

# CHICAGO LAWYER

CLIFFORD'S NOTES

## SEEKING AN ANSWER

Illinois high court says legislature needs to solve tort question in custodial rights disputes

BY BOB CLIFFORD

**J**eremy Hulsh, a father of two minor children, wrongfully removed his kids from Slovakia and brought them to Illinois. The mother had been granted custody of the children and successfully pursued return in federal court under the Hague Convention and International Child Abduction Remedies Act (ICARA). She then sought to recover her legal expenses in a state court tort suit. She brought causes of action against the children's grandmother and uncle, alleging, inter alia, tortious interference with her custodial rights.

The case (*Hulsh v. Hulsh*, 2025 IL 130931) reached the Illinois Supreme Court, which declined to create a new tort. The justices reaffirmed that Illinois consistently refused to judicially create a cause of action for interference with the parent-child relationship. It also said the question of whether to allow this type of tort is for the legislature to answer, even in the stark factual backdrop of international child abduction.

In response to the decision, Illinois Rep. Jay Hoffman introduced House Bill 4499 in January that creates "a civil cause of action for a parent or child if a third party's tortious conduct injures either the child or the parent or otherwise unreasonably harms, prevents, or terminates a parent-child relationship." If enacted, the bill would allow for the recovery of damages including loss of society, companionship, consortium, parent-child relationship, emotional distress, mental anguish or economic loss.

In Illinois, courts have consistently refused to recognize a standalone tort for interference for claimed emotional or economic injury. *Hulsh* presents a useful lens through which to examine the boundaries of parental remedies, the interplay between federal and state law in child-abduction suits, and the role of the judiciary versus the legislature in expanding tort liability.

There is a national divide on the establishment of this tort. Some states recognize civil remedies for the tort of interference with custodial rights. For example, in California, *Surina v. Lucey*, 168 Cal. App. 3d, 539, 542, 214 Cal. Rptr. 509, 511 (1985), the court held "... that the unlawful taking or withholding of a minor child from the custody of the parent or guardian entitled to such custody constitutes an actionable tort. ... Damages may also be recovered from the wrongdoer for the mental anguish and wounded feelings (i.e., emotional distress) resulting from the loss of the child and for the expenses incurred in vindicating the parent's rights."

The California courts obviously rely on the Restatement (Second) of Torts Sec. 700, which provides: "One who, with knowledge that the parent does not consent, abducts or otherwise compels or induces a minor child to leave a parent legally entitled to its custody or not to return to the parent after it has been left him, is subject to liability to the parent."

Other states, like Illinois, have declined creation of a civil tort for this wrong and left the issue to be resolved by criminal statutes, interstate child abduction laws or federal remedies like the Hague Convention. Currently, Illinois has criminal statutes covering visitation or parenting time interference: 750 ILCS 5/607.5 refers to the "Abuse of Allocated Parenting Time" section, part of the Illinois Marriage and Dissolution of Marriage Act (IMDMA). It empowers courts with enforcement tools like fines, counseling or even driver's license suspension when a parent obstructs court-ordered time with the child, even if the child resists, focusing on the child's best interest to ensure adherence to parenting schedules.

In the realm of federal law, international child abduction claims may proceed under ICARA that provides a prevailing parent may recover "necessary expenses" (including attorney's fees) incurred in obtaining the return of the child.



Family courts also possess contempt, enforcement and modification tools. Illinois law provides expedited court processes for enforcement of parenting time, fines, bond or security requirements. The "Abuse of Allocated Parenting Time" section in Illinois law, part of IMDMA, empowers courts with enforcement tools such as fines and counseling.

Remedial possibilities reveal a patchwork in Illinois: criminal prosecutions, statutory instruments, federal abduction law and family-court relief. However, Illinois courts have consistently held that codification would first be required.

The *Hulsh* court observed the plaintiff had already obtained relief under ICARA for return of the children and fee recovery. The plaintiff was asking only for attorneys' fees. Thus, the incremental value of a state-law tort claim was diminished, but that did not make the plaintiff whole.

Codification of the tort could deter family members, friends or organizations from assisting in unlawful abductions. It would also fill the remedial gap where existing law fails to make victims whole. Until the legislature acts, parents in Illinois must rely on the tools at hand: criminal enforcement, contempt proceedings and federal abduction statutes. Whether that suffices, or whether civil liability should finally step in to fill the void, remains one of the most poignant and unresolved gaps in the intersection of tort and family law. [CL](#)

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