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OF THE KALININGRAD CITY

Kaliningrad, Russia

May 25th, 2017

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**COUNSEL'S OPINION WITH REGARD TO THE CASE OF
R. S. N. and M. I. O.**

The Main Laws Regulating the Legal Relations in Dispute

The Relationship between R.S.N. and M.I.O. as Governed by the Russian and the International Laws

The Constitution of the Russian Federation guarantees the equality of human and citizen rights and freedoms regardless their sex, social or official position. Men and women have equal rights and freedoms and equal opportunities for their implementation (parts 2 and 3 of the Article 19). Besides, child's care and nurturing are the equal right and duty of the parents (parts 1 and 2 of the Article 38). The similar rights are enshrined in the Family Code of the Russian Federation (part 1, Article 61). The legal relations in dispute are governed by the Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms. Family life is a fundamental aspect of private life. Thus, the relationship between parents and children is protected by the concept of family life. Therefore, the discrimination of rights under the Article 8 of the Convention is the violation of the Article 14 of the Convention. This position is confirmed by the practice of the European Court of Human Rights. The right to respect for private life includes but not be limited to the right of a child born out of wedlock to establish a legal

relationship with his biological father (the Judgment of the European Court in the case of "Mikulic v. Croatia" Complaint No. 53176/99, ECHR 2002-I).

Possible Options of the Legal Assistance

From the above it follows that ignoring by M. I. A. the rights of R. S. N. for their joint children is illegal. At the moment, the biological mother of the children draws benefits from her legal status of a single mother. There is a dash listed for father in the birth certificate. Therefore, R. S. N. first should obtain the status of the father and to amend the birth certificate according to the status obtained (Article 47 of the Family Code of the Russian Federation). Then the biological parents will have the mutual rights and obligations for the joint children.

There are two options of the legal assistance for this situation to help the Client. The first option is an offer to engage in discussions with M. I. O. (her lawyer) for voluntary establishment of paternity according to the part 3 of the Article 48 of the Family Code of the Russian Federation. The main arguments are the real parentage of the children known to both parties, the costs of the judicial procedures for establishing paternity which may be imposed on the losing party, the sensitivity of the issue, in other words, the offer "not to make quarrels in public." The second option is filing a statement of claim to the court for establishment of paternity in accordance with the Article 49 of the Family Code of the Russian Federation. This stage consists of the pre-trial preparation and the actual trial (including the first and the second court). Considering the tactics of protection of the Client's rights and the possible actions of M. I. O., preparing for the case is the priority action. After the case is ready, we make an offer for a peaceful settlement. If this proposal is rejected, we immediately file a statement claim to the court.

Plan of Action for the Protection of the Interests of R. S. N.

From the plot of the case follows that R. S. N. and M. I. O. lived together for a long time, since autumn 2010 until December 2016. In the summer of 2016 M. I. O. became pregnant with twins. At first, they lived in a rented apartment, then in the Client's apartment. Even though the relations between the two future biological parents were not registered, they behaved as husband and wife, and future parents. They did not hide their relationship in front of others. The future father strove for the health of his wife, as well as for obtaining various documents, such as a birth certificate, and a medical leave of absence.

So, at the pre-trial stage it should be explained to the Client what circumstances he/she (his/her Lawyer) will need to prove in the court in accordance with the Article 56 of the Civil Procedural Code of the Russian Federation. The evidences of the joint long-term residence of the plaintiff and the defendant, the joint household, and the defendant's actions based on which it is

possible to conclude her recognition of the Client as the father of their children are very important for the case. The plaintiff must prove the parentage of the children from R. S. N. Therefore, the work at this stage should be divided between the Lawyer and the Client. The Client needs to collect all available documents (communications via emails, social platforms, and/or instant messengers, door-to-door map of his/her apartment where he/she could register the defendant, the residential lease agreement which usually states the names of people living together, the receipts confirming the purchase of the children's things), photos and videos that prove all of the foregoing circumstances, and also a list of people who may act as witnesses in the case.

Meanwhile, the Lawyer preparing for the case makes the attorney's requests to the Agency of Civil Acts Registration Bureau on obtaining the children's birth certificates, a request to the hospital to receive the medical and parental records. If these bodies deny to provide the documents, this fact will be used as an additional argument for obtaining the necessary evidence through court in accordance with the Article 57 of the Civil Procedural Code of the Russian Federation.

After collecting all possible evidence, the Lawyer prepares the statement of claim to the court to establish paternity, the motion to call the necessary evidence, and the application for interim measures in accordance with the Articles 139, 140 of the Civil Procedural Code of the Russian Federation. I would like to clarify the possible interim measures. Based on the information provided, the defendant intends to leave the territory of Russia together with her first husband and children.

Therefore, I believe it necessary to impose the interim measures on the defendant and M. Z. I. in the form of a ban to perform certain actions. For example, a ban to hide the children, to take the children outside the city of Novosibirsk, Russia, as well as from Russia. Moreover, I believe that to achieve the best result for ensuring the Client's rights in addition to imposing such ban for the defendant, we should request for the limitation of the plaintiff's and the defendant's right on a child to leave Russia in accordance with part 5 of the Article 15 of the Federal Law as of 15.08.1996 No. 114-Φ3 "On the Procedure for Exit from the Russian Federation and Entry into the Russian Federation".

In addition to the above, it is also possible to apply for the interim measures specifying the children's residence together with their biological mother at a specific address of residence during the trial. If children are not in the specified place, it is possible to apply sanctions according to the Federal Law as of 02.10.2007 №229-Φ3 "On the Enforcement Proceedings."

In accordance with the Russian Family Law, the decision in establishing the fatherhood shall be based on a comprehensive and objective study of all the evidence that can confirm or

deny the actual parentage of a child. In addition, no evidence predetermines influence for the court. It means, the DNA test is not a mandatory condition for the satisfaction by the court of the plaintiff's claim to establish the paternity over the children.

At the trial stage, in the first place, the plaintiff must provide the court with sufficient, reliable, and relevant evidence about the relationship between the plaintiff and the defendant, and the parentage of the children. In the situation of R. S. N., this can be the testimony of his relatives, friends, co-workers, the apartment landlord, and the health-care personnel about the existence of a family relationship between the disputing parties and (which is more important) the information of all witnesses of the plaintiff and the defendant about their coming baby, as well as the actions of the plaintiff in this regard: purchase of the children's clothing and preparation of the necessary documents. The written communications of the defendant to the plaintiff or to other people (including the witnesses) which show that the plaintiff is the father of her children are of the special importance. Perhaps, there are photos of the plaintiff and the defendant together with the appropriate notes. The documents from the medical institutions, including the copies of the medical and parent records in which the plaintiff is stated as the father, are very valuable as well.

After the submission of all written evidence and interviewing all witnesses, the plaintiff will make a motion to the Court requesting to conduct a genetic testing to determine the paternity in accordance with the Article 79 of the Civil Procedural Code of the Russian Federation. If the defendant resists to take the children to the expert institution which she stated to the plaintiff, the court may declare the paternity of the Client in accordance with the part 3 of the Article 79 of the Civil Procedural Code of the Russian Federation.

Simultaneously with the establishment of paternity, the plaintiff may petition for determination of the children (child) place of residence with their (his/her) father (if the Client insists on this claim, we shall clarify the possible prospects considering the age of the children and the social portrait of the mother), as well as determination of the ways of communication with the children (this option seems most promising).

After the entry into force of the court's decision on the establishment of paternity, the father of the child is advisable to obtain a birth certificate and apply for the prohibition of the children departure from Russia in accordance with the Federal Law as of 15.08.1996 №114-ФЗ.

On grounds of the possible future departure of the defendant from the Russian Federation together with children, I believe, it necessary to include in the text of the statement of the claim the references to the Article 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms; since the establishment of the legal relationship of the father with his alleged child relates to the notion of the "private life" (the Judgment of the European Court

from November 24, 2005 in the case of Shofman v. the Russian Federation, Complaint No. 74826/01), and also due to the fact that in deciding the paternity the courts should pay special attention to the best interests of a child (the Judgment of the European Court from July 17, 2007, case of Jevremovic v Serbia, Complaint No. 3150/05, as well as the Article 3 of the Convention on the Rights of the Child).

If later the children's mother with the children leaves Russia without the knowledge of the plaintiff, in accordance with Article 8 of the Convention on the Civil Aspects of International Child Abduction the plaintiff applies to the Central authority of the place of children's residence or of the other foreign country, where the children were taken to, with a statement on taking measures to ensure the implementation of the access rights (Article 21), the statement on children return (Articles 10,11) due to the violation of the Article 3 of the Convention and the violation of the "custody" and "access right" by the defendant. If the measures taken do not bring the expected result, the plaintiff files the proper motion on the child's return or on implementation of the access rights in respect to the child.

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