

Rath v. Marcoski

Another Hague Convention case. This one concerns the applicable standard for awarding attorney's fees and costs to a successful Petitioner [here, the father], in an action for the return of a child under the Hague Convention. 22 U.S.C. Section 9007(B) (3) provides that a District Court shall order the Respondent to pay necessary expenses... unless the Respondent establishes that such Order would clearly be inappropriate. In this instance, the District Court held that the mother who removed the child failed to meet her burden and awarded fees and costs to Petitioner-Father. The 11th Circuit affirmed.

Mother took the minor child from the Czech Republic to Florida. In proceedings in the District Court, it was determined that the Czech Republic was the child's habitual residence at the time of removal, that removal of the child was wrongful, and ordered that the child be returned. The Court awarded mother \$73,219 in attorney's fees, \$5,421 in taxable costs, and \$10,849 for expenses, for a total award of \$89,490. The Hague Convention protocol provides for a permissive and discretionary attorney's fees standard, but the implementation provisions of the International Child Abduction Remedies Act ("ICARA"), posits a more succinct directive in 22 U.S.C. section 9003. In fact, ICARA's fee-shifting provision creates a rebuttable presumption in favor of a fee award. The 11th Circuit opinion discusses the "clearly inappropriate" exception and determined that mother's conduct in removing the child was not one of good faith, nor did a fee award impose such a financial burden that it would significantly impair her ability to care for the child. The end of the opinion tells us that mother was an attorney herself, and that she could not in good faith rely upon a legal opinion letter from a Czech attorney to justify her removal of the child.

We see Hague Convention cases and complicated removal fact scenarios with increasing frequency. As the print headlines and ubiquitous cable news tell us every day, sovereign national borders are important. Crossing them illegally, especially with a minor child, creates legal complexities of magnitude and unanticipated results. Suffering the imposition of a sizeable attorney's fee award was one such result for this mother. This case focuses our attention on the often-overlooked attorney's fees, costs and expenses provisions of both the Hague Convention protocol and ICARA. Well worth an entry on our Hague Convention checklist.

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