SUMMARY
January 12, 2023

2023COA4

No. 22CA0174, *In re Marriage of Badawiyeh* — Family Law — Dissolution — Uniform Child Abduction Prevention Act — Factors to Determine Risk of Abduction

In a case of first impression, the division concludes that a district court may not impose abduction prevention measures under the Uniform Child Abduction Prevention Act, §§ 14-13.5-101 to -112, C.R.S. 2022, without first finding that the parent presents a credible abduction risk and evaluating all factors listed in section 14-13.5-107(1).

COLORADO COURT OF APPEALS **2023COA4**

Court of Appeals No. 22CA0174
Douglas County District Court No. 20DR30832
Honorable Andrew C. Baum, Judge

In re the Marriage of

Basil Badawiyeh,

Appellant,

and

Michelle Mary Badawiyeh,

Appellee.

JUDGMENT REVERSED AND CASE
REMANDED WITH DIRECTIONS

Division IV
Opinion by JUDGE GROVE
Dunn and Schutz, JJ., concur

Announced January 12, 2023

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¶ 1 In this dissolution of marriage proceeding involving Basil Badawiyeh (father) and Michelle Mary Badawiyeh (mother), father appeals a portion of the district court's permanent orders imposing foreign travel restrictions on him to ensure the return of the parties' children to the United States. We reverse and remand the case to the district court for additional proceedings.

I. Relevant Facts

¶ 2 After twenty-two years of marriage and four children, father petitioned for dissolution.

¶ 3 The district court held an evidentiary hearing on father's dissolution petition. After the close of evidence, the court made the following oral findings:

- Father and the children had Jordanian and United States passports.
- Father had relatives in the United Arab Emirates (UAE).
- The UAE is not a signatory to the Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No. 11,670 (Hague Convention).[1]

[1] The Hague Convention on the Civil Aspects of International Child Abduction, "generally requires the 'prompt return' of a child to the

- During the marriage, the family traveled regularly to the UAE.
- It was in the children's best interests to travel to Dubai because, while there, they could learn about Arab culture and spend time with their relatives.
- Although mother had testified that she was "not really particularly convinced that [father] would bring [the children] back" if these overseas trips continued, and one of the parental responsibility evaluators testified "that there was at least a reasonable risk" that father would not return with the children, the court "d[id] not necessarily share at this point [mother's] fears and concerns" about the children traveling internationally.

¶ 4 From those findings, the district court allowed father and the children to travel internationally every year during the children's

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child's country of habitual residence when the child has been wrongfully removed to or retained in another country." *Golan v. Saada*, 596 U.S. ___, ___, 142 S. Ct. 1880, 1888 (2022) (citation omitted); *see also Lozano v. Montoya Alvarez*, 572 U.S. 1, 4-6 (2014) (discussing the purposes of the Hague Convention). Approximately eighty countries are signatories to the Hague Convention. *See* U.S. Dep't of State, *Convention Countries*, https://perma.cc/U7A8-JM84.

winter break. But to allay mother's fears and concerns, the court required father to (1) surrender the children's United States and Jordanian passports to a neutral third party who could release them before travel; and (2) post a $50,000 bond with the court naming mother as the beneficiary before an overseas trip, as security for his return with the children. The court later entered a dissolution decree along with written permanent orders that tracked its oral ruling.

¶ 5 Father then moved for post-trial relief with respect to the foreign travel restrictions. His request was unsuccessful. In contrast to the oral findings that it had made at the permanent orders hearing, the court wrote that it had agreed with mother and the parental responsibility evaluators "as to the risk of [father] absconding with the children if he was allowed unrestricted international travel and access to their passports," and observed that it had "included in its oral findings concerns for the significant legal fees and costs [mother] would incur if [father] were to not return with the children from international travel, particularly travel to a non-Hague signatory nation, as well as [her] ability to pay." The court recognized that international travel would enable

father to foster the children's connections with their cultural heritage and their relationships with extended family, while also acknowledging that giving mother veto power over these trips would prevent them from happening until the children turned eighteen. Balancing these concerns, it confirmed its previous ruling imposing the bond requirement and the passport restrictions as prerequisites to father's annual international trips with the children.

¶ 6 Although the district court later amended its written permanent orders, those changes are not relevant to this appeal.

II. Discussion

¶ 7 Father contends that under the Uniform Child Abduction Prevention Act (UCAPA), §§ 14-13.5-101 to -112, C.R.S. 2022, the district court erred by imposing abduction prevention measures without first finding that there was a credible risk that he would abduct the children. We agree.

A. Preliminary Issues

¶ 8 Because the record reflects that the parties' two older children are at least eighteen years old, any parenting time determinations as to them would be moot. *See In re Marriage of Tibbetts*, 2018 COA 117, ¶¶ 9-21 (after a child turns eighteen years old, parenting time

orders have no practical legal effect and are therefore moot); *see also* § 13-22-101(1)(d), C.R.S. 2022 (A person eighteen years or older is deemed to be of full age to "make decisions in regard to [their] own body . . . to the full extent allowed to any other adult person."). Thus, we address father's contention only as it relates to the two younger children.

B. Standard of Review and Preservation

¶ 9 A district court has broad discretion over parenting time issues, and we exercise every presumption in favor of upholding its decisions. *In re Marriage of Hatton*, 160 P.3d 326, 330 (Colo. App. 2007). The court abuses its discretion when its decision is manifestly arbitrary, unreasonable, or unfair; is based on an erroneous understanding or application of the law; or misconstrues or misapplies the law. *In re Marriage of Fabos*, 2022 COA 66, ¶ 16.

¶ 10 However, we review de novo whether the district court applied the correct legal standard. *In re Parental Responsibilities Concerning B.R.D.*, 2012 COA 63, ¶ 15.

¶ 11 Because the district court imposed the abduction prevention measures after the parties and court discussed the issue at length

at the permanent orders hearing, we reject mother's assertion that father did not preserve his contention for our review.

C. The Uniform Child Abduction Prevention Act

¶ 12 The Prefatory Note to the UCAPA states that its purpose "is to deter both predecree and postdecree domestic and international child abductions by parents" and that "[f]amily abductions may be preventable through the identification of risk factors and the imposition of appropriate preventive measures." Title 14, art. 13.5, Prefatory Note, C.R.S. 2022.

¶ 13 A district court may impose abduction prevention measures in a child-custody proceeding if it finds that the evidence establishes a "credible risk of abduction of the child." § 14-13.5-104(1), C.R.S. 2022. In determining whether there is a credible risk of abduction, the district court must consider various risk factors set forth in the UCAPA. *See* § 14-13.5-107(1)(a)-(m), C.R.S. 2022.[2] Among other

[2] We reject mother's suggestion that the district court's order may be affirmed under section 14-10-124(7), C.R.S. 2022, which directs courts to impose parenting plans that are "as specific as possible to clearly address the needs of the family as well as the current and future needs of the aging child." Even if this general statute conflicted with the UCAPA — and we do not conclude that it does — the UCAPA would prevail because it specifically addresses the situation at hand. *See* § 2-4-205, C.R.S. 2022.

things, the court "shall consider" a parent's previous threats or attempts to abduct the child, § 14-13.5-107(1)(a)-(b); whether the parent has recently engaged in activities — such as abandoning employment or hiding assets — that could be indicative of preparations to flee, § 14-13.5-107(1)(c); the strength of the parent's connections to the United States and other countries, § 14-13.5-107(1)(f)-(g); and whether the parent is likely to take the child to a country that is not a party to the Hague Convention, § 14-13.5-107(1)(h).

¶ 14 If, after considering the statutory factors, the district court finds that there is a credible risk of abduction, it "shall enter an abduction prevention order." § 14-13.5-108(2), C.R.S. 2022. The court has a choice of measures and may do "whatever is necessary to prevent an abduction." § 14-13.5-108 cmt. Its options include those imposed here — requiring the parent to surrender a child's United States or foreign passport or post a bond in an amount sufficient to serve as a financial deterrent to abduction. § 14-13.5-108(3)(d)(II), (4)(b).

¶ 15 At the permanent orders hearing, although the court acknowledged mother's expressed fears that father would take the

children to the Middle East and not return, it also expressly said that it did not "necessarily share" those concerns.[3] And aside from observing that father's plans would — as they had in the past — include travel to a country that is not party to the Hague Convention, the court did not address any of the remaining statutory factors. Thus, the court's finding that father presented a credible risk of abducting the children was premised solely on the fact that he planned to visit the UAE with the children. *See* § 14-13.5-107(1). On that basis, the court entered the passport surrender and bonding requirements, explaining that those measures would help to relieve mother's fears and apprehensions.

¶ 16 But the UCAPA makes clear that the imposition of abduction prevention measures must be based on a court's finding that there is "a credible risk of abduction of the child." § 14-13.5-108(2). And

[3] We recognize that the court somewhat reframed its analysis when denying father's C.R.C.P. 59 motion, writing that it had agreed with mother and the parental responsibility evaluators "as to the risk of [father] absconding with the children if he was allowed unrestricted international travel and access to their passports." We discern no such finding in the transcript of the permanent orders hearing. To the contrary, while the court noted mother's concerns, it stated that it did not "necessarily share" them, and it did not mention the input of the parental responsibility evaluators on this point.

a court may make that determination only after considering all of the factors enumerated in section 14-13.5-107(1). *See* § 14-13.5-107 cmt. ("The more of these factors that are present, the more likely the chance of an abduction. However, the mere presence of one or more of these factors does not mean that an abduction will occur just as the absence of these factors does not guarantee that no abduction will occur.").

¶ 17 The district court here not only failed to make a specific finding that father posed a credible risk of abducting the children, but it also relied on little more than the UAE's status as a nonsignatory to the Hague Convention, along with mother's "fears and concerns," as a basis for imposing the abduction prevention measures. These findings were insufficient. *See Mohsen v. Mohsen*, 08-1703, p. 8 (La. App. 1 Cir. 12/23/08) (vacating an order enjoining the mother from taking the child to Nicaragua because the district court relied solely on the fact that Nicaragua was not a signatory to the Hague Convention and failed to consider all the risk factors identified in Louisiana's modified version of the UCAPA); *In re Rix*, 20 A.3d 326, 329 (N.H. 2011) ("[W]hile a foreign country's Hague Convention signatory status should be a significant factor for

the trial court to consider, it cannot, standing alone, be determinative of whether it is in the best interests of a child to travel with a parent outside the country."); *MacKinnon v. MacKinnon*, 922 A.2d 1252, 1260 (N.J. 2007) ("Although a foreign nation's Hague Convention status is a pertinent factor, it is by no means dispositive."); *Long v. Ardestani*, 2001 WI App 46, ¶ 51 ("While in some cases the difficulty of obtaining the return of the child in the event of an abduction (because the other country is not a signatory to the Hague Convention or for other reasons) is one factor courts have considered in imposing restrictions, in no case of which we are aware is this the only factor.") (citation omitted); *Davis v. Ewalefo*, 352 P.3d 1139, 1145 (Nev. 2015) (reversing a district court order that barred child visitation in Africa without adequately explaining its reasons beyond the mere fact that the specific countries at issue were not Hague Convention signatories).

¶ 18 We agree with these other jurisdictions and decline to adopt a bright-line rule or singular test permitting the imposition of abduction prevention measures simply because a parent intends to travel with a child to a country that is not a signatory of the Hague Convention. *See, e.g.*, *Abouzahr v. Matera-Abouzahr*, 824 A.2d 268,

281-82 (N.J. Super. Ct. App. Div. 2003); *Long,* ¶¶ 49-50 (observing that no cases "even hint" at a rule that provides "as a matter of law that a parent . . . may not take a child to a country that is not a signatory to the Hague Convention if the other parent objects").

¶ 19 As an example, in *Abouzahr*, the Appellate Division of the New Jersey Superior Court accepted, as genuine, the mother's fear that the father would abduct the child and flee to Lebanon, where custody issues are generally decided under religious laws. 824 A.2d at 275, 279. Yet the division concluded that "fear alone is not enough to deprive a non-custodial parent of previously agreed upon visitation." *Id.* at 281. It expressly refused to adopt a bright-line rule prohibiting out-of-country visitation by a parent whose country has not adopted the Hague Convention or executed an extradition treaty with the United States. *Id.* It reasoned that such an inflexible rule would unnecessarily penalize a law-abiding parent and could conflict with a child's best interests by depriving the child of an opportunity to experience and share family heritage with that parent. *Id.* at 281-82. It also warned that to focus solely on the conflict between the parent's native country's laws, policies,

religion, or values and our own would border on "xenophobia, a long word with a long and sinister past." *Id.*

¶ 20 The fact that a parent is traveling with their child to a non-Hague-signatory country is by no means dispositive of whether there is a credible risk of abduction. Accordingly, we reverse the portion of the permanent orders imposing the abduction prevention measures given that the district court relied exclusively on the UAE's Hague Convention status when determining the existence of a credible risk of abduction. A country's nonparticipation in the Hague Convention is only one risk factor the court must take into account in determining whether there is a credible risk of abduction. Consideration of all the evidence pertaining to the numerous risk factors in section 14-13.5-107(1) is also required.

¶ 21 We therefore remand this issue for reconsideration of all the evidence provided regarding the risk factors outlined in the UCAPA to determine whether a credible risk of abduction exists. *See* § 14-13.5-107(1). If the circumstances have changed, the court may consider new evidence. And if it finds that there is a credible risk of abduction, the court may issue appropriate abduction prevention measures under section 14-13.5-108(2).

¶ 22 Given our disposition, we need not consider father's related arguments that the district court (1) infringed on his constitutionally protected rights to the free exercise of religion and to travel and (2) improperly set a bond requirement that was unduly burdensome.

III. Conclusion

¶ 23 The portion of the permanent orders regarding father's foreign travel restrictions is reversed, and the case is remanded for reconsideration in light of the views expressed in this opinion.

JUDGE DUNN and JUDGE SCHUTZ concur.