

Child Abduction – Family Law

By Rob Westwater

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'International child abduction' is when a parent takes his under-age child ('Jonny'), from his habitual residence to another country without the other parent's consent or Court's permission. Indeed, failing to return Jonny home after an agreed holiday or period abroad also constitutes international child abduction.

Quite often, 'abducting' parents are unaware they have committed a crime. Often the abductor is the primary carer who can no longer abide the other parent's behaviour, can no longer subsist financially or simply misses family support back home.

Accordingly, if living in Spain and thinking of heading off with Jonny, you must obtain the other parent's written consent or the court's permission. Likewise, where the other parent decamps with Jonny without your consent, report it to the authorities and apply to court for Jonny's immediate return.

The court's primary interest is Jonny's prompt and safe return to his habitual residence. The court's singular interest is to determine whether permission to remove existed or not. This rationale is to dissuade parents from resorting to tit-for-tat secondary abduction.

To avoid 'abducting' Jonny yourself, you should agree terms with the other parent. Such agreement can be sworn before a notary or be ratified by a judge. The agreement will confirm both parents' agreement to Jonny going to live in another country as well as who has primary custody of Jonny, when he is to stay with mum, when he is to stay with dad, where he is to stay at Christmas and Easter and other holidays etc..

Where one parent suspects that the other is about to abduct Jonny, they can take preventative measures such as ensuring his passport is safe, notifying the Passport office not to issue a 'replacement' passport and informing the police, family doctor and school of their concerns.

I also advise you prepare an 'information pack' ready for presentation to the police when abduction occurs. The pack should contain recent colour digital photos of Jonny and abducting parent, physical descriptions, colour of hair, eyes, height, weight, frame, distinguishing scars etc. as well as your lawyer's full contact details.

If you wish more information on this particular topic or would like to discuss any matter raised therein, contact Rob Westwater or Reyes Gomez Llorente, De Cotta McKenna y Santafe, on 952 527 014. Offices in Mijas Costa, Coín, Nerja, Granada and Tenerife.

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