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Parental Alienation (2)

Risks of Family Court in Japan

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I. Introduction

We have been taking international cases form more than 26 years. Among these cases, we often represent foreign husband whose child was taken away by his Japanese wife from their home while he was absent. He usually receives the summons from the family court for divorce mediation and payment of the marital expense until he gets divorce. In this case, we file a petition for visitation on behalf of our client. His wife often refuses the visitation because his child afraid he based on the memory of the domestic violence from him. Typically, parental alienation defense is made by the taking away parent. It does sometimes effective if she hire so called psychiatrist in the current family court system. Let us give you terrible example for the left behind husband we barely mitigate the risks associate with the current family court system (we almost sue the court.)

II . Fight against the Family Court

Our client is a well-educated white male Westerner. He came to Japan to study Japanese. His wife was born in a grass root family in Japan and she started working on high school graduation. She met the client while working and they got married soon after they knew each other.

Because of the huge gap of educational background and life experience, their marriage did not go well; our client even started to consider the divorce shortly after their marriage. However, the wife was very keen on having a child and the couple did manage to have one eventually. However, even they both love the newly born a child, the relationships between the couple were not improved. Soon after the child graduated from kindergarten and was waiting for starting primary school study, the wife took the child with her and disappeared. She later applied for divorce mediation claiming the domestic violence from our client.

Our client came to us because he wants to reunite with his child as soon as possible . We filed mediation for visitation. His wife's attorney said it is impossible because his child is afraid of our client due to domestic violence from him. This is the typical parental alienation case.

We then submitted the parental alienation expert opinion of Ms. Noriko Odagiri, one of few child psychologists in Japan and demand the trial visitation at the family court.

Even the family court investigator investigate the cases and issue the investigation report to commence the trial visitation, our client's wife refused to follow the recommendation by stating that her child refused to do so.

The mediator was failed to persuade her and the case is passed on the judges.

The family court judge ordered the trial visitation and orders the court investigator to see the psychiatrist of the child.

One day before the trial visitation day, the wife of our client submitted the statement in

which she requested her child to go to the family court but the child squarely refused to do so. Again this is typical parental alienation.

Amazingly the family court decided to suspend the visitation.

Furthermore, the family court investigator secretly (without us) interviewed psychiatrist and submit the investigation report to the judge without showing us and request our comments just a couple of days before the final court date.

We frantically filed a petition for the extension of the court day by threatening the litigation against the family court investigator (and family court judge). Unusually the family court judge accepted our petition for extension of court day.

According to Mr. Akira Ueno, a Japanese attorney, specializing divorce, in Japan, told us that his client, who is high ranking bureaucrat, suggested him not to fight against his wife but the judge. The judge as a high ranking bureaucrat is often indifferent in the dispute between highly conflicted husband and wife but his career. He demanded Mr. Ueno to attack the judge and Mr. Ueno file a law suit against the judge. We coincidentally followed the suggestion of Mr. Ueno's client. It did work.

Please note, however, that it is extremely difficult to file a law suit against the family court judge. Family court judge's position is secured as he could say that he is not an expert of psychology of a child. He should rely on the family court investigator so called the expert and experienced practitioner of child psychology designated to assist the judge. If the judge follows the investigation report of the family court investigator, he is free of the risk of negligence. In this case, we have to show the special circumstance to establish the negligence of the family court judge even though he relied on the investigation report of the family court. It is legally very difficult (if not possible). In practice, however, it did work amazingly.

While we got an extension of the court day, the final court day is approaching. We need a prominent psychiatrist who challenge the opinion of psychiatrist on which the family

court investigator blindly relied on.

Ms. Odagiri kindly introduce Mr. Shinich Namamura, a psychiatrist truly specialized in child psychology.

The psychiatrist (and current doctor) of the child of our client said that the psychiatrist regards what the patient believes happened as it happened. This is ridiculous opinion.

If your wife takes your small child away from home and brainwashed him as you are abusive parent. He easily believes what your wife said and told the psychiatrist that he or she does not want to see you because he or she is afraid of you. The psychiatrist should not believe what the child said to him but examine the background why the child believes he or she was abused by you.

Mr. Nakamura provided us the following second opinion:

I could not believe any psychiatrist truly said that “the psychiatrist regards what the patient believes happened as it happened”. This opinion disregards the facts and opines the false and narrow statements as the entire psychiatrist treat its patient with false theory of psychiatry. I would like to receive the personal explanation from the so called psychiatrist.

He further stated in his investigation report that it should be true that a psychiatrist said to the family court investigator that “it is for the best interest of the child not to see his father”. I understand that an expert opinion has a huge impact on the investigation report.

However, the investigator is an independent practitioner authorized by the Court. It is, however, impossible for me why the investigator wrote the report by referring to a single expert opinion, which is, in my opinion, not based on the facts and professional. In this case, the investigator should consult second opinions of other experts and reevaluate the evidence and facts again before drafting the report. The conclusion of investigation report in this case is not based on the fact and unbiased opinion. It is not professional report and in my eye as a person who served as the instructor of investigator for the Family Court for over 23 years, this is unacceptable.

In the next court day, the family court judge, instead of closing the case, request us to submit the realistic visitation plan. We won!

III. Conclusion

It is true that the judges do rely on the investigation report of the family court investigator. The family court investigators do rely on the expert such as the psychiatrist. The problems in associate with the parental alienation cases, not all the psychiatrist recognize the issues of parental alienation. Some of the psychiatrist do issue its expert opinion without considering the background of why the child taken away by a parent, does afraid the other and refuse to see him.

The risks in the family court are that some of the court investigator do believe the opinion of so called expert blindly and issue the investigation report without receiving our comments. Further risk is that the judge is usually rendering the judgment based on the family court investigator without us fighting extremely hard.

In the parent alienation case, you have to choose the experienced attorney who knows the risks in the family court. He or she might be a little bit expensive though.

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