

Not Reported in F.Supp.2d
Not Reported in F.Supp.2d, 1999 WL 33951234 (M.D.N.C.) (Cite as: 1999 WL 33951234
(M.D.N.C.))

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Only the Westlaw citation is currently available.

United States District Court,
M.D. North Carolina.
Emanuel FRIEDRICH, Petitioner,
v.
Jeana Michelle THOMPSON, Respondent.
No. 1:99-CV-772.

Nov. 26, 1999.

Marilyn Feuchs-Marker, Smith Helms Mulliss & Moore, Greensboro, NC, for
Petitioner.

David Bruce Hough, Law Office of David B. Hough, Winston-Salem, NC, for
Respondent.

MEMORANDUM OPINION

BEATY, J.

I. INTRODUCTION

*1 This matter is before the Court on Petitioner Emanuel Friedrich's ("Petitioner") Motion for Return of Child to Petitioner and Attorney's Fees [Document # 2], filed pursuant to the Convention on the Civil Aspects of International Child Abduction, October 25, 1980, T.I.A.S. No. 11670, 1343 U.N.T.S. 49 [hereinafter the Hague Convention], and the provisions of the International Child Abduction Remedies Act, 42 U.S.C. <section> 11601 ("ICARA"). In a previous ruling in open court, this Court ordered the return of the child to Petitioner, but withheld decision on the issue of attorney's fees pending the submission of pleadings on that issue by Petitioner and Respondent Jeana Michelle Thompson ("Respondent"). Respondent has since filed a Brief in Support of the Denial of the Payment of Attorney's Fees and Costs by the Respondent [Document # 12]. Petitioner has filed a Reply Brief in Support of Application for Payment of Attorney's Fees and Costs by Respondent [Document # 14]. For the reasons stated herein, Petitioner's motion for attorney's fees pursuant to ICARA is GRANTED, with the exception that the requested attorney's fees will be reduced to a reasonable sum as articulated herein.

II. FACTUAL AND PROCEDURAL BACKGROUND

Petitioner and Respondent have litigated the custody of their son Thomas David Friedrich ("the child") on two occasions prior to the litigation that has taken place before this Court. *Friedrich v. Friedrich*, 983 F.2d 1396 (6th Cir.1993) ("Friedrich I"); *Friedrich v. Friedrich*, 78 F.3d 1060 (6th Cir.1996) ("Friedrich II"). As a result of the Sixth Circuit's decision to enforce a ruling of the German Family Court awarding sole custody to Petitioner, Petitioner has exercised custody of the child in Bad Aibling, Germany since 1996. Although the order of the German court made no mention of visitation rights for Respondent, Petitioner verbally agreed to allow the child to visit with his mother on three occasions. The first visit took place in the summer of 1997 when Respondent came to Bad Aibling, Germany for a period of two weeks. The second visit was in 1998 when the child was permitted to visit for a month with Respondent at her home in the state of Ohio. Both visits took place without incident or concern for the well-being of the child. The third visit, which is the subject of this matter, began when Petitioner placed his son on a flight from Germany to Winston-Salem, North Carolina for a visit that was to last from July 31, 1999 until September 4, 1999. During this visit, Respondent filed civil custody action in Forsyth County, North Carolina, District Court Division 99 CVD 6586 on September 3, 1999, and thereby obtained temporary custody of the child. That order prohibited Petitioner from returning the child to Germany without the consent of the State District Court.

After receiving a fax copy of the custody order on September 6, 1999, Petitioner filed a petition for the return of the child pursuant to the Hague Convention with the Central Authority of the Federal Republic of Germany on September 8, 1999. This petition came to the attention of the United States Department of State, which serves as the Office of Children's Issues, and performs the function of the Central Authority of the United States pursuant to the Hague Convention. Hague Convention, art. 6, T.I.A.S. No. 11670, at 5, 1343 U.N.T.S. 49, 99. In a letter dated September 10, 1999, the Central Authority of the United States notified this Court of Petitioner's pending application and further advised the Court of its obligations under the Hague Convention. On September 9, 1999, Petitioner filed the present action before the Court--the aforementioned Motion for Return of Child to Petitioner and Attorney's Fees--in accordance with the Hague Convention. Petitioner also moved for an expedited hearing and requested that the Court, pursuant to Article 16 of the Hague Convention, stay the custody action filed by Respondent in the State District Court pending the determination of Petitioner's application for return of the child to his custody. Hague Convention, art. 16, T.I.A.S. No. 11670, at 9, 1343 U.N.T.S. 49, 101.

*2 After due consideration of the facts alleged in the petition, this Court scheduled a hearing for Monday, September 13, 1999 at 9 a.m. in order to

determine whether a stay should be entered with respect to the matter filed in State District Court and for determination, if necessary, of Petitioner's application filed pursuant to the Hague Convention. The Clerk of Court notified counsels for Petitioner and Respondent of the hearing set by this Court. Prior to the opening of the hearing, Respondent filed a response to Petitioner's application. Respondent's response included a copy of the motion filed by Respondent in the State District Court for custody and a signed copy of the order of the State District Court judge granting temporary custody to Respondent. As a result of the parties' pleadings and the hearings, which included the presentation of witnesses and an in camera interview with the child to determine whether he faced a grave risk of harm upon returning to Germany, the Court ordered that the decision of the State District Court be stayed. The Court further ordered that the minor child be returned forthwith to Petitioner's custody in the Federal Republic of Germany. Though Petitioner requested that the Court award attorney's fees, the Court did not make a ruling on that issue, instead giving Respondent ten days to submit a response and affidavits on the matter. Respondent has since submitted a response and affidavits on the issue, and Petitioner has filed a reply. The Court will now consider the parties' contentions with respect to Petitioner's request for attorney's fees and necessary expenses.

III. DISCUSSION

With respect to attorney's fees and expenses incurred in defense of rights granted under ICARA, 42 U.S.C. <section> 11607(b)(3) provides:
Any court ordering the return of a child pursuant to an action brought under section 11603 of this title shall order the respondent to pay necessary expenses incurred by or on behalf of the petitioner, including court costs, legal fees, foster home or other care during the course of proceedings in the action, and transportation costs related to the return of the child, unless the respondent establishes that such order would be clearly inappropriate.
42 U.S.C. <section> 11607(b)(3).

Thus, in this instance, Respondent has the burden of showing that it would be clearly inappropriate to grant attorney's fees and expenses to Petitioner. Respondent's actions in denying Petitioner's custody rights caused Petitioner to incur considerable expense in the vindication of those rights. In cases similar to the instant case, courts generally award attorney's fees to parties whose parental rights have been violated. See e.g. *Distler v. Distler*, 26 F.Supp.2d 723 (D.N.J.1998); *Freier v. Freier*, 985 F.Supp. 710 (E.D.Mich.1997). This Court's decision to order the return of the child to Petitioner signifies that Respondent's actions were wrongful. Moreover, the Court recognizes that ICARA, by providing for an award of attorney's fees and expenses after a judgment of wrongful removal or retention of a child, contemplates the use of such awards as a deterrent to violations of the Convention. See 51 Fed.Reg. 10493, 10511 (App. C). In light of this purpose, and after careful review of

the parties' pleadings on this issue, the Court finds that Respondent has failed to establish that it would be clearly inappropriate for the Court to award attorney's fees and expenses to Petitioner in this instance. Therefore, the Court need only determine the reasonableness of the dollar amount requested by Petitioner for attorney's fees and expenses related to the present action. Petitioner requests a total of \$14,443.40 in attorney's fees and \$3,146.00 for other expenses incurred by Petitioner in securing the return of the child. This Court finds that the non-legal expenses, which Petitioner attributes to the cost of airline tickets for the child and himself, the translation of documents from German to English, court costs, and lodging while in the United States, are reasonable. (Pet. Reply Supp.App. Attorney's Fees, Ex. H.) Accordingly, the Court turns to the question of the reasonableness of the attorney's fees sought by Plaintiff.

A. The Lodestar Approach

*3 It is well established that the "lodestar" approach is the proper method for determining reasonable attorney's fees. *City of Burlington v. Dague*, 505 U.S. 557, 557, 112 S.Ct. 2638, 2639, 120 L.Ed.2d 449 (1992); *Clinchfield Coal Co. v. Harris*, 149 F.3d 307, 309 (4th Cir.1998). Consistent with the general acceptance of the method, federal courts have applied the lodestar approach to cases where ICARA is at issue. *Distler*, 26 F.Supp.2d at 727.; *Freier*, 985 F.Supp. at 712. The lodestar figure is determined by multiplying the number of reasonable hours expended times a reasonable rate. See *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S.Ct. 1933, 76-L.Ed.2d 40, 50 (1983); *Rum Creek Coal Sales, Inc. v. Caperton*, 31 F.3d 169, 174-75 (4th Cir.1994). To determine the reasonable rate and reasonable number of hours to use in calculating the lodestar, the Court is guided by the twelve "Johnson" factors: (1) the time and labor required; (2) the novelty and difficulty of the questions; (3) the level of skill required to perform the legal service properly; (4) the preclusion of employment by the attorney due to acceptance of the case; (5) the customary fee; (6) whether the fee is fixed or contingent; (7) the time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputations, and ability of the attorneys; (10) the "undesirability" of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases. *Rum Creek*, 31 F.3d at 175; (citing *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir.1974)). These "Johnson" factors are to be considered as part of the Court's determination of the reasonable number of hours and the reasonable rate to be used in this case. See *Daly v. Hill*, 790 F.2d 1071, 1078 (4th Cir.1986). [FN1] Therefore, in applying the lodestar analysis, the Court has the discretion to reduce the award requested by Petitioner. *Hensley v. Eckerhart*, 461 U.S. at 437, 103 S.Ct. at 1941.

FN1. While Respondent urges the Court to consider Respondent's limited financial resources in its determination of the reasonableness of

attorney's fees in this case, the Court notes that the lodestar approach as articulated by the Fourth Circuit does not involve such a consideration. Moreover, if the Court were to consider Respondent's limited resources, it would only be equitable for the Court to consider Petitioner's resources, which appear to be limited as well. In Petitioner's affidavit detailing the expenses he incurred in his effort to recover custody of his son, he reports having "modest means." He is employed as a bar manager on a U.S. military base in Bad Aibling, Germany, and reports receiving no child support from Respondent. (Pet. Reply Supp.App. Attorney's Fees, Ex. H.) Therefore, the Court will adhere strictly to the factors provided by the lodestar approach.

B. Reasonableness of Number of Hours

To establish the number of hours reasonably expended, Petitioner must "submit evidence supporting the hours worked." Hensley, 461 U.S. at 433, 76 L.Ed.2d at 50. The number of hours should be reduced to exclude hours that are "excessive, redundant, or otherwise unnecessary" in order to reflect the number of hours that would properly be billed to the client. See *id.* at 434, 76 L.Ed.2d at 51; *Daly*, 790 F.2d at 1079 (4th Cir.1986). In the present case, Petitioner has submitted somewhat itemized billing records to establish the number of hours worked by the two attorneys that handled the case. (Pet. Reply Supp.App. Attorney's Fees, Ex. B-C.) Attorney Marilyn Feuchs-Marker reports 49.1 hours of work. Attorney Lyn K. Broom reports 23.9 hours of work. Respondent challenges as unreasonable Petitioner's use of two attorneys to litigate this case, and the number of hours reported by the attorneys. Respondent supports this challenge by arguing that the case was relatively ordinary and routine, and thus did not require two attorneys or an unusual expenditure of time.

*4 After consideration of the level of difficulty presented by this case, and careful review of the affidavits submitted by Petitioner's attorneys detailing the nature of the work done on the case, the Court finds that the amount of time reported by Petitioner's attorneys is not totally justifiable. With respect to a consideration of the level of difficulty of the case as one of the Johnson factors, the Court notes that, prior to the present action, the parties involved in this action litigated this same issue twice before the Sixth Circuit Court of Appeals. As a result, Petitioner's attorneys had at their disposal two opinions applying the law to these very facts. In preparing the arguments presented before this Court, Petitioner's attorneys had only to rely on those precedents. Consequently, the process of arguing the legal requirements of ICARA and the presentation of one witness in a hearing before this Court did not present legal tasks of novel difficulty. Given the legal history of this case and the recurrent fact pattern involving similar actions by Respondent, the Court finds that special skills were not required of the attorneys in order to prosecute this matter. In comparing the relatively

moderate level of difficulty presented by this case to affidavits submitted by Petitioner's attorneys detailing the tasks performed in the case, the Court finds that the number of hours reported by Petitioner's attorneys is excessive and duplicative in certain areas. In particular, the Court notes duplication of tasks in the preparation of Petitioner's pleadings and in the choice of Petitioner's counsel to employ two attorneys in representing Petitioner in hearings before this Court.

First, with respect to the hours reported by both attorneys for time spent on preparation of Petitioner's pleadings, the Court notes that neither attorney gives a detailed account of the precise hours devoted to that task. Attorney Feuchs-Marker merely includes a reference to "draft[ing] pleadings and research" with telephone conferences, drafting letters to opposing counsel, various telephone conferences with opposing counsel, and work performed in preparation for trial. A total of 23.9 hours is reported for these combined tasks. In similar fashion, Attorney Broom's account of the time she spent on this case also combines the tasks of "review[ing] and revis[ing] drafts" of the pleadings with other tasks-unrelated to the pleadings. (Pet. Reply Supp.App. Attorney's Fees at Ex. B.) However, she reports a total of 17.3 hours, during which she performed some work on the pleadings. (Id. at Ex. C.) As a result of this lack of specificity, it is not possible for the Court to isolate the exact number of hours both attorneys spent on preparation of Petitioner's pleadings or to determine why the efforts of both attorneys was necessary given the facts of this case. It is apparent to the Court, however, that both attorneys are attributing a considerable number of billable hours to the research and writing associated with the preparation of pleadings, which of necessity results in a duplication of hours.

*5 Second, the Court notes that both Attorneys Feuchs-Marks and Broom appeared before the Court in a hearing to determine the issues of jurisdiction and custodial rights under ICARA. Attorney Feuchs-Marker reports 9 hours spent in the hearings before the Court. Attorney Broom combines her time spent in hearings before the Court with unrelated tasks, thereby reporting 10.6 hours which includes an unspecified amount of time for her presence in Court. (Id. at Ex. C.) As with the number of hours reported by the attorneys in connection with the preparation of Petitioner's pleadings, it is difficult for the Court to identify the precise number of hours spent by both attorneys in the hearings that were conducted before this Court. However, it is clear that both attorneys are attributing a considerable number of hours to the time spent in the hearings. Petitioner attempts to justify this overlap by arguing that the presence of both attorneys was required in court because of their preparation based on their respective expertise in domestic and international family law. (Pet. Reply Supp.App. Attorney's Fees at 6.) However, this Court finds that Attorney Feuchs-Marker's election to have an additional attorney present in court was more for convenience rather than a choice necessitated by the complexity of the case. Therefore, the Court finds the hours reported by both attorneys for time spent in hearings before the Court to be duplicative.

Where a district court finds a duplication in the hours reported by the attorney of the party requesting attorney's fees, the court has discretion to exclude from the calculation of attorney's fees hours that were not "reasonably expended." *Hensley v. Eckerhart*, 461 U.S. 424, 433, 103 S.Ct. 1933, 76 L.Ed.2d 40, 50 (1983). Therefore, the Court will reduce the number of hours reported by Attorneys Feuchs-Marker and Broom by 5 hours and 10 hours respectively. The 5 hours excluded from Attorney Feuchs-Marker's reported hours reflects the duplication of hours connected to the work done on Petitioner's pleadings. The 10 hours excluded from Attorney Broom's reported hours reflects the time that Attorney Broom attributes to her preparation for and presence in the Hague Convention hearings. This reduction leaves Attorney Feuchs-Marker 44.1 hours for the calculation of attorney's fees. The reduction leaves Attorney Broom 13.9 hours for the calculation of attorney's fees.

C. Reasonableness of Rate

Once a reasonable number of hours has been determined, the Court must determine a reasonable rate, "calculated according to the prevailing market rates in the relevant community." *Blum v. Stenson*, 465 U.S. 886, 895, 104 S.Ct. 1541, 1547, 79 L.Ed.2d 891 (1984). "This determination is fact-intensive and is best guided by what attorneys earn from paying clients for similar services in similar circumstances." *Rum Creek*, 31 F.3d at 175. In the present case, Attorney Feuchs-Marker reports a customary fee of \$220.00 per hour for international family law, which she reduced to \$200.00 in this case, her customary rate for domestic cases. As further support for this rate, Attorney Feuchs-Marker asserts that she has practiced exclusively in the area of family law and international family law for eleven years in Guilford County, North Carolina. (Pet. Reply Supp.App. Attorney's Fees, Ex. B.)

*6 On the other hand, Attorney Broom reports a customary fee of \$170.00 per hour based upon her having practiced in the area of civil litigation for nine years in Guilford County, North Carolina. (Id. at Ex. C.) The attorneys for Petitioner have submitted affidavits which indicate that within the legal market of Guilford County, North Carolina, legal fees in the area of family law typically range from \$100.00 to \$275.00. (Id. at Ex. D-G.) Additionally, the 1998 North Carolina Bar Association Economic Survey ("1998 Economic Survey") indicates that typical rates for an attorney admitted to the bar in the same year as Attorney Feuchs-Marker range from \$113.00 to \$176.00 in areas similar to Guilford County. In addition, the Bar Survey indicates that typical rates for an attorney admitted to the bar in the same year as Attorney Broom range from \$118.00 to \$160.00 in areas similar to Guilford County.

Both the Supreme Court and the Fourth Circuit prescribe a method of rate determination whereby the district court uses discretion influenced by "evidence of fees paid to attorneys of comparable skill in similar circumstances." *Blum*, 465 U.S. at 895, 104 S.Ct. at 1547; *Rum Creek*, 31 F.3d at 175.

This Court has examined the foregoing indicators of what constitutes a reasonable rate for similar services in the Guilford County legal market, consisting of affidavits submitted by Petitioner and the North Carolina Bar Association's Economic Survey. Based on these indicators, the Court finds that a rate reduction is appropriate in the instant case in order to achieve congruence between the rates charged by Attorneys Feuchs-Marker and Broom and those rates charged for similar services in the Guilford County legal market. Therefore, the Court will reduce the rates of Attorneys Feuchs-Marker and Broom to \$150.00 and \$125.00 respectively. In this manner, the rates used in the calculation of a reasonable fee will be more congruent with the prevailing market norms that the Fourth Circuit directs the Court to follow.

Finally, once the Court has determined a reasonable number of hours and a reasonable rate, the Court must multiply the two factors to produce a reasonable fee:

Attorney	Type of Time	Adjusted Total Time	Hourly Rate	Amount of Award
Feuchs-Marker	Legal	44.1	\$ 150.00	\$6,615.00
Broom	Legal	13.9	\$ 125.00	\$1,737.50
TOTAL				\$ 8,352.50

The calculation based upon the above illustration reveals that Petitioner is entitled to attorney's fees in the amount of \$8,352.50. In addition, Petitioner is entitled to receive actual expenses in the amount of \$3,146.00, given the Court's finding as to the necessity of those expenses which are related to his efforts to obtain the return of the child under ICARA and the Hague Convention.

IV. CONCLUSION

For the foregoing reasons, Petitioner's Motion for attorney's fees and necessary expenses is GRANTED. IT IS THEREFORE ORDERED, ADJUDGED, and DECREED that Respondent is to pay to Petitioner the total sum of \$11,498.50, reflecting attorney's fees in the amount of \$8,352.50 and necessary expenses in the amount of \$3,146.00. An Order and Judgment in accordance with this Memorandum Opinion will be filed immediately herewith.

ORDER AND JUDGMENT FOR PETITIONER'S ATTORNEY'S FEES

*7 This matter is before the Court on Petitioner Emanuel Friedrich's ("Petitioner") Motion for Return of Child to Petitioner and Attorney's Fees [Document # 2], filed pursuant to the Convention on the Civil Aspects of International Child Abduction, October 25, 1980, T.I.A.S. No. 11670, 1343 U.N.T.S. 49 [hereinafter the Hague Convention], and the provisions of the International Child Abduction Remedies Act, 42 U.S.C. <section> 11601 ("ICARA"). In a previous ruling in open court, this Court ordered the return of the child to Petitioner, but withheld decision on the issue of attorney's fees pending the submission of pleadings on that issue by Petitioner and Respondent Jeana Michelle Thompson ("Respondent"). Respondent has since filed a Brief in Support of the Denial of the Payment of Attorney's Fees and Costs by the Respondent [Document # 12]. Petitioner has filed a Reply Brief in Support of Application for Payment of Attorney's Fees and Costs by Respondent [Document # 14]. For the reasons enumerated in the MEMORANDUM OPINION filed contemporaneously herewith, Petitioner's Motion for attorney's fees and necessary expenses is GRANTED, with the exception that the requested attorney's fees is reduced to \$8,352.50.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Respondent is to pay to Petitioner the total sum of \$11,498.50, reflecting attorney's fees in the amount of \$8,352.50 and necessary expenses in the amount of \$3,146.00.

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