

Not Reported in F.Supp.2d

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In re Application of Hirts  
E.D.Pa.,2004.

Only the Westlaw citation is currently available.

United States District Court,E.D. Pennsylvania.

In re the APPLICATION OF Henri-Pierre Robert HIRTS, Petitioner for Miranda  
Christine Hirts and Liam Alexander Hirts, Petitioner,

v.

Maureen HIRTS and Dianne McCann, Respondents.

No. Civ.A.03-CV-03156.

July 13, 2004.

Linda Shay Gardner, Rooney Mannicci & Gardner, Bethlehem, PA, for Petitioner.  
Sandor Engel, Allentown, PA, for Respondents.

ORDER GARDNER, J.

\*1 NOW, this 13<sup>th</sup> day of July 2004, upon consideration of the Application for Pending Petition for Attorney Fees and Costs, which application was filed by petitioner on July 31, 2003; the Answer to Application for Pending Petition for Attorney Fees and Costs, which answer was filed by respondents on August 15, 2003; Respondent's Memorandum in Opposition to Award of Attorneys Fees and Costs, which memorandum was filed on November 18, 2003; and the Amended Application for Pending Petition for Attorney Fees and Costs, which amended application was filed by petitioner on March 30, 2004; and after hearing and argument held on March 30, April 2 and 28, 2004 and oral argument held on May 20, 2004; it appearing by Order dated July 16, 2003 that the undersigned ordered the return of Miranda Christine Hirts and Liam Alexander Hirts to Germany upon petition of petitioner Henri-Pierre Robert Hirts; it further appearing that petitioner now seeks an award of \$37,744.24 in expenses, attorneys' fees and costs in this action; it further appearing that \$31,958.45 of petitioner's expenses, attorneys' fees and costs is related to the return of the children; it further appearing that respondents both suffer from straightened financial circumstances; it further appearing that any award of expenses, attorneys' fees and costs against respondent Maureen Hirts is clearly inappropriate; it further appearing that an award of the full amount of expenses, attorneys' fees and costs against respondent Dianne McCann is clearly inappropriate,

IT IS ORDERED that petitioner's application is granted in part and denied in part.<sup>FN1</sup>

FN1. Petitioner grounds his motion and petition on the International Child Abduction Remedies Act of the Hague Convention on International Child Abduction, as adopted by the United States at 42 U.S.C. <section> <section> 11601-11611. Section 11607(b)(3) of title 42 provides that: Any court ordering the return of a child pursuant to an action brought under section 4 [42 U.S.C. <section> 11603] 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); accord *Feder v. Evans-Feder*, 63 F.3d 217, 226 (3d Cir.1995). Petitioner seeks an award of \$37,744.24 in expenses from respondents.

Section 11607(b)(3) requires an award of such fees and costs to a successful petitioner to return the non-offending parent to the status quo in existence before his or her children were removed from their state of habitual residence. *Heyer v. Bayless*, 119 Misc.2d 413, 463 N.Y.S.2d 159-160 (Fulton Co.1983). Because this court ordered the return of the children in this action pursuant to 42 U.S.C. <section> 11603 by Order dated July 16, 2003, the court must award the necessary expenses described above unless respondents establish that such an award is clearly inappropriate.

Respondents have attacked petitioner's demand for \$37,744.24 on the basis that the expenses sought are unnecessary and unrelated to the return of the children and that any award would be clearly inappropriate under the circumstances at hand. We agree with respondents' argument that petitioner's full claim of \$37,744.24 is excessive, unnecessary and unrelated to the return of the children as required by 42 U.S.C.

<section> 11607(b). Thus, we will reduce petitioner's claim of expenses and legal fees as explained below.

Initially, we deny petitioner's claim for personal expenses except his claim for airfare, hotel costs, car rentals, and "trial expenses".

Petitioner's costs incurred in caring for himself and his children are in no way "related to the return of the child[ren]," as required by 42 U.S.C. <section> 11607(b). Petitioner would have incurred the costs of feeding, clothing and otherwise supporting his children and himself whether his children were in the United States or Germany. Thus, petitioner is not entitled to these normal daily expenses.

Moreover, we find that petitioner is not entitled to reimbursement for computer equipment purchased which equipment may have been used in this litigation, but the value of which petitioner retains. Additionally, we

find that petitioner is not entitled to reimbursement for gasoline purchased while in the United States because there has been no evidence presented to support that the consumption of such gas was related to the return of the children. Finally, we discount all telephone costs claimed by petitioner by half because we find that the contradictory testimony of respondent Hirts and petitioner Hirts supports the validity of some charges while proving others unrelated to the return of the children. We find, however, that petitioner did incur \$2,856.06 in related travel expenses, \$395.93 in related litigation expenses, and \$268.24 in related telephone calls. Thus, in determining an appropriate award, we will consider \$3,520.23 in expenses related to the return of the children in determining an appropriate award.

Although this court maintains the discretion to reduce petitioner's legal costs on the grounds of "duplication, padding, or frivolity", *Whallon v. Lynn*, No. 00-CV-11009, 2003 U.S. Dist. LEXIS 6501, \*5-6 (D. Mass. April 18, 2003) (citing *Freier v. Freier*, 985 F.Supp. 710, 712 (E.D.Mich.1997)), we decline to do so. The United States District Court for the District of Kansas has held that an attorney's bill is appropriately reduced where an experienced attorney who has prepared similar pleadings on prior occasions bills for time commensurate with drafting pleadings from scratch. *Berendsen*, 938 F.Supp. at 738.

However, the number of hours billed by Attorney Gardner are reasonable and respondents offered no evidence demonstrating that the work Attorney Gardner performed was duplicative of work performed on prior cases for other clients. Moreover, Attorney Gardner has significant experience in international child abduction matters justifying an award of her full hourly rate of \$200.00 for office work and \$225.00 for court appearances. Thus, we find that 73.9 hours of office work billed to petitioner at a total \$14,780.00 and 40 hours of court appearances billed to petitioner at a total \$9,000.00 was reasonable, necessary and related to the return of the children. Therefore we will consider the total sum of \$23,780.00 in Attorney Gardner's fees in calculating an appropriate award to petitioner.

Because fees incurred in related custody, support, or divorce actions are unrelated to the return of the children, these fees cannot be recovered under 42 U.S.C. <section> 11607. E.g., *Distler v. Distler*, 26 F.Supp.2d 723, 728 (D.N.J.1998); *Berendsen*, 938 F.Supp. at 738. Thus, we find petitioner's claim for \$1,698.00 in legal fees incurred in the support action in the Court of Common Pleas of Northampton County to be unrelated to the return of the children. Thus, we will not consider that claim in determining an appropriate award.

Similarly, we reduce petitioner's claim for the fees of his German attorney, Wolfgang Vomberg, to those necessary and related to the return of the children. To the extent such fees were incurred in connection with any German custody proceedings, those fees should be denied. See, e.g., *Distler*, 26 F.Supp.2d at 728; *Freier*, 985 F.Supp. at 713-714.

Where such fees were incurred in furthering this case, however, such as costs to obtain a decision from Germany's Central Authority that the children were removed in violation of the Hague Convention, they should be awarded. See Distler, 985 F.Supp.2d at 713-714. Because petitioner failed to introduce into evidence any itemized bill from Attorney Vomberg, we determined that those fees charged by Attorney Vomberg after this court's July 16, 2003 Order were not related to the return of the children. Even if Attorney Vomberg did take action on petitioner's behalf related to the return of the children after July 16, 2003, such action was unnecessary because this court had already ordered the children's return. Thus, we find that the \$986.87 charged by Attorney Vomberg after July 16, 2003 was unrelated and unnecessary to the return of the children and we will not consider that portion of petitioner's claim in determining an appropriate award. However, we find that the \$4,658.22 charged by Attorney Vomberg prior to July 16, 2003 was related to the return of the children and, thus, we will consider that amount in determining an appropriate award.

Thus, we find that petitioner incurred \$31,958.45 in expenses, attorneys' fees and costs related to the return of the children to Germany. As explained below, however, we find that an award of that full amount to petitioner would be clearly inappropriate in this case.

Courts considering a losing respondents' ability to pay have held that "strained financial circumstances" may render an award of at least the full amount sought clearly inappropriate. Rydder v. Rydder, 49 F.3d 369, 374-375 (8<sup>th</sup> Cir.1995); Berendsen v. Nichols, 938 F.Supp. 737, 739 (D.Kan.1996). We find that respondent Maureen Hirts holds assets totaling \$610.22. Moreover, we find that respondent Hirts is unemployed and unable to become employed in Germany given her immigration status there. Finally, we find that respondent Hirts is residing with her children in a women's shelter and is receiving government assistance to cover the daily living expenses of her children, as well as herself.

Given respondent Hirts's limited financial resources, we find any award of petitioner's expenses against respondent Hirts to be clearly inappropriate in light of her "strained financial circumstances."

Additionally, we find that respondent Diane McCann holds assets totaling \$42,695.73. She receives a pension of \$309.60 a month, but has identified no obstacle preventing her from working in some capacity.

Accordingly, we find that respondent McCann suffers from straightened financial circumstances, although her circumstances are in no way as severe as her daughter's. Accordingly, we find that an award against respondent McCann for the full amount of petitioner's expenses is clearly inappropriate. Thus, we will reduce the amount of any necessary and related expenses sought by petitioner to \$20,000.00.

IT IS FURTHER ORDERED that respondent Dianne McCann is ordered to pay to petitioner \$20,000.00 in necessary expenses related to the return of the

children, pursuant to 42 U.S.C. <section> 11607(b)(3).

IT IS FURTHER ORDERED that in all other respects petitioner's application is denied.

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