

May 20, 2010

International Travel and/or Relocation Restricted in Child Custody Setting

For the most part, family law matters, including divorce, child custody and time-sharing and child support are governed by the States, which means that most of the case law relevant to New Mexico family law issues comes from the New Mexico courts. However, the United States Supreme Court recently issued a family law decision regarding parents' rights and duties when taking children to foreign countries.

In the recent United States Supreme Court case of *Abbot v. Abbot*, No. 08-645, the Supreme Court was charged with interpreting the Hague Convention on the Civil Aspects of International Child Abduction (Convention) and International Child Abduction Remedies Act (ICARA), which govern, among other things, parents' rights and remedies when their children are taken to another country without their permission. In *Abbot*, the married parties moved to Chile with their son and then separated. The Chilean court granted the mother primary custody and granted the father regular visitation. Subsequently, the mother took the child to Texas without the father's permission. The father then filed a suit in the federal court in Texas asking the court to order his child's return.

His request was initially denied by the federal court, but the Supreme Court reversed that decision and found that Chilean law gave the father custody rights, which in turn, gave the father the right to refuse consent to the mother's taking of the child out of the country under the Hague Convention. Based on the Court's ruling in *Abbot*, it is very clear that the United States takes the custody decisions of countries that adhere to the Hague Convention very seriously and, in turn, expects those participating countries to give the same respect to American child custody and time-sharing orders.

Child custody cases involving international travel and/or international relocation of one of the parents with the child are complex and rife with hazards. The Hague Convention, and the federal laws that enforce it, are very complicated and can involve not only the Courts of the respective jurisdictions but also the United States Department of State's Office of Children's Issues. Any person facing a custody dispute that involves international travel or international relocation to or from New Mexico should contact a New Mexico divorce and family law attorney.

Main Office:
400 Gold Ave. SW
Suite 500
Albuquerque, NM 87102
(505) 242-5958

<http://www.albuquerquedivorcelawyerblog.com/>