New Frontiers in Cross Border Family Mediation

As globalization progresses and migratory streams increase, the number of bi-national and cross-cultural relationships and marriages is burgeoning. This brings new lifestyles and dynamics to our society, but also brings new challenges and difficulties when these relationships break down. One of the difficulties that can occur is international parental child abduction, where one parent takes a child or children from another country, often their country of origin, without the other parent’s consent. This usually results in complex legal proceedings under the Hague Convention on the Civil Aspects of International Child Abduction (1980), to which 86 countries are parties, the only issue that can be decided in this court is whether or not the child or children should be returned to their state of habitual residence. This means that the court has no jurisdiction to decide any other matters relevant to the future of the family, such as custody, access, maintenance or any other matters that might result in a decision in order for the family to reunite. It is out of the purview of the court to decide such matters; it must be committed to the relevant dispute, depending on where the child and the parties will live. This can affect, in effect, that at least two sets of legal proceedings in different courts, possibly in different countries will be required to resolve the circumstances of the family, after the abduction. In mediation however, the focus is on the needs and interests of the parties, and in particular their children, and a safe, confidential environment is an advantage of family mediation, as it is the flexibility of family mediation in general.

Mediation however offers a number of specific advantages in these cases. It is a confidential and voluntary process in general, in cases taken under the Hague Convention on the Civil Aspects of International Child Abduction (1980), in which countries are parties, the only issue that can be decided is whether or not the child or children should be returned to their state of habitual residence. This means that the court has no jurisdiction to decide any other matters relevant to the future of the family, such as custody, access, maintenance or any other matters that might result in a decision in order for the family to reunite. It is out of the purview of the court to decide such matters; it must be committed to the relevant dispute, depending on where the child and the parties will live. This can affect, in effect, that at least two sets of legal proceedings in different courts, possibly in different countries will be required to resolve the circumstances of the family, after the abduction. In mediation however, the focus is on the needs and interests of the parties, and in particular their children, and a safe, confidential environment is an advantage of family mediation, as it is the flexibility of family mediation in general.

Another potential advantage of mediation in child abduction cases, particularly where there is conflict, is that it can help us make it known that such cases are not as rare as one might think. This is because the steps to be followed in a legal process can be so complex and time-consuming that they can deter anyone from even considering mediation. This means that the court has no jurisdiction to decide any other matters relevant to the future of the family, such as custody, access, maintenance or any other matters that might result in a decision in order for the family to reunite. It is out of the purview of the court to decide such matters; it must be committed to the relevant dispute, depending on where the child and the parties will live. This can affect, in effect, that at least two sets of legal proceedings in different courts, possibly in different countries will be required to resolve the circumstances of the family, after the abduction. In mediation however, the focus is on the needs and interests of the parties, and in particular their children, and a safe, confidential environment is an advantage of family mediation, as it is the flexibility of family mediation in general.

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