Commentary: District Court Cases

Adkins v. Adkins, No. 19-cv-05535-HSG, 2020 U.S. Dist. LEXIS 207559 (N.D. Cal. Nov. 5, 2020)

Other District Court Cases

Wan v. Debolt,
No. 20-cv-3233, 2020 U.S. Dist. LEXIS 197996 (C.D. Ill. Oct. 26, 2020)

Jacquety v. Baptista,
19 Civ. 9642 (VM), 2020 WL 5946562 (S.D.N.Y. Oct. 7, 2020)

Da Silva v. Vieira,
No. 6:20-cv-1301-Orl-37GJK, 2020 U.S. Dist. LEXIS 174167 (M.D. Fla. Sep. 23, 2020)

Trott v. Trott,
No. 20-CV-1392 (AMD) (CLP), 2020 U.S. Dist. LEXIS 151818 (E.D.N.Y. Aug. 21, 2020)

Leon v. Ruiz,
No. MO:19-CV-00293-RCG, 2020 U.S. Dist. LEXIS 43758 (W.D. Tex. Mar. 13, 2020)

Attorney Fees | ICARA

In this case, the petitioner—a mother who had filed a Hague petition for the return of her daughter to Switzerland—filed a motion seeking reimbursement for attorney fees and costs incurred in part by state court custody actions that the father (the respondent) had initiated.

Holding

The cost-shifting provisions of the International Child Abductions Remedies Act (ICARA) apply only to those fees and costs incurred in the proceedings for a child's return.

Facts

The mother successfully obtained an order for the return of her daughter to Switzerland. The mother also moved for an award of $128,524 consisting of

- attorney fees and costs amounting to $17,930 incurred to obtain the dismissal of a state court custody action
- attorney fees and costs amounting to $19,714 incurred in a Swiss action for custody of the child
- costs of a private investigator to discover the child's location in California, amounting to $6,475
- attorney fees and costs amounting to $80,231 expended in the action in federal court to obtain an order for return
- travel expenses from Switzerland to California and back to attend the evidentiary hearing, amounting to $3,553[1]

Discussion

The district court denied the part of the motion for attorney fees and costs relating to the custody proceedings in both the California state and Swiss courts. The mother argued that if the father had not wrongfully removed the child from Switzerland, these fees and costs would not have been necessary. The court denied her request, however, finding

1. Adkins v. Adkins, No. 19-cv-05535-HSG, 2020 U.S. Dist. LEXIS 207559, at *3–4 (N.D. Cal. Nov. 5, 2020).

that § 9007(b)(3) of ICARA provides that necessary expenses are reimbursable in "an action brought under section 9003 of the Convention."[2] Since neither the California nor Swiss custody actions were brought under these terms, the fees and costs relating to those actions could not be awarded.

The court also denied the mother's request to be reimbursed for investigative services, since the evidence showed that she was aware of the child's location in Petaluma, California, and she had frequent contact with the child at that location.

The court found that the mother's request for attorney fees was appropriate for the time spent preparing the case for the evidentiary hearing and for preparing the motion for reimbursement. Applying the lodestar method, the court approved the time attorneys, paralegals, and legal assistants spent on the case. The father argued that the 43 hours his attorney spent on the case showed that the 135 hours claimed by the mother's counsel was excessive. But the father failed to detail the time spent by his counsel, foreclosing any comparison between the attorneys' work.[3]

The court also approved the mother's request for reimbursement of travel expenses to and from Switzerland for herself and travel expenses for the child's return. The father argued that the award she proposed was "clearly inappropriate" and that the court should reduce it.[4] He claimed that he was previously unemployed in Switzerland, and that he had various financial obligations and debts. But the district court found that the father's current employment of $10,000 per month plus bonuses indicated a significant earning potential and held that the award of $83,785 as necessary expenses (attorney fees and costs plus travel costs) was appropriate.

2. *Id.* at *5.
3. *Id.* at *7–11.
4. *Id.* at *12.