

THE ZEIT GIST

U.S. takes tougher line on abductions to Japan

By MARK SMITH

Special to The Japan Times

Despite Ronald MacKinnon's fears that his child would be abducted, the New Jersey Supreme Court in the U.S. recently gave permission for his divorced Japanese wife, Erika, to relocate with their daughter to Okinawa. On July 30, the U.S. Supreme Court denied a stay, so Erika is free to leave.

One might think that these precedents would have custodial parents racing to resubmit requests for international relocation. But instead, we may be about to witness a tsunami of cases similar to MacKinnon's, albeit with a different outcome.



Sawyer Kalmus holds a placard before a protest last year in Los Angeles to coincide with the U.S. premiere of the "The Megumi Yokota Story." Sawyer hopes one day to meet his half-sister, Amy, who was taken to Japan. ERIC LALMUS PHOTO

The gist of the NJSC ruling was that special factors are not required to distinguish international from domestic relocations. They reaffirmed that neither "fear (of abduction) alone" nor a country not being a signatory to the Hague Convention on the Civil Aspects of International Child Abduction should unnecessarily penalize a law-abiding parent. But two important aspects may have been overlooked.

First, the NJSC repeatedly pointed out that Erika had returned with Justine from trips to Japan in the past. Why, they queried, would she now choose to abduct?

The answer is that without a court's permission to relocate, removing a child to Japan is a clear criminal violation. In such cases, the court typically awards sole custody to the left-behind parent within weeks or even days of the abduction and both local and federal arrest warrants for the Japanese parent are forthcoming. An Interpol notice follows, which makes the abducting parent subject to detention in countries worldwide — a prisoner within Japan. But when a court has given permission to relocate, the hurdles to proving a crime grow tremendously, complicated by thousands of miles and a legal system not very responsive on matters of international comity.

In one well-known case, an ex-wife (let's call her Natsumi) was given permission to relocate with their children. Once in Japan, she cut off all contact with her husband. Even though court-ordered phone and webcam communication did not occur between the father and his children, it took a year and a half for the court to finally award him sole custody. Yet because Natsumi had originally received permission to relocate, local authorities would not issue an arrest warrant for parental interference. Without a local warrant, federal prosecutors would not issue a federal warrant, much less report Natsumi to Interpol.

So the difference between abducting before and after a court order allowing relocation can be the difference between being forever branded an international criminal and not.

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Second was the disturbing claim made by Erika's attorney that Japanese family law "determines issues in the best interests of the child." Professor Colin Jones of Doshisha University testifies in a recent law journal article, "In the Best Interests of the Court: What American Lawyers Need to Know about Child Custody and Visitation in Japan," that despite the presence of similar words in Japan's Civil Code, nothing could be farther from the truth. Japan has no legal statutes that guide, much less define, the "best interests of the child." Thus determinations are left to whatever judges, family court investigators and mediators imagine to be in the

child's best interests. In fact, Japanese courts often act in the "best interests of the court" to protect themselves from becoming irrelevant to society due to their inability to enforce their own orders. This authoritative source ensures that future judges will understand the unique meaning of the "best interests of the child" in Japan and realize that even Japanese court orders are not enforceable, so neither are foreign ones.

But Ronald's major legal misfortune was living in a state without a law tailored to target the threat of international parental abduction. Unlike New Jersey, the states of Alabama, California, Oregon, Tennessee and Texas do have laws which lower the legal bar for taking preventative measures, such as denying relocation or issuing restraining orders against travel.

Texas says that a judge shall consider "whether the parent has strong familial, emotional, or cultural ties to another country, particularly a country that is not a signatory to or compliant with the Hague Convention."

Alabama singles out parents from any "foreign country whose public policy does not normally enforce the visitation rights of non-custodial parents."

Oregon subjects to special scrutiny citizens from any country that "does not provide for the extradition to the United States of a parental abductor and minor child."

Although they are not the only considerations, these provisions each point an accusatory finger when evaluated with Japan in mind. And there are more.

When similar but differing laws in U.S. states have a potential for abuse, the states often enact model laws from the National Conference of Commissioners on Uniform State Laws (NCCUSL). In the past, model family laws have been widely adopted in order to guard against conflicting custody and visitation orders by mobile parents. In 2006, the NCCUSL finalized a draft of The Uniform Child Abduction Prevention Act (UCAPA). It contains provisions similar to all three examples and so is more widely applicable than existing laws. Seven states have already adopted UCAPA and it's pending in four others. By the end of 2007, there could be 15 states codifying legal relief from the transgressions of Japanese family law, and plans are being made among advocate

groups to push UCAPA in many other states.



Ronald Mackinnon hugs his daughter, Justine, and his half-brother, Luke. Last month, the U.S. Supreme Court declined a stay preventing Mackinnon's ex-wife, Erika, from taking Justine to live in Okinawa. CHRISTINA R. SORACE PHOTO

Another obstacle to court ordered prevention measures is the unwillingness of the State Department's Office of Children's Issues (OCI) to provide evidence documenting the extent of the problems with Japanese family law. Even the occasionally released statistic for the total number of active cases is widely questioned. Left-behind parent Brett Weed explains that the OCI tried to close his "relatively new, unresolved case" simply by explaining that "the Department cannot assist you further in this matter." Cases may be

closed when the abducted child turns 18 and it is unclear whether they report retentions in Japan at all.

But if the co-author of California's parental abduction prevention law, Larry Synclair, has his way, this will soon change. Larry is now lobbying for a national law, The Parental Abduction Recovery, Enforcement, and Network Training (PARENT) Act, which centralizes responsibility for all aspects of parental abduction cases with a new section of the Federal Justice Department. Unlike the State Department which seems unwilling to endanger diplomatic relations over abducted children, the Justice Department is well accustomed to handling enforcement and prosecution in adversarial criminal relationships. The PARENT Act mandates a broad spectrum of public education including the collection and dissemination of statistics. It also includes further deterrents such as the elimination of the statute of limitations on international parental abduction and the abolishment of the maximum jail sentence.

Although none of these new laws are likely to help

MacKinnon, they will make it much easier for other American parents to successfully prevent relocations to Japan and even to prevent ordinary travel to Japan with children. Japanese politicians may eventually be gasping for air amid a flood of complaints from Japanese grandparents who are forced to make the long trip to the U.S. to see their grandchildren. Sound cruel? Well, just as certainly as this is a necessary evil to convince Japanese politicians to enact change, there are certainly foreign grandparents who would gladly make the reverse trip if only they could see their grandchildren who have been abducted to Japan.

Mark Smith is the pseudonym of the webmaster of the Japan Children's Rights Network, www.crnjapan.com. He has not been able to see his 5-year-old son since March 2002. Send comments on this issue and story ideas to: community@japantimes.co.jp

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