

TRAVELLING TO NON-HAGUE CONVENTION COUNTRIES WITH CHILDREN

Australia, along with 69 other countries, is a signatory to the Hague Convention on the Civil Aspects of International Child Abduction, which provides a mechanism for the return of children who have been wrongfully removed from their country of residence.

This leaves another 126 countries which are not signatories to the Convention. So what happens when a parent wishes to travel with a child to a country that is not a signatory and the other parent objects?

Recently, the Court has considered two cases involving countries that are not signatories to the Convention.

CHINA:

The first case involved an Application by the Father who wished to travel to China with the 11 year old child for a holiday of one month. There was a long history of litigation between the parties on parenting matters and the Mother had been found to have contravened Orders on several occasions.

The Mother objected to the Father's proposal to travel and argued that it was not in the child's best interests to go to China.

In that case, the Court allowed the Father's application. The Court noted, the following:

- The Court was satisfied that the father would actively promote the child's welfare and not place her health or safety at risk;
- The Father had set out a detailed itinerary in his affidavit including travel dates, flight numbers, accommodation details for each part of the trip, methods of communication for mother and child, and activities he proposed to engage in with the child on holiday.
- The trip would promote a meaningful relationship between the child and the father.
- There was no evidence to support the Mother's concern that the Father may disappear with the child.

UNITED ARAB EMIRATES:

The second case involved an Application by the Father for the child to spend school holiday time with him in Abu Dhabi, United Arab Emirates, where the Father worked and lived with his new wife and their child. The Father had been flying back to Australia to spend one week in every four with the child since his move to the UAE.

In that case, the Court confirmed that the best interests of the child were the paramount consideration, however there are a range of other factors that should be considered, such as:

- The existence of continuing ties between the 'departing parent' and Australia such as ownership of property, business links, family ties or strong social ties;
- The possibility of motives not to return including parental conflict over child related issues;

- Any possible motives for the travelling parent to remain in the other country such as property, business interests or family.
- Whether the proposed destination exposes the child to a risk or threat of harm;

The Court refused the Father's application, referring to the following:

- It would be almost impossible for the mother to seek any effective redress for the return of the child if the child was retained;
- The relationship between the child and the mother was difficult;
- The level of conflict between the parties was very high, and both parties were extremely critical of the other with respect to parenting;
- The Court had considerable doubt about the Father's actual response if he was faced with a situation where the child was complaining about his mother's behaviour or was refusing to board a plane to return to Australia.