

ORIGINAL

IN THE SUPREME COURT OF OHIO

HANIF IBRAHIM  
Plaintiff-Appellant

Case No. 14-0251

vs.

SAKHI IBRAHIM  
Defendant-Appellee

On Appeal from the Franklin  
County Court of Appeals,  
Tenth Appellate District  
Court of Appeals Case No.  
13 AP 681

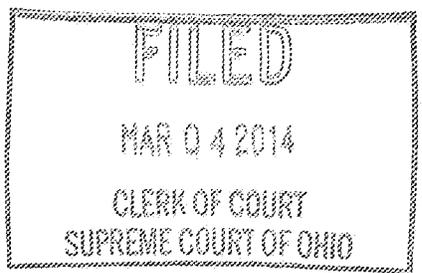
2013-Ohio-5401  
(Trial Court No. 12 DR 1670)

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APPELLANT HANIF IBRAHIM'S EMERGENCY MOTION TO STAY

\*\*\*\*\*

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PLAINTIFF-APPELLANT'S EMERGENCY MOTION TO STAY THE DECISION OF  
THE TENTH DISTRICT COURT OF APPEALS AND THAT PORTION OF THE  
PARTIES' DIVORCE DECREE THAT DEALS WITH THE FORCED ACQUISITION  
OF THE MINOR CHILD'S PASSPORT AND FORCED CONSENT TO  
INTERNATIONAL TRAVEL  
PENDING APPEAL

Plaintiff-Appellant Hanif Ibrahim respectfully asks this Court to stay pending appeal the Franklin County Domestic Relation Court's divorce decree of July 11, 2013<sup>1</sup> (pp. 26-27 deals with international travel and the passport, p. 36 removed the restraining order restraining Appellee from relocating out of the country), and the Tenth District Court of Appeals' Decision of December 5, 2013 and Entry of December 6, 2013<sup>2</sup>. This is an emergency motion due to two recent rulings by the trial court, which refused to stay this matter, and which have Ordered Mr. Ibrahim to "cooperate" by March 6, 2014 **or go to jail on March 7, 2014**.

The issue in this case pertains to the Court's demand that Mr. Ibrahim, Appellant, cooperate in the acquisition of a U.S. passport for the parties' 22-month old son, and the Court's further demand that Appellant cooperate and permit Appellee, an unemployed Indian national who has been in the country for less than 3 years, and "international arranged-marriage website" previously-divorced bride, from Dubai, United Arab Emirates, to travel with the child to Dubai for a month-long "vacation".

Appellee on three occasions in 2012 during the pendency of the lower court's case, indicated *in writing* and *by affidavit* that she wished to permanently relocate with the

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<sup>1</sup> Exhibit 1. Franklin County Divorce Decree 12 DR 1670, pp. 26-27 and 36.

<sup>2</sup> Exhibit 2. Tenth District Court of Appeals Decision and Entry 13 AP 681, 2013-Ohio-5401.

minor child to Dubai, U.A.E.<sup>3</sup> Dubai, The United Arab Emirates, is not a Hague-convention country.<sup>4</sup> If Appellee, who is not an American citizen, and who has no relatives in the United States other than her child, should choose to remain in Dubai with the child, as she had sworn she desired to do less than 2 years ago, there is no legal remedy for Mr. Ibrahim to effectuate the return of his child.<sup>5</sup>

Further, it appears from the face of the Divorce Decree, by the absence of the usual boilerplate language,<sup>6</sup> that the trial Court has *permitted* Appellee to permanently relocate out of the jurisdiction of the Court, including, presumably, to Dubai or India or another non-Hague signatory country. Although the standard Relocation Notice language is present, R.C. 3109.051(G)(1), nothing in that statute gives a trial court the ability to block a custodial parent's decision to relocate the child outside of Franklin County, Ohio.

*Zimmer v. Zimmer*, 2001-Ohio-4226, Tenth District.

Recently, Appellee filed and served a "Motion Requesting Court's Permission to Obtain Minor Child's Passport and for Authorization for Proposed International Travel

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<sup>3</sup> Exhibit 3. Defendant-Appellee's 5-1-12 Answer to Complaint, 5-1-12 Affidavit in Support, 6-18-12 Answer to Amended Complaint.

<sup>4</sup> Hague Conference on Private Int'l Law, Status Table 28: Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, [http://hcch.e-vision.nl/index\\_en.php?act=conventions.status&cid=24](http://hcch.e-vision.nl/index_en.php?act=conventions.status&cid=24) (last updated June, 27, 2013) [hereinafter Hague Status Table].

<sup>5</sup> *Taveras v. Taveras*, 397 F. Supp. 2d 908, 912 (S.D. Ohio 2005) (citing *Mohsen v. Mohsen*, 715 F. Supp. 1063 (D. Wyo. 1989)) (dismissing a left-behind parent's petition for the return of the child under the International Child Abduction Remedies Act after the child was abducted from Bahrain and removed to the United States because of lack of reciprocity between the United States and Bahrain). See generally *Mezo v. Elmergawi*, 855 F. Supp. 59 (E.D.N.Y. 1994).

<sup>6</sup> By way of example, "neither parent shall relocate with the child from Franklin County Ohio or an adjacent county without first obtaining written permission from the other parent or a court order" or "the residential parent shall not relocate with the child from Franklin County Ohio or a contiguous county without first obtaining written permission from the other parent or a court order".

with Minor Child”. Appellee also filed and served a “Motion for Contempt” alleging that Appellant had refused to cooperate in securing a passport for the minor child. On 2-20-14 the trial court by Judgment Entry denied Appellant’s motion to stay<sup>7</sup> proceedings on these motions, which Appellant had filed due to the pendency of the instant case, and the Court went forward with hearings on both motions.

The magistrate hearing the contempt motion ruled that:<sup>8</sup>

“Plaintiff Hanif Ibrahim is found in contempt and is sentenced to **10 days in jail**, which shall be stayed so long as he purges this finding of contempt as follows: Father shall immediately comply with this Court’s Order mandating that he **cooperate with obtaining a passport for the parties’ minor child**. Father shall provide all information necessary and complete all documents necessary so that the Mother can obtain said passport. Father shall do so no later than **March 6, 2014**. ... This matter shall come on for review before the Honorable Judge Mason on the **7<sup>th</sup> day of March 2014** at 9:00 a.m....” (emphasis added).

The judge ruled that:<sup>9</sup>

- “1. Defendant Mother’s **request to travel to Dubai is GRANTED; Defendant Mother is hereby ORDERED to return to the United States upon the conclusion of her vacation to Dubai;**
2. Plaintiff-Father is ordered to cooperate, immediately, and facilitate Defendant Mother’s requests relating to international travel including to authorization and consent to the issuance of [I.I.]’s passport ...

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<sup>7</sup> Exhibit 4. Trial Court’s *Judgment Entry* 2-20-14 denying Plaintiff-Appellant’s Motion to Stay.

<sup>8</sup> Exhibit 5. *Magistrate’s Decision* 2-27-14.

<sup>9</sup> Exhibit 6. *Decision and Entry*, 2-27-14.

4. Plaintiff Father is immediately ordered to remove any and all past “red-flagging” or notifications that impede or interfere with the Defendant Mother and the parties’ child’s international travel. ...

**This matter is set for review on Friday March 7, 2014 at 9:00 ... If Plaintiff Father refuses ... he shall be found in direct contempt and incarcerated until the order is obeyed.** “ (emphasis added).

Mr. Ibrahim is left with the choice of going to jail to protect the constancy of his relationship with his child, or submitting and facing the real risk that his child will be taken from him permanently. The trial Court has Ordered the Father, **under penalty of incarceration**, to assist in his own potential permanent loss of his right to access with his child by allowing international travel and forcing Father to sign for a passport for the child. This trial Court’s order that Mother is “Ordered to return to the United States” is meaningless and without effect. U.S. custody orders are not recognized or enforceable in India and United Arab Emirates.

[http://travel.state.gov/abduction/country/country\\_4441.html#](http://travel.state.gov/abduction/country/country_4441.html#),

[http://travel.state.gov/abduction/country/country\\_5914.html](http://travel.state.gov/abduction/country/country_5914.html).

Mr. Ibrahim will suffer irreparable injury if the stay is not granted. Further granting the stay will not substantially harm Appellee, as she desires to go on “vacation”, which, considering that she is unemployed, she can do at any time.

A memorandum in support of this motion follows.

Respectfully submitted,

  
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#### MEMORANDUM IN SUPPORT

A court should stay its judgment pending appeal where the moving party can demonstrate that: (1) it is likely to succeed on the merits; (2) it would suffer irreparable injury if the stay were not granted; (3) granting the stay would not substantially harm the other parties; and (4) granting the stay would serve the public interest. *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). This test is flexible and allows a movant to obtain a stay pending appeal by showing “a substantial case on the merits when a serious legal question is involved” and that “the balance of the equities weighs heavily in favor of granting the stay.” *Ruiz v. Estelle*, 650 F.2d 555, 556 (5th Cir. 1981); see also *Mohammed v. Reno*, 309 F.3d 95, 101 (2d Cir. 2002).

The Hague Convention was created to allow for the prompt return of children to the states from which they were wrongfully removed or retained in hopes that the speedy return of the child will help avoid the harmful effects that stem from the abduction.<sup>10</sup>

Additionally, the Hague Convention aims to work as a preventive measure against “forum-shopping” in custody disputes by requiring that the rights of custody are

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<sup>10</sup> See Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No. 11,670, 1343 U.N.T.S. 89 [hereinafter Hague Convention], arts. 1, 7. Read in conjunction, Articles 1 and 4 of the Hague Convention state that the instrument was created to “apply to any child who was habitually resident in a Contracting State immediately before any breach of custody or access rights. The Convention shall cease to apply when the child attains the age of 16 years.” *Id.* art. 4.

respected across international lines by contracting States.<sup>11</sup> Thus, under the Hague Convention, a custodial parent whose child has been abducted to another Convention country would apply to the Central Authority<sup>12</sup> within their country of residence for the return of their child. If the claim is in accordance with the standards set forth in the Hague Convention, the claim is subsequently forwarded to the Central Authority of the country where the child has been taken.<sup>13</sup> In the United States, **the Central Authority that handles all abduction cases is the National Center for Missing and Exploited Children International Division (NCMEC)**,<sup>14</sup> which may make requests for the return of children abducted by a parent.<sup>15</sup>

Hanif Ibrahim is a Pakistani-born American citizen who has lived in Ohio for 15 years. (Plaintiff's Trial Affidavit, 8-24-12, p.4, p.8). Sakhi Beeru is a previously-divorced, (Tr. 127-129) Dubai, U.A.E.-born, Indian national, who just previous to her marriage to Hanif, lived in Germany and worked as a medical resident in obstetrics and gynecology for 17 months (Defendant's Trial Affidavit, 8-24-12). Hanif and Sakhi met through an international arranged marriage website, where Sakhi had posted an ad, and

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<sup>11</sup> Turner v. Frowein, 752 A.2d 955, 972 (Conn. 2000). Here, the Court concluded that "a paramount purpose of the Hague Convention" was to prevent international forum-shopping. *Id.*

<sup>12</sup> Hague Convention, *supra* note 4, art. 7. This Article establishes a network of central authorities throughout Convention countries that bear the duties of tracking down the unlawfully removed child and securing the child's prompt return. *Id.* In addition, Article 7(e) states that the central authorities may aid other convention countries by providing information about the family laws of their own nation. *Id.* art. 7(e).

<sup>13</sup> *See id.* art. 9.

<sup>14</sup> International Child Abduction, 61 Fed. Reg. 7069, 7070 (Feb. 26, 1996). Beginning in 1995, the incoming requests for the return of children who had been abducted by a parent were routed through, and processed by, the National Center for Missing and Exploited Children, International Division (NCMEC), a non-governmental organization. *Id.* However, the State Department maintains a supervisory role and will continue to be the official Central Authority for the United States under the Convention. *Id.*

<sup>15</sup> *Id.*

they married on March 31, 2011 in Dubai where her Indian family resides. Hanif and Sakhi promptly moved back to Ohio where Hanif owned a home in Gahanna and held a job. They separated on February 25, 2012. Sakhi gave birth to a son, I.I., in Columbus Ohio, on April 3, 2012. I.I. is now 23 months old. Sakhi is not an American citizen and has no relatives in the United States other than her son I. I. (Defendant's Trial Affidavit 8-24-12). Defendant-Appellee Sakhi Beeru (aka Sakhi Ibrahim) is Indian and prior to the marriage had taken up permanent residence in Dubai. On April 17, 2012, Hanif filed a Complaint for Legal Separation, and requested sole custody or that he be named the school placement parent in a shared parenting arrangement of the minor child, and further, because of fears Sakhi would abscond with the child (Sakhi had demanded that the child be born in Dubai), he requested a restraining order restraining Sakhi from leaving the jurisdiction with the minor child. In response, on April 23, 2012, Sakhi filed for and received an ex parte civil protection order, Franklin County Common Pleas Court, case no. 12 DV 04 0609, voluntarily dismissed June 15, 2012. On May 1, 2012, with her original counsel, Sakhi filed an Answer and Counterclaim in Divorce, and specifically requested that the Court **permit her to permanently relocate with the child to Dubai and continued to request that she be permitted to permanently relocate to Dubai with the minor child.** Sakhi claimed that despite the fact that Hanif was an American citizen and a long-time resident of Ohio, he had somehow agreed to reside in Dubai after the child was born. Defendant's Affidavit, 8-24-12; in her Answer to Hanif's Amended Complaint, p.2, she claims that he had "discussed" moving to Dubai, among other places, not "agreed"; at trial, she claimed that Hanif "expressed interest in going

back to the Middle East and settle down .. by the time the kids are school going years of four to five years after marriage or after kids.” Tr. 170, 20 – 171, 6.

Appellee expressly indicated in Court that her intention was to **permanently move with the parties’ minor child to Dubai, United Arab Emirates**. See attached Exhibit 3. The attached affidavit of Preston A. Findlay<sup>16</sup>, Counsel for the Missing Children Division of the National Center for Missing and Exploited Children details that the Hague Convention is not enforceable in India or United Arab Emirates, and further that U.S. custody orders are not recognized or enforceable in India and United Arab Emirates. Exhibit 7.

Generally, when a child is removed to a non-signatory country (especially one governed by Islamic law), the parent attempting to secure the return of the child is faced with the harsh reality that his government has very few options to secure the safe return of the child.<sup>17</sup> In the United States, these options include diplomatic intervention, the use of domestic statutes, and re- abduction.<sup>18</sup> In *Mezo v. Elmergawi*<sup>19</sup>, the mother sought the return of her children, whom their father abducted to Egypt then moved to Libya.<sup>20</sup> As neither Egypt nor Libya was a party to the Convention at the time of the incident, the *Mezo* Court denied the remedy requested, stating that **when “a child is taken from a**

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<sup>16</sup> Exhibit 7. Affidavit of Preston Findlay.

<sup>17</sup> See generally Ericka A. Schnitzer-Reese, Comment, *International Child Abduction to Non-Hague Convention Countries: The Need for an International Family Court*, 2 NW. U. J. INT’L HUM. RTS. 7, at 7 (2005) at 11–16.

<sup>18</sup> *Id.*

<sup>19</sup> *Mezo v. Elmergawi*, 855 F. Supp. 59, 61–62 (E.D.N.Y. 1994).

<sup>20</sup> *Id.*

**non-signatory country and is retained in a signatory country,” or vice versa, it is well-settled law that “there is no remedy.”<sup>21</sup>**

In 2006, the Uniform Law Commission (ULC) promulgated the Uniform Child Abduction Prevention Act (UCAPA)<sup>22</sup>. This uniform law originated by the parents of internationally abducted children<sup>23</sup>, and parents fearing their children would be abducted. The act provides States with a valuable tool for deterring both domestic and international child abductions by parents and any persons acting on behalf of the parents. According to UCAPA, an action for abduction prevention measures may be brought either by a court on its own motion, by a party to a child-custody determination or an individual with a right to seek such a determination, or by a prosecutor or public attorney. UCAPA sets out a wide variety of factors that should be considered in determining whether there is a credible risk that a child will be abducted. The act also addresses the special problems involved with international child abduction by including several risk factors specifically related to international abduction. In particular, the act requires courts to consider whether the party in question is *likely to take a child to a country that isn't a party to the Hague Convention* on the Civil Aspects of International Child Abduction, or to a country that has laws that would restrict access to the child. If a court determines that a credible risk exists that the child will be abducted, *it may then enter an order containing provisions and measures meant to prevent abduction*. The act lists a number of specific measures that a court may order. **These include imposing travel restrictions,**

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<sup>21</sup> *Id.* at 63, emphasis added.

<sup>22</sup> Uniform Child Abduction Prevention Act.

<sup>23</sup>

[http://www.uniformlaws.org/shared/docs/child\\_abduction\\_prevention/childabduct\\_intro\\_materials.pdf](http://www.uniformlaws.org/shared/docs/child_abduction_prevention/childabduct_intro_materials.pdf)

prohibiting the individual from removing the child from the State or other set geographic area, placing the child's name in the United States Department of State's Child Passport Issuance Alert Program, or requiring the individual to obtain an order from a foreign country containing identical terms to the child-custody determination. Such orders are commonly referred to as "mirror orders." An abduction prevention order is effective until the earliest of the order's expiration, the child's emancipation, the child's 18<sup>th</sup> birthday, or until the order is modified, revoked, or vacated.

There is currently pending legislation, 130 H.B. No. 86 in the Ohio House, introduced February 2013 which essentially adopts much of UCAPA:

To make that determination, the court shall consider the following:

...

**(2) Obstacles to the location, recovery, and return of the child if the child is abducted;**

...

**(2) Whether a parent has previously threatened to take, entice away, keep, withhold, or conceal a child in violation of the right of custody or of visitation of a person;**

**(3) Whether a parent lacks strong ties to this country;**

**(4) Whether a parent has strong familial, emotional, or cultural ties to another country, including foreign citizenship.** This factor shall be considered only if evidence exists in support of another factor specified in division (B) of this section;

**(5) Whether a parent has no financial reason to stay in this country, including whether the parent is unemployed, is able to work anywhere, or is financially independent;**

**(6) Whether a parent has engaged in planning activities that would facilitate the removal of a child from this country, including quitting a job, selling the parent's primary residence, terminating a lease, closing a bank account, liquidating other assets, hiding or destroying documents, applying for a passport,...**

(C) If the court makes a finding that there is a need for preventative measures after considering the factors listed in divisions (A) and (B) of this section, the court shall consider taking one or more of the following measures to prevent the

abduction of the child:

- (1) Ordering supervised visitation;
- (2) Requiring a parent to post a bond in an amount sufficient to serve as a financial deterrent to abduction, the proceeds of which may be used to offset the cost of recovery of the child in the event there is an abduction;
- (3) Restricting the right of the custodial or noncustodial parent to remove the child from the country;
- (4) Requiring the surrender of passports and other travel documents;
- (5) Prohibiting a parent from applying for a new or replacement passport for the child;...

*Sakhi Ibrahim presents a credible risk of permanent relocation of the child to a non-signatory country, Dubai, U.A.E., or India.*

Defendant-Appellee had indicated at the beginning of the case that she wished to leave to Dubai with the child forthwith, and she is permitted to do according to the decree of divorce. If this Court does not stay this judgment and order, Appellant will suffer irreparable harm as Defendant-Appellee may follow her wishes as expressed in her original pleadings in the divorce case and permanently move the minor child overseas. As explained in the NCMEC affidavit, Appellant will have no recourse to recover his child.

There is realistically nothing to stop Appellee from permanently relocating with the child once she has the passport in her hands and nothing to stop Appellee from not bringing the child back. Were Appellant to file a contempt motion against Appellee once she is gone with the child, it would be a pointless exercise.

In an ordinary case, if this trial Court were wrong about “credibility” and Mother were to abscond with the child out-of-state, there are legal remedies that are slow, but nevertheless sometimes effective. In this case, if this trial Court is wrong about “credibility” or if Appellee *changes her mind again* about permanently relocating with the child to a non-signatory country once she has possession of the child’s passport,

Father has no recourse. There is no remedy. U.S. custody orders are not recognized or enforceable in India and United Arab Emirates.

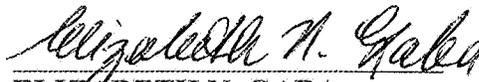
[http://travel.state.gov/abduction/country/country\\_4441.html#](http://travel.state.gov/abduction/country/country_4441.html#),

[http://travel.state.gov/abduction/country/country\\_5914.html](http://travel.state.gov/abduction/country/country_5914.html).

The balance of the equities weighs heavily in favor of granting the stay.

WHEREFORE, Appellant requests that this Court stay pending appeal the decision of the Tenth District Court of Appeals and that portion of the parties' divorce decree that deals with the forced acquisition of the minor child's passport and forced consent to international travel.

Respectfully submitted,



**ELIZABETH N. GABA**

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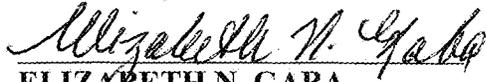
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[gabalaw@aol.com](mailto:gabalaw@aol.com)

### **CERTIFICATE OF SERVICE**

This is to certify that a true and accurate copy of the foregoing document was served upon Defendant-Appellee Sakhi Ibrahim by and through her attorney Virginia Cornwell, Esq., 603 E. Town St., Columbus, Ohio 43215, and the Guardian ad Litem, Kristy Swope, 6480 East Main St., Suite 102, Reynoldsburg Ohio 43068 via ordinary U.S. mail, postage prepaid, and/or email transmission on this the 4th day of March 2014.

Respectfully submitted,



**ELIZABETH N. GABA**

**S. CT. NO. (0063152)**

Attorney for Plaintiff-Appellant

6. **International Travel:** The parties shall cooperate in facilitating reasonable international travel for the child, including, but not limited to completion of applications for a passport, renewed passport and visas. However, the minor child shall not travel outside of the United States without written consent of the non-traveling parent, or court order. Consent to travel shall not be unreasonably withheld by either parent.

The parents shall cooperate to obtain and keep current a valid United States Passport for their minor child, [REDACTED]. The parties shall divide equally the cost associated with obtaining or renewing a passport. When not in use, the Guardian ad Litem shall hold and secure [REDACTED]'s passport. She shall not withhold his passport from either party for any agreed upon or court ordered international travel including for the purposes of obtaining a Visa for said travel. Upon [REDACTED]'s return from any agreed upon or court-ordered international travel, his passport shall be immediately returned to the Guardian ad Litem's possession.

The parent proposing travel with [REDACTED] shall give the other parent at least forty-five days written notice of his or her intention to travel. This written notice shall include details of the travel with dates, flight information, accommodations, contact information, full itinerary, etc. The other parent shall give a written response to the proposing parent within seven (7) days regarding whether he or she consents to said travel plans with the minor child. If consent is given, the parent shall immediately effectuate said consent by signing all documents and taking all actions necessary to facilitate the travel. Neither parent shall notify any entity, government or otherwise, accusing the other parent of abduction of the child when the non-traveling parent has agreed to the international travel of the minor child, or a court order has been obtained permitting same.

In the event the other parent withholds consent to a proposed travel plan, either by failing to provide written permission within seven (7) days, or once consent is given fails to cooperate in facilitating the travel, the parent desiring international travel may file a motion with this Court seeking to authorize the specific proposed travel plan, and request that said motion be heard upon an expedited basis.

If the parties agree to international travel or the Court orders it, each parent shall be entitled to additional vacation to accommodate the travel. The Court is cognizant that international travel may require a minimum of three (3) weeks of parenting time, and more likely four (4) weeks of parenting time. Although vacation time is not required to be made up, the Court requests that the traveling parent attempt to facilitate additional parenting time for the non-traveling parent upon return from an international trip. The parent exercising international travel may not exercise additional regular vacation time without the consent of the other parent.

Once the parties have agreed to an international trip for the traveling parent and minor child evidenced by writing or upon Court Order, the non-traveling parent shall take all actions necessary to facilitate the travel including, but not limited to, refraining from contacting any state, governmental, or international agencies alleging abduction of the child, or contacting said agencies to remove or rescind any prior allegations or notifications alleging abduction of the child.

7. **Access:** Mother and Father shall exert every reasonable effort to maintain free access and unhampered contact between each of the parents and the child. Once Ishaq is of reasonable age, he shall be allowed to communicate by telephone, text messages, instant messaging, e-mail or other electronic communication regularly with

certified copy thereof in lieu of the document regularly required for such conveyance or transfer.

**H. Other Orders:**

All temporary orders, including but not limited to the child support arrearages and all hospital bills relating to Ishaq's birth, shall be paid in full and incorporated herein through the effective date of this Decree. The effective date of this Decree is the filing date, unless otherwise provided.

All temporary restraining orders are dismissed.

Any motions before the Court not specifically addressed herein are denied.

Pursuant to the parties' Agreed Stipulation of December 3, 2012, the Plaintiff Father and Defendant Mother shall equally divide the balance of court costs, if any.

**IT IS SO ORDERED.**

\*\*See Attached Signature Page\*\*  
JUDGE MASON

<b>PRAECIPE: TO THE CLERK OF COURTS</b>
Pursuant to Civil Rule 58(B), you are hereby instructed to serve upon all parties not in default for failure to appear, notice of the judgment and its date of entry upon the journal.

*Plaintiff, Pro Se*  
*Defendant, Pro Se*  
*Kristy Swope, Guardian ad litem*

IN THE COURT OF APPEALS OF OHIO  
TENTH APPELLATE DISTRICT

Hanif Ibrahim,	:	
	:	
Plaintiff-Appellant,	:	
	:	
v.	:	No. 13AP-681
	:	(C.P.C. No. 12DR-1670)
Sakhi Ibrahim,	:	
	:	
Defendant-Appellee.	:	(REGULAR CALENDAR)

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D E C I S I O N

Rendered on December 5, 2013

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*Elizabeth N. Gaba*, for appellant.

*Law Offices of Virginia C. Cornwell*, and *Virginia C. Cornwell*, for appellee.

*Swope & Swope*, and *Kristy Swope*, Guardian ad Litem.

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APPEAL from the Franklin County Court of Common Pleas,  
Division of Domestic Relations

TYACK, J.

{¶ 1} Hanif Ibrahim is appealing from portions of his divorce decree. His counsel assigns three errors for our consideration:

1. The trial court erred to the prejudice of Appellant in awarding sole custody of ██████ to Sakhi, placing no restrictions on her relocation with the child, and forcing Hanif to sign for a passport for ██████ and requiring Hanif to agree to ██████ traveling with Sakhi out of the country, and in particular to Dubai. This error is of Constitutional dimension. It deprives Hanif of his right to association with his child and to be free from a deprivation of substantive due process of law in violation of Hanif's 1st, 4th, 9th and 14th Amendments rights, and further deprives him of his rights to equal protection of the courts in violation of the 1st and 14th Amendments, and his rights under the Ohio Constitution. It

Franklin County Ohio Court of Appeals Clerk of Courts- 2013 Dec 05 12:14 PM-13AP000681

deprives ██████ for his right to association with his father and to be free from a deprivation of substantive due process of law in violation of ██████'s 1st, 4th, 9th and 14th Amendments rights, and further deprives him of his rights to equal protection of the courts in violation of the 1st and 14th Amendment, and his rights under the Ohio Constitution.

2. The trial court erred to the prejudice of Appellant in awarding sole custody of ██████ to Sakhi, placing no restrictions on her relocation with the child, and forcing Hanif to sign for a passport for ██████, and requiring Hanif to agree to ██████ traveling with Sakhi out of the country, and in particular to Dubai. This award to Sakhi, and lack of restrictions on Sakhi were not supported by the evidence and are not in the best interest of the child.

3. The trial court erred to the prejudice of Appellant in awarding sole custody of ██████ to Sakhi, rather than shared parenting to both parties, on the basis that neither party had filed a shared parenting plan. The parties filed an Agreed shared parenting plan on June 14, 2012. To interpret the statute otherwise is to permit the selective or discriminatory enforcement of a Sec. 3109.04(A)(1), in violation of the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution as well as the Due Course of Law Provision and Article I Section 16 of the Ohio Constitution. To interpret the statute otherwise means that sec. 3109.04(A)(1) is unconstitutional not just "on its face", but "as applied", both for Hanif and Ishaq.

{¶ 2} Although the assignments of error are lengthy, they all turn on the same question: Whether Hanif's ex-wife can be trusted to keep her residence with the couple's one-year-old son, Ishaq, in this country.

{¶ 3} Hanif is afraid that his ex-wife is going to flee the country with the child and, as a result, he will lose all contact with his son. The trial court addressed this issue at length in the divorce decree:

Defendant Mother did testify that in an affidavit to the Court on May 1, 2012, she was requesting sole custody of Ishaq and leave of Court to return to Dubai. However, at trial she testified that her intent is not currently to leave the United States. She testified that she had a green card that allows her to be in this country on condition of marriage, which expired on March 31, 2013. Defendant Mother further testified that she has an immigration attorney, and she is working with

same to get the condition of marriage removed from her green card so that she may stay in the United States. Defendant Mother is confident that she will be allowed to stay in the United States, and believes she has timely applied and is requesting permission based upon abuse by a U.S. citizen and her civil protection request.

\* \* \* No credible evidence was presented that Defendant Mother is a flight risk or that reasonable international travel with Ishaq should not be permitted.

(R. 327, at 15-16, Decree of Divorce.)

{¶ 4} The trial court also addressed the issues of involving the child in more detail elsewhere in the decree following the mandates of R.C. 3109.04:

VI. ALLOCATION OF PARENTAL RIGHTS AND RESPONSIBILITIES

Although Plaintiff Father, in his April 17, 2012, *Complaint for Legal Separation*, requested sole custody, or in the alternative, Shared Parenting, Plaintiff's May 13, 2012 *First Amended Complaint*, which requested divorce rather than legal separation, contained no such request for shared parenting. Defendant Mother's argument is that Plaintiff Father's *First Amended Complaint* did not renew his original request for Shared Parenting, and therefore, the Court may not consider his request for Shared Parenting. Nonetheless, the Court finds that the Plaintiff Father did **not** file a Proposed Shared Parenting Plan, and therefore, any such request for Shared Parenting will not be considered.

R.C. 3109.04(F) provides the statutory criteria for the court to consider in the allocation of parental rights and responsibilities. In a divorce, the court must allocate the parental rights and responsibilities for the minor children born as issue of the marriage. R.C. 3109.04(A).

The Court makes the following findings with respect to the factors of R.C. 3109.04(F)(1):

**A. "The wishes of the child's parents regarding the child's care;" R.C. 3109.04(F)(1)(a).**

Based upon Plaintiff Father's narrative testimony, he wants sole custody of [REDACTED], and is willing to work on 50/50 time share of parenting time with the Defendant if she can stay in

this country after March. However, as stated within his *Closing Statement, Findings and Facts and Recommendations of Plaintiff*, Plaintiff Father requested shared parenting with equal parenting time by alternating weeks for the next four years and then for the remaining years, alternating two week periods with no provision for holidays, vacations, or international travel.

Based upon her testimony, the Defendant Mother is requesting sole custody so long as she resides within Ohio. She is requesting a schedule of several day visits on Wednesdays, and alternate Saturday and Sundays, as she has concerns with the minor child having overnights with the Plaintiff Father prior to the child being able to communicate his needs. Plaintiff Mother's concern was aptly demonstrated in her testimony concerning [REDACTED]'s day visit with Father on or about August 18, 2012, wherein Mother sent him in a clean diaper marked with an "X" inside the diaper prior to the 10:00 a.m. scheduled parenting time. After the conclusion of Father's parenting time at approximately 1:00 p.m., Mother testified that [REDACTED] remained in the same diaper for this time period as demonstrated by the presence of the "X" in the diaper upon the child's returning home to her.

Defendant Mother also testified regarding what she perceived as Plaintiff Father's determination to switch [REDACTED] to formula while she was still breast feeding, despite her requests and what she believes was the recommendation of [REDACTED]'s pediatrician. Defendant Mother also testified regarding a time where Ishaq had to go to the emergency room for projectile vomiting immediately after the conclusion of Plaintiff Father's visit. On that occasion, according to Defendant Mother, Plaintiff Father was reluctant to answer the doctor's questions about what he had been feeding [REDACTED]. Despite Defendant Mother's concerns about [REDACTED]'s safety, she has not denied Plaintiff Father parenting time.

During the pendency of the litigation, the parties have engaged in a parenting schedule providing Plaintiff Father parenting time with [REDACTED] every Tuesday and Thursday from 6:00 p.m. until 9:00 p.m. and every Saturday and Sunday from 10:00 a.m. until 1:00 p.m. Defendant Mother proposes an expanded schedule to include one overnight once [REDACTED] is two years old, and once he reaches school age, she proposes some slight additional time for Plaintiff Father.

Although Defendant Mother has been Ishaq's primary caregiver since birth, the schedule has allowed ██████ to have regular and frequent contact with Plaintiff Father. Plaintiff Father testified that he repeatedly spoke to the Guardian ad litem to request overnight visitation.

Plaintiff Father's parents, whose permanent residence is in Pakistan, were staying with him at the time of trial. Plaintiff believes that his parents are suitable caregivers for Ishaq while he is at work. He would like ██████ to have more time at his house, with his parents watching ██████ while he is at work. However, Defendant Wife testified that due to concerns about the age and medical conditions of the paternal grandparents, she did not believe that they could properly care for the baby without assistance from Plaintiff Father. Defendant Mother believes that ██████'s paternal grandmother is unable to lift him at his current weight. ██████'s paternal grandfather is in failing health, and, according to Plaintiff Father, has been diagnosed with cancer. Defendant Mother also indicated that since neither grandparent drives or speaks English, she is concerned about Ishaq in the event of an emergency. Defendant Mother also expressed some concern about paternal grandmother's use of anti-psychotic medication, but it is not clear as to the extent of her psychological issues, if any.

**B. "If the court has interviewed the child in chambers pursuant to division (B) of this section regarding the child's wishes and concerns as to the allocation of parental rights and responsibilities concerning the child, the wishes and concerns of the child, as expressed to the court;" R.C. 3109.04(F)(1)(b).**

The Court did not conduct an interview of the child in chambers, and neither parent requested an in-camera interview.

**C. The child's interaction and interrelationship with his parents, siblings, and any other person who may significantly affect the child's best interest; R.C. 3109.04(F)(1)(c).**

Both parents gave testimony demonstrating that they are very bonded to their child and show genuine love and affection for Ishaq. Although ██████ is only one year old, he has had the opportunity to spend a good deal of time with both his maternal and paternal grandparents. ██████'s maternal

grandparents have visited from Dubai, and his paternal grandparents from Pakistan, are currently staying with the Plaintiff Father. Defendant Mother does not have relatives in the area, but she testified that she has made efforts to establish a support system and network of friends, including participating in "playgroups" with [REDACTED], and joining parenting and cultural groups.

**D. The child's adjustment to the child's home, school, and community; R.C. 3109.04(F)(1)(d).**

[REDACTED] has been cared for at home since his birth with Defendant Mother as the primary caregiver. Both parties have residences located close to each other, within a few minutes of the Gahanna police station. Defendant Mother testified that [REDACTED] is well fed, well clothed and happy. Ishaq is established with a pediatrician. Defendant Mother has joined play groups and culture programs with [REDACTED].

**E. The mental and physical health of all persons involved in the situation; R.C. 3109.04(F)(1)(e).**

There are no health concerns evidenced in the record regarding either child or their parents. Plaintiff Father testified that he had concerns about scratches the child had on his face alleging that the scratches were due to Defendant Mother's failure to properly clip the child's nails.

**F. The parent more likely to honor and facilitate court-approved parenting time rights or visitation and companionship rights; R.C. 3109.04(F)(1)(f).**

The Court finds that the Defendant Mother is more willing to honor and facilitate the Plaintiff Father's parenting time rights. Defendant Mother testified that she did not always feel that Plaintiff Father exercised the best care for their son during his parenting time, but has continued to follow the Court ordered parenting time. Defendant Mother has continued her efforts to communicate to Plaintiff Father the important information with respect to [REDACTED] including his health, nutritional needs, and developmental milestones, despite Plaintiff Father's self-serving rebuffs and critical responses. Defendant Mother testified to a certain degree of reluctance to allow parenting time in excess of the court ordered time, recalling that she did not grant Plaintiff Father additional parenting time as Plaintiff Father had requested when his brother was in town. However, Mother further

explained that she was unable to have the Guardian ad litem verify this additional parenting time, and was concerned that agreeing to additional parenting time without the Guardian ad litem's knowledge and approval in advance, that Plaintiff Father would claim that Defendant Mother failed to pick-up the child. In light of Plaintiff Father's prior actions and comportment, this refusal would be reasonable. Defendant Mother also testified that she has been late a few times for the exchanges, but has contacted the Plaintiff Father as soon as the issue arose.

In contrast, significant testimony was presented that the Plaintiff Father does not follow this Court's Orders. The Plaintiff Father testified that he did not maintain the Defendant Mother's health insurance, in violation of the Court's Temporary Orders, and did not inform Defendant Mother about the health insurance lapse. Yet, he maintained dual health coverage for himself. At the time of trial, Plaintiff Father had not yet taken the additional parenting classes he was ordered to take six months earlier. Plaintiff Father also testified that he did not remember if he turned over food stamps to the Defendant Mother as he was required to do pursuant to the Temporary Orders. He also testified that he has not paid the medical bills associated with Ishaq's birth, but further testified that he had paid some of his father's medical bills.

Of further importance, Defendant Mother provided credible testimony that Plaintiff Father is chronically late to the parenting exchanges. Defendant Mother testified that he blames his chronic tardiness on work conflicts, and traffic. It is of great concern that Plaintiff Father does not take responsibility for his actions as evidenced by Plaintiff Father's evasive testimony and lack of credibility. Rather than take responsibility for his actions, he consistently shifts the blame to the Defendant Mother. He testified that he often leaves his residence to return his child at 9:00 p.m., and that he is aware that the exchange is 19 minutes from his house. When asked if he was on time for exchanges, Plaintiff Father stated that he has asked for the Guardian ad litem to move the exchanges to 6:30 p.m. (rather than the currently scheduled 6:00 p.m.) and for overnight parenting time. He also deflected indicating that Defendant Mother is 15-20 minutes late for exchanges.

His consistent lateness for a parenting time schedule that has been in place since June 14, 2012, (as agreed) shows not only an arrogance and disregard for the value of Defendant

Mother's time, but a lack of insight as to how it negatively affects his infant son to be made to regularly wait in a public space or car for long periods of time without a valid basis. The Plaintiff Father's chronic lateness in returning the child to Defendant Mother is a further denial of Defendant Mother's parenting time.

Plaintiff Father did testify that he has agreed to parenting schedule changes in the past, citing an instance right before Ramadan when the exchange was moved to an earlier 5:00 p.m. time.

**G. Whether either parent has failed to make all child support payments, including all arrearages, that are required of that parent pursuant to a child support order under which that parent is an obligor; R.C. 3109.04(F)(1)(g).**

As of February 12, 2013, Plaintiff Father had a child support arrearage in the amount of \$4,279.65. See *Defendants Exhibit X*. Based upon the parties' testimony, Defendant Mother did not receive any financial support for the first five months after [REDACTED] was born, and Plaintiff Father's meager contribution consisted of one pack of diapers and several outfits. However, Plaintiff Father testified that he is the sole supporter of his parents whom live with him, and that they do not contribute to his household expenses. Plaintiff Father also testified that he has not fully paid the medical bills associated with [REDACTED]'s birth, but he has paid some of his father's medical bills.

Further, Plaintiff Father applied for public assistance on July 3, 2012, and misrepresented that his wife and son were currently residing in his home. See *Defendant's Exhibit Y*. Plaintiff Father's lack of financial support is further worsened in light of Defendant Mother's testimony that her father provided \$20,000.00 to Plaintiff Father during the short course of their marriage. Further, although the Magistrate ordered Plaintiff Father to provide any food stamps to the Defendant Mother, Plaintiff Father testified that he did not recall whether or not he did so.

**H. Whether either parent previously has been convicted of or pleaded to any criminal offense involving any act that resulted in a child being an abused child or a neglected child; whether either parent, in a case in which a child has been**

adjudicated an abused child or neglected child, previously has been determined to be the perpetrator of the abusive or neglectful act that is the bases of an adjudication; whether either parent previously has been convicted of or pleaded guilty to a violation of section 2919.25 of the Revised Code involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding, whether either parent previously has been convicted of or pleaded guilty to an offense involving a victim who at the time of the commission of the offense was a member of the family or household that is the subject of the current proceeding and caused physical harm to the victim in the commission of the offense; and where there is reason to believe that either parent has acted in a meaner resulting in a child being abused or a neglected child; R.C. 3109.04(F)(1)(h).

No evidence was presented on this issue.

**I. Whether the residential parent or one of the parents subject to a shared parenting decree has continuously and willfully denied the other parent his or her right to visitation in accordance with an order of the court; R.C. 3109.04(F)(1)(i).**

This issue was previously addressed in subsection F. above.

**J. Whether either parent has established a residence, or is planning to establish a residence, outside the state; R.C. 3109.04(F)(1)(j).**

Plaintiff Father testified that he and ██████ are U.S. citizens, a focus that he emphasized throughout his testimony. Plaintiff Father was born in Pakistan, and has family in Pakistan, India and Dubai, United Arab Emirates (UAE). His parents have their permanent home in Pakistan, but are currently staying with the Plaintiff Father. Defendant Mother was born in India, and has family in India and Dubai, UAE. Her parents reside in Dubai, United Arab Emirates. Defendant Mother testified that they first met online in October 2010 on two arranged marriage web sites, and then met face-to-face in December 2010 with Defendant Mother's father's permission. Defendant Mother testified that Plaintiff Father seemed settled and ready to start a family. She further testified that she felt he was appropriate as a husband because he wanted

his children to have an Islamic upbringing, was financially able to care for her, and that he wanted to return to the Middle East when the children were school age.

Defendant Mother testified that in December 2011 while she was pregnant, that Plaintiff Father made threats of abduction. They fought, and Plaintiff Father asked her to leave. He threatened that if she tried to leave the United States with the child, he would shoot her and run away.

Although these parties originally focused on a similarity of their culture, it appears that there was much disagreement about the practice of "confinement" wherein a woman, from the time she is seven months pregnant until a minimum of 40 days after the child's birth, is in the care of her mother's family. Defendant Mother testified that she would engage in this traditional practice if she still lived at home. Defendant Mother testified that she believed Plaintiff Father felt threatened about this practice, so Defendant Mother's parents decided to come to the U.S. Defendant Mother testified that her parents came to the U.S. in January 2012 and rented an apartment; on February 25, 2012, Plaintiff Father threw her out of the house, and she moved into the apartment with her parents. There were many attempts at reconciliation including dinners at each other's houses and celebration of an anniversary. Defendant Mother relayed in her testimony that some days the Plaintiff Father was nice and sweet, and other days he was rude and mad.

Defendant Mother did testify that in an affidavit to the Court on May 1, 2012, she was requesting sole custody of [REDACTED] and leave of Court to return to Dubai. However, at trial she testified that her intent is not currently to leave the United States. She testified that she had a green card that allows her to be in this country on condition of marriage, which expired on March 31, 2013. Defendant Mother further testified that she has an immigration attorney, and she is working with same to get the condition of marriage removed from her green card so that she may stay in the United States. Defendant Mother is confident that she will be allowed to stay in the United States, and believes she has timely applied and is requesting permission based upon abuse by a U.S. citizen and her civil protection request.

Defendant Mother provided credible testimony that she intends to remain in the United States, acknowledged [REDACTED]'s need for a relationship with his Father, and outlined her plan

for supporting herself here. These plans include joining a medical transcriptionist class, and ultimately completing her residency to become a medical doctor. She also testified with respect to the cultural groups, play groups and parenting groups that she has participated in order to establish a support system and further integrate herself and [REDACTED] into the community. At the time of trial, no evidence was presented that she was not legally in the United States or under the threat of deportation. The Court finds Defendant Mother's testimony to be credible. No credible evidence was presented that Defendant Mother is a flight risk or that reasonable international travel with [REDACTED] should not be permitted.

Plaintiff Father did not present any evidence that he intends to move outside of the state. Plaintiff Father testified regarding his fears that the Defendant Mother would move outside of the United States and further testified as to what he perceived as the likelihood that Defendant Mother was going to take Ishaq and leave the United States and go to countries which may not be signatories to the Hague Convention. In his testimony, Plaintiff Father admitted that when Defendant Mother returned to her apartment from the hospital after [REDACTED]'s birth rather than return with him to his residence, he considered such an act as "child abduction" even though Plaintiff Father actually drove Defendant Mother and [REDACTED] to Defendant Mother's apartment. Plaintiff Father also admitted upon cross-examination that he has placed alerts with the U.S. Department of State and Interpol, Center for Missing Children, the U.S. passport office indicating that his child is at risk of being abducted. In order for the Defendant Mother to be able to travel internationally with [REDACTED], Plaintiff Father would have to remove any existing barriers to international travel he has initiated, both in the United States and abroad, and refrain from initiation any new obstacles to [REDACTED]'s travel.

In addition to abduction alerts to state and international agencies, the Plaintiff Father also admitted that he contacted U.S. Immigration, and testified that he told immigration officials that his marriage was a sham, and that Defendant Mother only married him for a green card. Plaintiff Father also testified that he destroyed Defendant Mother's green card, and other forms of her identification. Plaintiff Father reiterated to this Court on many occasions that he was a naturalized citizen, and clearly believes that this designation provides a basis for him to obtain sole custody of this child. Plaintiff Father's actions further indicate that he believes

Defendant Mother should be deported. During the marriage, there was significant conflict about Defendant Mother's identification, particularly her green card which documented that she was legally within the country. Defendant Mother testified that she was often asked to leave the marital residence, but that Plaintiff Father would not provide her with her identification when she asked for it.

### **K. Other Relevant Evidence**

1. Communication between the Parents: Defendant Mother has continued attempts to communicate with Plaintiff Father despite Plaintiff Father's physical and emotional abuse. Plaintiff Father clearly rebuffs Defendant Mother when she attempts to relay pertinent information as to [REDACTED]. It appears that Plaintiff Father's sole focus is Defendant Mother's lack of citizenship and his anger at her, rather than providing a conducive environment of respect to encourage Defendant Mother to openly engage with him and facilitate co-parenting. Plaintiff Father simply cannot cooperate with Defendant Mother despite her on-going efforts to do so. It is incumbent upon Plaintiff Father to reconsider the effects of his behavior upon his child, as well as the effects upon his parenting time. Clearly, Plaintiff Father has the ability to encourage the sharing of love, affection, and contact between the child and the other parent, but it is unclear if he is willing to do so.

Plaintiff Father testified that he does not want to continue to exchange [REDACTED] at the Gahanna Police Station, yet Defendant Mother testified with regard to Plaintiff Father's erratic behavior at exchanges, including telling people in the parking lot that this was an international abduction case. Defendant Mother also testified that at a recent exchange that when Ishaq began to cry that Defendant Mother attempted to comfort [REDACTED] by patting his head and speaking to him, Plaintiff Father smacked Defendant Mother's hand away.

2. Any history of, or potential for, child abuse, spouse abuse, other domestic violence or parental kidnapping by either parent:

In his narrative testimony, Plaintiff Father made several allegations that Defendant Mother falsified a lot of information, but he was not specific as to what she falsified other than the Defendant Mother had filed a petition for a civil protection order (which was granted). He also testified

that there had been an abduction threat, but he failed to present any evidence to support this perception. In fact, Plaintiff Father was often evasive and not credible during much of his testimony.

Defendant Mother testified as to Plaintiff Father's controlling behaviors. She testified that she felt as though she was "under house arrest" – stating that Plaintiff Father controlled everything including finances, phone, computer, and car keys. During the marriage when Defendant Mother was still living with the Plaintiff Father, and his parents were also residing there, Defendant Mother testified that Plaintiff's father kept the house keys and his mother kept the car keys if Plaintiff Father was not present. Defendant Mother testified that she had no access outside the house unless a neighbor took her out, which was rare. She also testified that Plaintiff Father would often tell her to leave the house, and she would ask for her identification, and Plaintiff Father would refuse to provide same. Plaintiff Father continually accused Defendant Mother of marrying for a green card.

Defendant Mother testified that Plaintiff Father physically abused her on two occasions during the marriage. Defendant testified that August 28, 2011, was the first time Plaintiff hit her. He threw her laptop, pushed her against a wall and told her to leave. On January 20, 2012, Defendant Mother testified that Plaintiff Father asked for her passport, and she asked for her green card in return. He began screaming at her, hit her, slapped her, and pushed her on the bed. She recalled that he was screaming at her that her father would not give him the money he had requested. At this time she was 30 weeks pregnant, and she was sent to the hospital for observation.

3. Recommendation of the guardian ad litem of the child: The Guardian ad litem issued her interim recommendation and report on February 20, 2013. She participated in the trial of this matter, and was available for cross-examination, yet neither party called her to testify. She filed her *Final Report and Recommendation of Guardian ad Litem* on March 29, 2013. The Court has thoroughly reviewed each report and recommendation.

In Plaintiff Father's narrative testimony, he testified that he felt that the guardian ad litem was too biased.

(R. 327, at 6 – 19, Decree of Divorce.)

{¶ 5} Turning to the individual assignments of error, the facts alleged in the assignment of error do not correspond with the provisions of the decree set forth above.

{¶ 6} Divorce and ancillary custody actions are purely matters of statute. *Shively v. Shively*, 10th Dist. No. 94APF02-249 (Sept. 22, 1994), citing *State ex rel. Papp v. James*, 69 Ohio St.3d 373, 379 (1994). In such actions, domestic relations courts have jurisdiction, as statute confers and limits it, to allocate parental rights and responsibilities for the care, custody, and control of a child. *Id.*; see R.C. 2301.01; R.C. 3105.03, 3105.21, and 3109.04. In reviewing statutes, we are obligated "to give effect to the words used and not to insert words not used." *In re James*, 113 Ohio St.3d 420, 2007-Ohio-2335, ¶ 13.

{¶ 7} The first assignment of error alleges that the trial court erred and deprived Hanif of his right to association with his child, his right to substantive due process, and his right to equal protection, as well as depriving Ishaq of the same rights.

{¶ 8} Initially we address Hanif's presumption to be asserting the constitutional rights of Ishaq in this appeal. ██████ was a party to this divorce having been appointed a Guardian *ad Litem* and had a right to file an appeal in this case. *Schottenstein v. Schottenstein*, 10th Dist. No. 00AP-1088 (Nov. 29, 2001). An appellant cannot raise an issue on another's behalf, especially when that party could have appealed. *In re D.T.*, 10th Dist. No. 07AP-853, 2008-Ohio-2287, ¶ 8. Hanif has no standing to appeal on behalf of Ishaq in this appeal.

{¶ 9} In reviewing the trial court's decision, we are guided by a presumption that the trial court's findings are correct. The underlying rationale of giving deference to the findings of the trial court rests with the knowledge that "the trial judge is best able to view the witnesses, observe their demeanor, gestures, voice inflections, and use these observations in weighing the credibility of the proffered testimony." *Griffin v. Twin Valley Psychiatric Sys.*, 10th Dist. No. 02AP-744, 2003-Ohio-7024, ¶ 28.

{¶ 10} The trial court heard the actual testimony from Sakhi and found her credible. Based upon the testimony presented in open court, the trial court judge concluded that Sakhi was not going to flee the country with the child. The trial court judge also concluded that Sakhi believed that Hanif should be involved in raising the child.

{¶ 11} We are not in a position to overturn that set of factual findings by the trial court judge. Given those factual findings, Hanif will not lose access to the child.

{¶ 12} The first assignment of error is overruled.

{¶ 13} The second assignment of error argues the trial court, in awarding sole custody of ██████ to Sakhi without restrictions, was not in the best interest of the child and was not supported by the evidence.

{¶ 14} "Judgments supported by some competent, credible evidence going to all the essential elements of the case will not be reversed by a reviewing court as being against the manifest weight of the evidence." *C. E. Morris Co. v. Foley Const. Co.*, 54 Ohio St.2d 279, 280 (1978). The in-court testimony of Sakhi constituted competent credible evidence to support the trial court's orders. Hanif's fears are understandable, but his fears do not outweigh the testimony of his ex-wife which was found to be credible by the trial court judge.

{¶ 15} Further, the trial court addressed the issue of international travel directly and implemented a number of procedures and restrictions to ensure that the child would be allowed to reasonably travel. These procedures include requiring written consent for travel to be obtained from both parents, having the Guardian ad Litem hold ██████'s passport when not in use, and requiring the non-traveling parent to take all actions necessary to facilitate the travel. (R.327, at 26-27 Decree of Divorce.) It is evident that the trial court attempted to address the fears of Hanif but at the same time not hinder ██████, who no doubt would benefit from international travel with much of his extended family abroad, whose best interest the trial court is obligated to uphold.

{¶ 16} The second assignment of error is overruled.

{¶ 17} The third assignment of error argues the trial court erred in awarding sole custody rather than shared parenting to both parties, on the basis that neither party had filed a shared parenting plan.

{¶ 18} "The discretion which a trial court enjoys in custody matters should be accorded the utmost respect, given the nature of the proceeding and the impact the court's determination will have on the lives of the parties concerned. The knowledge a trial court gains through observing the witnesses and the parties in a custody proceeding cannot be conveyed to a reviewing court by a printed record." *Miller v. Miller*, 37 Ohio St.3d 71, 74

(1988). A trial court's discretion in custody matters is broad but must be guided by the language set forth in R.C. 3109.04. See *Baxter v. Baxter*, 27 Ohio St.2d 168 (1971). The trial court's decision must not be reversed absent an abuse of discretion. *Davis v. Flickinger*, 77 Ohio St.3d 415, 418 (1997).

{¶ 19} The failure of the parties to file a shared parenting plan does not ultimately decide the issue. The communication problems between the parties were enormous. Hanif was not paying his child support, leading to an arrearage of over \$4,000 on a child who was less than two-years old. The visitation schedule had been a problem with Hanif not showing up on time. Their attitudes toward each other were so bad that transfer of the child occurred in a police station so it could be recorded.

{¶ 20} The mother was breastfeeding and had been the primary caregiver for the child. If there were no shared parenting, she would be the likely residential parent. Given the communication problems and other problems between the parties, shared parenting was not in the best interest of anyone. We find that the trial court did not abuse its discretion in naming Sakhi the residential parent and legal custodian, subject to the parenting time of Hanif as determined by the court.

{¶ 21} The third assignment of error is overruled.

{¶ 22} All three assignments of error having been overruled, the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, is affirmed.

*Judgment affirmed.*

DORRIAN and T. BRYANT, JJ., concur.

T. BRYANT, J., retired, of the Third Appellate District,  
assigned to active duty under the authority of Ohio  
Constitution, Article IV, Section 6(C).

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DORRIAN, J., concurring.

{¶ 23} Having carefully reviewed the transcript, I would concur with the majority and would affirm the trial court. I would also note that the transcript reveals that appellant, not appellee, threatened abduction. The appellee testified that appellant told her, "if you ever try to leave with [the baby], I will just shoot you and I will take him and I will run away within the United States." Appellee further testified that appellant told her

No. 13AP-681

17

"the United States is a big place and children go missing all the time and nobody would ever find him." (Tr. Vol. II, 63.)

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Hanif Ibrahim, :

Plaintiff-Appellant, :

v. :

Sakhi Ibrahim, :

Defendant-Appellee. :

No. 13AP-681  
(C.P.C. No. 12DR-1670)

(REGULAR CALENDAR)

JUDGMENT ENTRY

For the reasons stated in the decision of this court rendered herein on December 5, 2013, the assignments of error are overruled. Therefore, it is the judgment and order of this court that the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, is affirmed. Costs shall be assessed against appellant.

TYACK, DORRIAN & T. BRYANT, JJ.

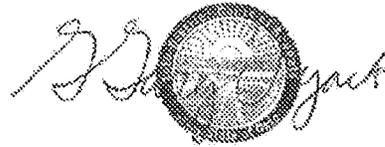
/S/JUDGE

Judge G. Gary Tyack

Tenth District Court of Appeals

**Date:** 12-06-2013  
**Case Title:** HANIF IBRAHIM -VS- SAKHI IBRAHIM  
**Case Number:** 13AP000681  
**Type:** JEJ - JUDGMENT ENTRY

So Ordered



/s/ Judge G. Gary Tyack

68-78 - U24  
# 28

MAY -1 PAID

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO  
DIVISION OF DOMESTIC RELATIONS

HANIF IBRAHIM

Plaintiff

vs.

SAKHI BEERU

Defendant

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:

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Case No.12 DR 1670  
JUDGE MASON  
MAGISTRATE SIELOFF

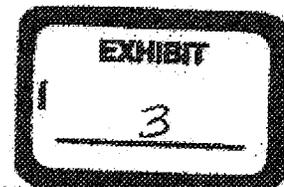
ANSWER

1. Now comes the Defendant Saki Beeru, and for her answer to the Plaintiff's Complaint.
2. Further answering, the Defendant admits paragraph 1 through 7 of the Plaintiff's Complaint.
3. Defendant denies any and all allegations not specifically admitted to herein.

FILED  
COMMON PLEAS COURT  
FRANKLIN CO. OHIO  
MAY -1 AM 10:39  
CLERK OF COURTS

COUNTERCLAIM

1. Now comes the Defendant and states that she and the Plaintiff were married on the 31<sup>st</sup> day of March, 2011, in Dubai, United Arab Emirates.
2. The Defendant has been a resident of the State of Ohio for six (6) months and of Franklin County for ninety (90) days, respectively, immediately preceding the filing of this Complaint.
3. One (1) child has been born as issue of this marriage, namely; ~~Sakhi Beeru~~  
(DOB 04-03-2012)
4. The parties are owners of various items of personal property.

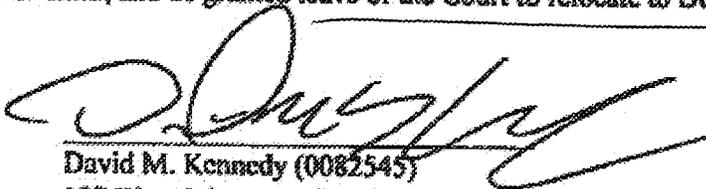


18

5. The Defendant hereby incorporates her attached Affidavit as if fully re-written herein.

6. Based on the facts alleged in the Affidavit, the Plaintiff has been guilty of gross neglect of duty and extreme emotional cruelty

WHEREFORE, the Defendant request that she be granted an absolute divorce; standard residential and custodial parent of the minor child of the parties; temporary and permanent child support for the benefit of the minor child, and be granted leave of the Court to relocate to Dubai, United Arab Emirates.



David M. Kennedy (0082545)  
107 West Johnstown Road  
Gahanna, Ohio 43230  
Telephone: (614) 471-8194  
fax: (614) 471-4581  
Email: [rmularski@mbdplaw.com](mailto:rmularski@mbdplaw.com)  
Attorney for Defendant

APPROVED

FILED  
COMMON PLEAS COURT  
FRANKLIN CO. OHIO  
2012 MAY - 1 AM 10:39  
CLERK OF COURTS

**CERTIFICATE OF SERVICE**

The undersigned attorney at law hereby certifies that a true copy of the foregoing was served upon Catherine White, Esq., attorney for Plaintiff, Hanif Ibrahim, located at 145 East Livingston Ave. Columbus, Ohio 43215, via ordinary United States mail, postage prepaid, on this 1<sup>st</sup> the day of May, 2012.

  
David M. Kennedy (0082545)  
Attorney for Defendant

FILED  
COMMON PLEAS COURT  
FRANKLIN CO., OHIO  
2012 MAY -1 AM 10:41  
CLERK OF COURTS

IN THE FRANKLIN COUNTY COURT OF COMMON PLEAS  
DOMESTIC DIVISION - COLUMBUS, OHIO

Hanif Ibrahim,	:	
	:	
Plaintiff,	:	Case No. 12 DR 1670
	:	
v	:	Judge Mason
	:	
Sakhi Beeru,	:	Magistrate Sicloff
	:	
Defendant.	:	

AFFIDAVIT OF SAKHI BEERU

Now comes Ms. Sakhi Beeru, affiant herein, having been duly cautioned and sworn and states as follows:

1. I am over the age of 18 years old and competent to give testimony.
2. I am the Defendant in the above-captioned case and the spouse of Hanif Ibrahim.
3. I am seeking a divorce from Hanif Ibrahim based on incompatibility and extreme emotional cruelty.
4. I met Hanif through an internet matrimonial website and we were married in Dubai, UEA on 3/31/11.
5. I moved to the United States to live with Hanif on or about 4/9/11.
6. Shortly after taking up residence together, Hanif became verbally and emotionally abusive. Hanif was insulting and demeaning to me and would not allow me to take on work of my own.
7. I became pregnant a short time into our marriage. During my pregnancy, Hanif struck me on two different occasions – once at 8 weeks and once at 29 weeks. He struck me as the result of fights over his constant demands for money from my father and my ongoing refusal to obey his instructions to give up my travel documents. Ultimately, Hanif seized my identification and “green card” and I believe he destroyed them.
8. As Hanif’s wife I was ordered to cut off contact from my friends and family while he made constant demands of money from my family. I refused. He made numerous threats against me, including on December 17, 2011 when he threatened to kill me and flee to other parts of the United States and take our child.
9. On April 23, 2012, after I obtained a Protection Order from the Court, Hanif solicited a local friend to call me on his behalf in an effort to communicate messages.
10. I am asking the Court for a decree of divorce, to be named residential and custodial parent of our newborn child and for leave of the Court to return to Dubai and the safety of my family.

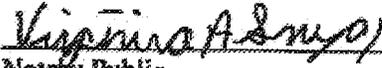
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 COMMON PLEAS COURT  
 FRANKLIN CO. OHIO  
 2012 MAY 21 AM 10:29  
 CLERK OF COURT

EXHIBIT  
3(b)

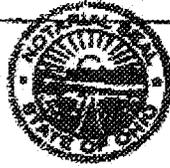
The undersigned Affiant, having been duly sworn, states that the foregoing facts are fair and true representations to the best of his recollection. Further Affiant sayeth naught.

  
\_\_\_\_\_  
Ms. Sakhi Beeru

Sworn to and subscribed in my presence on this 24 day of April, 2012

  
\_\_\_\_\_  
Notary Public

My commission expires \_\_\_\_\_



VIRGINIA A. SNYDER  
Notary Public, State of Ohio  
My Commission Expires 08-29-2015

FILED  
COMMON PLEAS COURT  
FRANKLIN CO. OHIO  
2012 MAY -1 AM 10:39  
CLERK OF COURTS

**IN THE FRANKLIN COUNTY COURT OF COMMON PLEAS  
DOMESTIC RELATIONS DIVISION**

HANIF IBRAHIM, :  
 :  
 Plaintiff, : Case No. 12 DR 1670  
 :  
 v. : Judge Mason  
 :  
 SAKHI IBRAHIM, : Magistrate Sieloff  
 :  
 Defendant. :

**DEFENDANT'S ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT**

Now comes the Defendant, Sakhí Ibrahim, by and through counsel, and as for her Answer to the Plaintiff's First Amended Complaint, states the following:

1. The Defendant ADMITS the allegations contained in paragraph 1 of the Plaintiff's First Amended Complaint.
2. The Defendant ADMITS the allegations contained in paragraph 2 of the Plaintiff's First Amended Complaint.
3. The Defendant ADMITS the allegations contained in paragraph 3 of the Plaintiff's First Amended Complaint.
4. The Defendant ADMITS in part and DENIES in part the allegations contained in paragraph 4 of the Plaintiff's First Amended Complaint. The Defendant ADMITS that the parties are incompatible, but DENIES the rest and remainder of the allegations contained in paragraph 4.
5. The Defendant ADMITS the allegations contained in paragraph 5 of the Plaintiff's First Amended Complaint, without assuming any debt liability under which Defendant is not currently liable.

**Law Offices of  
Virginia C. Cornwell**  
603 E. Town Street  
Columbus, Ohio  
43215  
(614) 225-9316  
FAX (614) 220-9411  
virginia@  
cornwell-law.com

*EXHIBIT 3-C*

- 6. The Defendant ADMITS in part and DENIES in part the allegations contained in paragraph 6. The Defendant ADMITS that the parties agreed to marry, but DENIES the remaining allegations contained in paragraph 6 and asserts that the parties, particularly the Plaintiff, discussed living in and raising their child in several different places, including Dubai, UAE.
- 7. The Defendant DENIES any and all allegations contained in the Plaintiff's First Amended Complaint that are not specifically addressed herein.

**WHEREFORE**, the Defendant prays that that the Court grant her the relief requested in her original Answer and Counterclaim for Divorce, which was filed on 05/01/12. In addition, the Defendant would request that the Court grant her spousal support plus interim spousal support, an award of attorney's fees, including interim attorney's fees, an equitable division of the parties' assets and liabilities, and for such further and additional relief as the Court would deem just and equitable.

Respectfully submitted,

Law Offices of Virginia C. Cornwell  
*Attorneys for Defendant*

/s Virginia C. Cornwell  
Virginia C. Cornwell, #0071001

**Law Offices of  
Virginia C. Cornwell**  
Attorneys At Law  
603 E. Town Street  
Columbus, Ohio  
43215  
(614) 225-9316  
FAX (614) 220-9411  
virginia@  
cornwell-law.com

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was faxed to the following persons on the 18 day of June, 2012:

Robert N. Burman  
Burman & Robinson  
601 S. High Street  
Columbus, OH 43215  
Fax: (614) 221-8912  
*Attorney for Plaintiff*

Kristy J. Swope  
Swope & Swope, Attorneys at Law  
6480 E. Main St., Suite 102  
Reynoldsburg, OH 43068  
Fax: (614) 864-5553  
*Guardian ad Litem*

Respectfully submitted,

Law Offices of Virginia C. Cornwell  
*Attorneys for Defendant*

/s Virginia C. Cornwell  
Virginia C. Cornwell, #0071001

**Law Offices of  
Virginia C. Cornwell**  
Attorneys At Law  
603 E. Town Street  
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cornwell-law.com

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO  
DIVISION OF DOMESTIC RELATIONS

Hanif Ibrahim,	:	
	:	Case No. 12 DR 1670
Plaintiff,	:	
	:	
vs.	:	<b>Judge Mason</b>
	:	
<b>Sakhi Ibrahim (nka Sakhi Beeru),</b>	:	
	:	Magistrate Sieloff
Defendant.	:	

**JUDGMENT ENTRY**

This matter is before the Court upon Plaintiff, Hanif Ibrahim's, *Motion for Immediate Stay of the Trial Court's Judgment, Stay of All Trial Court Proceedings, and Stay of the Court's Decision on Defendant's Motion Requesting Court's Permission for Passport and International Travel Pending Appeal to the Ohio Supreme Court* filed February 14, 2014. Plaintiff has filed an appeal of the Tenth District Court's Decision to the Ohio Supreme Court, Case No. 14-0251. Upon review of Plaintiff's Motion, the Court finds Plaintiff's *Motion for Stay* not well-taken, and is therefore, DENIED.

**IT IS SO ORDERED.**

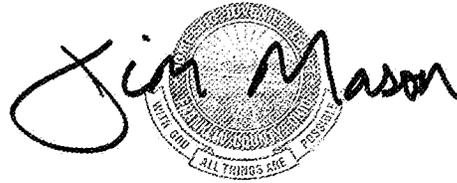
\*See Attached Signature Page\*  
JUDGE JIM MASON

cc: Hanif Ibrahim, Plaintiff Pro Se  
Sakhi Ibrahim (nka Beeru) Defendant Pro Se

Franklin County Court of Common Pleas

**Date:** 02-20-2014  
**Case Title:** HANIF IBRAHIM -VS- SAKHI IBRAHIM  
**Case Number:** 12DR001670  
**Type:** JUDGMENT ENTRY

Jim Mason, Judge

A handwritten signature in cursive script that reads "Jim Mason" is written over a circular official seal. The seal contains the text "JUDICIAL BRANCH" at the top, "FRANKLIN COUNTY, OHIO" around the inner edge, and "ALL THINGS ARE POSSIBLE" at the bottom.

Jim Mason

Court Disposition

Case Number: 12DR001670

Case Style: HANIF IBRAHIM -VS- SAKHI IBRAHIM

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 12DR0016702014-02-1499980000

Document Title: 02-14-2014-MOTION TO STAY

Disposition: MOTION DENIED

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO  
DIVISION OF DOMESTIC RELATIONS AND JUVENILE BRANCH

HANIF IBRAHIM,

PLAINTIFF,

v.

SAKHI IBRAHIM,

DEFENDANT.

CASE NO. 12DR-04-1670

JUDGE MASON

MAGISTRATE SIELOFF

JUDGMENT ENTRY

Pursuant to Ohio Rules of Civil Procedure / Ohio Rules of Juvenile Procedure, the Court has by specific and/or general order of reference directed that this cause be referred to a magistrate, which magistrate has the powers specified in said Ohio Civil Rules / Ohio Juvenile Rules.

This matter came to be heard on February 21, 2014 upon Defendant-Mother's Motion for Contempt, filed December 18, 2013. Plaintiff-Father was properly served and appeared with counsel, Attorney Elizabeth Gaba. Defendant-Mother was present and unrepresented by counsel. The Magistrate proceeded on the pending motion.

The magistrate has filed a decision in this matter with the Clerk of Courts on see time stamp, and copies thereof were mailed to the parties and/or their attorneys of record. The Court adopts the magistrate's decision and approves same, unless specifically modified or vacated, and enters the same as a matter of record, and includes same as the Court's judgment herein. The Court further finds there is no error of law or other defect on the face of the magistrate's decision. The Court incorporates by reference the attached magistrate's decision and makes same the judgment of this Court.

(Check if applicable)

Pursuant to Ohio Rule of Civil Procedure 53(D)(4)(e)(ii) / Juvenile Procedure 40(D)(4)(e)(ii) the Court finds immediate relief is justified. Should a party file timely objections to the magistrate's decision, this order shall serve as an interim order, and shall not be subject to the automatic stay caused by the filing of said objections.

  
JUDGE MASON

PRAECIPE: TO THE CLERK OF COURTS

Pursuant to Civil Rule 58(B), you are hereby instructed to serve upon all parties not in default for failure to appear, notice of the judgment and its date of entry upon the journal.

EXHIBIT 5

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO  
DIVISION OF DOMESTIC RELATIONS AND JUVENILE BRANCH

HANIF IBRAHIM,

PLAINTIFF,

v.

SAKHI IBRAHIM,

DEFENDANT.

CASE NO. 12DR-04-1670

JUDGE MASON

MAGISTRATE SIELOFF

**MAGISTRATE'S DECISION**

This matter came to be heard on February 21, 2014, upon Defendant-Mother's Motion for Contempt, filed December 18, 2013. Plaintiff-Father was properly served and appeared with counsel, Attorney Elizabeth Gaba. Defendant-Mother was present and unrepresented by counsel. The Magistrate proceeded on the pending motion.

Findings of Fact and Conclusions of Law were not requested. An audio recording of the proceedings was made.

**Both parties testified as to the pending motion.**

The parties were divorced by Judgment Entry - Decree of Divorce after the conclusion of a contested trial on July 11, 2013. Pursuant to the parties' Decree of Divorce, the applicable provision provides:

**International Travel:** The parties shall cooperate in facilitating reasonable international travel for the child, including, but not limited to completion of applications for a passport, renewed passport and visas. However, the minor child shall not travel outside of the United States without written consent of the non-traveling parent, or court order. Consent to travel shall not be unreasonably withheld by either parent.

The parents shall cooperate to obtain and keep current a valid United States Passport for their minor child, ~~████████████████████~~. The parties shall divide equally the cost associated with obtaining or renewing a passport. When not in use, the Guardian ad Litem shall hold and secure Ishaq's passport. She shall not withhold his passport from either party for any agreed upon or court ordered international travel including for the

purposes of obtaining a Visa for said travel. Upon [REDACTED]'s return from any agreed upon or court-ordered international travel, his passport shall be immediately returned to the Guardian ad Litem's possession.

Defendant filed a Motion for Contempt alleging that Plaintiff has failed to abide by this provision from the parties' Decree of Divorce, specifically, that Plaintiff has refused to cooperate in securing a passport for the parties' minor child.

Having considered the evidence and appropriate law, it is the decision of the Magistrate that the following orders shall issue:

- I. **Motion for Contempt.** Defendant's Motion is granted. Plaintiff is found to be in contempt of this Court's Orders by a showing of clear and convincing evidence. Plaintiff admitted that he has not assisted in any manner with obtaining a passport for the minor child. The focus of Father's testimony continued to be his on-going concerns with *any* international travel. The Court finds that there is no sufficient reason why Father has failed to comply with obtaining the passport for the minor child. The passport, once obtained, is to be held by the Guardian ad Litem in this matter. No travel can be undertaken unless the Court orders that such travel is permitted or unless the parties agree. No adequate reason was given for Plaintiff's failure to comply with the aforementioned provision in the parties' Decree of Divorce as it relates to securing a passport for the minor child other than Plaintiff's fear of inappropriate international travel. Plaintiff's arguments as to this "defense" are not persuasive.

Plaintiff also argues that Defendant's Motion for Contempt should be dismissed because there is no affidavit attached to the Motion, and therefore is deficient. Plaintiff relies on Fair v. Fair, 164, Ohio App.3d 177, for the proposition that an affidavit is required with a Motion for Contempt. A reading

of Fair indeed mentions the use of an affidavit in that matter and that it was deficient in putting the alleged contemnor on notice with respect to issues addressed at the hearing before the trial court. Fair, however, does not stand for the proposition that an affidavit is required. The vehicle for informing the person of the reasons for a potential contempt finding is the motion filed alleging a contempt of court. Northern v. Northern, 2010-Ohio-1389, p. 9. Procedural due process requires that one charged with contempt of court be advised of the charges against him. In re Oliver (1948), 333 U.S. 257, 275. Nowhere in the Ohio Revised Code, Ohio Rules of Civil Procedure, or the Franklin County Domestic Court Local Rules is there a requirement that an affidavit must accompany a contempt motion. While several jurisdictions specifically require an affidavit to be filed with such a motion, this Court does not. See Helton v. Helton, 2012-Ohio-1854 citing Montgomery County Domestic Rule 4.42; Yanik v. Yanik, 2003-Ohio-4155 citing Summit County Local Rule 22.0; and DeVito v. Steinberg, 1991 Ohio App. Lexis 1152, citing Trumbull County Local Rule 34.05. This Magistrate finds that the pleading filed by the Defendant was sufficient and plead with such specificity as to give Plaintiff proper notice as to the issues before this Court.

**WHEREFORE**, Plaintiff Hanif Ibrahim is found in contempt and is sentenced to 10 days in jail, which shall be stayed so long as he purges this finding of contempt as follows: Father shall immediately comply with this Court's Order mandating that he cooperate with obtaining a passport for the parties' minor child. Father shall provide all information necessary and complete all documents necessary so that the Mother can obtain said passport. Father shall do so no later than Thursday, March 6, 2014.

- II. **Court Costs**. Plaintiff-Father shall reimburse Defendant-Mother \$150 towards the filing fees of this motion in this matter as well as \$50 for the cost of serving said motion. These costs are to be paid within 30 days. Additionally, Plaintiff-Father shall pay any remaining court costs.
- III. **Review**. This matter shall come on for review before the Honorable Judge Mason on the 7<sup>th</sup> day of March, 2014, at 9:00 a.m. in Courtroom 64, located on the 6<sup>th</sup> floor of 373 South High Street, Columbus, Ohio 43215.

**NOTICE TO THE PARTIES**

A party shall not assign as error on appeal the court's adoption of any factual finding or legal conclusion, whether or not specifically designated as a finding of fact or conclusion of law under Civ. R. 53(D)(3)(a)(ii) or Juv. R. 40(D)(3)(a)(ii), unless the party timely and specifically objects to that factual finding or legal conclusion as required by Civ. R. 53(D)(3)(b) or Juv. R. 40(D)(3)(b).

All Orders to be effective upon the approval of the Court.

Magistrate Sieloff

2-27-14

Date

cc: Hanif Ibrahim  
Plaintiff

Sakhi Beeru  
Defendant, pro se

Elizabeth Gaba  
Attorney for Plaintiff

Kristy Swope,  
Guardian ad Litem

Court Disposition

Case Number: 12DR001670

Case Style: HANIF IBRAHIM -VS- SAKHI IBRAHIM

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 12DR0016702013-12-1899940000  
Document Title: 12-18-2013-MOTION FOR CONTEMPT  
Disposition: MOTION GRANTED

IN THE COURT OF COMMON PLEAS OF FRANKLIN COUNTY, OHIO  
DIVISION OF DOMESTIC RELATIONS

Hanif Ibrahim,	:	
	:	Case No. 12 DR 1670
Plaintiff,	:	
	:	
vs.	:	<b>JUDGE MASON</b>
	:	
Sakhi Ibrahim,	:	
	:	Magistrate Sieloff
Defendant.	:	

**DECISION AND ENTRY**

This matter came before the Court on February 14, 2014, upon the Defendant Mother's *Motion Requesting Court's Permission to Obtain Minor Child's Passport and For Authorization for Proposed International Travel with Minor Child* filed on December 9, 2013. Plaintiff Father was personally served on December 31, 2013. Plaintiff Father appeared and was represented by Attorney Elizabeth Gaba; Defendant also appeared *pro se*. Also present was Attorney Kristy Swope, the Guardian ad Litem for the parties' minor child, ~~████████████████████~~.

**Relevant Procedural Background:**

The parties were divorced by *Judgment Entry - Decree of Divorce* after the conclusion of a contested trial upon custody issues on July 11, 2013, for the minor child, Ishaq Ibrahim (DOB 04/03/2012). Pursuant to the parties' *Judgment Entry -Decree of Divorce*, the applicable provision provides:

International Travel: The parties shall cooperate in facilitating reasonable international travel for the child, including, but not limited to completion of applications for a passport, renewed passport and visas. However, the minor child shall not travel outside of the United States without written consent of the non-traveling parent, or court order. Consent to travel shall not be unreasonably withheld by either parent.

The parents shall cooperate to obtain and keep current a valid United States Passport for their minor child, ~~████████████████████~~. The parties shall divide equally the cost associated with obtaining or renewing a passport. When not in use, the Guardian ad Litem shall hold and secure Ishaq's passport. She shall not withhold his passport from either party for any agreed upon or court ordered international travel including for the purposes of obtaining a Visa for said travel. Upon Ishaq's return from any agreed upon or court-ordered international travel, his passport shall be immediately returned to the Guardian ad Litem's possession.

The parent proposing travel with ~~██████~~ shall give the other parent at least forty-five days written notice of his or her intention to travel. This written notice shall include details of the travel with dates, flight information, accommodations, contact information, full itinerary, etc. The other parent shall give a written response to the proposing parent within seven (7) days regarding whether he or she consents to said travel plans with the minor child. If consent is given, the parent shall immediately effectuate said consent by signing all documents and taking all actions necessary to facilitate the travel. Neither parent shall notify any entity, government or otherwise, accusing the other parent of abduction of the child when the non-traveling parent has agreed to the international travel of the minor child, or a court order has been obtained permitting same.

In the event the other parent withholds consent to a proposed travel plan, either by failing to provide written permission within seven (7) days, or once consent is given fails to cooperate in facilitating the travel, the parent desiring international travel may file a motion with this Court seeking to authorize the specific proposed travel plan, and request that said motion be heard upon an expedited basis.

If the parties agree to international travel or the Court orders it, each parent shall be entitled to additional vacation to accommodate the travel. The Court is cognizant that international travel may require a minimum of three (3) weeks of parenting time, and more likely four (4) weeks of parenting time. Although vacation time is not required to be made up, the Court requests that the traveling parent attempt to facilitate additional parenting time for the non-traveling parent upon return from an international trip. The parent exercising international travel may not exercise additional regular vacation time without the consent of the other parent.

Once the parties have agreed to an international trip for the traveling parent and minor child evidenced by writing or upon Court Order, the non-traveling parent shall take all actions necessary to facilitate the travel including, but not limited to, refraining from contacting any state, governmental, or international agencies alleging abduction of the child, or contacting said agencies to remove or rescind any prior allegations or notifications alleging abduction of the child.

*Judgment Entry – Decree of Divorce* of July 11, 2013, p. 26-27. The *Judgment Entry – Decree of Divorce* was journalized July 11, 2013, and Plaintiff Father timely filed his appeal to the Tenth District Court of Appeals. The basis of Plaintiff's appeal alleged error in the award of sole custody to Defendant Mother, and that the international travel provisions and the failure to place restrictions upon Defendant's relocation with the child deprived Plaintiff Father of his right of association with the minor child, ██████. The Tenth District Court of Appeals found no error in this Court's *Judgment Entry – Decree of Divorce*, and affirmed same. Further, the Tenth District Court of Appeals specifically found no constitutional violation as to Plaintiff Father's right to association with the minor child, and upheld the validity of the international travel provisions therein. Thereafter, Plaintiff Father filed his *Motion for Reconsideration* with the Tenth District Court of Appeals, which was subsequently denied on January 14, 2014. Counsel for Plaintiff Father indicated to this Court that a filing with the Ohio Supreme Court had occurred on February 14, 2014, pursuant to Case No. 14-0251. However, no request for stay had been filed nor granted with any Court.<sup>1</sup>

Defendant Mother testified that she originally sent an e-mail to Plaintiff Father on August 6, 2013, in an effort to obtain his authorization and consent for Ishaq's passport. She further testified that she became aware of a stay granted by the Tenth District Court of Appeals.<sup>2</sup> Defendant Mother also testified that she was unable to obtain the passport for the minor child because Plaintiff refused his consent. Pursuant to Defendant Mother's pleadings and her testimony, she later e-mailed Plaintiff Father with a

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<sup>1</sup> Subsequent to the hearing of the instant matter, Plaintiff Father filed a *Motion for Stay* on February 14, 2014, with this Court, which was subsequently denied on February 20, 2014.

<sup>2</sup> The stay was granted by *Journal Entry* on October 10, 2013, and was in effect until November 1, 2013, subject to further review.

proposed itinerary for travel to Dubai, including return flight information and contact information and address for where she and Ishaq would be staying in Dubai. Defendant Mother also provided alternate dates for travel, and indicated a final itinerary would be provided when the travel was approved and the tickets were booked; she testified that she provided alternate dates because she expected potential delays as demonstrated by Plaintiff Father previously. Defendant Mother testified that, again, Plaintiff Father did not respond to her e-mail. At the time of trial, Defendant Mother's understanding was that the passport for [REDACTED] was "on hold" as Plaintiff Father refused to consent to same.

Defendant Mother testified that she has established a home in Columbus, Ohio area, has a car, and has begun to establish a medical career as a medical doctor. She testified that she went to Atlanta to test for her medical license, and if she passes, she will have two more exams before applying for residency in 2015. She testified that her father currently supports her financially, but that she has completed medical transcriptionist training, and has sent out several resumés since returning from the Atlanta exam.

Also, Defendant Mother testified that her immigration status is "permanent resident status" until 2024, and provided her green card to the Court, Plaintiff's counsel, and the Guardian ad Litem for viewing. When questioned upon cross-examination as to her original intention to permanently relocate to Dubai at the commencement of divorce proceedings, she testified that she decided there was no point in asking for something the law would not permit. When further questioned about other potential options that she had explored as to the international travel provision, she testified that she did not plan to run away, so she did not need to look at other legal options. Defendant Mother

also iterated that during the appeal process, Plaintiff Father came up with a lengthy list of proposals, and that she only recalled a request for a Dubai entry. She summarized that she does not believe his fears are true, and that he rejected everything right before trial. She does not believe she needs to formulate a resolution, as she is not planning on running away.

With respect to Plaintiff Father's position, he testified that if the child leaves the United States, he does not have the finances or resources to bring his child back to this country, as Defendant Mother is traveling to a country that is not a signatory to the Hague Convention. Plaintiff Father further testified that he would be comfortable for ██████ to travel if reasonable protections are put in place by Defendant Mother, prior to any travel, which would include an order from Dubai, Germany and India that the child is required to return to the United States. Plaintiff Father testified that he has contacted attorneys in Dubai through e-mails approximately a month ago, but also testified that he made no efforts to come up with an amicable solution. Upon cross-examination by the Guardian ad Litem, Plaintiff Father testified that a government agency contacted him, and he refused to authorize a passport to be issued for ██████. He is also requesting an order from this Court stating that Defendant Mother cannot *permanently* relocate with the minor child. Plaintiff Father's counsel also argued at closing that there is no urgency for Defendant Mother to travel to Dubai as Defendant Mother's mother is currently in the United States, and her father visited as recently as the fall of last year.

The Court finds that Defendant Mother's request to obtain a passport for ██████ as well as authorization for proposed international travel with ██████ is a reasonable request. The Court finds that there is no evidence that Defendant Mother is going to fail

to return with the minor child if she is granted authorization to travel to Dubai. In fact, Defendant Mother's testimony with regard to her permanent residency green card until 2024, her residence and assets here, demonstrated greater participation in residency than she originally testified to at trial. The Court finds Defendant Mother's testimony credible about her present intention not to relocate and her rationale in changing her mind about relocation due to the Court not willing to grant same.

The Court further finds Plaintiff Father's continued objections to international travel to be disingenuous and dilatory in nature. The Court notes that Plaintiff Father has asserted the same argument in the trial, his appeal to the Tenth District Court of Appeals, his Motion for Reconsideration to the Tenth District Court of Appeals, his *Motion for Relief from Judgment Pursuant to Civ. R. 60(B)*, and now his appeal to the Supreme Court of Ohio. Although Plaintiff Father testified that he wanted to resolve this in "some intelligent way," he failed to propose any reasonable course of action. The Court finds that his proposed resolution requiring Defendant Mother to obtain Court orders in every nation to which she intends to travel (or presumably through), is unreasonable, unduly restrictive, wholly impracticable, and likely impossible. If such an order was required, international travel would not occur. With respect to Plaintiff Father's argument that there is no urgency, such an argument is not a reasonable, rational pre-condition for international travel.

Therefore, Defendant Mother's *Motion Requesting Court's Permission to Obtain Minor Child's Passport and For Authorization for Proposed International Travel with Minor Child* filed on December 9, 2013, is GRANTED. Accordingly, the Court orders the following:

1. Defendant Mother's request to travel to Dubai is GRANTED; Defendant Mother is further ORDERED to return to the United States upon the conclusion of her vacation to Dubai;
2. Plaintiff Father is ordered to cooperate, immediately, and facilitate Defendant Mother's requests relating to international travel including authorization and consent to the issuance of Ishaq's passport;
3. Upon issuance of Ishaq's passport, Defendant Mother shall provide a proposed written travel itinerary to Dubai with return flight information to the Court for final approval, as well as serve same upon Plaintiff Father and the Guardian ad Litem. Upon review of the proposed written itinerary, this Court will issue an Order authorizing travel for the specific dates. The Court notes that Defendant Mother's proposed travel itinerary beginning March 7 and March 8 may no longer be practical;
4. Plaintiff Father is immediately ordered to remove any and all past "red-flagging" or notifications that impede or interfere with the Defendant Mother and the parties' child's international travel. Plaintiff Father is further ordered to refrain from contacting any and all agencies, domestic or foreign, for the purpose of "red-flagging" or impeding Defendant Mother's travel with the minor child in any way or by any means;
5. This matter is set for review on **Friday, March 7, 2014, at 9:00 am** before Judge Mason, and both Plaintiff Father and Defendant Mother are hereby ORDERED to attend the review hearing; and

6. If Plaintiff Father does not consent and execute a passport application for ██████, Defendant Mother is to bring the application and related paperwork necessary for a passport request for the minor child to the Court at the specified hearing date. If Plaintiff Father refuses to sign the appropriate application paperwork as directly ordered by this judge at the hearing, Plaintiff Father shall be found in direct contempt and incarcerated until the order is obeyed.

**IT IS SO ORDERED.**

\*Signature Page Attached\*  
Judge Jim Mason

PRAECIPE: TO THE CLERK OF COURTS  
Pursuant to Civil Rule 58(B), you are hereby instructed to serve upon all parties not in default for failure to appear, notice of the judgment and its date of entry upon the journal in the manner prescribed by the attached instructions for service.

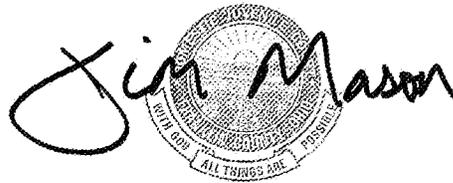
cc:

Elizabeth Gaba, Attorney for Plaintiff Father  
Sakhi Beeru, Defendant Mother, *Pro Se*  
Kristy Swope, Guardian ad Litem

Franklin County Court of Common Pleas

**Date:** 02-27-2014  
**Case Title:** HANIF IBRAHIM -VS- SAKHI IBRAHIM  
**Case Number:** 12DR001670  
**Type:** DECISION/ENTRY

Jim Mason, Judge

The image shows a handwritten signature in black ink that reads "Jim Mason". The signature is written over a circular official seal. The seal contains the text "FRANKLIN COUNTY OHIO" at the top and "ALL THINGS ARE POSSIBLE" at the bottom. The center of the seal features a sunburst design.

Jim Mason

Court Disposition

Case Number: 12DR001670

Case Style: HANIF IBRAHIM -VS- SAKHI IBRAHIM

Final Appealable Order: Yes

Motion Tie Off Information:

1. Motion CMS Document Id: 12DR0016702013-12-0999970000

Document Title: 12-09-2013-MOTION

Disposition: MOTION GRANTED

# EXHIBIT 7#2

## AFFIDAVIT OF PRESTON A. FINDLAY

COMMONWEALTH OF VIRGINIA)

CITY OF ALEXANDRIA )

) SS

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NOW COMES THE AFFLIANT, PRESTON A. FINDLAY, having been duly sworn according to law, deposes and states the following:

1. I am currently employed as Counsel for the Missing Children Division of the National Center for Missing and Exploited Children (NCMEC) and have been employed by NCMEC since April 2009.
2. NCMEC is a private, nonprofit corporation, incorporated under the laws of the District of Columbia. NCMEC is not an agency or instrumentality of the United States government and neither NCMEC nor its employees are agents of the United States government.
3. NCMEC, through a grant from the U.S. Department of Justice, handles cases of missing children, including those abducted by a parent or family member.
4. NCMEC has entered into a Cooperative Agreement with the Administrator of the Office of Juvenile Justice and Delinquency Prevention to perform certain tasks specified by Congress in the Missing Children's Assistance Act, 42 U.S.C. § 5771 et seq., including that of providing "technical assistance and training to law enforcement agencies, State and local governments, elements of the criminal justice system, public and private nonprofit agencies, and individuals in the prevention, investigation, prosecution, and treatment of cases involving missing and exploited children." 42 U.S.C. § 5773(b). Information contained in this document is provided under the above technical-assistance requirements of the Missing Children's Assistance Act. NCMEC does not provide legal advice. NCMEC does not represent any party. This information in no way constitutes legal advice.
5. NCMEC and the U.S. Department of Justice's Office of Juvenile Justice and Delinquency Prevention in cooperation with the American Bar Association (ABA) Center on Children and the Law produce a publication titled Family Abduction. Prevention and Response, Sixth Ed., copyright 2009. The Chapter titled *Preventing Abductions* enumerates steps parents can take to safeguard their children from abduction, and includes the following prevention tips: [For additional information see the following ABA Reports: *Early Identification of Risk Factors for Parental Abduction* (NCJ 185026) available at: [http://www.ncjrs.gov/html/ojjdp/2001\\_3\\_1/contents.html](http://www.ncjrs.gov/html/ojjdp/2001_3_1/contents.html) and *Family Abductors: Descriptive Profiles and Preventive Interventions* (NCJ 182788), available at: [http://www.ncjrs.gov/html/ojjdp/jjbul2001\\_1\\_2/contents.html](http://www.ncjrs.gov/html/ojjdp/jjbul2001_1_2/contents.html)].
  - A. Obtain a custody/visitation determination that clearly specifies the rights of each parent with respect to the child. Avoid using vague language, such as "reasonable visitation," and avoid joint custody orders in parental abduction and family violence cases. Specify residential arrangements. Consider supervised visitation, bonds and

other guarantees, prohibitions on unauthorized pick-up of the child, restrictions on interstate and/or international removal of the child (i.e.: surrender passports, prohibit passport applications, notify foreign consulate of passport restrictions.) Authorize law enforcement assistance to recover the abducted child.

- B. Be certain that the custody determination clearly states the basis for the court's jurisdiction and the manner in which notice and opportunity to be heard were given to the parties.
- C. When considering which prevention provisions to include in the custody determination, evaluate the risk of abduction, the obstacles you may encounter trying to recover your child, and the potential harm the child is likely to suffer if abducted. More restrictive preventive measures will be needed when the risk of abduction is high, obstacles to recovering the child would be difficult to overcome, and abduction is likely to be harmful to the child.
- D. Consider "red flag" indicators of abduction risk (below). There may be an increased likelihood of an abduction if a parent has:
- a. Previously abducted the child;
  - b. Threatened to abduct the child;
  - c. No strong ties to the child's home state;
  - d. Friends or family living out of state or in another country;
  - e. A strong support network;
  - f. No job, is able to work anywhere, or is financially independent—in other words is not tied to the area for financial reasons;
  - g. Engaged in planning activities such as quitting a job; selling a home; terminating a lease; closing a bank account or liquidating other assets; hiding or destroying documents; applying for a passport, birth certificates, school or medical records; or undergoing plastic surgery;
  - h. A history of marital instability, lack of cooperation with the other parent, domestic violence or child abuse; or
  - i. A criminal record.
- E. Six personality profiles of abductors (below) may indicate an increased likelihood of an abduction:

Profile 1: Parents who have threatened to abduct or have abducted previously.

Profile 2: Parents who are suspicious or distrustful because of their belief that

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FRANKLIN COUNTY  
2013 AUG -7 PM 3:19  
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abuse has occurred and who have social support for their belief.

Profile 3: Parents who are paranoid delusional.

Profile 4: Parents who are severely sociopathic.

Profile 5: Parents who have strong ties to another country and are ending a mixed-culture marriage.

Profile 6: Parents who feel disenfranchised from the legal system (e.g., those who are poor, a minority, or victims of abuse) and have family and social support in another community.

- F. When a court has decided to allow a child to visit or relocate to another country, it is recommended that the U.S. court require that the party seeking to remove the child ensure that the U.S. order is registered/domesticated (where possible) in the court of the country to which the child will travel. In order to prevent violations, it is recommended that the domesticated order be put in place *prior* to the child's travel to the foreign country.
6. The Second National Incidence Study of Missing, Abducted, Runaway and Thrownaway Children (NISMART - 2), prepared by the Office of Juvenile Justice and Delinquency Prevention, estimates that 203,900 family abduction cases occur annually in the United States. [Full report available at: [http://www.missingkids.com/en\\_US/documents/nismart2\\_overview.pdf](http://www.missingkids.com/en_US/documents/nismart2_overview.pdf)].
  7. The Hague Convention on the Civil Aspects of International Child Abduction (the "Hague Convention") provides a civil remedy for signatory countries to seek the return of internationally abducted children to their home country for custody proceedings.
  8. NCMEC's missing child case database contains cases of international family abduction. NCMEC records each missing child as an individual case.
  9. NCMEC relies on public information available from the U.S. Department of State's website, among other resources, to assess country-specific risks that could exacerbate an international family abduction, including the including the U.S. Department of State's annual *Report on Compliance with the Hague Convention on the Civil Aspects of International Child Abduction* ("Compliance Report"), the International Parental Child Abduction Country Specific Information Sheets ("Information Sheet"), and any applicable Travel Warnings.
  10. India is *not* a Signatory to the Hague Convention on the Civil Aspects of International Child Abduction; therefore, the Hague Convention cannot be enforced in India.
  11. NCMEC's database reflects that in seventy-four percent (74%) of our active (unresolved) cases involving children taken from the U.S. to India, we have been seeking the return of the children for two years or longer and thirty-nine percent (39%) of these cases have remained unresolved for five years or longer.

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FRANKLIN COUNTY  
2013 AUG -7 PM 3:19  
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12. NCMEC's database reflects that, out of all of our closed cases involving children taken from the U.S. to India, twenty-eight percent (28%) of the children were never recovered.
13. NCMEC's database reflects that in thirty-five percent (35%) of our closed cases involving children taken from the U.S to India, the children were returned or allowed access to the left-behind parent solely because of voluntary action on the part of the taking parent. In nineteen percent (19%) of our closed cases involving children taken from the U.S to India, the children were recovered through law enforcement action.
14. The U.S. Department of State's Information Sheet notes that India is not a signatory to the Hague Convention. The Information Sheet further cautions that "There is no formal process for registering a foreign custody order with the courts, and U.S. custody orders are not automatically enforced in India. If one is presented, the Indian court is likely to take it into consideration depending on the facts of each case. U.S. court decisions are almost never upheld in Indian courts in ex parte cases. ... Parental child abduction is not a criminal offense in India. Although India will extradite its own citizens subject to an Interpol arrest notice if the crime is covered by the U.S. Extradition Treaty with India this is not an available remedy in parental child abduction cases because India does not recognize it as a crime." Other cautionary information related to child abduction issues in India is also included.  
 [Full Information Sheet available at:  
[http://travel.state.gov/abduction/country/country\\_4441.html](http://travel.state.gov/abduction/country/country_4441.html)].
15. The United Arab Emirates is *not* a Signatory to the Hague Convention on the Civil Aspects of International Child Abduction; therefore, the Hague Convention cannot be enforced in the United Arab Emirates.
16. NCMEC's database reflects that there are currently four (4) total active cases involving children taken from the U.S. to the United Arab Emirates. In three (3) of those cases we have been seeking the return of the children for two (2) years or longer.
17. NCMEC's database reflects that in forty-percent (40%) of our closed cases involving children taken from the U.S to the United Arab Emirates, the children were recovered as the result of law enforcement action in the U.S. and the United Arab Emirates.
18. NCMEC's database reflects that there has never been a child recovered from the United Arab Emirates as a result of a civil legal proceeding.

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2013 AUG -7 PM 3:19  
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# EXHIBIT

19. The U.S. Department of State's Information Sheet notes that the United Arab Emirates is not a signatory to the Hague Convention. The Information Sheet further notes that "Custody orders and judgments of foreign courts are not enforceable in the UAE." Other cautionary information related to child abduction issues in the United Arab Emirates is also included.

[Full report available at: [http://travel.state.gov/abduction/country/country\\_532.html](http://travel.state.gov/abduction/country/country_532.html)].

20. I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.

Preston A. Findlay

11/2/12  
DATE

Preston A. Findlay  
Counsel, Missing Children's Division  
The National Center for Missing and Exploited Children (NCMEC)  
Charles B. Wang International Children's Building  
699 Prince Street  
Alexandria, VA 22314

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NOTARIZED  
City of Alexandria  
Commonwealth of Virginia

The foregoing instrument was subscribed and sworn before me this 13<sup>th</sup> day of November, 2012 by Preston A. Findlay  
(name of person seeking acknowledgement)

Meredith W. Morrison

Notary Public.

My Commission expires: June 30, 2016

