
International Family Law And Litigation

International relationship breakdown and separation have represented critical challenges for Australian international family law. The increase in family dispute means more women fall victim, and it seems that there is very little protection or appropriate legal protection for the victims. Without a doubt Family law is different in each country, and as the number of international family cases increased, so have the disputes involving children and family violence issue.

Family dispute can be very problematic for children, but deadly for women. As family law matter crosses international borders, things can get very complicated; in conjunction with jurisdiction issues creating prolong process adding to the frustration and conflict for the litigants living parents and child who are forced to rely on the system vulnerable. Scholars have written about the issues with family law systems, as the need to protection women becomes more urgent both internationally and locally. Over the past year's violence against women is widely recognised as a global problem of significant magnitude that needs to be address.

Though there are many aspect of Australian international family law that are in much need of reform, women protection would be the one aspect that need urgent change.

So why should Australian international family law reform to better protect women? Firstly, there are many reports that show the number of women murdered by the estranged husband despite the fact that the law is involved. When a woman escaping domestic violence to another country with their children due to numerous reasons, they are often face harsh legal penalties. Because Under the Hague Convention on the Civil Aspects of International Child Abduction 1980 As this is considered to be abduction of a child.

While Hague Convention agreement in international family law applied to helping resolve cases of international parental child abduction, it neglect to adequately protection mothers fleeing domestic violence which therefore put the children at harm's way. Considering that Family law have stated that child's best interests must be paramount in court proceedings and when making orders, generally, children have a fundamental right to their best interests being a primary consideration in all matters affecting them, as recognised in the United Nations Convention on the Rights of the Child (CRC). How can children's interest be paramount, if when a mother take their child to safety, the law that supposed to protect that child now works against the mother who is only doing the right thing by them both.

The issues involving family violence and children have been the subject of lawmaker and its time that the domestic violent issues need to be given up most attention. Instead of continually putting to women's lives and their children's safety in danger, Australia's law makers need seriously consider adding domestic violence to regulate under which The Hague Convention. Even more importantly women need to have an access to justice.

Introduction

In Australia, primary legislation is the Family Law Act of 1975 in matters relating to the divorce,

property settlement after marriage dissolution or the violation of de facto marriage or spouse maintenance after a party has broken down and the parental arrangements after their separation. The case has data on foreign marriage, their children and property order, and parenting orders between two non-Australian persons. The jurisdiction of the Australian Family Court and of the Federal Circuit Court of Australia will be the focus of the litigation.

The case is Nicholas hills vs. Jane Evans. Both are international citizens. Nicholas is a British citizen till 2002 and moved to Sydney in 2002. He owns property in Britain.

Jane is a New-Zealand citizen but was born in Britain. Both married each other in Fiji while Jane was 18, but in Fiji, the legal age of marriage is 21. With the approval of parents, one can marry under the age of 21. Here in the case of Jane, the misconduct by the marriage planner and the marriage register let the marriage happen without the permission of her parents. They came back to Sydney. Their daughter Nina was born in Australia. Now, Nina claims that the father was not Nicholas, and she married him only for the property. There are no strict parenting rules among them. Nicholas has a frequent traveling history to the UK for his work. Jane is the primary caretaker of Nina. Jane visited her parents in the UK, along with Nina. Coincidentally Nicholas was also there for his work. Jane let Nicholas stay with Nina and returned to Sydney to promise that Nicholas and Nina will come to Sydney after two days of Jane's return. But Nicholas does not come back with Nina after two days.

Hence Jane has applied for their marriage to annul and in the alternative for a divorce order, for property orders and parenting orders. Now the Family court of Australia has to decide the facts assessing all the terms and conditions regarding the petitioner's nationality. To answer whether the Australian court has Jurisdiction is to hear the pleas of Jane, the facts and information regarding the laws of international citizen and monetary behavior are required.

Jane is not an Australian; she is born in the united kingdom and a present citizen of New Zealand. Hence the laws and regulations for her will be related to international legalities.

It presume that Jane's plea concerning the nullity of her marriage and the order for divorce is within the jurisdiction of the family court of Australia. for this answer. The declaration of nullity of the marriage is based on the fact that marriage is invalid under FAMILY LAW ACT of 1975 No.53 of 1975 SECT 51(zero-matrimony).

Here, as mentioned before, the marriage between Nicholas and Jane was done in Fiji. Though there was a miscommunication between the planer and the register, the marriage was legal in Fiji. So the Australian family court cannot order the wedding as null and void. Thus, the alternative plea comes into the play for the divorce order, property, and parenting order.

FAMILY LAW ACT OF 1975 NO. SECT OF 48(divorce) State that the application for a divorce order in respect of marriage under this Act is based on the irretrievable break-down of marriage.

In October 2017, Jane left Nicholas and took Nina with her. After three years of separation, she has applied for the order of divorce. So under the norms of irretrievability, their marriage is broken. Under the provision, A divorce decision shall also be made if, and only if, the court is satisfied that, for a continuing duration of 12 months immediately preceding the date of filing, the parties were separated and after living separately from each other and that they were not living separately.

If the Court is convinced that there is a fair opportunity for living together, the Court will not order divorce. Both the parties have stayed separately from October 2017 to 2020. So the court has the provision for declaring it of divorce.

For the sake of argument, we will assume that the court has Jurisdiction to stay those proceedings. Nicholas has applied this plea. The question remains if the Family court under the law of the Family law act of 1975 can do that.

The courts exercise the Jurisdiction under the Family Law Act 1975, and it has the power to grant a stay of the proceedings. The reason can be a pending foreign proceeding under Section 34 of the Family Law Act 1975 and the court's internal Jurisdiction to preserve its process from being used to bring injustice. The principle of forum non-conveniens or inappropriate forum test decides the result of the stay of proceedings. The example of *Henry v Henry* (1996) HCA 51. It can be referred to here. For an Australian court to consider a 'clearly inappropriate forum.' The court has to find that the continuation of the proceeding would be oppressive or vexatious.

The non-exhaustive reasons which are relevant to consider one case for a stay of proceedings:

- When both courts have Jurisdiction.
- Overseas Judgement that are not from the legislation are customarily recognized and given due respect by the Australian courts.
- Where did the order of proceedings was instituted?
- Which court can provide the best resolution of the matter?
- The connection between the party's jurisdiction.
- The general circumstance of the case is present.

So, the plea of stay of proceeding will be considered under the lights of these cases. If all these facts answer positively, the Family Court may order of stay of proceeding.

I am assuming that the court is competent and will not order the stay in proceedings.

- (a) To annul the marriage, the Australian Court has to be satisfied that the marriage between Nicholas and Jane was Void. The wedding happened in a very complicated situation. It will require a lot of laws to consider for nullity.

Both the parties married each other under exceptional circumstances. Nicholas was totally against the marriage, while Jane was pregnant. So the wedding happened to justify the pregnancy of both. This marriage took place in Fiji, where the minimum age of marriage is 21. But if the parties come from countries where the minimum age of marriage is 18. As both of them are in a foreign land, they have to follow that nation's rules.

In Fiji, a minor of 18 ages can marry with the approval of parents. Both Jane's parents were against the marriage. But coincidentally, the wedding planner forgot to ask Jane about written permission to her parents, and the marriage register did not check whether the approval has been provided. The fault was on behalf of the officials, and none of the parties was guilty of it, so now that Fijian should be discussed about the nullity of the marriage.

But the Australian Court has always been respectful to the other countries Jurisdiction. To order the marriage between Nicholas and Jane, the Australian Family court will consider Fijian

marriage laws.

- (b) The Australian Family Court will consider the FAMILY LAW ACT OF 1975, NO. SECT OF 60CA (child's best interest paramount consideration in making a parenting order). To make a parenting decision, the court must consider the child's best interest as an essential consideration.

While making such an order, the court will consider two main prospects regarding the order of parenting—first, the benefit of the child of having a meaningful relationship with both of the parents. Second, the child should be protected from being a subject of any physical, psychological, or exposed to abuse or family violence.

Here, in this case, the mother Jane has clarified that Nicholas is not Nia's biological father. But the relationship between Nicholas and Nina is alike of father and daughter.

On the other hand, though Jane is the primary caretaker of Nina, Jane herself is not an earning member of the family. So the question of maintenance of Nina is instead a significant one. None the less, the court must consider all these factors while delivering the judgment on parenting.

As argued before, the Australian Family court is respectful of the other nation's constitution and legalities. Under the particular circumstance, if it has been the case that an English Court has granted a divorce in 2020 on Nicholas' application, on the basis that Nicholas was domiciled and habitually resident in England, the Australian Court will recognize the decree as valid only if At the dates of such proceedings, either or both spouses, as though they had been resident for at least either year before the issuing date, residency or nationality have had appropriate interaction with the foreign jurisdiction ..

However, the approval of the international divorce could be refused, if natural justice has been denied to a party or to a public policy, for example if a party does not have a hearing. So under these circumstances, the court has to decide whether they will recognize Nicholas' divorce in English Court.

Conclusion

In conclusion, this case is an amalgamation of various exceptional circumstances and needs an astute lawyer to analyze those circumstances. The Family Law Act of 1975 is the primary Act that needs to be concerned. All answers regarding these situations have been specified in the constitution beforehand. Hence, after assessing the laws and circumstances, the Australian Court will provide their decision.