUBMITTED:

DATE: SCHEDULED CONFERENCE (STATE TIME AND TIME ZONE)

COUNSEL FOR PLAINTIFF JURISDICTION A, ADDRESS, PHONE NUMBER AND FAX NUMBER

COUNSEL FOR PLAINTIFF JURISDICTION B; ADDRESS, PHONE NUMBER AND FAX NUMBER

COUNSEL FOR DEFENDANT JURISDICTION A, ADDRESS PHONE NUMBER AND FAX NUMBER

COUNSEL FOR DEFENDANT JURISDICTION B ADDRESS, PHONE NUMBER AND FAX NUMBER

WHO WILL BE PLACING THE CALL?

WHO IS RESPONSIBLE FOR COURT REPORTER/RECORDING CONVERSATION? WILL A TRANSCRIPT BE MADE OF THE PROCEEDINGS?

*** THE UCCJEA APPLIES TO INTERNATIONAL MATTERS. IF THE JUDGE OR JUDICIAL OFFICER IN THE FOREIGN JURISDICTION DOES NOT SPEAK ENGLISH, WILL A TRANSLATOR BE NEEDED/ PROVIDED? WILL THE COMMUNICATION TAKE PLACE ORALLY OR IN WRITING.**

PRELIMINARY STATEMENT

This matter comes before the Court pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act, for the resolution of a custody dispute pending simultaneously in two competing jurisdictions. Pursuant to the *mandatory* provisions of the Act, in the circumstance where there is more than one proceeding concerning custody or access of the same minor child, the Court is required to stay the pending proceedings and confer in determining which jurisdiction will proceed in making a child custody determination. Unlike the prior versions of the Act, the provisions of the new legislation require that the parties have an opportunity to be represented during the conference and a record be made of the communication. Further, any determination by the court and findings supporting the determination should be made a part of the record.

This memorandum is designed to assist the court's determination.

Case Name: Jurisdiction A _____;

Jurisdiction B _____

1. What date was the application in Jurisdiction A filed?

What date was the application in Jurisdiction B filed?

Attach a copy of the applications filed, including the jurisdictional statement required under the Act, which certifies the names and ages of the minor children and where they have lived for the last 5 years, and with whom.

2. What is the nature of the applications filed? Initial child custody determination, application for enforcement, application for modification.
3. Is there a written order or judgment entered by a judge or a written agency decision relevant to the exercise of jurisdiction? ***Attach copies of the order, decision or judgment.***
4. How was service of process accomplished in Jurisdiction A, How was service of process accomplished in Jurisdiction B? Has any part of the process in either action been accomplished ***ex parte?*** If so, what reason was given for the need for the application without notice?
5. Are there any other prior or pending proceedings before either court regarding the children who are the subject of this action? Ie. Divorce proceedings, Abuse and Neglect proceedings, Domestic Violence proceedings, Child Support application, action taken by the State in dependency proceedings, Hague Convention Proceedings in State or Federal Court for the return of a child alleged to have been wrongfully removed or retained from a country other than the United States.
6. If the answer to Question 5 is yes, has any aspect of this matter been presented to or considered by another judge? If so, what Judge in what vicinage?
7. What is the essence of the argument being made by the movant in Jurisdiction A for the retention of jurisdiction?
8. What is the essence of the argument being made by the movant in Jurisdiction B for the retention of jurisdiction?
9. Is there is an allegation that one of the Courts should decline to exercise jurisdiction due to the wrongful removal or retention of the child?
10. If there is an allegation that an emergency exists or existed at the time of the application? What is the nature of the emergency and its expected duration?
11. ***Attach a copy of the UCCJEA/ UCCJA as codified in both jurisdiction A and B. What section/sections of the Act does the movant in Jurisdiction A indicate is most important for the proposition that child custody determination should be made there? What section/sections of the Act does the movant in Jurisdiction B indicate is most important for the proposition that child custody determination should be made there?***
12. Have all necessary parties been notified of the applications and given opportunity to be heard?
13. Please provide a brief summary of the facts of the case.

Respectfully submitted