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CAYMAN ISLANDS

HAGUE CONVENTION ON INTERNATIONAL CHILD ABDUCTION

Introduction

The Cayman Islands are a series of small islands located in the Caribbean Sea south of Cuba. They are an overseas territory of the United Kingdom, with the British government retaining control over the foreign matters of the Islands.

I. Domestic Laws and Regulations Implementing the Hague Convention

The Hague Convention on the Civil Aspects of International Child Abduction¹ was extended to the Cayman Islands by the British government on May 8, 1998, and entered into force on August 1, 1998, through the application of the United Kingdom's Child Abduction and Custody Act 1985² to the national law of the Cayman Islands.³

II. Domestic Laws Regarding Child Abduction and Parental Visitation

A. Child Abduction

When a child has been abducted and taken to the Cayman Islands, the Child Abduction and Custody (Cayman Islands) Order 1997 applies. As the Order incorporates legislation from the United Kingdom into the national law of the Cayman Islands, the procedures under the Order are virtually identical to those in place in the United Kingdom. The Order allows the Grand Court to give interim directions after an application has been made under the Convention to prevent a change in the circumstances of the case that are relevant to the determination of the application, or to secure the welfare of the child concerned.⁴ If the Grand Court is satisfied that the removal of a child from, or their retention outside of, the Cayman Islands is wrongful within the meaning of the Convention, they may make a declaration stating this.

B. Parental Visitation

The Guardianship and Custody of Children Law⁵ governs custody of and access to children in the Cayman Islands. This law defines a child as a person under 21 years of age, unless they are, or have

¹ Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No. 11,670, 1343 U.N.T.S. 89 [hereinafter "the Convention"].

² Child Abduction and Custody Act 1985, c. 60 (Eng.).

³ The Child Abduction and Custody (Cayman Islands) Order 1997, SI 1997/2574.

⁴ *Id.* ¶ 5.

⁵ The Guardianship and Custody of Children Law, 1957, c.65 (rev. 1977 and 1996). The law referred to in this report is in accordance with the 1977 revision.

been, married.⁶ The criteria that the courts use when determining custody and access rights are the welfare of the child, the conduct of the parents, and the wishes of both parents.⁷

When considering custody and access rights to children, case law has determined that consideration of the child’s welfare is not limited to home surroundings and education. The courts can also consider the child’s opportunities for “love and security, personal growth, access to wider family connections, physical care, and any other relevant matters.”⁸

In a case in 2000, the Grand Court of the Cayman Islands considered an application for sole custody by a wife in the process of divorcing her American husband. The wife had returned to the Cayman Islands with her daughter after her marriage began to fail and commenced divorce proceedings in the United States. Her husband sought an order for joint custody, which was not granted as there was not a “reasonable prospect that the parents would cooperate with each other ... the problem of their residing in different countries was [born] in mind in this context.”⁹

In another case in 2001, the Grand Court held that it was wrong to require a parent that wished to move overseas to remain in the Cayman Islands to retain custody of a child if sole custody would otherwise be unopposed.¹⁰ In making this decision, the court took into account the support that the wife would receive from extended family in the overseas location, and that the standard of medical care and educational facilities available to the child was comparable, or higher than was available in the Cayman Islands.¹¹

III. Court System and Structure – Courts Handling the Hague Convention

A. Family Proceedings Generally

It appears that the Grand Court of the Cayman Islands has jurisdiction generally in family cases. The Cayman Islands also has a Summary Court that deals with civil claims below \$2,000 and the majority of criminal cases.¹²

B. Under the Convention

The court in the Cayman Islands that has authority to hear applications under the Convention is the Grand Court.¹³ The Grand Court is a court of general jurisdiction and as such does not specialize in family cases. The court has the authority to give interim directions to secure the welfare of the child

⁶ *Id.* § 2.

⁷ *Id.* § 7.

⁸ *Mercer v Hermans (C.A.)*, 2002 CILR N 29.

⁹ *Re: Carlson*, (Grand Court), 2000 CILR 138.

¹⁰ *H-P v P*, 2001 CILR 108.

¹¹ *Id.* at 110, ¶ 8(D).

¹² PIERS HILL, *CRIMINAL PROCEDURE IN THE CAYMAN ISLANDS* (1992).

¹³ *Supra* note 3, at 4.

concerned, or to prevent a change in circumstances that are relevant to the case. These directions can be given at any time after an application under the Convention has been made, but before a determination has been made.¹⁴ For the purposes of article 15 of the Convention, upon application, the Court can make a declaration that the removal of any child from, or their retention outside, the Cayman Islands is wrongful within the meaning of article 3 of the Convention.¹⁵

IV. Law Enforcement System

The Attorney-General of the Cayman Islands¹⁶ is the Central Authority.¹⁷ In 1999, the Central Authority of the Cayman Islands reported that they received one incoming return and one incoming access application, both originating from and concerning nationals of the United States.¹⁸ The return application was judicially granted after 24 days.

A contested application under the Convention was received in the Cayman Islands from Germany in 2001. This application concerned a Cuban woman, German man, and their child, who was also a German national. The marriage between the husband and wife deteriorated, resulting in the wife leaving for Cuba with their infant child in January 2001. The husband contacted his wife stating that he accepted that she would live in Cuba with their child and that divorce was inevitable.

While in Cuba the wife obtained a divorce, allegedly under false pretenses, with no notice of the proceedings provided to the husband and no mention made of the child. In August of 2001, the wife went to the Cayman Islands with the child to marry a national from the United Kingdom, and the husband filed his application under the Convention with the Cayman Islands a month later. The husband argued that the child was habitually resident in Germany, and as such, should be returned. The wife successfully argued that the husband had consented to their residency in Cuba, a non-contracting party to the Convention. As such, the child was considered habitually resident there, not in Germany; therefore, the case was not subject to article 3 of the Convention upon the child's removal to the Cayman Islands. The application was dismissed.

The court stated that under the above application, it was not for the Cayman court to decide the merits of custody or access to the child. However, upon the dismissal of the application, because the child was considered a ward of the court, it considered him being habitually resident in the Cayman Islands, and the court invoked its inherent jurisdiction to “give detailed directions as to the hearing for the custody and possible access to [the child].”¹⁹

¹⁴ *Id.* at 5.

¹⁵ *Id.* at 8.

¹⁶ The Attorney-General, Government Administration Building, Grand Cayman, Cayman Islands.

¹⁷ *Supra* note 3, at 3.

¹⁸ The Special Commission to Review the Hague Convention on the Civil Aspects of International Child Abduction, Statistical Analysis of Applications Made in 1999 Under the 1980 Convention (Revised Version of Nov. 2001) UK-Cayman Islands, *available at* ftp://ftp.hcch.net/doc/stats_cay.doc.

¹⁹ H-P v P. 2001 CILR 108 at 438, ¶ 28.

V. Legal Assistance Programs

The reservation made by the United Kingdom has been extended to the Cayman Islands that the costs mentioned in article 26 will not be born by the Governor or any other authority in the Cayman Islands. However, provisions are made for individuals to obtain a grant of legal aid or legal advice and assistance under the Poor Persons (Legal Aid) Law 1975.²⁰ This Act provides that a limited form of financial assistance may be provided to individuals seeking legal aid for criminal and civil cases. Lawyers are listed on a roster and then provided to successful applicants on a rotational basis.

VI. Conclusion

The Cayman Islands has successfully implemented the Convention into its national laws, and has addressed several cases dealing with this issue. The case mentioned above demonstrates the court's willingness to follow the spirit of the Convention. However, in this case, where it appears that a strict interpretation of the Convention may cause an injustice, the courts were willing to use their inherent jurisdiction to provide a custody and access hearing for the child in question under its national laws.

Prepared by Clare Feikert
Legal Specialist
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²⁰ The Poor Persons (Legal Aid) Law, Law 17 of 1975.