

CUSTODY AND VISITATION INTERFERENCE: ALTERNATIVE REMEDIES

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The potential for psychological and physical damage to children of divorce and the parental relationship looms as a potential harbinger of doom over every divorce case. This specter becomes reality when one parent interferes with the rights of custody or visitation of the other parent by preventing the child from visiting the other parent, or by kidnapping or secreting the child from the parent who has the right to custody or visitation. This article will discuss the visitation and custody interferences that occur during divorce and alert practitioners and judges to the psychological damage to the children. This article will review the alternative remedies available to circumvent custody and visitation interference and address the problems associated with enforcing these remedies. This examination will reveal that the available remedies lose effectiveness proportionate to the severity of the interference with custody and visitation rights. There are numerous types of visitation and custody interferences that courts must address: modest abuses related to timeliness and access for telephone contact and visitation; issues of child protection when allegations of physical and sexual abuse occur, such as eliminating or limiting contact with the other parent; and in the most severe cases, loss of a relationship due to actions characterized as kidnapping. In addition to these described interferences, more subtle actions occur which create problems. Parents involved in serious custody and visitation disputes frequently engage in programming and brainwashing techniques directed at the child to the detriment of the other parent, thereby interfering subtly or overtly with the parent/child relationship.¹

This behavior is frequently referred to as the Parental Alienation Syndrome. Although such behavior is a common occurrence, what is clear is that a dilemma exists in cases involving brainwashing: risk to the child when a change of custody is imposed for parental alienation syndrome or programming cases may not be in the best interest of the child;² yet the court may be powerless to stop the offending contact from occurring.

Programming behaviors range from the simple to the complex. They often begin with ignoring any discussion of the other parent; speaking negatively about the parent in front of the child; criticizing or attacking the parent's lifestyle or character; not informing the other parent of dates for the child's school activities, plays, conferences and sporting events; ignoring the other parent in front of the child; destroying or desecrating photographs of the other parent or refusing to allow the child to have a photograph of the parent in his/her room; speaking to the child about issues that should be first discussed with the other parent; and using the child as a messenger.³ More severe techniques include attempting to get the child to side with one parent against the other; instilling in the child the belief that the other parent does not genuinely care for the child; and communicating to the child he or she will suffer rejection or loss of love from a parent if the child expresses love or the desire to be with the other parent. The child, either implicitly or

explicitly, understands that to be loved by one parent the child must turn against the other parent.⁴ The most severe methods of programming occur when the programmer instills distrust, fear or the belief that a parent is unable to properly care for the child by initiating judgmental, opinionated and negative comments or physical inspection and derogatory interrogation once the child returns to the custodial parent.⁵ The child then interprets anything associated with the target parent as “wrong” or “unsafe”.⁶

Physical punishment may be added to this psychodramatic interplay if the child fails to comply with the programmer.⁷ Any form of programming may be used alone, or in conjunction with the other techniques, including the ultimate detachment — kidnapping. The programmer may experience a backlash effect if the child is able to realize that the programmer has made specific attempts to intentionally and systematically sever the child’s relationship with the target parent.⁸ While practitioners are told of such a reaction, it is seldom seen; and when experienced, it comes after years of abuse — at an untold cost of emotional destruction to the child. Even when practitioners admonish their clients not to engage in such destructive behavior, practitioners frequently lament their clients’ failure to follow attorney advice. A child who has not been successfully brainwashed frequently harbors anger and resentment toward both parents.⁹ The child expresses anger toward the brainwasher for behavior the child comprehends is destructive to the child’s relationship with the target parent and toward the target parent for “giving up” attempts to protect him or her through greater custodial time¹⁰, severing the visitation requirement, or otherwise having the ability to control and prevent the acts of abuse. The child’s hope is that the target parent will be strong and rescue the child from the programmer. Surprising to many parents, very often the child does not want the target parent to back off from “rescue” attempts.

Children often use denial as a coping mechanism, and construct images of a fantasy relationship with the “lost” target parent.¹¹ Children who become estranged from a parent because of residential relocation or kidnapping and are subjected to programming are at the greatest risk. Without residential proximity and significant contact, children only receive input from one parent and are more susceptible to programming without any input or behavior by the target parent to counteract the programmer.¹²

Furthermore, particularly if a child is denied access to the mother figure at various developmental states, the child may be unable to provide necessary attachment, as some evidence points to a preferred attachment figure of most babies to their mothers as opposed to their fathers or substitute caregivers.¹³ The motivation for the programmer’s actions are numerous. They include (1) self-righteousness, (2) revenge, (3) fear of losing the child, (4) sense of past history of more involvement, (5) proprietary perspective, (6) jealousy, (7) child support, (8) loss of identity, (9) out of sight, out of mind, (10) self-protection, (11) maintaining the marital relationship through conflict, and (12) power, influence, control, and domination.¹⁴ Programming parents show a diminished capacity to parent as a result of their anger, depression, and humiliations. The parents become preoccupied with their own lives and are unable to provide emotional support to their children.¹⁵ Significant behavior problems may result from the parent’s brainwashing and inability to effectively parent. Children suffer from a multitude of behavioral maladjustments including anger, loss of impulse control, loss of self-confidence and self-esteem, clinginess, separation anxiety, fears, and phobias, depression and suicidal feelings,

sleep disorders, eating disorders, academic problems or radical fluctuations in academics, enuresis, confusion, daydreaming, drug abuse and other self-destructive behaviors, peer group problems, obsessive-compulsive behavior, motor tension, anxiety, psychosomatic disorders, damaged sexual identity, desire to live with neither parent, rescuer role, excessive guilt, and the desire to, or a retreat into fantasy.¹⁶ It is unfortunate that the most devastating effect of divorce and custody disputes are these as described, inflicted upon the innocent victims for whom the parents profess love. Courts in all states have struggled with ways to protect the right of access to each parent and child. They now recognize a variety of causes of action and remedies available to the parent whose custodial or visitation rights have been interfered with by the other parent.¹⁷ The traditional “solutions” range from the mild remedies of specifying exactly the time and place of visitation, awarding make-up visitation, and family therapy or mediation intervention to moderate remedies such as supervised visitation, having a third party responsible for overseeing visitation, loss of visitation, and an award of attorney’s fees.¹⁸ More severe remedies include contempt proceedings¹⁹, change of custody²⁰, and a variety of tort actions designed to redress the problem through coercive financial compensation, rather than modulating behavior through other means. There are also remedies dealing exclusively with the problem of parental kidnapping.²¹ The appropriate remedy is directly proportional to the extent of the interference, but unfortunately, even the most severe remedy becomes ineffective when the interference is prolonged and extensive. When a parent’s bond with a child is broken, even when the bond is not healthy, the child still suffers all of the ramifications associated with loss: including the feelings of anger, sadness, depression, powerlessness and hurt.

Traditional Remedies

Minor infractions in the custody or visitation arena, such as the failure to return the child on a timely basis, failure to make the child available for visitation in a consistent manner, and limiting telephone contact with the parent are susceptible to traditional remedies. The traditional remedies for visitation or custody interference most frequently involve petitions to the court requesting such relief as: specification of time and place of visitation, make-up visitation time, and family therapy or mediation.²² These remedies are mild in that there is no finding of contempt or action on this charge, no fines or attorney’s fees imposed, and only involve making the existing visitation order more specific than in its previous format. This remedy is designed to rectify the skirmishes occurring over visitation dates and times. When minor infractions escalate to include such action as complete denial of visitation, denial of telephone contact and destruction of the parent-child relationship through severe brainwashing, then additional relief must be afforded. When more severe intervention is required, the parent whose right to custody or visitation is being interfered with may request more significant relief from the Court such as: supervision by a responsible third party, transfers to occur at a neutral location, restrictions or loss of visitation or custody, attorneys’ fees for the contemnor’s contempt of court, and in some states, withholding of child support as an additional appropriate remedy.²³ However, most courts have held that a non-custodial parent’s visitation rights are independent from the duty to make child support payments.²⁴

In reality, these traditional remedies are often inadequate and do not serve as a deterrent to custody or visitation interference.²⁵ Although it may help the aggrieved parent obtain access to the child, it may not circumvent the harm to the child because the parent will continue to engage

in brainwashing techniques while reluctantly providing the former spouse with access to the child. Specifically, with regard to civil contempt, the fines may be inadequate to cause any change in active access, let alone changing subversive or subconscious behavior. In addition, the relief is frequently denied because the Judgment or court order inadequately defines the visitation which makes it difficult for the court to find that there was direct wrongdoing by one of the parents. Furthermore, such proceedings are time consuming costly. This action also has a negative impact on the children,²⁶ when the child may be forced to testify in court, and is almost always subjected to the parents' anger and hostility.²⁷ If relief is granted, it is difficult to enforce and fails to compensate the non-custodial parent for time loss or emotional distress. Finally, contempt rarely deters future parental interference.²⁸ A parent who has engaged in parental kidnapping may be subject to criminal sanctions which can include restitution for costs incurred,²⁹ and in severe cases, the aggrieved party may request a change of custody as a remedy to visitation denial.³⁰ Courts view change of custody as an extreme remedy which is rarely warranted in denial of visitation cases. The courts instead have determined that willful interference with court ordered visitation cannot alone be the basis for a change of custody; instead courts will evaluate the appropriateness of custody modification based upon the best interests of the child.³¹ They most frequently prefer to maintain the status quo and leave sole custody with the present custodial parent.³² Although these cases are difficult on both the parent and child, change of custody may be the only real counteraction to severe or complete denial of one parent's access to the child and obstruction of the parent/child relationship.

Tort Actions

Severe psychological or physical interference in the parenting relationship demands extreme remedies. Financial coercion is used to deter kidnapping, repay expenses and compensate for a loss that may never be truly rectified. The courts in many jurisdictions have wrestled with the question of recognition of a specific tort of interference with custody or visitation rights,³³ or reliance on traditional torts of emotional distress, false imprisonment and/or the like. Those jurisdictions that have recognized the specific tort of custodial interference have determined that as with any tort, the petitioner must prove the elements of a tort. First the parent suing for custodial interference must possess a superior custody right to the other parent.³⁴ This paradox often defeats the aggrieved parent's rights, as a third party will not be held liable for conspiring to interfere with a custodial relationship where the parent had joint legal custody,³⁵ thereby eliminating the ability to prove the first element of the tort. Second, the interfering or abducting parent must be proven to have intentionally interfered with the other parent's right to custody of the child.³⁶ Third, damages must be demonstrated and can include any emotional or physical injury to the custodial parent;³⁷ the loss of society and companionship of their minor child;³⁸ expenses of locating and regaining custody of the child;³⁹ and the injured parent is entitled to recover the value of the services which would have been rendered by the child.⁴⁰ (This last concept is often outdated in modern society where children rarely apprentice in the parental workplace, forum, etc.) Damages should also be awarded for the cost of the child's medical and therapeutic care and treatment to obtain maximum recovery from the traumatic separation and other events endured during the secession and separation.⁴¹ Finally, punitive damages should be awarded when, in kidnapping cases, the abducting parent acted with a culpable state of mind and his/her acts rose to the level of malicious, outrageous, or wanton misconduct.⁴² Although many jurisdictions have recognized the tort for intentional interference with custodial rights, several

courts have refused to recognize the tort due to public policy reasons.⁴³ The court's primary concern was that recognition of the tort would not be in the child's best interest because the child may be forced to testify against a parent he or she loves. These courts further determined that creating a new tort would provide an additional weapon to escalate intra-family hostility and would place innocent children in the middle of a vigorous lawsuit between their parents and potentially grandparents or other relatives. In effect, there would be a re-litigation of the original custody decision.⁴⁴ In non-custodial complainant cases, the court will not recognize an action for intentional interference with visitation.⁴⁵ However, a number of jurisdictions have upheld a cause of action brought by a non-custodial parent for interference with visitation rights under the theory of intentional infliction of mental distress,⁴⁶ and at least one court has recognized the tort of "interference with visitation" without resorting to the more commonly accepted "mental distress" theory.⁴⁷ In such causes of actions, the courts have allowed both compensatory and punitive damages.⁴⁸ However, the tort of intentional infliction of emotional distress may be found inapplicable as against public policy for the deprivation of visitation rights by a custodial parent. Proper remedies may be limited to contempt, enforcement of visitation provisions, and possible change of custody when the actions are severe and outrageous conduct such as the unilateral separation of a child from his or her parent.⁴⁹ Strong arguments exist for denying recovery for damages resulting from intentional interference with visitation. A dissenting opinion in an Iowa Supreme Court decision argues that allowing monetary damages for interference with custody will injure the child because the damage award comes either directly or indirectly out of funds used to support the child.⁵⁰ The non-custodial parent may be seeking a means of recovering past due alimony or child support without genuine concern for maintaining contact with the child.⁵¹ The United States Court of Appeals for the Second Circuit recently held that whether or not the tort of visitation interference would be recognized should be left to the state court for its determination in light of the domestic relations exception to federal jurisdiction. The court also stated that the validity of the tort should be based on the facts of each particular case.⁵² Therefore, whether the tort will be recognized will vary from state to state depending on the facts of the case, particularly, the severity of the interference.

Parental Kidnapping Remedies

A parent who has lost a child through kidnapping suffers tremendously from its effects. It is particularly traumatic when the child is secreted in another country. In response to the problem of international kidnapping, an increasing number of countries have become part of an international treaty known as the Hague Convention on Civil Aspects of International Child Abduction providing for the return of a child wrongfully removed from one country to another.⁵³ The intent of this treaty is "to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence."⁵⁴ Under this treaty, a parent challenging the removal of a child from another country to the United States has the burden of showing by a preponderance of the evidence that the removal was wrongful.⁵⁵ The burden then shifts to the parent who currently has possession of the child to show that there would be a risk that a return of the child to the other parent would expose the child to physical or psychological harm; that returning the child would be a violation of human rights principles and fundamental freedoms; that the action was commenced more than one year after the abduction; or that the other parent was not actually

exercising custody at the time of the child's removal or had consented to, or acquiesced in, the child's removal.⁵⁶

The Hague Convention provides for the immediate return of the child when the child has been found to have been wrongfully removed and at the date of the commencement of the proceedings a period of less than a year has elapsed since the removal.⁵⁷ If a period of one year has elapsed, the child is returned unless it is shown by the opponent that the child is settled in a new environment.⁵⁸ The Hague Convention also provides for payment by the parent who has wrongfully removed the child for expenses incurred in implementing the return of the child, including travel, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant and those of returning the child.⁵⁹

Additionally, the federal legislature enacted the Parental Kidnapping Prevention Act of 1980 (PKPA) in response to interstate parental kidnapping and child custody litigation, in large part as a result of the line of cases in which the United States Supreme Court declined to rule that child custody determinations are entitled to full, faith and credit by sister state courts pursuant to Article IV, Sec. 1 of the United States Constitution.⁶⁰ A major purpose of the PKPA was to ensure that a state would enforce the decrees validly made under the UCCJA, regardless of whether or not that state had adopted the UCCJA. (All states have now adopted the UCCJA.)⁶¹ The PKPA basically provides that once a state court properly exercises jurisdiction, no other state may exercise concurrent jurisdiction over a child custody case, and all other states must afford full, faith and credit to the first state's custody decree, unless the first state loses jurisdiction for some reason enumerated in the Act or declines to exercise continuing jurisdiction over the case.⁶² The PKPA also created an explicit preference for jurisdiction in the home state of the child in an attempt to rectify one of the statutory weaknesses of the UCCJA.⁶³ Under the PKPA, a state cannot assert significant contacts jurisdiction unless there is no state that meets the home state requirement.⁶⁴ The PKPA enforces the UCCJA's requirement that only one state at a time can validly exercise jurisdiction over a custody determination.⁶⁵ Furthermore, where the PKPA conflicts with a state child custody statute, many courts have held that the PKPA controls because of federal preemption under the Supremacy Clause.⁶⁶ Despite these available remedies, however, the question remains as to whether they serve as a deterrent and whether they adequately protect the interests of the child. Even when criminal proceedings against an abducting parent have been initiated, such action should not be viewed as vindicating, securing or enforcing rights to custody. The aggrieved parent should take action in state court to obtain, modify, or enforce a custody or visitation order.⁶⁷ The most tragic cases, of course, exist when the child can not be located or is discovered in a foreign country that is not a party to the Hague Convention.

The Constitutional Protection Available for Custody/Visitation Intervention

There are some instances when the parent is denied access to the child by a government agency when the parent and child are forced to enter a witness protection program not as a result of any intentional wrongdoing by the parent. In these instances, the traditional remedies, tort remedies, and kidnapping remedies are inapplicable. In these line of cases involving witness protection programs, the due process clause of the Fifth Amendment to the Constitution has been used as the basis for a cause of action against the government.⁶⁸ The argument is made in these cases that

a parent's relationship with his/her child is a constitutionally protected right, although not expressly set forth in the constitution, drawn from the "liberty" protected by the Due Process Clause of the Fifth Amendment.⁶⁹ In order to succeed under this theory, the defendant's wrongful conduct must be intentional and the plaintiff must suffer compensable damages.⁷⁰ The courts have supported the rights of the parent to maintain a relationship with his/her child and have held that the government can not infringe upon these rights without: affording the parent requisite procedural protections; making a particularized finding and showing of a legitimate interest to justify the infringement; and availing itself of equally effective alternate solutions to the problem before them that would have been less restrictive of the parents' rights.⁷¹ These cases undeniably support the parents' rights but are in contrast to intentional types of interferences which result from a parent's conduct. These cases suggest that rights are not absolute in that compelling public necessity can justify terminating parental contact if proper procedures are followed. In these cases, the court must weigh the parental rights versus the danger to both the other parent and the child.⁷²

Conclusion

There are clear remedies which are now recognized in an effort to alleviate the custody or visitation intervention problems that occur when parents are undergoing a dissolution of marriage. The most recent development has been the integration of tort law into domestic relations actions through the recognition of domestic torts. Courts have acknowledged the effects on children and spouses when there is hostility and anger which results in brainwashing and visitation or custody interference. Judges play a crucial role in these cases and it is important that they have an understanding of the psychological impact of the divorce process on the parents and children. In particular, they should ascertain the level of parental alienation: whether it is severe, moderate, or mild, in order to make an appropriate ruling.⁷³ What is clear, unfortunately, is that the remedies are not effective deterrents to the programming and brainwashing in the severe cases when the parental alienation cannot be undone.

1. Stanley S. Clawar & Brynne V. Rivlin, *Children Held Hostage: Dealing with Programmed and Brainwashed Children*, 15 (1991).
2. Cheri L. Wood, Note, The Parental Alienation Syndrome: A Dangerous Aura of Reliability, 27 *Loy. L.A. L. Rev.* 1367, 1382 (1994).
3. Clawar & Rivlin, *supra note 1*, at 16-24.
4. *Id.* at 23-26.
5. *Id.* at 31.
6. *Id.*
7. *Id.* at 36.
8. Clawar & Rivlin, *supra note 1*, at 36.
9. *Id.* at 111.
10. *Id.* at 112.

11. *Id.* at 113.
12. *Id.* at 115.
13. Arlene Browand Huber, Children at Risk in the Politics of Child Custody Suits: Acknowledging Their Needs for Nurture, 32 *U. Louisville J. Fam. L.* 33, 53 (1993).
14. Clawar & Rivlin, *supra note 1* at 38.
15. Judith S. Wallerstein, *The Child in the Divorcing Family*, 7 (1980).
16. Clawar & Rivlin, *supra note 1*, at 129.
17. *Larson v. Dunn*, 460 N.W.2d 39, 44 (Minn. 1990).
18. *In re Marriage of Kramer*, 570 N.E.2d 422, 431 (Ill. App. Ct. 1991); *Ingerwerson v. Woeckener*, 490 N.E.2d 1008, 1010 (Ill. App. Ct. 1986).
19. *Ford v. Ford*, 700 P.2d 65 (Idaho 1985); *McGrady v. Rosenbaum*, 308 N.Y.S.2d 181, 188 (N.Y. Sup. Ct. 1970), *aff'd*, 37 A.2d 917 (N.Y. App. Div. 1970).
20. *Rosenberg v. Rosenberg*, 504 A.2d 350 (Pa. Super. Ct. 1986); *Marriage of Ciganovich*, 132 Cal. Rptr. 261 (Cal Ct. App. 1975).
21. See Juliet A. Cox, Note, Judicial Wandering Through A Legislative Maze: Application of the Uniform Child Custody Jurisdiction Act and the Parental Kidnapping Prevention Act to Child Custody Determinations, 58 *Mo. L. Rev.* 427 (1993).
22. See Sue T. Bentch, Comment, Court-Sponsored Custody Mediation to Prevent Parental Kidnapping: A Disarmament Proposal, 18 *St. Mary's L.J.* 361 (1986).
23. Lawrence A. Goldman, Tortious Interference With Visitation Rights: A New and Important Remedy for Non-Custodial Parents, 20 *J. Marshall L. Rev.* 307, 313 (1986).
24. *Id.*
25. *Id.* at 315.
26. *Id.* at 311.
27. *Larson v. Dunn*, 460 N.W.2d 39, 45 (Minn. 1990).
28. *Id.* at 311.
29. See, e.g., *Vanness v. State*, 605 N.E.2d 277 (Ind. Ct. App. 1992) (upholding father's felony conviction for interference with custody for removing his daughter from the state in violation of custody order).
30. *English v. English*, 469 A.2d 270 (Pa. Super. Ct. 1983), *Pamela J.K. v. Roger D.J.*, 419 A.2d 1301 (Pa. Super. Ct. 1980), *Ford v. Ford*, 700 P.2d 65 (Idaho 1985), *Entwistle v. Entwistle*, 402 N.Y.S.2d 213 (N.Y. App. Div. 1978).
31. *Rosenberg v. Rosenberg*, 504 A.2d 350, 353 (Pa. Super. Ct. 1986); *English v. English*, 419 A.2d at 1307. See also *Schmidt v. Schmidt*, 591 S.W.2d 260, 262 (Mo. App. 1979), *Spenser v. Spenser*, 488 N.Y.S.2d 565 (N.Y. Fam. Ct. 1985); *Clark v. Clark*, 805 S.W.2d 290 (Mo. App.

1991); *Snarski v. Krincek*, 538 A.2d1348 (Pa. Super. Ct. 1988) (visitation interference was a factor in modification of custody proceeding).

32. Goldman, *supra note* 23, at 312-313.

33. See Richard A. Campbell, Comment, The Tort of Custodial Interference — Toward a More Complete Remedy to Parental Kidnappings, 1983 *U. Ill. L. Rev.* 229; Joseph R. Hillibrand, Note, Parental Kidnapping and the Tort of Custodial Interference: Not in a Child's Best Interests, 25 *Ind. L. Rev.* 893 (1991).

34. *Kajtazi v. Kajtazi*, 488 F. Supp. 15, 18 (E.D.N.Y. 1978); *Abdul-Rahman Omar Adra v. Clift*, 195 F. Supp. 857, 862-63 (D. Md. 1961); *Politte v. Politte*, 727 S.W.2d 198, 200 (Mo. App.1987), *Spencer v. Terebelo*, 373 So. 2d 200, 202 (La. App. 1979); Restatement (Second) of Torts s 700, cmt. c (1976).

35. *Marshak v. Marshak*, 628 A.2d 964, 969 (Conn.1993).

36. *Fenslage v. Dawkins*, 629 F.2d 1107, 1108 (5th Cir.1980); *Kajtazi* at 17.

37. *Loyd v. Loeffler*, 518 F. Supp. 720, 725 (E.D. Wisc., 1981); 488 F. Supp. at 19; see also C. David Bargamean, Note, Intentional Infliction of Emotional Distress in the Child Custody Context: Proposed Guidelines, 36 *Wayne L. Rev.* 125 (1989).

38. 488 F. Supp. at 19.

39. 518 F. Supp. at 720.

40. *Fenslage v. Dawkins*, 629 F.2d at 1109.

41. *Id.*

42. 518 F. Supp. at 493-4; 488 F. Supp. at 20; Sanford N. Katz, Legal Remedies for Child Snatching, 15 *Fam.L.Q.* 103, 117 (1981-2); Note, The Tort of Custodial Interference - Toward a More Complete Remedy to Parental Kidnappings, *U. Ill. Law Rev.* 256 (1983).

43. *Zaharias v. Gammill*, 844 P.2d 137, 139 (Okla. 1992); *Larson v. Dunn*, 460 N.W.2d 39, 45 (Minn. App. 1990). However, these decisions did acknowledge that there may be a cause of action for intentional infliction of emotional distress.

44. 460 N.W.2d at 45-46; 844 P.2d at 141.

45. *Cosner v. Ridinger*, 882 P.2d 1243 (Wyo. 1994); *Gleiss v. Newman*, 415 N.W.2d 845 (Wis. Ct. App. 1987); *Owens v. Owens*, 471 So. 2d 920 (La. Ct. App. 1985).

46. *Bhama v. Bhama*, 425 N.W.2d 733 (Mich. Ct. App. 1988); *Pankratz v. Willis*, 744 P.2d 1182 (Ariz. Ct. App. 1987); *Sheltra v. Smith*, 392 A.2d 431 (Vt. 1978).

47. *Ruffalo v. United States*, 590 F.Supp. 706 (W.D. Mo., 1984).

48. *Rafferty v. Scott*, 756 F.2d 335 (4th Cir. 1985).

49. *Pankratz v. Willis*, 744 P.2d 1182, 1189 (Ariz. Ct. App.1987), citing *Kajtazi v. Kajtazi*, 488 F. Supp. 1520 (E.D.N.Y. 1978); *Rafferty v. Scott*, 756 F.2d 335 (4th Cir.1985); *Sheltra v. Smith*, 392 A.2d 431 (Vt. 1978); *Plante v. Engel*, 469 A.2d 1299 (N.H. 1983); *Eller v. Eller*, 524

N.Y.S.2d 93 (N.Y. App. Div. 1988); *McGrady v. McGrady*, 308 N.Y.S.2d 181, 182 (N.Y. Sup. Ct. 1970).

50. *Wood v. Wood*, 338 N.W.2d 123, 127-30 (Iowa 1983) (Wolle, J. dissenting).

51. Eve Kahao Gonzalez, Note, Intentional Interference with Visitation Rights: Is This a Tort?: *Owens v. Owens*, 47 *Louisiana L. Rev.* 217 (Sept. 1985); 338 N.W.2d at 127-30 (Wolle, J. dissenting).

52. *Minot v. Eckardt-Minot*, 13 F.3d 590, 594 (2d. Cir.1994).

53. In 1986 the United States ratified the Hague Convention on the Civil Aspects of International Child Abduction at the Hague Conference on Private International Law. Fourteenth Session, October 25, 1980 (51 Fed Reg. 10,498 (1980)). Legislation was enacted shortly thereafter as the International Child Abduction Act, Pub. L. No. 100 -300 s 1, 102 Stat. 437 (1988) (codified at 42 U.S.C. ss 11601-11610 (1988)). See also Philip Schwartz, Note, Getting a Child Back, How the State Department Can Help, *Fam. Advoc.*, Spring, 1993.

54. Hague Convention, *supra note* 53.

55. *Friedrich v. Friedrich*, 983 F.2d 1396 (6th Cir. 1993).

56. Hague Convention, *supra note* 53, Articles 13 & 20.

57. *Id.*, Article 12.

58. *Id.*

59. *Id.*, Article 26.

60. 18 *U.S.C. s 1738A* (1985).

61. Linda M. Demeris, Note, Interstate Child Custody and the Parental Kidnapping Prevention Act: The Continuing Search for a National Standard, 45 *Hastings L.J.* 1329, 1336 (1994).

62. *Id.*

63. *Id.* at 1336.

64. *Id.*

65. *Id.*

66. *Id.* at 1340, see e.g., *Alvarez v. Bressett*, 433, 434 (Ala.Civ. App. 1991); *Shute v. Shute*, 607 A.2d 890, 893 (Vt. 1992).

67. Lenore Kramer, *Legal Rights of Children*, 244 - 45 (2d ed. 1994).

68. *Ruffalo v. Civiletti*, 702 F.2d 710 (8th Cir. 1983).

69. *Id.*

70. *Id.* at 709.

71. *Franz v. United States*, 707 F.2d 582, 586 (D.C. Cir.1983).

72. *Id.*; *Ruffalo v. Civiletti*, 702 F.2d 710 (8th Cir. 1983).

73. Richard A. Gardner, *Family Evaluation in Child Custody Mediation, Arbitration, and Litigation*, 496 (1989).

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