

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Kevin Federico Pichardo Aguilar v. Aylin Xomara Bernal Millan

Aguilar v. Millan · No. CV-25-00509-PHX-SMB · Decided January 29, 2026

SUMMARY

The U.S. District Court for the District of Arizona considered Plaintiff Kevin Federico Pichardo Aguilar’s motion for attorneys’ fees and costs following an order requiring the return of a minor child to Mexico under the Hague Convention and ICARA. The court held that an award was not clearly inappropriate despite the defendant’s financial hardship, but reduced the requested amount of \$10,455.35 and ordered the defendant to pay \$1,000.

CASE DETAILS

COURT	United States District Court for the District of Arizona
WRITING FOR THE COURT	Susan M. Brnovich
JURISDICTION	U.S. District Court for the District of Arizona
DECIDED	January 29, 2026
DOCKET	CV-25-00509-PHX-SMB
DISPOSITION	other
PROCEDURAL POSTURE	After granting Plaintiff's petition for the return of a child under the Hague Convention and ICARA, the court considered Plaintiff's motion for attorneys' fees and costs under Article 26 of the Convention and 22 U.S.C. § 9007(b)(3).
STANDARD OF REVIEW	The court applied its broad discretion in determining whether an award of necessary expenses and legal fees would be clearly inappropriate under 22 U.S.C. § 9007(b)(3).
PRECEDENTIAL VALUE	unpublished district court order

TOPICS

- child custody
- attorney fees
- family law procedure
- family law
- foreign affairs

PRACTICE AREAS

- family law
- international child abduction
- attorney fees
- civil procedure

QUESTIONS PRESENTED

1. Whether Mother's financial hardship made an award of attorneys' fees and costs clearly inappropriate under 22 U.S.C. § 9007(b)(3).
2. Whether the court should exercise its discretion to reduce the requested \$10,455.35 award in light of Mother's indigent status.

HOLDINGS

1. Mother's limited financial resources did not make an award of attorneys' fees and costs clearly inappropriate under 22 U.S.C. § 9007(b)(3).
2. The court reduced Father's requested award and ordered Mother to pay \$1,000.

KEY QUOTATIONS

“shall order the respondent to pay necessary expenses incurred by or on behalf of the petitioner, including . . . legal fees . . . unless the respondent establishes that such order would be clearly inappropriate.” (at 2)

“However, Mother’s financial status does not make Father’s requested fees “clearly inappropriate” under § 9007(b)(3). Accordingly, the Court will order Mother to pay Father \$1,000.” (at 3)

FACTUAL BACKGROUND

The case arose from an international custody dispute concerning the parties' minor child, J.A.P.B. Father obtained an order requiring the child's return to Mexico under the Hague Convention and ICARA. Father requested \$10,455.35 in attorneys' fees and costs; Mother primarily argued that an award would be clearly inappropriate because of her financial hardship. The court found that Father had seen the child nearly every day, provided significant financial support, and was not shown to have been abusive, while Mother reported limited financial resources.

PROCEDURAL HISTORY

Father filed a petition seeking the return of the parties' minor child to Mexico. Following a bench trial, the court granted the petition and ordered Father to submit a request for reasonable attorneys' fees and costs. Father then moved for \$10,455.35 in fees and costs. The court granted the motion in part and ordered Mother to pay \$1,000.

DISPOSITION

other

CASES CITED

- Elkhaiat v. Mawashi, No. CV-24-02800-PHX-SPL, 2025 WL 3144177, at *2 (D. Ariz. July 17, 2025)
- Radu v. Shon, No. CV-20-00246-TUC-RM, 2021 WL 1056393, at *2 (D. Ariz. Mar. 19, 2021)
- Ciampa v. Nichols, No. 8:24-CV-02556-DOC-ADS, 2025 WL 1358488, at *4 (C.D. Cal. Apr. 3, 2025)
- Efthymiou v. LaBonte, No. 22-CV-04694-VC, 2023 WL 3611362, at *4 (N.D. Cal. May 24, 2023)

- LaSalle v. Adams, No. CV-19-04976-PHX-DWL, 2019 WL 6135127, at *11 (D. Ariz. Nov. 19, 2019)

OPINION

1 WO 2 3 4 5 6 IN THE UNITED STATES DISTRICT COURT 7 FOR THE DISTRICT OF ARIZONA 8 9 Kevin Federico Pichardo Aguilar, No. CV-25-00509-PHX-SMB 10 Plaintiff, ORDER 11 v. 12 Aylin Xomara Bernal Millan, 13 Defendant. 14 15 The Court now considers Plaintiff Kevin Federico Pichardo Aguilar’s Motion for 16 Attorneys’ Fees and Costs. (Doc. 57).

For the following reasons, the Court grants in part 17 Plaintiff’s Motion. 18 I. BACKGROUND 19 This case involved an international custody dispute between Plaintiff (“Father”) and 20 Defendant Aylin Xomara Bernal Millan (“Mother”) over J.A.P.B., their minor child. (Doc. 21 46 at 1.) Father filed a Petition seeking to have J.A.P.B. returned to Mexico. (Doc. 1).

22 Following a bench trial, the Court granted Father’s Petition pursuant to the Hague 23 Convention on the Civil Aspects of International Child Abduction (the “Convention”) and 24 the International Child Abduction Remedies Act (“ICARA”), 22 U.S.C. § 9001 et seq, 25 which implements the Convention. (Doc. 46 at 12.)

The Court also ordered that “pursuant 26 to Article 26 of the Convention and 22 U.S.C. § 9007, Father shall submit his request for 27 reasonable attorneys’ fees and costs associated with this action.” (Id.) Father now moves 28 for attorneys’ fees and costs in the amount of \$10,455.35. (Doc. 57 at 1.) 1 II. LEGAL STANDARD 2 Article 26 of the Convention provides that, upon ordering the return of a child, the 3 Court “may, where appropriate, direct the person who removed or retained the child... to 4 pay necessary expenses incurred by or on behalf of the applicant.” Similarly, ICARA 5 provides that a court ordering the return of a child under the Convention “shall order the 6 respondent to pay necessary expenses incurred by or on behalf of the petitioner, 7 including... legal fees... unless the respondent establishes that such order would be 8 clearly inappropriate.” 22 U.S.C. § 9007(b)(3).

9 “While the Ninth Circuit has not defined the contours of the ‘clearly inappropriate’ 10 exception, various Circuit Courts of Appeals have concluded that district courts hold broad 11 discretion and may consider equitable principles in assessing the appropriateness of a fee 12 award in ICARA cases.” *Elkhaiat v. Mawashi*, No. CV-24-02800-PHX-SPL, 2025 WL 13 3144177, at *2 (D.

Ariz. July 17, 2025). Still, courts generally consider the following when 14 assessing whether an award of fees would be “clearly inappropriate: “the reasonableness 15 of the respondent’s basis for removing the children”; “the financial circumstances of the 16 respondent and whether an award of fees would interfere with the respondent’s ability to 17 care for the minor children”; and “whether the prevailing party has financially neglected 18 the children or been physical or mentally abusive.” *Radu v. Shon*, No. 19 CV-20-00246-TUC-RM, 2021 WL 1056393, at *2 (D.

Ariz. Mar. 19, 2021). “Courts in 20 the District of Arizona have declined to award attorneys’ fees based on the limited financial 21 means of the respondent and the abuse and financial neglect of the petitioner.” Id. (citing 22 cases). 23 III. DISCUSSION 24 Mother contends that the requested fees are “clearly inappropriate” based almost 25 entirely on financial hardship.¹ (Doc.

63 at 4.) While Mother does not substantively argue 26 that the requested fees are inappropriate on any other basis, the Court notes that this case 27 1 Mother argues that “Plaintiffs counsel pursued extensive filings and motion practice, which substantially increased fees” and that “[s]ome billing entries reflect duplicative or 28 unnecessary work.” (Id. at 2.)

Mother does not make any further arguments on this point or point the Court to any particular examples of duplicative or unnecessary billing entries. 1 lacks many of the indicia that typically make a fee award inappropriate.

Here, Father saw 2 J.A.P.B “nearly every day,” provided J.A.P.B with significant financial support, and there 3 was no credible evidence suggesting that Father was abusive. (Doc. 46 at 7); *Contra Radu*, 4 2021 WL 1056393, at *3–4 (finding that fees were clearly inappropriate based on financial 5 neglect, abusive behavior, and the fact that the respondent was the child’s primary 6 caregiver).

7 The Court also notes that Father’s requested \$10,455.35 in attorneys’ fees and costs 8 is relatively modest. Courts in this Circuit have been confronted with, and granted, far 9 greater requests in similar cases. See, e.g., *Ciampa v. Nichols*, No. 10 8:24-CV-02556-DOC-ADS, 2025 WL 1358488, at *4 (C.D. Cal. Apr. 3, 2025) (awarding 11 a petitioner over \$160,000 in fees under § 9007(b)(3)); *Efthymiou v. LaBonte*, No. 12 22-CV-04694-VC, 2023 WL 3611362, at *4 (N.D.

Cal. May 24, 2023) (awarding over 13 \$85,000). 14 Although Father’s requested relief is relatively modest, the Court will exercise its 15 “broad discretion” and will award a reduced fee in light of Mother’s indigent status. See 16 *LaSalle v. Adams*, No. CV-19-04976-PHX-DWL, 2019 WL 6135127, at *11 (D. Ariz. 17 Nov. 19, 2019) (noting that § 9007(b)(3) creates a “duty to order the payment of necessary 18 expenses and legal fees,” subject to the district court’s broad discretion (citation 19 modified)).

Mother contends that she has little in the way of financial resources; Father 20 does not contest this assertion. Mother avers that she makes approximately \$1,500 a month 21 and pays approximately \$1,400 a month in necessary expenses. (Doc. 63 at 5.)

However, 22 Mother’s financial status does not make Father’s requested fees “clearly inappropriate” 23 under § 9007(b)(3). Accordingly, the Court will order Mother to pay Father \$1,000. 24 IV. CONCLUSION 25 Accordingly, 26 IT IS HEREBY ORDERED granting in part Plaintiff’s Motion for Attorney’s 27 Fees and Costs. 28 ... 1 IT IS FURTHER ORDERED that Defendant is directed to pay \$1,000 to Father.

2 Dated this 29th day of January, 2026. 3. 4 (He 5 A honorable Susan M. Brnovich United States
District Judge 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 -4-

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