

Which Court Decides Custody And Parenting Time Disputes When Parents Live In Separate Countries?

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Madonna and her ex-Husband Guy Ritchie have been fighting over Rocco, their 15 year old son who left Madonna's tour in December 2015 to stay with his father. Since then, litigation as to the return of Rocco to Madonna in the U.S. has been conducted on both sides of the Atlantic.

The United States and Great Britain are both signatories to an international convention, the Hague Convention on the Civil Aspects of International Child Abduction. This is an international agreement signed by many countries which, if followed, is meant to provide a quick return of a child who has been abducted back to the country from his ordinary residence and legal guardian. This means other countries will abide and enforce the custody order of another country, which is a signatory to the Convention. It is intended to maintain the status quo by not condoning the abduction by one parent of a child to another country.

In Madonna's case, Rocco had been living with her in New York City since 2008, but for some reason, left Madonna's tour in December to go live with his father in London who then placed him in school there and did not encourage his return to New York City.

Madonna filed an action in New York in December of 2015 to compel Ritchie to return Rocco to her in the U.S., arguing that Ritchie had abducted Rocco when he refused to return him to the United States. One day later, she made the same application in Great Britain. The New York court said that Rocco should be returned to Madonna citing the Hague Convention, finding that his ordinary residence was with his mother in the United States. On March 21, 2016, the British court held that the custody dispute should be resolved in the U.S. applying the terms of The Hague Convention, finding that Rocco's "habitual residence" was in the U.S. with his mother.

The Hague Convention only applies to children under the age of 16. With Rocco being 15, noting his age and that he had two parents on opposite sides of the ocean, the New York Court and the British court stepped back, urging the parents and Rocco to find a solution without using litigation.

The Hague Convention provides a jurisdictional structure and process which courts use to determine which court should take control of the dispute, thus, eliminating courts issuing competing orders as to custody. This is not unlike what happens when parents live in different states in the U.S. and there is a custody dispute. In the United States, the courts apply the Uniform Child Custody and Jurisdiction Enforcement Act (UCCJEA) N.J.S.A. 2A:34-53 to -95, which holds that a court will not overturn, but will enforce an order of custody or parenting time issued in another state. If a parent wishes to change the custody and parenting time terms, he or she must return to the state which entered the order to request a change in the custody and parenting time order.

That is not unlike what occurred in the Madonna case. Here, even though she was charging her ex-husband with having abducted their son, in effect, his actions by not returning Rocco were an attempt to effectuate a change in the custody and parenting time order. The Hague Convention terms, as does the Uniform Child Custody and Jurisdiction Act, preserve the custodial status quo, which was in effect before the removal of a child from a custodial parent. Neither the Act nor the Convention condones an argument by a parent who abducts a child and then says to a court, "I have the children now and therefore, we need to have a new parenting time order." Implementation of the terms of the Hague Convention provide guidance to courts in different countries as to when they are permitted to exercise their power over a matter and when they cannot, thereby obviating conflicting and confusing orders in international custody disputes.

The case of Rocco Ritchie is a good example of how courts, operating in compliance with and applying the terms of The Hague Convention, can work together to effectuate the law and to enforce prior orders of other countries so that children are returned to their rightful custodial parent.