

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

OPINION

Aguilar

PER CURIAM.

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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