No. 130931

IN THE SUPREME COURT OF ILLINOIS

VIERA HULSH, Plaintiff- Petitioner, v. MAYA HULSH and OREN HULSH, Defendants-Respondents	)))))))))	Petition for Leave to Appeal from the Appellate Court of Illinois, First Judicial District No. 1-22-1521 There heard on appeal from the Circuit Court of Cook County, County Department, Law Division No. 2021 CH 00831 Judge Patrick J. Sherlock, Presiding

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BRIEF OF APPELLEE MAYA HULSH

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INTRODUCTION

There is no need to create the new cause of action plaintiff seeks. The Court should affirm the ruling of the appellate court because its decision, affirming the trial court's dismissal of the case, was founded on decades of well reasoned Illinois law, and plaintiff fails to state a need for a new cause of action when the Illinois legislature and the courts have declined for decades to adopt the cause of action suggested by plaintiff. Contrary to plaintiff's assertion that existing law provides no remedy for awarding expenses to recover abducted children, the exact opposite is true, as plaintiff has already received a judgment of $265,096.87 for such expenses. It would be grossly unjust to saddle defendants with a judgment plaintiff obtained against someone else when plaintiff chose not to sue these defendants in her previous federal lawsuit, they had no opportunity to litigate its propriety against them, and even now, plaintiff does not assert these defendants violated the law on which the judgment was predicated.

The only reason plaintiff now seeks to create new law is to attempt to collect that judgment against a third party from these defendants, as plaintiff may have difficulty collecting the judgment from the defendant in plaintiff's previous suit. There is nothing unfair about plaintiff having received a full award of $265,096.87 in the federal lawsuit and dismissing her improper attempt to hold relatives of the judgment debtor liable for that judgment based on an imaginary cause of action Illinois courts have rejected time and again.

The plaintiff seeks to set aside decades of decisions in violation of *stare decisis* to create a new cause of action repeatedly rejected by Illinois courts which have prudently deferred to the legislature to change the law if it perceives such a need. Plaintiff seeks to upset settled law not for any principled purpose, but for a unique opportunity, applicable to few if any other individuals, to allow her to collect a judgment she obtained against a third party from people who

were never parties to the case in which judgment was awarded. While the Appellate Court found that plaintiff had a full remedy under the International Child Abduction Remedies Act (ICARA) which obviated the need for a new cause of action, plaintiff also asks this Court to construe ICARA in conflict with the decisions of numerous federal courts for at least 15 years. Moreover, it would fly in the face of due process to assert these defendants should be liable for judgment against a third party when they had no opportunity to contest that judgment. This case arises not from a gap in any law, but is a case where plaintiff repeatedly chose not to pursue the legal remedies already available to her and now asks this Court to create a new cause of action so that she can backdoor collection of a federal judgment against these defendants who were never parties to the federal case. Plaintiff thus asks this Court to change Illinois law so as to extend a federal judgment to people who were never parties to it and have never even been accused of violating the law from which judgment emanated. The Court should therefore affirm dismissal of plaintiff's claim.

STATEMENT OF FACTS

Plaintiff Viera Hulsh ("Viera") is a citizen of Slovakia with two children. Pursuant to a divorce proceeding in Slovakia, she was awarded primary custody of the children, who were to stay in Slovakia. Contrary to a Slovakian court order solely against Viera's ex-husband Jeremy Hulsh ("Jeremy"), Jeremy took the children without Viera's permission to a number of places, ending up in Chicago. (C20-21)

Viera then sued Jeremy in U.S. District Court for the Northern District of Illinois seeking return of the children to Slovakia pursuant to an international treaty known as the Hague Convention (Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No. 11,670 at 1, reprinted in 51 Fed. Reg. 10494 (1986) and an enabling statute known

as the International Child Abduction Remedies Act, (ICARA), 22 U.S.C. §9001 *et.seq*. After trial, the District Court ordered the return of the children to Slovakia and awarded Viera $265,096.87 against Jeremy for attorney's fees and costs. (C 272). Although plaintiff initiated attempts to collect the judgment against Jeremy, he filed for bankruptcy.

Realizing that it would be difficult to collect the judgment from her ex-husband, Viera then filed this case against Jeremy's mother, Maya Hulsh (Maya), and Jeremy's brother, Oren Hulsh (Oren), asserting for the first time that these defendants had aided and abetted Jeremy's "kidnapping" and that they should be held responsible to pay the judgment against Jeremy as well as any future attorney's fees and expenses which Viera might incur in Jeremy's bankruptcy proceeding. (C 215).

With no legal basis for collecting the judgment against Jeremy from his family members, Viera sued Maya and Oren for non-existent causes of action, namely tortious interference with custodial relations and conspiracy to aid and abet tortious interference with custodial relations, as well as intentional infliction of emotional distress. (C 35). Specifically, Viera alleged that Maya had allegedly provided Jeremy with living expenses which he used in part to charter an airplane used in the abduction and paid for his legal defense in the federal case. Viera's lawsuit also claimed that Maya and Oren allowed the children to stay in their homes during the federal lawsuit (making no mention of the federal court's approval for Maya to care for her grandchildren during the lawsuit.) Thus, Viera asserted it was illegal for Maya to pay for her son's living expenses and legal expenses, and for the children's grandmother and uncle to care for the children while the federal lawsuit unfolded.

Maya and Oren moved to dismiss the tortious inference and aiding and abetting claims on the grounds that Illinois courts had repeatedly rejected a cause of action for tortious interference

with custodial relations, and the trial court agreed, dismissing those claims (C 296) and affirming their dismissal following a motion for reconsideration. (C 483). Viera then chose to voluntarily dismiss her claim for intentional infliction of emotional distress. (C 630).

Viera filed an appeal to the Illinois Appellate Court to reverse the trial court's dismissal of her claims. During oral argument, the Appellate Court directed the parties to file supplemental briefs on the significance of two federal cases holding that claims under ICARA could be brought against people who facilitated an abduction as well as the actual abductor. Following supplemental briefing, the Appellate Court affirmed the trial court's dismissal of the Complaint on the grounds that no such causes of action were recognized in Illinois and that plaintiff could have obtained a full remedy against Maya and Oren for any alleged role in the abduction by adding them as defendants in the ICARA case against Jeremy.

ARGUMENT

I. PLAINTIFF'S CLAIMS WERE PROPERLY DISMISSED BECAUSE ILLINOIS COURTS HAVE LONG REJECTED PLAINTIFF'S PROPOSED CAUSE OF ACTION.

The trial court dismissed plaintiff's claims based largely on *Whitehorse v. Critchfield,* 144 Ill.App. 3d 192, 494 N.E.2d 743 (1986). In *Whitehorse* the defendants placed a girl on an airplane bound for Illinois under a fictitious name, took her to their home in Illinois, induced her not to return to Utah or to reveal her location to her father and attempted to adopt her. The father sued defendants on four counts based on tortious interference with a parent's custody rights. The trial court clearly rejected such claims, stating:

> Plaintiff argues that defendants' actions tortiously interfered with his parental rights and such interference also constituted intentional infliction of emotional distress. Plaintiff urges this court to recognize a cause of action based upon a tortious interference with a custodial parent's right to custody, care, and companionship of his child. We decline to do so, feeling this area, because of

its multiple ramifications and potential for abuse, is more properly a subject for legislature's consideration. 144 Ill. App. 3d at 194, 494 N.E.2d at 744.

Two years later, in *Dralle v. Ruder*, 124 Ill. 2d 61, 529 N.E.2d 209 (1988), this Court found that a parent could not recover for loss of a child's society and companionship in a non-fatal case.

Sixteen years later, in *Vitro v. Mihelcic*, 209 Ill. 2d 76, 806 N.E.2d 632 (2004) this Court again held that no cause of action exists for loss of a child's society and companionship except for fatal injuries under the Wrongful Death Act.

Plaintiff seeks to draw a distinction between "indirect" parental injury, such as parental anguish due to a child's injury, and "direct" injury, such as expenses incurred by a parent to recover her children. Plaintiff mistakenly argues that this Court has only denied a cause of action for "indirect" parental injury and left open the question of whether a parent could sue for "direct" injury. That is untrue.

In *Doe v. McKay*, 183 Ill. 2d 272, 285-286, 700 N.E.2d 1018, 1025 (1998), a father sued a therapist for intentional interference with a parent-child relationship and loss of his daughter's society and companionship because in counseling sessions, the therapist repeatedly accused the father of sexual abuse. Rejecting any distinction between "direct" and "indirect" injury to custodial rights, the Court stated:

> The plaintiff maintains that he is alleging an action for direct interference, and it was on that ground that the appellate court below permitted the plaintiff to proceed on these portions of the amended complaint. 286 Ill. App. 3d at 1026-27. We do not agree that the asserted distinction between "direct" and "indirect" forms of interference support a different result in this case, for we believe that the same considerations that led the court to deny recovery in Dralle must also preclude recovery for lost society and companionship here. In our view, the considerations cited in Dralle as grounds for barring recovery of psychic damages are applicable whether the interference with the relationship is characterized as direct or indirect.

Twenty-three years after *Whitehorse*, the U.S. District Court for the Northern District of Illinois found that *Whitehorse* was still the law in Illinois and that a tort based on interference with custody could not be the basis for a claim of intentional infliction of emotional distress. *Zvunca v. Motor Coach Indus. Int'l*, 2009 U.S. Dist. LEXIS 47817, *5-6, 2009 WL 1586020.

Petitioner cites only one Illinois case, *Dymek v. Nyquist*, 128 Ill.App.3d 859 (1984) in support of her position. In *Dymek* the court found that a cause of action for loss of a child's companionship could be maintained in Illinois. A federal case, *Kunz v. Deitch*, 660 F. Supp. 679 (N.D. Ill. 1987), also predicted that if the issue was raised, this Court would recognize a cause of action for loss of a child's society. As noted by the Appellate Court in this case, however, *Dymek* and *Kunz* predated this Court's rulings in *Dralle, Vitro* and *Doe,* which proved their predictions of this Court's future rulings were mistaken. Thus, plaintiff's suggestion of a split in Illinois courts is wrong, as any alleged split was already resolved by this Court beginning in 1988 with *Dralle.* No Illinois court has ruled otherwise in the 36 years since *Dralle,* and *Zvunca v. Motor Coach Indus. Int'l* found in 2009 that *Whitehorse* still was the law in Illinois.

Plaintiff argues that damage in the form of expenses incurred due to an abduction are different from damage such as psychic injury to the parent for loss of companionship. That supposed distinction fails. As an obvious example, if a parent suffered psychic injury from a therapist damaging the parent-child relationship, it is readily foreseeable that the parent might incur expenses for a therapist to treat her psychic injury. Under plaintiff's theory the parent's direct incurring of expenses to treat her own psychic injury would be compensable, since the parent spent money to treat her own resulting damage. But that is exactly the sort of claim this Court rejected in *Doe v. McKay*. Reversing that decision would open up an amorphous distinction between "direct" and "indirect" parental injury, based on whether the parent incurred

any expense arising from a deprivation of custody. Not only would the expenses of recovering a child be compensable, but a raft of other expenses might follow, such as the parent incurring expenses for psychiatric treatment of herself or her child, hiring a nanny to look after a sibling while the parent pursued recovery, visiting a distant relative to decompress, lost wages or other economic opportunities for the parent from taking time off to address the situation, and perhaps even the expense of a resulting years-long divorce proceeding.

Further, while abduction of a child would obviously grieve a parent, it is not necessarily worse than the grief caused by a drunk driver or a negligent manufacturer causing serious damage to a child and disrupting the parent's relationship with their child, which Illinois courts have rejected as a basis for parental recovery other than wrongful death.

In addition, it is readily foreseeable, as in this case, that an angry parent might delight in the opportunity to sue a former spouses' family members, claiming that they had wrongfully aided the former spouse's actions, causing them substantial expense, anxiety and disruption regardless of the lack of merit. These sorts of repercussions might represent the thorny issues in domestic litigation which first led the *Whitehorse* course to defer to the legislature to create a new cause of action if it perceived such need.

II. CASES FROM OTHER JURISDICTIONS DO NOT REFLECT ILLINOIS POLICY.

Faced with decades of contrary law in Illinois, plaintiff cites three other states, New Hampshire, Missouri and Texas, which supposedly lend support to plaintiff's position. They do not represent Illinois policy.

The New Hampshire cases plaintiff cites both occurred in the early 1980's, *Siciliano v. Capitol City Shows, Inc,* 124 N.H. 719 (1984) and *Plante v. Engel*, 124 N.H. 213 (1983). *Siciliano* arose

not from an abduction but from an amusement park ride accident in which one child died and another was seriously injured. The very different issue, as noted by the court was:

> In this case, we are asked to extend the liability of a negligent tortfeasor to cover harm to a plaintiff which occurs as a consequence of an injury to a third party, when that harm is emotional and unrelated to any injury to the plaintiff's physical person or tangible property.
> *Siciliano v. Capitol City Shows*, 124 N.H. 719, 725, 475 A.2d 19, 21, (1984).

In *Plante v. Engel*, 124 N.H. 213 (1983), cited by plaintiff, a father sued the mother's grandparents for aiding the mother in moving the children to another state without notifying the father in violation of a divorce decree. Although the court allowed the case to proceed to recover the mother's expenses incurred in recovering the child, the court noted that "This common-law action *for loss of a child's services* is distinguishable from an action for loss of custody." *Plante v. Engel*, 124 N.H. 213, 216, 469 A.2d 1299 (1983).

Plaintiff also cites two Missouri cases in support of her position, *Powell v. A. Motors Corp*., 834 S.W.2d 184 (Mo. 1982) and *Kramer v. Leineweber,* 642 S.W.2d 364 (Mo. Ct. App. 1982).

In *Powell*, the daughter of a father brain- injured in an auto accident sued an automobile manufacturer and dealer for loss of parental and filial consortium. The opinion concluded "we decline to recognize a common law right of action in either children or parents of an injured party."

In *Kramer*, a mother sued her ex- husband and his mother for conspiring to deprive plaintiff of custody of her child following a struggle in which he knocked his ex-wife unconscious and took the child. Later, the father's mother lied to a juvenile officer about the child's identity, said they were not going to take her grandchild and drove the child to a courthouse, where following her call to the father, the child disappeared from the courthouse and the father was found hiding. The court awarded the mother $26,000 in compensatory damages and $25,000 in punitive damages

for a combination of expenses, loss of services and companionship and emotional distress but specifically denied her request for attorney's fees and travel expenses.

Lastly, plaintiff cites two Texas cases, *Silcott v. Oglesby*, 721 S.W.2d 290 (Tex. 1986) and *McKisson v. Sales Affiliates, Inc.* 416 S.W.2d 787 (Tex. 1967).

In *Silcott,* a grandfather abducted his grandchild by taking him from Ohio to Texas without the father's knowledge. The trial court awarded the father $100,000 for out-of-pocket expenses, court costs and mental anguish and suffering plus $50,000 in punitive damages. While the court remanded the case, it found that civil penalties could be awarded for such conduct, relying on common law, a Texas criminal statute and a recently enacted 1983 statute creating a civil cause of action.

Finally, *McKisson* has no relation to this case, as it found that a food manufacturer could be liable in negligence to a consumer who ate contaminated food.

While the cases cited by plaintiff are of dubious relevance, it is true that a minority of states allow limited civil remedies against a relative who interferes with custody of a child. As both the trial court and the Appellate Court noted, however, Illinois law is distinct from other states and has never recognized such claims.

The doctrine of *stare decisis* expresses the policy of the courts to stand by precedents and not to disturb settled points. This doctrine is the means by which courts ensure that the law will not change erratically but will develop in a principled and intelligible fashion. This Court has consistently held that any departure from *stare decisis* must be specially justified and that prior decisions should not be overruled absent "good cause" or "compelling reasons". *Vitro v. Mihelcic*, 209 Ill. 2d 76, 81-82, 806 N.E.2d 632, 634 (2004). Moreover, this case would be a

particularly poor one to justify a change in the law for several reasons. First, as noted in the next section, unlike the cases from other jurisdictions, the plaintiff here has already obtained a full judgment for $265,096.87 for the costs of recovering the children against Jeremy for abducting the children in violation of federal law stemming from an international treaty. Second, plaintiff seeks to hold Maya and Oren liable to pay a liquidated judgment against Jeremy when they have never even been claimed to commit the offense resulting in that judgment, they were never parties to that case and had no opportunity to contest its amount, which cannot now be challenged in state court as it was a federal judgment. Third, the judgment against Jeremy resulted from his physically abducting the children from Slovenia to Chicago, in which these defendants had no part. The alleged claim against Maya and Oren is simply for paying her son's living expenses and legal expenses, and for Maya and Oren allowing their relatives shelter when they were already in Chicago. In addition, their alleged knowledge of a wrong is predicated on a custody order from Slovenia to which they were never parties. Finally, the damages claimed against them are merely vicarious, as they had no part in bringing the children to Chicago, nor in litigating the federal case, of which they had no part.

Further, unlike Texas, which enacted civil penalties through a 1983 statute, the Illinois legislature has never indicated any desire to create civil claims for such alleged conduct, despite *Whitehorse* rejecting such claims since 1986. Plaintiff's desire to sue her former mother-in-law and former brother-in-law to facilitate collection of a judgment against her former husband does not justify changing law which has been settled for decade.

III. PLAINTIFF HAS ALREADY OBTAINED A FULL REMEDY WITHOUT NEED TO CREATE A NEW TORT.

Plaintiff suggests that without a change in law, Illinois will provide no deterrence for kidnapping. Plaintiff further asserts that although she obtained a judgment against Jeremy for the full cost of recovering her children, there is no existing law allowing recovery of such expenses. Those arguments are specious. Kidnapping a child is an aggravated crime punishable as a Class X felony under 720 ILCS 5/10-2 (a) (2), and punishable under 730 ILCS 5/5-4.5-25 by imprisonment for 6 to 30 years plus a fine.

Further, as noted by the Appellate Court, the International Child Abduction Remedies Act ("ICARA"), 22 U.S.C. 9001 *et seq*. provides a complete remedy for international abduction including return of a child and assessment of attorney's fees and expenses incurred to recover a child. Specifically, §9003(b) empowers a petitioner to seek the return of any child abducted wherever he is found and §9007(b)(3) mandates assessment of fees and costs of recovery against any respondent who violates the Act. Considering that plaintiff's former counsel prosecuted Jeremy under that statute and claimed hundreds of thousands of dollars for pursuing that claim, it rings hollow to suggest that plaintiff or her counsel didn't know that anyone allegedly aiding an abduction could be prosecuted under that law.

In deciding this case, the Appellate Court ordered the parties to provide supplemental briefs addressing two cases bearing on the question of who can be a proper defendant in an ICARA case. Both *Rishmawy v. Vergara*, 540 F. Supp. 3d 1246 (S.D. Ga.2021) and *Mendoza v. Silva,* 987 F. Supp. 2d 910 (N..D. Iowa 2014) allowed an ICARA prosecution against secondary defendants who assisted the primary defendant in an abduction. *Mendoza* relied upon the language of Article 26 of the Hague Convention, which permits assessment of attorney's fees and costs not only

against the person who removed a child from custody in another country, but also to anyone who "retained the child," or who "prevented the right of access" to them, as alleged in this case. *Neves v. Neves*, 637 F.Supp.2d 322 (W.D.N.C. 2009), also cited by the Appellate Court, is strikingly similar to the claims alleged here, as that court entered ICARA expenses against a couple who helped an estranged father abduct the children by making travel arrangements, paying for airline tickets, allowing the children to stay in their house and ignoring the mother's efforts to contact them.

Thus, given the nature of the allegations in the state court complaint, plaintiff could readily have named Maya and Oren as additional defendants in the ICARA case against Jeremy, and if she proved their assistance in an abduction, could have obtained an assessment of fees and costs jointly against them and Jeremy without attempting to later create a new cause of action to reiterate the remedies provided by ICARA.[1] Having chosen not to sue them under ICARA, voluntarily dismissed the opportunity to sue them for intentional infliction of emotional distress, and chosen not to initiate criminal charges against them, the repeated choices not to seek relief against them (if they had actually done anything unlawful) was entirely plaintiff's choice and not because a gap in the law left inadequate remedies. Where relief was already available to plaintiff under federal and state law, and where she already obtained a full judgment for fees and expenses against Jeremy, she cannot claim that public policy demands creation of new law to

[1] It is telling that following a full trial of the facts, the 27- page District Court opinion (C 225) makes no mention at all of Maya Hulsh or Oren Hulsh conspiring, participating in or aiding the abduction or concealment of the children, and that plaintiff only divined their alleged participation when it became apparent that collection against Jeremy might be difficult.

afford her a third or fourth opportunity to obtain another judgment in another court for the very costs she already obtained in federal court.

Faced with the fact that plaintiff strategically chose not to pursue remedies against these defendants under existing law, she complains at page 17 of her Brief that "The Appellate Court should not have unilaterally raised the issue" of remedies under ICARA. That is a spurious objection since the judgment against Jeremy under ICARA was at the heart of this case and the Complaint has an entire section about that case beginning at paragraph 25. In addition, a reviewing court can sustain the decision of a circuit court on any grounds which are called for by the record regardless of whether the circuit court relied on the grounds and regardless of whether the circuit court's reasoning was correct. *Bell v. Louisville & N. R. Co*., 106 Ill. 2d 135, 148, 478 N.E.2d 384, 389 (1985). Thus, having obtained a full judgment for any recovery expenses plaintiff allegedly incurred, there is no public policy interest in enacting a new cause of action to create redundant remedies without legislative direction.

IV. THE COURT SHOULD BE CAUTIOUS IN CONSIDERING CREATION OF A NEW CAUSE OF ACTION

Plaintiff acknowledges that existing law does not recognize her proposed cause of action, and that either this Court or the legislature would need to create a new cause of action to enable her claim to proceed. The Court should be cautious in creating new causes of action or expanding existing causes of action. This is especially true because (1) the Illinois legislature has not enacted legislation to recognize the proposed cause of action since it was rejected by *Whitehorse* in 1986, (2) federal law already provides a sufficient remedy, obviating the need for a duplicative cause of action, and (3) at least some of the foreign jurisdictions which have recognized such claims have been guided by enacting legislation.

As this Court has noted, "The General Assembly may depart from the common law and adopt new causes of action that have no counterpart in the common law or equity." *Wingert v. Hradisky*, 2019 IL 123201, P33, 131 N.E.3d 535, 543, 2019 Ill. LEXIS 443, *15-16, 433 Ill. Dec. 177, 185. "It is plaintiff's burden, in urging this court to create new rights of action or expand existing ones, to persuade the court of the need for such new or expanded rights." *Zimmerman v. Buchheit of Sparta, Inc.*, 164 Ill. 2d 29, 39, 645 N.E.2d 877 (1994).

"[The] legislature has broad discretion to determine not only what the public interest and welfare require, but to determine the measures needed to secure such interest". *Wingert v. Hradisky*, 2019 IL 123201, P33, 131 N.E.3d 535, 543, 2019 Ill. LEXIS 443, *15-16, 433 Ill. Dec. 177, 185.

As the Court noted in rejecting a cause of action for loss of a child's society other than wrongful death:

"The General Assembly, by its very nature, has a superior ability to gather and synthesize data pertinent to the issue. It is free to solicit information and advice from the many public and private organizations that may be impacted. Moreover, it is the only entity with the power to weigh and properly balance the many competing societal, economic, and policy considerations involved…. This court, on the other hand, is ill-equipped to fashion a law on this subject that would best serve the people of Illinois. We can consider only one case at a time and are constrained by the facts before us.'" *Vitro v. Mihelcic*, 209 Ill. 2d 76, 88-90, 806 N.E.2d 632, 638 (2004).

Here, unlike states such as Texas, the Illinois legislature has taken no action in the 38 years since *Whitehorse* to enact legislation creating the cause of action plaintiff seeks. Moreover, ICARA already provides a complete economic remedy for the damage plaintiff claims. The mere fact that plaintiff either chose not to pursue an ICARA claim against these defendants along with Jeremy, or that plaintiff did not realize that she could have pursued such remedy, does not establish a need for this Court to create new law but simply signifies a need for plaintiff's chosen counsel to review existing applicable law already providing such remedies.

V. PLAINTIFF'S PROPOSED CAUSE OF ACTION WOULD VIOLATE DUE PROCESS.

Plaintiff urges this Court to create a new cause of action to enable her to hold non-parties liable for a judgment entered against a third party for violating a federal law they have never been charged with, in a case that never involved them. Specifically, the rejected cause of action seeks to hold Maya and Oren liable for payment of a federal judgment against Jeremy for violating ICARA in a case in which they were never parties, for a cause of action never claimed against them. That concept violates due process in several ways.

First, Maya and Oren cannot fairly be saddled with plaintiff's expenses in a case which did not involve them at all, as they had no role in that case and had no opportunity to defend themselves or contest expenses.

"It is a principle of general application in Anglo-American jurisprudence that one is not bound by a judgment *in personam* in a litigation in which he is not designated as a party or to which he has not been made a party by service of process. A judgment rendered in such circumstances is not entitled to the full faith and credit which the Constitution and statute of the United States prescribe, and judicial action enforcing it against the person or property of the absent party is not that due process which the Fifth and Fourteenth Amendments require." *Hansberry v. Lee*, 311 U.S. 32, 40-41, 61 S. Ct. 115, 117-118 (1940) [Internal citations omitted]

"And as a State may not, consistently with the Fourteenth Amendment, enforce a judgment against a party named in the proceedings without a hearing or an opportunity to be heard so it cannot, without disregarding the requirement of due process, give a conclusive effect to a prior judgment against one who is neither a party nor in privity with a party therein." *Richards v. Jefferson County*, 517 U.S. 793, 797, 116 S. Ct. 1761, 1765 (1966) [Internal citations omitted]

Second, plaintiff sued these defendants only after she litigated the federal ICARA claim solely against Jeremy. These defendants never had an opportunity or legal standing to participate in the defense of that case, have no way to reopen it, and would simply be liable for a judgment against someone else which they never had any opportunity to defend. It would be grossly unfair

to seek hundreds of thousands of dollars in damages against them to satisfy a judgment against someone else with no opportunity to contest that judgment.

Third, the judgment against Jeremy specifically arose from his violation of federal ICARA law. Plaintiff has never brought an ICARA claim against Maya or Oren. Plaintiff thus seeks to hold these defendants liable for a violation of ICARA by someone else which has never even been claimed against them.

Fourth, plaintiff's theory would intrude on federal jurisdiction. The District Court found after trial that only Jeremy violated the law which resulted in attorney's fees and costs and was never asked to award any fees or costs against these defendants. Despite the District Court's judgment against a single other party, plaintiff through this action seeks to multiply the same judgment against others whom the District Court never found at fault. The effect would be to enable a state court to broaden a federal judgment against defendants whom the District Court never intended to be liable for it. That would in effect empower state courts to modify federal judgments in all kinds of cases to extend those judgments to non-parties with no opportunity to defend such claims. Likewise, plaintiff seeks to hold these defendants liable for any bankruptcy fees which might be entered against Jeremy even though the bankruptcy court never found them responsible for any fees. In essence, it would hold defendants liable for a federal judgment without ever granting them a trial on the federal claim.

Lastly, such a process would undermine the goal of judicial efficiency since instead of seeking remedies against these defendants in the federal case, plaintiff stretched out her claims serially against one defendant in federal court followed by a new lawsuit in state court to obtain the same result. Plaintiff admits that the only reason she sued Jeremy's relatives was because her efforts to collect the judgment against Jeremy were frustrated by his bankruptcy. The excuse that

plaintiff only discovered in bankruptcy that Jeremy had received financial support from his mother is disingenuous, since nothing is unlawful about a mother supporting her son financially, and it certainly does not equate to kidnapping.

VI. PLAINTIFF CANNOT OBTAIN ANY REMEDY WITHOUT A VIABLE CAUSE OF ACTION.

Plaintiff argues that even though Illinois law does not recognize a cause of action for tortious interference with custodial rights, the Court should nonetheless award damages when they are limited to the costs of recovering a child. The argument is misplaced since the District Court, at plaintiff's request, entered fees and expenses against Jeremy alone for recovering the children, with no suggestion that these defendants bore any responsibility for it. A complaint cannot survive without a cause of action regardless of the damages sought. A complaint must allege facts sufficient to bring a claim within a legally recognized cause of action. *Doe v. Coe*, 2019 IL 123521, P32, 135 N.E.3d 1, 12 (2019). Thus, it makes no sense to argue that any damages should be permitted for alleged acts which Illinois courts have repeatedly held do not constitute a cause of action.

CONCLUSION

Illinois courts have long rejected plaintiff's proposed cause of action and nothing has changed to upset those rulings, such as any contrary Illinois decision in the last 38 years since *Whitehorse* or any legislative enactment. In contrast, the United States Congress has specifically addressed the type of conduct plaintiff alleges and under the Hague Convention and ICARA created a law that empowers federal courts to return children to their homes and to hold anyone who participated or assisted in an abduction responsible to reimburse the full expenses to recover the children. In addition, state and federal laws already punish and deter kidnapping rather than

"immunizing" it. The remedies and limits of such laws have been clear for decades and the plaintiff knew of such remedies because she pursued them successfully against her ex-husband. Accordingly, the Court should affirm the Appellate Court decision dismissing plaintiff's claims.

CERTIFICATION

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service and those matters to be appended to the brief under Rule 342(a) is 5,836 words.

/ s/ Peter Ordower

Peter Ordower

CERTIFICATE OF SERVICE

On November 12, 2024, at 5:00 p.m., I served this Brief by email on Thomas Kanyock at tkanyock@pattersonlawfirm.com, Steven J. Cullen at scullen@milesstockbridge.com and Kelly A. Powers at kpowers@milesstockbridge.com.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements in this instrument are true and correct.

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