

When parents turn kidnappers

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A lot has been written recently--not least in these pages--about the problems that occur when international marriages turn sour. Divorce can be a messy business at the best of times, and it gets even uglier when there is an intercontinental tussle over child custody. Articles on the subject tend to focus on the female victims of deadbeat dads, but there's a flip side to the story--the foreign fathers left behind when their Japanese wives abscond with the children.

Canadian Murray Wood first realized something was wrong when he got a call from his ex-wife's bank manager in December last year. The bank couldn't cash three checks for child support payments that Ikuko (not her real name) had given him because she had reported them lost. In itself that was unsurprising--the woman had been unreliable in making court-ordered payments since Wood had been awarded sole custody of their children about nine months earlier.

But the news had more chilling significance. Ikuko had handed Wood the checks at the airport, where she was on her way to Japan with their kids--a daughter, 7, and a son, 10--ostensibly for a visit to their grandparents. Why would she now report the checks missing? A visit to her Vancouver apartment seemed to confirm Wood's worst suspicions. The property was stripped bare, with only a rent demand lying on an old couch providing evidence that Ikuko had ever been there.

It looked clear the woman wasn't coming back, and Wood knew he faced a battle to retrieve his kids.

With the benefit of hindsight, it's easy to say that he should never have allowed his children to leave the country with Ikuko. He had sole custody and was under no obligation to let them go with her. But it was a difficult situation for a responsible father.

"I'd always said that it was important for the kids to travel to Japan, to maintain their connection with their Japanese family, their Japanese heritage," Wood said in an interview with The Daily Yomiuri over the phone from his home in Vancouver.

"Knowing where the children were going to be and having had some connection with their grandparents, I decided that it was unlikely that these people would all conspire to abduct the children and cut them off from their home in Canada," he explains.

It seems Wood was wrong.

In most of the world's major industrialized nations his situation wouldn't be too much of a problem. Most are signatories to the Hague Convention on the Civil Aspects of International Child Abduction, the stated object of which is to "ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States."

In other words, Wood's Canadian custody order for his children must be respected in all states party to the convention, which further obliges national authorities to "cooperate with each other and promote cooperation amongst the competent authorities...to secure the prompt return of children."

But Japan, along with Russia, is one of only two Group of Eight industrialized nations that has refused to sign the convention. The country is under no legal obligation to return Wood's children and, like many dads before him, the Canadian faces a battle even to see them again.

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No visiting rights

Despite Wood's Canadian custody order, the Saitama Family Court awarded custody of the children to Ikuko--at first on a temporary basis, later permanently--largely on the basis of a statement by their son that he wished to stay in Japan. The wishes of a 10-year-old boy, wholly in the sway of his mother, thus took precedence over a binding legal decision in another country.

The Family Court's decisions also meant that an attempt to file for habeas corpus in the High Court failed. Since Wood no longer had custody over his kids in Japan, he had no legal standing here to demand that they be returned to him.

The matter is now before the Supreme Court and Wood's lawyer, Masayuki Honda, says he expects a verdict in a month or two. If it goes against Wood, the only avenue then open to him will be to return to the Family Court to seek visiting rights.

And that's when things might just get tougher, as Chinese-American David Chang (not his real name) found out.

Like Wood, Chang has been battling to secure the return of a child abducted by his wife, with equally little success. One minor win came before the Family Court, but it turned out to be a somewhat Pyrrhic victory.

"Three hours per year!" Chang recalls in a telephone interview, still incredulous at the limited visiting time he was awarded. "I appealed, and she appealed, saying it is too much time!"

In this case, the nationality of the father is not an issue, as the Japanese Civil Code makes no provision for visiting rights, even for Japanese dads. But the protracted legal battles faced by foreign fathers are liable to make the situation even tougher when it comes to visiting rights.

"After a struggle in the Family Court, the courts are likely to deny a request for access rights," Honda says, explaining that Japanese courts are predisposed to side with the parent who gets custodial rights if he or she says that visits from the other parent are likely to be a bad influence on the children.

The fiercer the dispute in the Family Court, the more likely a left-behind father is to be perceived as a disruptive influence, best kept away from the kids.

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Running out of options

Prospects for left-behind dads seem bleak. Japanese law makes no provision for joint custody. Their chances of securing the return of their kids are small and the chances of securing adequate visiting rights are equally slim.

Waiting for the Japanese government to sign up to the Hague Convention certainly doesn't seem like a sure bet. An unofficial committee of the Justice Ministry is looking into the matter in cooperation with Foreign Ministry officials, but there seems to be little sign of movement. Osamu Imai--a member of the committee--says it would take time for Japan to set up the central authority for child abduction matters required by the convention. It would also take a while to establish a system for locating abducted children and to make necessary changes to domestic law, he says, adding that no timescale for a decision can be given.

No wonder some fathers consider taking matters into their own hands.

Chang admits that he attempted reabduction, even hiring a former U.S. Army Ranger to help with the attempt. The bid failed, and ended up weighing against him in subsequent court battles.

"Do I encourage people to do it? No," Chang says now. "But then again, if people ask me, well, do you encourage us just to fight it out in court, I don't encourage that either. These days I just tell people, 'Is there any way you can mediate?'"

For many desperate dads, that will seem a forlorn hope. By their very nature, these cases involve couples who are at loggerheads. A woman who is prepared to go to the extreme lengths of abduction is unlikely to be too amenable to negotiation, particularly when Japanese law would appear to be on her side.

But when options are this limited, Chang says there's little else to be done--even if it means accepting some unpalatable conditions.

"If you can somehow persuade the spouse to give you access, do it, even if they're demanding a certain amount of money," Chang maintains. "You're going to be spending that amount of money in court anyway, and you still won't get to see your kids."

Neither Wood nor Chang claim to be paragons of virtue, but both had reason to think the law was on their side. Both had custody orders for their children. Both their wives are the subject of outstanding arrest warrants for child abduction.

But unless Japan signs the Hague Convention, they face an uphill battle. Retrieving their kids will be difficult and the lack of joint custody or adequate visitation rights makes even seeing them a struggle.

Neither man is giving up, however, with both determined to fight on despite all the official obstacles.

For now, their plight is a personal tragedy, but with international marriages on the rise it could soon start to look like part of a wider problem for Japan and the world.
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