No._____

IN THE SUPREME COURT OF ILLINOIS

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

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PETITION FOR LEAVE TO APPEAL

Dated: August 1, 2024

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ORAL ARGUMENT REQUESTED

E-FILED
8/1/2024 12:51 PM
CYNTHIA A. GRANT
SUPREME COURT CLERK

TABLE OF CONTENTS AND POINTS AND AUTHORITIES

I. PRAYER FOR LEAVE TO APPEAL

Pursuant to Rule 315(a), plaintiff Viera Hulsh respectfully petitions this Court for leave to appeal from the Judgment of the Appellate Court of Illinois, First District, in *Viera Hulsh v. Maya Hulsh, and Oren Hulsh*, 2024 IL App. (1st) 221521-U. (A. 1-22).

II. STATEMENT OF THE DATE OF JUDGMENT

The Appellate Court issued its Opinion in this matter on June 28, 2024. No petition for rehearing was filed.

III. POINTS RELIED UPON FOR REVERSAL

Grounds exists to accept this appeal per Rule 315(a) because Plaintiff Viera Hulsh ("Viera") presents an important question which split the Appellate Court.

Viera's two children ("the Children") were kidnapped in Slovakia by her ex-husband, Jeremy Hulsh ("Jeremy"), and eventually spirited to Chicago. Jeremy's mother and brother, defendants Maya Hulsh ("Maya") and Oren Hulsh ("Oren"), were aware of the custody orders but nonetheless aided and abetted the kidnapping. Maya paid the expenses and both harbored the Children in Illinois without telling Viera where to find them (C21; A. 25). Viera brought and won a Hague Convention case. The District Court entered a Judgment against Jeremy for some of the expense (A. 41-67).

It was only after the custody and expense award that Plaintiff learned – buried in Jeremy's bankruptcy schedules – that he had

received $800,000 from Maya to pay his legal bills and housing expenses (A. 39-40)[1]. Here, Viera seeks to recover from Maya and Oren the money she spent and owes for reaching out across the globe to recover her Children (C31; A. 35).

The majority opened its Opinion by stating in the first line (par. 1) that it was called upon to recognize a new tort for interference with custodial rights and that this Court already ruled (A. 1-22). The majority said that it was for this Court or the legislature to make these decisions and not the Appellate Court (id.).

The majority and dissent disagreed about this Court's prior holdings. The dissent, beginning in par. 33, pointed out that this Court left open the specific question in this case, and that "we should not continue to allow such behavior to go unchecked and that public policy dictates that we recognize and allow this cause of action as a deterrent to such future behavior" (id.).

Grounds also exist to accept this appeal per Rule 315(a) because conflicts exist among Illinois Courts as well as foreign Courts applying Illinois law. As the dissent found: "[T]here is a conflict among districts in our appellate court, with the Fourth District rejecting the cause of action in Whitehorse v. Critchfield, 144 Ill.App.3d 192 (1986), and the First

[1] Petitioner attaches only two pages of the bankruptcy petition to avoid adding forty-three useless pages to the appendix. Petitioner can, of course, provide the entire forty-five pages should this Court want to see them.

District recognizing recovery in Dymek v. Nyquist, 128 Ill App. 3d 859 (1984)" (par. 38).

IV. STATEMENT OF FACTS

A. Background of Case

Viera and Jeremy obtained a divorce in Slovakia in 2019 (C19-C34 ¶¶7-9; A. 23-38). The Slovakian Court awarded primary custody of the Children to Viera, with visitation rights to Jeremy (id., ¶8). Viera was the Children's primary caregiver (C238). The Slovakian custody Order forbade Jeremy from removing the Children from Slovakia without Viera's permission (C237-238). The Court premised its custody Order on the notion that Jeremy may try removing the Children from Slovakia (C237-38).

Jeremy's mother, Maya, and brother, Oren, were both active in the Slovakian proceedings, including submitting materials and Maya requesting grandparent visitation rights, which were denied (C19-34 ¶21). They knew that Jeremy was under Order to not remove the children from Slovakia and that Viera had sole custody (id., ¶22).

Jeremy nonetheless abducted the Children (C238). He took them via car to Hungary, on a private jet to London, paid for by Maya, flew them from London to Toronto on a commercial flight, and drove them to Chicago, Illinois, all without Viera's knowledge or consent (C19-34 ¶¶9-12). Jeremy hid the boys with his mother, Maya, near Fox Lake, Illinois

(id., ¶¶12-14). Both defendants cared for the Children without telling Viera where they were (id., ¶16).

The answer to how Jeremy could afford to abduct his children, and spirit them across the world using a privately chartered aircraft, was found in his bankruptcy schedules -- where he listed Maya paying him $800,000+ for legal and other "living expenses" (id., ¶19; A. 39-40.)

B. District Court Case

On November 5, 2019, Viera filed in the United States District Court for the Northern District of Illinois, case number 19-CV-7298, Viera Hulsh v. Jeremy Hulsh (the "District Court Case"), a Petition for Return of Minor Children under the Convention on the Civil Aspects of the International Child Abduction ("Hague Convention"), Oct. 25, 1980, T.I.A.S. No. 11,670 at 1, 22514 U.N.T.S. at 98, reprinted in 51 Fed. Reg. 10494 (1986), and its enabling legislation, the International Child Abduction Remedies Act ("ICARA"), 22 U.S.C. § 9001-11, to secure the return of her Children to Slovakia, from where they were abducted.

The case was tried in February and June of 2020. On July 21, 2020, the District Court entered a memorandum opinion granting Viera's Petition, rejecting Jeremy's defenses, and ordering the Children returned to Viera in Slovakia (C225-251; A. 41-67)).

Viera then filed a petition requesting attorneys' fees and costs, as authorized by ICARA, 22 U.S.C. § 9007, incurred in the six-day trial to pursue her successful action for return of her children (C19-34 ¶¶25-30).

Viera incurred significant expenses, including lost income, housing, transportation, and other costs incurred in travelling to the United States for trial and to see her children, as well as expert fees and other costs.

On March 15, 2021, the District Court issued another opinion in which it granted Viera's petition and ordered that Jeremy reimburse Viera $239,955 in attorney's fees and an additional $25,141.87 in costs, for a total of $265,096.87 in expenses she incurred getting her Children back (C272; A. 68-87).

In awarding expenses, the District Court held that it needed to balance policy considerations, including: 1) a sum that would adequately deter Jeremy and others from absconding with their children; 2) while acknowledging the impact of Jeremy's claimed indigency; and 3) the "main concern" of the care of the Children (C263-264).

C. Bankruptcy Case

On August 31, 2020, Jeremy filed a petition under Chapter 7 of Title 11 of the United States Code in the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division, case 20-16482 (the "Bankruptcy Case") (C19-C34 ¶32). To protect the District Court Award, Viera was forced to retain counsel (id., ¶¶32-43).

On March 15, 2021, the District Court held that no stay applied, relying on In re Weed, 479 B.R. 533, 544 (Bk. Minn. 2012), in which that Court held that expenses incurred, including attorney fees, in successfully maintaining a Hauge Convention / ICARA claim to regain

custody of abducted children are non-dischargeable "domestic support obligations" because the money spent on the litigation could have been spent instead on the care of the abducted children (C253-272, pp. 11-12; A. 68-87). On October 25, 2021, the Bankruptcy Court entered Judgment finding that Jeremy cannot discharge the debt he owes Viera (C573; A. 88).

D. State Court Case

On February 22, 2021, Viera filed her Complaint herein against Maya and Oren for conspiring to interference with custodial rights, aiding and abetting interference with custodial rights, and intentional infliction of emotional distress (C19–34; A. 23-38). Viera limited her damages to: 1) economic losses she incurred getting her Children back after defendants abducted them; 2) economic losses incurred seeking to enforce her Hague Convention expense award; and 3) her injuries for the emotional distress she suffered as a direct result of defendants' outrageous misconduct (id.). She limited her allegations to economic losses awarded by the District Court in the Abduction Case and the fees she incurred in the Bankruptcy Case protecting the District Court award because it was for the benefit of the Children (id., at ¶51).

Viera pled that Maya and Oren violated the criminal abduction statute pursuant to 720 ILCS 5/10-5 and 10-7 (C29; A. 33). Section 720 ILCS 5/10-5 provides that it is a criminal offense to abduct children or aid and abet the abduction of children in knowing violation of custody

orders. Maya and Oren knowingly interfered with Viera's custodial rights by directly participating in abducting Viera's children for the intended purpose of violating Viera's custodial rights.

Section 720 ILCS 5/10-7 provides that is a criminal offense to aid and abet child abduction. Maya and Oren reached an agreement with Jeremy to engage in an unlawful scheme of abducting Viera's Children in knowing violation of custody orders, the Hague Convention, ICARA, and/or 720 ILCS 5/10-5(b).

1. Defendants' §2-615 Motions to Dismiss Complaint

Defendants moved to dismiss Viera's Complaint under 735 ILCS 5/2-615, arguing that the causes of action for tortious interference with custodial rights, and the conspiracy and intentional infliction of emotional distress claims based on the alleged custodial tortious interference, do not exist under Illinois law (C130-139). They relied on the Court rulings in Whitehorse and Dralle, The Court in Whitehorse declined to recognize a cause of action for tortious interference with custodial rights. Whitehorse v. Critchfield, 144 Ill. App. 3d 192, 744 (1986). The Whitehorse Court further explained that civil sanctions for custodial interference are "better addressed by the legislature." (Id. at 744). In Dralle, this Court held that parents cannot recover for the loss of a child's society and companionship in a nonfatal case. Dralle v. Ruder, 124 Ill. 2d 61 (1988).

2. Viera's Combined Response to Motion to Dismiss

Viera responded that in every jurisdiction, including those the Illinois Supreme Court cites, a custodial parent may recover in an action against a noncustodial family member for interference with custody rights, including damages for expenses incurred in regaining custody (C188-279). However, Courts look more closely when the damages involve loss of society or damage to the parent-child relationship, as opposed to custodial parents seeking recovery of expenses.

3. Lower Court's Ruling on February 24, 2022

The lower Court dismissed Viera's claims for tortious interference with custodial rights and civil conspiracy to aid and abet tortious interference with custodial rights (A. 89-93). The lower Court relied on Whitehorse and ruled that no recognized cause of action exists in Illinois for tortious interference with custodial rights. The lower Court dismissed the civil conspiracy claim for the same reason.

Somewhat inconsistently, the lower Court did not dismiss Viera's Intentional Infliction of Emotion Distress ("IIED") claim. The lower Court reasoned that Defendants' actions might support a conclusion that their actions were so outrageous, so atrocious, and so utterly intolerable that a person of ordinary sensibilities could not reasonably be expected to endure it (C296-300).

Defendants moved for reconsideration, arguing that the Whitehorse Court also held that Illinois does not recognize a cause of action for "psychic" injury "derivative" of custodial interference claims.

On May 17, 2022, the Court denied the motion to reconsider, holding that, per Dralle v. Ruder, 124 Ill. 2d 61 (1988), our Supreme Court "opened the door" by stating that emotional distress claims of a parent "did not arise as the derivative consequence" of injury to a child and therefore the Supreme Court would permit Viera's emotional distress claim (C483-486, at p. 3, quoting Dralle, 124 Ill. 2d at 73). The lower Court denied the motion to reconsider (A. 94-97).

The lower Court did not explain how the Dralle Court opened the door to an IIED claim, separate from damage to the parent-child relationship, but did not similarly open the door to recovering economic losses also unrelated to the parent-child relationship.

4. Lower Court's September 8, 2022, Order

On August 26, 2022, Viera moved to voluntarily dismiss her Count III IIED claim because it would require her to expend time and money litigating a claim without more guidance whether the cause exists, would have to risk her ex-husband accessing her mental health records, would raise problematic legal issues trying to obtain and produce European medical records, and the case would become tabloid fodder, as was Jeremy's bankruptcy proceeding (C610-611). On September 8, 2022, the lower Court granted Viera's motion, the action was terminated in its entirety, and this appeal followed. (C630; A. 98).

V. ARGUMENT

A. Dismissal of the In-Concert Claims for Breaching Custody Orders by Kidnapping the Children.

Viera pleads that Maya funded the abduction, including chartering a private aircraft to spirit the Children from Hungary to England, and paid for Jeremy's lawyers in the District Court (C19-34, ¶¶19-20) (A. 23-38). In the Bankruptcy Proceeding, Jeremy claimed to have only $4,100 in assets and no job but acknowledged receiving $800,000+ from Maya to pay his litigation fees and living expenses (id., ¶¶19, 38-39) (A. 39-40).

The Appellate Court majority held that it would not recognize causes of action for in concert knowing breaches of custody orders leading to child kidnapping (A. 1-22). The majority said that was for this Court or the legislature to do. It added that it thought that Viera also could have had a remedy in the District Court Hague Convention / ICARA proceeding.

B. This Court Has Not Ruled on the Claim Viera Makes.

The dissent in the Appellate Court was correct. This Court has twice deferred to the legislature on the issue of whether to recognize a cause of action for damage to the parent-child relationship arising from child kidnapping. Dralle, 124 Ill. 2d at 69; Vitro v. Mihelcic, 209 Ill. 2d 76, 89 (2004). However, that differs from whether the Court would do so when, like here, the custodial parent does not seek damages arising from damage to the parent-child relationship – an issue our Appellate Districts and Supreme Court have so far carefully avoided.

The dissent explained why this Court has not yet addressed the causes of action Viera pleads (par. 38-39). Counsel acknowledges this Court does not prefer block quotes. However, it is worth quoting at length

what this Court said in Dralle to confirm that this Court narrowly focused its holding:

> We do not consider at this time the nature or extent of the recovery in cases based on what has been termed a "direct interference" with the parent-child relationship, as opposed to the indirect interference involved here. (See Love, *Tortious Interference with the Parent–Child Relationship: Loss of an Injured Person's Society & Companionship,* 51 Ind.L.J. 590, 595 n. 16 (1976).) Recovery for loss of a child's companionship and society was approved in *Dymek v. Nyquist* (1984), 128 Ill.App.3d 859, 83 Ill.Dec. 52, 469 N.E.2d 659, a case relied on by the appellate court here, and in *Kunz v. Deitch* (N.D.Ill.1987), 660 F.Supp. 679. (But see *Whitehorse v. Critchfield* (1986), 144 Ill.App.3d 192, 98 Ill.Dec. 621, 494 N.E.2d 743 (denying parent's cause of action for loss of filial society resulting from alleged acts intended to induce child to abandon parental home).) As we have already noted, in Dymek a divorced father brought an action alleging that his former spouse and a psychiatrist had conspired to "brainwash" the couple's son in an attempt to destroy the father's relationship with the child. In Kunz, a widowed father brought an action against his deceased wife's parents for their alleged efforts to have the couple's child put up for adoption without the father's knowledge or approval; the child had been staying with her grandparents in Illinois following her mother's illness and death. Sitting in diversity, the district judge believed that this court would recognize the cause of action asserted by the father in that case.
>
> ***The torts alleged in Dymek and Kunz did not arise as the derivative consequence of an injury to the child***, as is the basis for the action asserted here. (See *Hammond v. North American Asbestos Corp.* (1983), 97 Ill.2d 195, 211–12, 73 Ill.Dec. 350, 454 N.E.2d 210 (discussing derivative nature of wife's action for loss of consortium arising from injuries to husband).)
> Rather, ***the plaintiffs in Dymek and Kunz alleged acts intentionally and directly interfering with the parent-child relationship***. We therefore conclude, as have other courts, that recognition of a cause of action for direct interference with the parent-child relationship ***does not entail recovery for the type of harm asserted here***.
> See *Borer v. American Airlines, Inc.* (1977), 19 Cal.3d 441,

> 451 n. 3, 563 P.2d 858, 865 n. 3, 138 Cal.Rptr. 302, 309 n. 3; *Baxter v. Superior Court* (1977), 19 Cal.3d 461, 466 n. 3, 563 P.2d 871, 874 n. 3, 138 Cal.Rptr. 315, 318 n. 3; *Siciliano v. Capitol City Shows, Inc.* (1984), 124 N.H. 719, 727, 475 A.2d 19, 23.

124 Ill. 2d at 72-74 (emphasis added).

In Vitro, this Court revisited Dralle. The Vitro Court held that it matters not whether the cause of action is direct or indirect, 209 Ill. 2d at 90. In neither case, however, did this Court address Viera's damages claims herein; that is, whether a custodial parent may recover economic losses incurred in having her abducted children returned.

In Dralle, 124 Ill.2d at 74, this Court relied on Siciliano v. Capitol City Shows, Inc., 124 N.H. 719, 727 (1984), in which the New Hampshire Supreme Court also deferred to its legislature whether its statutory framework would provide for a cause of action for loss of society between parent and child. The Siciliano Court stated that New Hampshire law prevented recovery for an "intangible, ***nonpecuniary*** loss which can never properly be compensated by money damages", id. (emphasis added). For that reason, in Plante v. Engel, 124 N.H. 213, 217 (1983), only one year earlier, the same Court held that a custodial parent may indeed recover pecuniary expenses incurred in recovering custody of children, including legal fees, against grandparents who harbored the abducted children.

In Vitro, 209 Ill. 2d at 89, this Court reiterated its Dralle deference to the legislature regarding whether to recognize a cause of action for loss

of society between parent and child. This time the Court cited the Missouri Supreme Court's decision in Powell v. Am. Motors Corp., 834 S.W.2d 184, 190 (Mo. 1992), in which that Court also deferred to its legislature whether to recognize a tort for loss of society. However, like New Hampshire, Missouri also recognizes a cause of action for aiding and abetting child abduction, allowing recovery of expenses incurred and for emotional distress suffered. Kramer v. Leineweber, 642 S.W.2d 364, 368 (Mo. Ct. App. 1982) ("Plaintiff is entitled to recover for reasonable expenses incurred in attempting to retain custody of Wendie. See Restatement, Second, Torts § 700, Comment g").

This Court knew its business when it cited to New Hampshire and Missouri cases and should make the same distinctions made by those Courts and allow a custodial parent to recover her expenses, including attorney fees, incurred in recovering custody.

C. We Should Allow Custodial Parents to Recover Expenses Incurred in Reobtaining Custody of Kidnapped Children.

The District Court specifically noted that one of the purposes of the award was to act in the best interests of both the children and the custodial parent (A. 41-67). That Court fashioned the Award in order to place the economic burden on the perpetrator of the crime, allowing the custodial parent to use the funds on behalf of the children (C263-264). Thus, disallowing a claim for economic losses resulting from kidnapping interferes with and harms the parent-child relationship – the opposite of what Courts like Whitehorse and Dralle were seeking to accomplish.

Neither should we immunize criminal misconduct. Criminal statutes confirm sources of public policy in contexts, like this one, where the focus is on the best interests of the children and discouraging abductions, with no countervailing considerations of asking a jury to determine the economic value of loss of society between parent and child, nor whether reimbursing expenses impacts any custody arrangements. *See* Silcott v. Oglesby, 721 S.W.2d 290 (Tex. 1986) (grandparent liable under common law for expenses incurred in regaining custody of grandchild harbored in violation of custody order):

The determination of the common law is left to the courts and, often, the lower courts, like the Appellate Court majority here, leave the extension of common law doctrines to the court of last resort. *E.g.*, McKisson v. Sales Affiliates, Inc., 416 S.W.2d 787, 791 (Tex. 1967): "At the time of Michael's abduction, interference with child custody was a third-degree felony. Tex.Penal Code Ann. § 25.03 (Vernon 1974). The fact that the legislature did not choose to create a civil cause of action by statute until 1983 does not prevent us from recognizing the existence of a common law cause of action. In fact, the legislative intent, as evidenced by the prior criminal offense and the later statutory cause of action, is a persuasive reason why we should recognize a prior actionable tort for child abduction in violation of a custody order as a sound principle for our developing common law."

In Illinois, like Texas, Defendants' actions constitute felonious criminal misconduct (C19-34, ¶¶57, 62). A person violates 720 1ILCS 5/10-7 if, before or during the commission of a child abduction, and with the intent to promote or facilitate the child abduction, she or he intentionally aids or abets another in the planning or commission of that offense, unless before the offense is committed, she or he makes proper effort to prevent its commission. (Il. Pattern Jury Instr.-Criminal 8.18, Ill. Pattern Jury Instr.-Criminal 8.18). Concealing the Children in their homes with knowledge of the abduction constitutes criminal aiding and abetting. People v. Williams, 105 Ill.App.3d 372 (1st Dist. 1982)(Mother with knowledge of order awarding custody of her child to foster mother deliberately picked up child at school and concealed child by having child stay at neighbor's home at night committed crime of child abduction).

The common thread running through Illinois and foreign cases applying Illinois law is that this Court has refused to recognize a cause of action for damage to the parent-child societal relationship. Whitehorse v. Critchfield, 144 Ill. App. 3d 192, 195 (4th Dist. 1986); Zvunca v. Motor Coach Indus. Int'l, Inc., 2009 WL 1586020, at *2 (N.D. Ill. 2009); Holzgrafe v. Hinsdale Bank & Tr. Co., 2009 WL 3824651, at *3 (N.D. Ill. 2009); Huter by Huter v. Ekman, 137 Ill. App. 3d 733, 734 (2nd Dist. 1985).

Tellingly, however, like the dissent here, Courts like Sullivan v. Cheshier, 846 F.Supp. 654, 660–61 (N.D. Ill. 1994), and Lindgren v

Moore, 907 F. Supp. 1183 (N.D. Ill. 1995), held that this Court, in Dralle, meant to leave open the question whether it would recognize other claims for other kinds of damages. Not one of the cases cited by defendants or the majority in the Appellate Court here discusses whether this Court would do what other courts have done and distinguish claims for loss of society from claims for economic losses for recovering abducted children.

D. Whether Viera had an ICARA Remedy

During oral argument on December 7, 2023, the Appellate Court asked about a new issue not previously raised. The Court ordered additional limited briefing discussing the applicability of the following cases: 1) Rishmawy v. Vergara, 540 F. Supp. 3d 1246 (2021); and 2) Mendoza v. Silva, 987 F. Supp. 2d 910 (2014) (A. 99).

In relying on these and similar cases, the majority minimized the purpose of a Hague Convention / ICARA proceeding and the timing of when Viera learned for the first time that Jeremy decided to live off his mother – that was a fact not then known. Indeed, the District Court assumed he would be likely to find a way to pay eventually: "Respondent argues that he has few assets now, but the Court is unconvinced he will never be able to pay the fees" (C272; A. 87).

The timing herein differs significantly from Rishmawy, Mendoza, and similar cases. The District Court case was tried in February and June 2020. On July 21, 2020, that Court entered its Order rejecting Jeremy's defenses and Ordering the Children returned to their mother in

Slovakia (C225-251). Viera complied and, on August 11, 2020, filed her initial fee petition the next month, on August 21, 2020 (C23).

Jeremy waited 10 more days, until August 31, 2021, and only then filed his bankruptcy petition (C264, ¶¶32-43). It was a note buried in the schedules to that petition, filed *months after the Order returning the children*, that revealed that Jeremy accepted over $800,000 (C25; A. 40).

On January 23, 2021 (C25), Viera filed an amended fee petition attempting to address issues involving Maya's funding the litigation while the father claimed poverty. On March 15, 2021, the District Court entered its award, but noticeably held that it had not intended to allow revisiting fee award issues arising after the original fee petition (C257; A. 72).

The Appellate Court should not have unilaterally raised the issue. The Appellate Court should not have ruled in part on that issue when Viera had not had the chance to develop it previously and it was not necessary to address it to obtain custody.

The arguments would have failed anyway even if timely raised. The treaty and enabling legislation focus on getting abducted children back home where they belong, and not on providing custodial parents with complete remedies: Article 26 of the Convention provides:

> Any court ordering the return of a child pursuant to an action brought under section 9003 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 (emphasis supplied).

22 U.S.C.A. §9007(3). The Medoza Court, and those like it, focus strictly and only the expenses directly related to what it took to have the children returned to the proper nation, 987 F. Supp. 2d at 914. Courts adjudicating ICARA claims do not consider a state's interest in deterring criminal misconduct nor the potential for awarding exemplary punitive damages designed to deter criminal misconduct and egregious misbehavior such as abducting children.

ICARA is quite clear that it is ***not*** exclusive:

> h) Remedies under Convention not exclusive
>
> The remedies established by the Convention and this chapter shall be in addition to remedies available under other laws or international agreements.

22 U.S.C.A. § 9003. Rigby v. Damant, 486 F. Supp. 2d 222, 227–28 (D. Mass. 2007) (Hague Convention /ICARA does not authorize grant of exclusive jurisdiction over state law).

Few cases may exist in this context because cases involving tort claims arising from international abductions often do not discuss the Hague Convention / ICARA, one way or the other. *E.g.*, Khalifa v. Shannon, 404 Md. 107 (2008), discussing tort claims in Maryland arising from children abducted to other nations, with no mention of the Hague Convention or ICARA. The dissent expressly noted that it found no cases addressing financial recovery under ICARA against third-parties when

the petitioning custodial parent did not have to sue the third-parties to get the children back (A. 16-17).

State law abduction claims and Hague Convention / ICARA claims serve different essential purposes. Illinois state law involves additional public policy considerations not at issue in the treaty. Rishmawy and Mendoza therefore necessarily have nothing to do with Viera's properly pleaded punitive damages claims (C29 and 30).

VI. APPENDIX

Viera Hulsh attaches a Rule 315(c)(6) appendix.

VII. CONCLUSION

WHEREFORE, for the foregoing reasons, Viera Hulsh respectfully requests this Court to grant this petition for leave to appeal, reverse the appellate court and circuit court, allow Plaintiff to submit a full brief, and for such other and further relief as this Court deems appropriate.

VIII. CERTIFICATE OF COMPLIANCE

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 contained 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 19 pages.

Respectfully submitted,

Dated: August 1, 2024

/s/Thomas Kanyock
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No._____

IN THE SUPREME COURT OF ILLINOIS

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

NOTICE OF FILING

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PLEASE TAKE NOTICE that on **August 1, 2024**, we filed with the Clerk of the Supreme Court of Illinois, the attached **Petition for Leave to Appeal of Plaintiff/Petitioner Viera Hulsh**.

Respectfully submitted,

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PROOF OF SERVICE

The undersigned, a non-attorney, certifies under penalties as provided by law pursuant to 735 ILCS 5/1-109, that the statements in this instrument are true and correct, and that on **August 1, 2024**, she caused this **Notice of Filing** and attached **Petition for Leave to Appeal of Plaintiff/Petitioner Viera Hulsh** to be served on counsel of record named above by electronic mail.

/s/ Daniela Ramirez

No._____

IN THE SUPREME COURT OF ILLINOIS

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

APPENDIX

2024 IL App (1st) 221521

SIXTH DIVISION
June 28, 2024

No. 1-22-1521

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

VIERA HULSH, Plaintiff-Appellant, v. MAYA HULSH and OREN HULSH, Defendants-Appellees.	)))))))))	Appeal from the Circuit Court of Cook County No. 20 CH 00831 The Honorable Patrick J. Sherlock, Judge Presiding.

JUSTICE TAILOR delivered the judgment of the court, with opinion.
Justice C.A. Walker concurred in the judgment and opinion.
Presiding Justice Oden Johnson dissented, with opinion.

OPINION

¶ 1 We are called on to recognize a new tort for interference with custodial rights in the context of international child abduction, an issue within the purview of a treaty commonly known as the Hague Convention, to which the United States is a party. Convention on the Civil Aspects of International Child Abduction, Oct. 25, 1980, T.I.A.S. No. 11670, 1343 U.N.T.S. 89, https://treaties.un.org/doc/Publication/UNTS/Volume%201343/volume-1343-I-22514-English.pdf [https://perma.cc/P8PV-AHD6]) (hereinafter Hague Convention). Here, the father abducted his two children, who were living with their mother in Slovakia pursuant to a court order granting her primary custody, and brought them to the United States. The father's mother and

brother allegedly assisted him by paying for a charter plane to take the father and children from Slovakia to England, providing housing for them in the United States, paying their living expenses after they came to the Chicago area, and otherwise secreting the whereabouts of the children from their mother. Following a trial on a claim brought by the mother against the father under the Hague Convention in federal district court, the father was ordered to return the children to the mother, and the mother was awarded the attorney fees and costs she incurred to get the children back. After the father filed for bankruptcy protection and claimed indigency, the mother sued the father's mother and brother in the circuit court for tortious interference with custodial rights, among other claims. The circuit court dismissed the complaint, and the mother appeals. We decline to recognize a new cause of action for tortious interference with custodial rights. Illinois reviewing courts have repeatedly declined to recognize such a claim. Moreover, it is the prerogative of our supreme court or the legislature to create new causes of action, not this court. Finally, and in any case, public policy does not support a new cause of action here where the mother could have obtained the relief she seeks against her former husband's mother and brother in federal court in the underlying Hague Convention proceedings. Accordingly, we affirm the dismissal of the plaintiff's claims.

¶ 2 I. BACKGROUND

¶ 3 Jeremy Hulsh, a citizen of the United States and Israel, and Viera Hulsh, a citizen of Slovakia, divorced in 2019. Viera was granted primary custody of their two children, who resided with her in Slovakia. Jeremy was granted visitation rights. In October 2019, Jeremy removed the children from Slovakia without Viera's permission and brought them to Chicago, Illinois.

¶ 4 On November 5, 2019, Viera filed a petition in the United States District Court for the Northern District of Illinois against Jeremy, seeking the return of the children under the Hague

Convention (*id.*) and its implementing legislation, the International Child Abduction Remedies Act (ICARA) (22 U.S.C. § 9001 *et seq.* (2018)). The case was tried in February 2020. On July 21, 2020, the district court granted Viera's petition and ordered that the children be returned to her in Slovakia.

¶ 5 On August 11, 2020, Viera filed a petition in district court, requesting "attorneys' fees, expenses and costs incurred pursuing her successful action for return of her children" as authorized by ICARA. Several weeks later, Jeremy filed a petition for bankruptcy. On January 23, 2021, Viera amended her fee petition and requested almost $500,000 in fees, expenses, and taxable costs.

¶ 6 On March 15, 2021, the district court partially granted Viera's request and ordered Jeremy to pay her $265,096.87 for the attorney fees and expenses she incurred in getting the children back. The court excluded fees it found duplicative or unreasonable and those that were unsupported by documentation or unrecoverable under the statute, and it factored in Jeremy's claimed indigency. The bankruptcy court found that the attorney fees awarded to Viera were "nondischargeable" because fees awarded under ICARA constitute domestic support obligations under the Bankruptcy Code (11 U.S.C. § 101 *et seq.* (2018)).

¶ 7 Unable to collect on the money judgment against Jeremy, Viera filed a separate lawsuit in the circuit court of Cook County against Jeremy's mother, Maya Hulsh, and Jeremy's brother, Oren Hulsh. In her complaint, Viera alleged three counts: (1) tortious interference with custodial rights, (2) aiding and abetting tortious interference with custodial rights, and (3) intentional infliction of emotional distress. She asserted that (1) Maya and Oren "knowingly interfered with [her] custodial rights by directly participating in abducting [her] children for the intended purpose of violating [her] custodial rights"; (2) Maya and Oren "reached an agreement with Jeremy to engage in an unlawful scheme of abducting [her] children in knowing violation of custody orders,

the Hague Convention, [and] ICARA"; and (3) Maya and Oren's "overt acts were done pursuant to and in furtherance of the common scheme to abduct [her] children." In support, Viera alleged that, after Jeremy took her children from Slovakia in 2019, he chartered a private aircraft paid for by Maya to fly the children to England and then traveled with them to Canada, where he rented a car paid for by Oren to travel to the United States. Viera alleged that, after Jeremy arrived in the Chicago area with his children, they stayed in a home "rented or owned" by Maya and that Maya helped care for the children and "helped finance the children's concealment and care." Viera alleged that Oren helped "harbor and care for the children," both at his mother's home and at his condominium in Chicago, and that he and Maya failed to provide her with information about her children's whereabouts.

¶ 8 Viera alleged that she suffered "significant financial damages" as a result of Maya and Oren's "interference with her custody rights," including (1) attorney fees and expenses related to the district court case she had previously litigated against Jeremy; (2) prior and future attorney fees and expenses in the bankruptcy case she was litigating against Jeremy; and (3) past and possible future lost income, transportation, and living expenses arising from Maya and Oren, "acting in concert with Jeremy," which "forc[ed] [her] to suspend her employment temporarily in Slovakia to come to the United States for extended periods to successfully reobtain custody of her children, litigate the bankruptcy case, litigate this case, and take other actions necessary to collect her district court award."

¶ 9 Oren and Maya filed section 2-615 (735 ILCS 5/2-615 (West 2020)) motions to dismiss Viera's complaint, asserting that "the causes of action she asserts ***do not exist under Illinois law." Relying on *Whitehorse v. Critchfield*, 144 Ill. App. 3d 192 (1986), the trial court dismissed count I of Viera's complaint because there is no recognized cause of action for tortious interference

with custodial rights in Illinois. The trial court dismissed count II for conspiracy as well because it hinged on the viability of the tortious interference count. However, it declined to dismiss count III for intentional infliction of emotional distress. After the court denied Maya and Oren's motion to reconsider, Viera filed a motion for an Illinois Supreme Court Rule 308 (eff. Oct. 1, 2019) certification and to stay the proceeding pending the disposition of her proposed Rule 308 petition. The court denied Viera's Rule 308 petition. Viera then voluntarily dismissed her intentional infliction of emotional distress claim and timely appealed the trial court's decision to dismiss the tortious interference with custodial rights and conspiracy claims.

¶ 10 II. ANALYSIS

¶ 11 A. Standard of Review

¶ 12 A motion to dismiss pursuant to section 2-615 of the Civil Practice Law (735 ILCS 5/2-615 (West 2020)) attacks the legal sufficiency of the complaint. *Hartmann Realtors v. Biffar*, 2014 IL App (5th) 130543, ¶ 14. In order to state a cause of action, a complaint must set forth a legally recognized cause of action and plead facts to bring the claim within that cause of action. *Misselhorn v. Doyle*, 257 Ill. App. 3d 983, 985 (1994). "The question presented by a section 2-615 motion to dismiss is whether the allegations of the complaint, when viewed in a light most favorable to the plaintiff, are sufficient to state a cause of action upon which relief can be granted." *Vernon v. Schuster*, 179 Ill. 2d 338, 344 (1997). A cause of action should be dismissed when it "clearly appears that no set of facts can be proved which will entitle the plaintiff to recover." *Id.* We review a trial court's decision to grant a section 2-615 motion to dismiss *de novo*. *Vogt v. Round Robin Enterprises, Inc.*, 2020 IL App (4th) 190294, ¶ 14.

¶ 13 B. Tortious Interference with Custodial Rights Is Not a Legally Recognized Cause of Action in Illinois

¶ 14 On appeal, Viera argues that the trial court erred when it dismissed her tortious interference with custodial rights claim. Although she acknowledges that Illinois courts have refused to recognize a cause of action for damage to the parent-child relationship, she contends that our supreme court has "not ruled on the claim [she] makes in this case," because she seeks only the expenses she incurred in reobtaining custody of her children, not damages arising from damage to the parent-child relationship.

¶ 15 However, Illinois courts have declined to recognize tortious interference with custodial rights as a cause of action regardless of the damages claimed. In *Whitehorse*, 144 Ill. App. 3d at 193, the Murphys removed a child from her father's custody in Utah and sent her to live with the Critchfields in Illinois, who counseled the child not to return home or reveal her location to her father. After the child was eventually returned to her father, he brought suit against the Murphys, alleging that they deprived him of the care, custody, and services of his daughter, and against the Critchfields, alleging that they aided and abetted the Murphys in carrying out their plan. *Id.* He asked for his expenses and costs, as well as damages for the emotional distress he suffered. *Id.* The Murphys moved to dismiss, alleging that "tortious interference with the custodial parent's relations with his child is neither statutorily nor judicially recognized as an action in Illinois." *Id.* After the trial court granted the motion to dismiss, the father appealed and "urge[d] 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." *Id.* at 194. This court "decline[d] to do so, feeling this area, because of its multiple ramifications and potential for abuse, is more properly a subject for the legislature's consideration." *Id.*

¶ 16 Our supreme court has repeatedly declined to recognize such a tort either. See, *e.g.*, *Dralle v. Ruder*, 124 Ill. 2d 61, 70 (1988) (declining to allow recovery for loss of society stemming from

a child's nonfatal injuries allegedly caused by the mother's use of a prescription medication, reasoning that creating such a tort "would threaten a considerable enlargement of liability," it was difficult to assess damages, and a tort remedy was available to the child); *Vitro v. Mihelcic*, 209 Ill. 2d 76, 88 (2004) (finding no valid cause of action when the parents of a child who suffered brain damage sought recovery for loss of society and companionship, stating that it is "the legislature which should decide whether this new cause of action should be created"); *Doe v. McKay*, 183 Ill. 2d 272, 286 (1998) (finding that "the same considerations that led the court to deny recovery in *Dralle* must also preclude recovery for lost society and companionship" when there was direct interference with the parent-child relationship because "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").

¶ 17 Viera relies on *Dymek v. Nyquist*, 128 Ill. App. 3d 859, 866 (1984), where the court determined that a cause of action for the loss of a minor child's society and companionship could be maintained by a parent in Illinois, and *Kunz v. Deitch*, 660 F. Supp. 679, 682-83 (N.D. Ill. 1987), where the federal court noted that our supreme court "ha[d] not specifically addressed whether an independent cause of action exists for loss of a child's society" but predicted that our supreme court would recognize such a tort. However, *Dymek* and *Kunz* predate our supreme court's decisions in *Dralle*, *Vitro*, and *Doe*, where the court repeatedly declined to recognize a cause of action based on interference with the parent-child relationship, finding that it was "the legislature which should decide whether this new cause of action should be created." *Vitro*, 209 Ill. 2d at 88.

¶ 18 Viera highlights the fact that a number of other states have recognized the tort of intentional interference with custodial rights. See, *e.g.*, *Kajtazi v. Kajtazi*, 488 F. Supp. 15, 18 (E.D.N.Y. 1978) (recognizing "[t]he unlawful taking or withholding of a minor child from the custody of the parent

entitled to such custody [a]s a tort"); *Kramer v. Leineweber*, 642 S.W.2d 364, 366 (Mo. Ct. App. 1982) ("A tort action against one who deprives a parent of a child has long been recognized in Missouri and other jurisdictions."); *Lloyd v. Loeffler*, 694 F.2d 489, 496 (7th Cir. 1982) (finding that Wisconsin law would recognize an action in tort for unlawful intentional interference with the custody rights of a parent). However, this does not change the fact that, in Illinois, reviewing courts have repeatedly declined to recognize a cause of action for interference with the parent-child relationship.

¶ 19 Moreover, as an intermediate appellate court, it is not our prerogative to create a new cause of action. When a statutory cause of action does not exist in Illinois, this court has repeatedly declined to recognize a new one, finding the matter better left to our legislature or our supreme court. See, *e.g.*, *Emery v. Northeast Illinois Regional Commuter R.R. Corp.*, 377 Ill. App. 3d 1013, 1030 (2007) ("[B]ecause we believe that it is the province of either the legislature or the supreme court to create new causes of action [citation], we continue to follow the rationale of the Second and Fifth Districts of the Appellate Court, and do not recognize the tort of compelled self-defamation. As such, we find that the trial court did not err in granting defendant's section 2-615 motion to dismiss on this claim."); *Harrel v. Dillards Department Stores, Inc.*, 268 Ill. App. 3d 537, 548 (1994) ("Appellate courts should not create new causes of action. Our supreme court and legislature are capable of and primarily responsible for deciding the need for new causes of action."); *Wofford v. Tracy*, 2015 IL App (2d) 141220, ¶ 41 ("We also note that it is the province of our supreme court and/or the General Assembly, not the appellate court, to create new causes of action."). Because our supreme court has repeatedly declined to recognize a claim for tortious interference with custodial rights, we decline to create a new cause of action here. We find it is best left to our supreme court or the legislature.

¶ 20 C. The Supreme Court and Legislature's Prerogative Aside, Public Policy Does Not Warrant Recognition of a Claim for Tortious Interference With Custodial Rights in This Case

¶ 21 Viera argues that we should recognize a new cause of action as a matter of public policy because, if we fail to extend the law here, Maya and Oren and other individuals "who offer[ ] substantial assistance" with child abduction will be able to completely escape liability. However, Viera could have brought suit against Maya and Oren in connection with her Hague Convention claim in federal district court. Therefore, her public policy argument must fail.

¶ 22 The Hague Convention is an international treaty "cent[e]red upon the idea of co-operation amongst authorities" (Elisa Pérez-Vera, Explanatory Report, 3 Acts and Documents of the Fourteenth Session, Hague Conference on Private International Law, Child Abduction 426, 435 (1982), https://assets.hcch.net/docs/05998e0c-af56-4977-839a-e7db3f0ea6a9.pdf [https://perma.cc/UZ4T-3UDX] (hereinafter Pérez-Vera Report), which seeks to " 'protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence.' " *Miller v. Miller*, 240 F.3d 392, 398 (4th Cir. 2001) (quoting Hague Convention pmbl., T.I.A.S. No. 11670, 1343 U.N.T.S. at 98). The Hague Convention and its enabling legislation, ICARA, allow attorney fees and costs to be awarded in order to "restore the applicant to the financial position he or she would have been in had there been no removal or retention" and "to deter such conduct from happening in the first place." Hague International Child Abduction Convention; Text and Legal Analysis, 51 Fed. Reg. 10,494-10,502, 10,511 (Dep't of State Mar. 26, 1986) (public notice). Although Viera's counsel contended at argument that he did not believe Viera could have filed suit against Oren and Maya in federal district court, nothing in the Hague Convention precludes a plaintiff from filing

suit against multiple respondents or nonfamily members. While the Hague Convention contains no express provision defining who may be a potential abductor, Elisa Pérez-Vera, the official Hague Conference reporter for the Convention, issued an explanatory report, which "is recognized by the Conference as the official history and commentary on the Convention and is a source of background on the meaning of the provisions of the Convention." Hague International Child Abduction Convention; Text and Legal Analysis, 51 Fed. Reg. 10,503 (Dep't of State Mar. 26, 1986) (public notice). In her report, Pérez-Vera notes that the Hague Convention adopts a "wide view" of who can be considered a "potential abductor" and characterizes as wrongful removals those carried out, not just by parents, but also by "a grandfather or adoptive father" for example. Pérez-Vera Report, *supra*, at 451. Although we have found no cases in Illinois addressing this issue, courts around the country have allowed suits against nonparent respondents and have held that individuals who assist with wrongful removals can be held financially liable.

¶ 23 For example, in *Neves v. Neves*, 637 F. Supp. 2d 322, 346 (W.D.N.C. 2009), the court held that a mother was entitled to recover attorney fees and expenses from a couple who helped her estranged husband wrongfully remove her children. The mother brought suit under the Hague Convention against her estranged husband and an unrelated couple, the Patels, seeking the return of her children to Germany. *Id.* at 329. She alleged that her estranged husband wrongfully removed their two children from Germany and that the Patels assisted her husband in wrongfully removing the children and by allowing the children to reside in their home in the United States. *Id.* at 329-30. The court found that the husband "received substantial assistance from" the Patels because the Patels knew the husband wanted to take his children from Germany without the mother's knowledge, made the travel arrangements, paid for the airline tickets, allowed the husband and children to reside in their home, and ignored the mother's multiple attempts to contact them about

the children's whereabouts. *Id.* at 335. Based upon this evidence, the court "f[ound] as fact and conclude[d] as a matter of law that the Patels actively and knowingly assisted [the estranged husband] in the wrongful removal and retention of the children, in violation of the [mother's] rights of custody." *Id.* at 335-36. The court ordered the Patels to pay fees and costs to the mother, finding that, "without their assistance, [the husband] would not have been able to carry out his plan to wrongfully remove the children from Germany without the [mother's] knowledge or consent." *Id.* at 346.

¶ 24 In *Litowchak v. Litowchak*, No. 2:15-cv-185, 2015 WL 7428573 (D. Vt. Nov. 20, 2015), the petitioner brought claims under the Hague Convention against the respondent, alleging that she abducted their children by moving them from Australia to the United States without his consent. He then asked the court to allow him to amend his petition to add the respondent's father as an additional respondent. *Id.* at *1. He claimed that the respondent's father "purchased plane tickets for [r]espondent and the children to leave Australia," "arranged and provided housing for [r]espondent and the children after they left Australia, and *** concealed the children's location" from him. *Id.* The court noted that "[t]he Hague Convention and ICARA provide remedies beyond orders requiring the return of a child" and that the Hague Convention "does not limit responsibility 'for the removal or retention of a child' to 'acts exclusively [done by] one of the parents … [but instead] hold[s] a wide view which would, for example, allow removals by a grandfather … to be characterized as child abduction, in accordance with the [Hague] Convention's use of that term.' " *Id.* at *2 (quoting Pérez-Vera Report, *supra*, at 451). The court found that, because the allegations in the petitioner's petition concerned the respondent's father's role in the removal of the children from Australia and his alleged concealment of the children from the petitioner, his actions were "clearly within the scope of actions addressed by the Hague Convention" and the court could

"redress those allegedly unlawful actions by granting appropriate remedies in addition to the return of the children to Australia." *Id.* The court further found that, "to the extent [respondent's father] committed the abduction of the children, he may be liable for [p]etitioner's expenses." *Id.* It therefore allowed the petitioner to amend his petition to add respondent's father as an additional respondent. *Id.* at *3.

¶ 25 Other courts have allowed suits against nonparent respondents in Hague Convention proceedings as well. See, *e.g.*, *Jacquety v. Baptista*, No. 19 Civ. 9642, 2020 WL 5946562, at *5 (S.D.N.Y. Oct. 7, 2020) ("As an initial matter, the Court is not persuaded that, because [the removing mother's boyfriend] is not a relative or a custodial parent, he is an improper respondent here. Under ICARA, responsibility for child abduction is nowhere limited to a child's parents or relatives."); *Rishmawy v. Vergara*, 540 F. Supp. 3d 1246, 1274-75 (S.D. Ga. 2021) (where a mother alleged that the child's father and his girlfriend took her minor child out of Honduras and wrongfully retained her, the court found that the girlfriend was subject to suit because she "played an integral role in the retention of the Child in the United States").

¶ 26 As the above cases illustrate, Viera could have brought suit against Maya and Oren under the Hague Convention and ICARA in the federal district court, seeking the same damages she now seeks. Although the dissent disagrees with our "conclusive determination that Viera could have sued and recovered against Oren and Maya under her ICARA case filed in 2019" (*infra* ¶ 37), it cites no authority to convince us otherwise. What's more, one of the allegations in Viera's complaint—that Maya and Oren "reached an agreement with Jeremy to engage in an unlawful scheme of abducting Viera's Children in knowing violation of *** the Hague Convention [and] ICARA"—seemingly concedes that she could have filed suit against Oren and Maya in federal court. Instead of doing so, however, Viera filed her suit under the Hague Convention solely against

Jeremy, and her petition was granted, her children were returned to her, and Jeremy was ordered to pay her more than $265,000 to compensate her for the economic damages she sustained in regaining custody of her children. It was only after Jeremy declared bankruptcy and was apparently unable to satisfy the judgment that Viera filed suit against Maya and Oren in the circuit court and asked the court to create a new cause of action so she could be compensated for the economic damages she had already been awarded by the district court. But because the Hague Convention and ICARA already provide Viera with a statutory remedy for the very damages she seeks, we see no public policy reason to recognize a new tort here. See, *e.g.*, *Berlin v. Nathan*, 64 Ill. App. 3d 940, 950-51 (1978) (So long as some remedy for the alleged wrong exists, article I, section 12, of the Illinois Constitution, which states that "[e]very person shall find a certain remedy in the laws for all injuries and wrongs which he receives to his person, privacy, or property" (Ill. Const. 1970, art. I, § 12), does not mandate recognition of any new remedy. The failure to state a cause of action cannot be cured by alleging that the plaintiff should have a remedy as provided in article I, section 12.); *Neade v. Portes*, 193 Ill. 2d 433, 450 (2000) (refusing to recognize a new action for breach of fiduciary duty against a physician in a suit brought against the physician for medical negligence because the claim was "duplicative" and the injuries suffered by plaintiff as a result of the physician's medical care were "sufficiently addressed by application of traditional concepts of negligence").

¶ 27 D. The Conspiracy Count Also Fails Because It Was Premised on the Viability of the Tortious Interference With Custodial Rights Claim

¶ 28 In her civil conspiracy count, titled "civil conspiracy to aid and abet tortious interference with custodial rights," Viera alleged that Maya and Oren "aid[ed] and abett[ed] Jeremy's abduction of Viera's children" and "reached an agreement with Jeremy to engage in an unlawful scheme of

abducting Viera's children." While civil conspiracy is recognized as a distinct cause of action in Illinois, " '[t]he gist of a conspiracy claim is not the agreement itself, but the tortious acts performed in furtherance of the agreement.' " *Lewis v. Lead Industries Ass'n*, 2020 IL 124107, ¶¶ 19-20 (quoting *Adcock v. Brakegate, Ltd.*, 164 Ill. 2d 54, 63 (1994)). Thus, if a plaintiff "fails to state an independent cause of action underlying its conspiracy allegations, the claim for conspiracy also fails." *Indeck North American Power Fund, L.P. v. Norweb PLC*, 316 Ill. App. 3d 416, 432 (2000); see *Süd Family Ltd. Partnership v. Otto Baum Co.*, 2024 IL App (4th) 220782, ¶ 60 (holding that plaintiffs failed to state a cause of action for fraud and therefore finding that "dismissal of its conspiracy counts—which [we]re based upon the same allegations of fraud—[wa]s also warranted"). Although Viera initially alleged intentional infliction of emotional distress in her complaint, she voluntarily dismissed that count, leaving only her tortious interference claim. But because no cause of action for tortious interference with custodial rights exists in Illinois, Viera's conspiracy count—which was premised solely on the viability of the tortious interference claim—necessarily fails as well.

¶ 29 III. CONCLUSION

¶ 30 For the foregoing reasons, the judgment of the trial court is affirmed.

¶ 31 Affirmed.

¶ 32 Presiding Justice Oden Johnson, dissenting:

¶ 33 I respectfully dissent from the majority's position that a petitioner who seeks to recover fees and costs from third parties who assist in the international abduction of children that are ultimately returned under the Hague Convention should not be able to recover under Illinois law. In doing so, I recognize that this case, like several before it, calls upon this court to recognize a cause of action for tortious interference with custodial rights, which this court has declined to do

on several occasions. However, I submit that we should not continue to allow such behavior to go unchecked and that public policy dictates that we recognize and allow this cause of action as a deterrent to such future behavior. Moreover, I disagree with the majority's conclusion that Viera could have sued Oren and Maya and recovered under ICARA at the time that her case was initially filed.

¶ 34 This case, as with all international child abduction cases, is governed by the Hague Convention. The Hague Convention, adopted in 1980, seeks to secure the prompt return of children wrongfully removed to or retained in any signatory state. *In re Marriage of Krol*, 2015 IL App (1st) 140976, ¶ 17. A central purpose of the Hague Convention is to " 'discourage parents from crossing international borders in search of a more sympathetic forum' " in which to litigate custody issues. *Id.* (quoting *In re Lozano*, 809 F. Supp. 2d 197, 217 (S.D.N.Y. 2011), *aff'd sub nom. Lozano v. Alvarez*, 697 F.3d 41 (2d Cir. 2012), *aff'd sub nom. Lozano v. Montoya Alvarez*, 572 U.S. 1 (2014)). The United States is a signatory to the Hague Convention and has implemented its provisions through the International Child Abduction Remedies Act (ICARA) (originally codified at 42 U.S.C. § 11601 *et seq.* (2006), now codified at 22 U.S.C. § 9001 *et seq.* (2018)). The ICARA statute provides that

> "[a]ny person seeking to initiate judicial proceedings under the [Hague] Convention for the return of a child *** may do so by commencing a civil action by filing a petition for the relief sought in any court which has jurisdiction of such action and which is authorized to exercise its jurisdiction in the place where the child is located at the time the petition is filed." 22 U.S.C. § 9003(b) (2018).

The statute further states that the courts of the states and the United States have concurrent original jurisdiction of actions arising under the Hague Convention. *Id.* § 9003(a).

¶ 35 Article 26 of the Hague Convention provides, in pertinent part, as follows:

> " 'Upon ordering the return of a child or issuing an order concerning rights of access under this Convention, the judicial or administrative authorities may, where appropriate, direct the person who removed or retained the child, or who prevented the exercise of rights of access, to pay necessary expenses incurred by or on behalf of the applicant, including travel expenses, any costs incurred or payments made for locating the child, the costs of legal representation of the applicant, and those of returning the child.' " *Mendoza v. Silva*, 987 F. Supp. 2d 910, 913 (2014) (quoting Hague Convention, art. 26, T.I.A.S. No. 11670, 1343 U.N.T.S. 89).

¶ 36 The ICARA codifies the obligations of the United States under this section of the Hague Convention as follows:

> "Any court ordering the return of a child pursuant to an action brought under section 9003 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." 22 U.S.C. § 9007(b)(3) (2018).

¶ 37 Reading both the *Mendoza* court's interpretation and the plain language of ICARA together, it is clear that the recovery of fees and costs under the Hague Convention and ICARA are aimed at the respondent who removed or retained the child. Neither the plain language of article 26 of the Hague Convention nor ICARA state or imply otherwise. The majority relies primarily on secondary sources and four cases to support its conclusion. It is important to note that two of the four cases cited by the majority, *Jacquety v. Baptista*, No. 19 Civ. 9642, 2020 WL 5946562

(S.D.N.Y. Oct. 7, 2020), and *Rishmawy v. Vergara*, 540 F. Supp. 3d 1246, 1273 (S.D. Ga. 2021), were not decided until *after* Viera's Hague Convention case was filed in 2019.[1] In *Neves v. Neves*, 637 F. Supp. 2d 322, 346 (W.D.N.C. 2009), recovery of fees and costs was found to be appropriate against third-party respondents who allowed the respondent father and the children to live with them and did not disclose the children's whereabouts to the petitioner. However, the majority does not cite, nor have I found, any other case that predates the filing of Viera's case that allows for recovery of fees and costs against third parties/nonparents.[2] As such, I disagree with the majority's conclusive determination that Viera could have sued and recovered against Oren and Maya under her ICARA case filed in 2019.

¶ 38 It is also clear that the Restatement of Torts recognizes the tort of intentional interference with a parent's custodial rights, titled "Causing Minor Child to Leave or not to Return Home." See Restatement (Second) of Torts § 700 (1977). Comment g to that section allows the parent to recover for the loss of society of his child and for his emotional distress resulting from the abduction or enticement. Restatement (Second) of Torts § 700 cmt. g (1977). The parent is also allowed recovery for any reasonable expenses incurred in regaining custody of the child. *Id.* While some jurisdictions have adopted this cause of action in both federal and state actions, to date, Illinois has not formally adopted the Restatement for this tort, and it is clear that a restatement is not binding on Illinois courts unless it is adopted by our supreme court. See *Tilschner v. Spangler*, 409 Ill. App. 3d 988, 990 (2011). However, despite there being no formal adoption of this tort under the Restatement, there is a conflict among districts of our appellate court, with the Fourth District rejecting the cause of action in *Whitehorse v. Critchfield*, 144 Ill. App. 3d 192 (1986), and

[1]Additionally, it should be noted that *Jacquety* and *Litowchak v. Litowchak*, no. 2:15-cv-185, 2015 WL 7428573 (Nov. 20, 2015) are unpublished slip opinions, which have no legal precedential value.

[2] While there are other cases where a third party has been sued for recovery of the abducted children, I have found no other cases that address financial recovery under ICARA against third parties.

the First District recognizing recovery in *Dymek v. Nyquist*, 128 Ill. App. 3d 859 (1984). Additionally, as noted above, the United States District Court for the Northern District of Illinois recognized the tort under Illinois law in *Kunz v. Deitch*, 660 F. Supp. 679, 680 (N.D. Ill. 1987). While the majority notes that those cases were all decided prior to *Dralle v. Ruder*, 124 Ill. 2d 61 (1988), it ignores the fact that our supreme court in *Dralle* explicitly stated that, at that time, it was *not* considering "the nature or extent of the recovery in cases based on what has been termed a 'direct interference' with the parent-child relationship." *Id.* at 72-73. A fair reading of that statement is that *Dralle*'s holding was limited to those circumstances where parents sought economic recovery for nonfatal injury to their children and that it left the door open for future consideration of this issue. And since *Dralle*, our supreme court has yet to conclusively decide whether or not Illinois recognizes the tort of intentional interference with a parent's custodial rights as codified in the Restatement of Torts.

¶ 39 Additionally, public policy dictates that Illinois should recognize tortious interference with custodial rights. Currently, the Illinois legislature has not codified a civil remedy for child abduction or aiding and abetting child abduction, although both are codified as felonies with criminal penalties. See 720 ILCS 5/10-5 (West 2022) (child abduction); *id.* § 10-7 (aiding or abetting child abduction). Public policy supports the rejection of a *per se* rule that a parent can never sustain a cause of action for direct interference with the parent-child relationship. The continued adoption of such a rule essentially absolves those who aid and abet child abductions, which is clearly a wrongful act and harmful to the parents and children. To hold otherwise is to allow defendants' actions to be without consequence. This is especially true in a particularly egregious circumstance such as this, where defendants, armed with the knowledge that Jeremy

only had supervised visitation to specifically prevent abduction, went to great lengths to knowingly assist and finance the children's abduction.

¶ 40 Refusal to recognize tortious interference with custodial rights would also frustrate the fundamental right that a parent has to the continued enjoyment of his or her child, which is at the heart of the Hague Convention, the ICARA, and our criminal statutes that address child abduction. Contrary to defendants' assertions, Viera (or any parent in such situation) does not have any other remedy available because individual parties do not determine what cases the state's attorney prosecutes. As such, it is disingenuous to argue that the penalties contained in the criminal kidnapping statute would provide relief to Viera under these circumstances.

¶ 41 With respect to Viera's conspiracy claim, I would find that Illinois recognizes civil conspiracy as a distinct cause of action. *Lewis v. Lead Industries Ass'n*, 2020 IL 124107, ¶ 19. Civil conspiracy is defined as a combination of two or more persons for the purpose of accomplishing, by some concerted action, either an unlawful purpose or a lawful purpose or a lawful purpose by unlawful means. *Id.*; *McClure v. Owens Corning Fiberglass Corp.*, 188 Ill. 2d 102, 133 (1999). " 'The function of a [civil] conspiracy claim is to extend liability in tort beyond the active wrongdoer to those who have merely planned, assisted or encouraged the wrongdoer's acts.' " *Lewis*, 2020 IL 124107, ¶ 19 (quoting *Adcock v. Brakegate, Ltd.*, 164 Ill. 2d 54, 62 (1994)).

¶ 42 To state a claim for civil conspiracy, a plaintiff must allege an agreement and a tortious act committed in furtherance of that agreement. *Id.* ¶ 20. Civil conspiracy requires proof that a defendant knowingly and voluntarily participates in a common scheme to commit an unlawful act or a lawful act in an unlawful manner. *Id.* Further, once the conspiracy is formed, all of its members are liable for injuries caused by any unlawful acts performed pursuant to and in furtherance of the conspiracy. *Id.* To prevail on a theory of civil conspiracy, a plaintiff must plead and prove (1) the

existence of an agreement between two or more persons (2) to participate in an unlawful act or a lawful act in an unlawful matter, (3) that an overt act was performed by one of the parties pursuant to and in furtherance of a common scheme, and (4) an injury caused by the unlawful overt act. *Id.*

¶ 43 I would find that the allegations in Viera's complaint support a cause of action for civil conspiracy to intentionally inflict emotional distress by defendants. A liberal reading of Viera's verified complaint and taking all facts as true for purposes of consideration of a section 2-615 motion reveals the following. Maya and Oren conspired with Jeremy to remove the children from Slovakia to the United States without Viera's knowledge and to conceal their whereabouts when they knew that Jeremy was not to remove the children from Slovakia per the parties' divorce. The act of removing the children in violation of the divorce decree was an unlawful child abduction. Maya provided Jeremy and the children with a private flight from Slovakia to London, and once they eventually reached the United States, Maya provided them with housing accommodations and living expenses and refused to disclose the children's whereabouts to Viera. Similarly, Oren also provided housing accommodations for Jeremy and the children and refused to disclose the children's whereabouts to Viera. Viera subsequently sustained injuries as a result of defendants' actions in the form of emotional distress as well as economic losses from her costs associated with the location and return of the children, including filing suit against Jeremy under the Hague Convention. Viera's economic losses from Maya and Oren are separate and viable even though she was awarded an amount under her fee petition in the Hague Convention action against Jeremy under the collateral source doctrine; that award does not negate or erase her separate damages for civil conspiracy in state court. Moreover, as previously noted, Viera did not receive the full amount of fees, expenses, and costs sought in her fee petition against Jeremy. Accordingly, as Viera's

complaint properly alleged a cause of action for civil conspiracy, it should not have been dismissed, and I would reverse the dismissal.

¶ 44 I would also find that Viera's award in the federal Hague Convention case does not preclude her recovery against defendants under application of our collateral source rule, especially in this instance where she did not receive the full amount of her requested attorney fees and costs. Illinois recognizes the "collateral source rule," which states that benefits received by the injured party from a source wholly independent of, and collateral to, the tortfeasor will not diminish damages otherwise recoverable from the tortfeasor. *Id.* ¶ 46; *Wills v. Foster*, 229 Ill. 2d 393, 399 (2008). The justification for the rule is that the wrongdoer should not benefit from the expenditures made by the injured party or take advantage of contracts or other relations that may exist between the injured party and third persons. *Lewis*, 2020 IL 124107, ¶ 46.

¶ 45 In conclusion, I would have reversed the dismissal of Viera's complaint and allowed the case to proceed.

No. 1-22-1521

***Hulsh v. Hulsh*, 2024 IL App (1st) 221521**

Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 20-CH-00831; the Hon. Patrick J. Sherlock, Judge, presiding.
Attorneys for Appellant:	Thomas Kanyock and Michael A. Beci, of Schwartz & Kanyock, LLC, of Chicago, for appellant.
Attorneys for Appellee:	Peter Ordower, of Law Office of Peter Ordower, P.C., of Chicago, for appellee Maya Hulsh. Stephen J. Cullen (*pro hac vice*) and Kelly A. Powers (*pro hac vice*), of Miles & Stockbridge P.C., of Washington, D.C., for other appellee.

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

VIERA HULSH, Plaintiff,	)	
v.	)	Cause: 2021CH00831
MAYA HULSH, AND OREN HULSH, Defendants.	)	**JURY DEMANDED**

VERIFIED COMPLAINT FOR DAMAGES AND DECLARATORY RELIEF

Plaintiff, VIERA HULSH ("Viera"), through counsel, SCHWARTZ & KANYOCK, LLC, for her verified complaint for damages and declaratory relief against Defendants, MAYA HULSH ("Maya"), and OREN HULSH ("Oren") demands judgment for damages and declaratory relief arising from Defendants': 1) tortious interference with custodial rights; 2) aiding and abetting tortious interference with custodial rights; and 3) intentional infliction of emotional distress. In support, Viera states as follows.

Parties and Personal Jurisdiction

1. Plaintiff Viera Hulsh is a citizen of the Slovak Republic, with her principal residence and domicile in that foreign state.

2. Jeremy Hulsh ("Jeremy") is a citizen of both the United States and the State of Israel. In August 2019, he filed a bankruptcy petition in the Northern District of Illinois, cause 20-16482, in which he invoked the Court's jurisdiction and venue by affirming residence in the City of Chicago. As of the date of this complaint, he has not amended his schedules. In December 2020, Jeremy submitted a child support payment listing an address in Chicago, Illinois.

3. Defendant Maya Hulsh is, upon information and belief, a citizen of both the United States and the State of Israel. Maya spends significant time in the State of Illinois,

in the City of Chicago, upon information and belief owns and/or rents property in Illinois, and, as described herein, directed her misconduct into Illinois and Cook County.

4. Defendant Oren Hulsh is, upon information and belief, a citizen of both the United States and the State of Israel. Oren has a condominium in the City of Chicago. As described herein, Oren directed his misconduct into Illinois and Cook County, including sheltering Plaintiff's abducted children in Chicago.

Venue

5. Venue is proper pursuant to §2-101 of the Code of Civil Procedure, 735 ILCS 5/2-101, because: (1) Upon information and belief, one of the defendants may reside in Cook County; and (2) a substantial part of the events giving rise to Plaintiff's claims occurred in Cook County.

Applicable law

6. Illinois law applies because: (a) Defendants directed their misconduct into Illinois, including hiding the Children in Illinois; and (b) Plaintiff suffered significant injuries while in Illinois, including incurring attorney fees and legal expenses, lost income and housing expenses incurred as a result of Defendants' misconduct, being forced to temporarily relocate to Illinois while fighting to reobtain custody of her abducted children, and similarly, being forced to incur additional legal fees and expenses while fighting Maya's attempts to assist Jeremy with his Bankruptcy Case in this County, as described below.

Facts

7. Viera and Jeremy litigated a divorce proceeding, including custody rights regarding their two children ("the Children"), in a Court in Slovakia.

8. The Court awarded custody of the Children to Viera.

9. In October 2019, Jeremy nonetheless kidnapped and removed the Children from Slovakia and drove them across the Slovakian border into Hungary.

10. Jeremy charted a private aircraft, paid for, upon information and belief, by his mother, Defendant Maya Hulsh, and flew with the Children to England.

11. Jeremy then travelled with the Children to Toronto, Canada, where he rented a car, upon information and belief, in the name of and paid for by, his brother, Defendant Oren Hulsh, then drove with the Children across the border into the United States.

12. Jeremy took the Children to Florida, but then settled with them in a house in a suburb north of Chicago, Illinois, near the Fox Lake railroad station, without informing Viera or obtaining her permission.

13. Defendant Maya was present in the house where the Children were hidden and helped Jeremy care for the Children.

14. Upon information and belief, Defendant Maya owned or rented the house and helped finance the Children's concealment and care.

15. Upon information and belief, Defendant Oren was present at times in the house and helped harbor and care for the Children.

16. Maya and Oren knew how to contact Viera, failed to do so and, for a roughly two-month period in 2019, Viera did not know where her Children were being kept by Defendants.

17. Jeremy moved the Children to Defendant Oren's condominium in Chicago, Illinois, without informing Viera or obtaining her permission.

18. Upon information and belief, Defendant Oren assisted with Jeremy's expenses, including use of a BMW automobile.

19. In his Form 107 Financial Statement submitted with his Bankruptcy Petition described herein, Jeremy acknowledged that Defendant Maya has paid his significant ongoing legal fees and helped to support him with his living expenses. Jeremy stated that, as of his Petition, Defendant Maya had paid him $800,000.

20. Upon information and belief, Maya and/or Oren paid:

A. All or most of the expenses incurred in chartering a private aircraft and renting an automobile to transport the Children from Slovakia to Chicago by way of Canada and Chicago's suburbs.

B. All or most upkeep and expenses necessary to harbor and care for the Children while away from their mother, Viera.

C. All or most of Jeremy's expenses allowing him to survive during the time he unlawfully assumed custody of the Children.

D. All or most of Jeremy's legal fees and expenses incurred retaining a Washington, D.C. firm that assigned multiple attorneys to represent his interests in the District Court Case in Chicago.

E. All or most of Jeremy's legal fees and expenses incurred defending himself against criminal stalking and abduction charges in Slovakia after terminating that government's appointed attorney who had been representing Jeremy.

21. Maya and Oren were actively involved in the legal proceedings in Slovakia, including but not limited to submitting individual affidavits, and Maya filing her own multiple legal requests to assert grandparent visitation rights, which were denied.

22. Maya and Oren knew that Jeremy was under custody orders barring him from removing the Children from Slovakia, that Jeremy's parenting was to be supervised, and that Viera had been awarded sole custody of the minor Children.

23. As described herein, Viera prosecuted a claim in the Northern District of Illinois, located in Chicago, against Defendant and successfully reacquired custody of the Children.

24. Viera currently lives in Slovakia with the Children.

District Court Case

25. On November 5, 2019, after Jeremy, with the deliberate and significant assistance of Defendants Maya and Oren, spirited the Children out of Slovakia and into Illinois, Viera filed in the United States District Court for the Northern District of Illinois, case number 19-CV-7298, Viera Hulsh v. Jeremy Hulsh (the "District Court Case"), a Petition for Return of Minor Children under the Convention on the Civil Aspects of the International Child Abduction ("Hague Convention"), Oct. 25, 1980, T.I.A.S. No. 11,670 at 1, 22514 U.N.T.S. at 98, reprinted in 51 Fed. Reg. 10494 (1986), and its enabling legislation, the International Child Abduction Remedies Act ("ICARA"), 22 U.S.C. § 9001-11.

26. The case was tried on February 18-21 and June 17-18, 2020.

27. On July 21, 2020, the District Court entered a memorandum opinion granting Viera's Petition for Return, rejecting Jeremy's defenses, and ordering the Children returned to Viera in Slovakia.

28. As part of the Hague Convention and ICARA opinion, the District Court granted Viera leave to submit a statutory fee, expense, and cost petition per 22 U.S.C. §9007(c).

29. On August 11, 2020, Viera filed in the District Court Case her initial Fee Petition requesting attorneys' fees, expenses and costs incurred pursuing her successful action for return of her Children.

30. Viera incurred significant expenses, including lost income, housing, transportation, and other expenses and costs incurred in travelling to the United States for trial and to see her abducted Children, expert fees, and translation costs. Viera was forced to put her career on hold for many months to come to the United States to see her Children while pursuing the District Court Case.

31. Jeremy filed for an emergency stay with the Seventh Circuit Court of Appeals as well as the United States Supreme Court; he lost both motions.

Bankruptcy Case

32. On August 31, 2020, Jeremy filed a voluntary petition under Chapter 7 of Title 11 of the United States Code ("Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division ("Bankruptcy Case").

33. In his Bankruptcy Case schedules, Jeremy failed to list Viera as a creditor; rather, he incorrectly listed Joy Feinberg, a partner with Feinberg Sharma, Viera's attorney in the District Court Case, as a creditor for attorney fees, expenses and costs claimed.

34. Jeremy wrongly assigned $436,055.26 for the value of the Viera/Feinberg claim even though the District Court had not yet entered judgment establishing the amount of the award.

35. The value of the claim exceeds Jeremy's figure because Viera has since incurred additional fees and expenses in the District Court Case, as well as litigating the Bankruptcy Case; both sets of fees are awardable in the District Court Case.

36. Viera is a creditor in the Bankruptcy Case with claims against Jeremy for her attorney fees and costs incurred in the District Court Case.

37. Jeremy listed just two creditors, Joy Feinberg, and a small claim by the law firm Holland & Knight.

38. Jeremy listed minimal assets, just $4,100 in personal property, despite acknowledging that his mother, Defendant Maya, has consistently supported him by paying at least $800,000 in living and attorney fee expenses.

39. Upon information and belief, Maya has financed Jeremy's additional legal fees and expense incurred in continuing to avoid his responsibilities pursuant to the Hauge Convention/ICARA and Viera's custody rights.

40. On November 18, 2020, Viera and attorney Feinberg filed in the Bankruptcy Case a joint Motion for Relief from Stay Filed by Creditor Viera Hulsh and her counsel Feinberg Sharma, PC.

41. On December 14, 2020, Viera filed a Complaint to Determine Dischargeability and Discharge objecting to the dischargeability of Viera's attorney fees and expense claim. That claim remains pending.

42. On January 11, 2021, the Bankruptcy Court denied Viera's motion for relief from stay as "unnecessary" holding that the Bankruptcy Code automatic stay provisions do not apply to domestic support obligations, including Viera's fee petition.

43. Viera will incur additional legal fees and expenses requesting that the Bankruptcy Court allow her to file this complaint to avoid potentially violating the Bankruptcy Code automatic stay provisions as a potentially related claim.

Amended Fee and Expense Petition

44. On or about January 23, 2021, Viera filed an Amended Fee Petition in the underlying District Court abduction case reflecting increased fees, expenses, and costs.

45. Jeremy will likely claim financial inability to pay the District Court's upcoming fee and expense award, despite the significant financial and other assistance Maya and Oren have provided and continue to provide to Jeremy.

46. Viera will incur additional fees and costs trying to collect her attorney fee and expense award directly related to the misconduct of Defendants herein.

Maya, Oren, and Jeremy Violated Criminal Abduction Statutes

47. 720 ILCS 5/10-5 provides that it is a criminal offense to abduct children or aid and abet the abduction of children in knowing violation of custody orders.

48. 720 ILCS 5/10-7 provides that is a criminal offense to aid and abet child abduction.

Statutory Presumptions of Emotional Distress

49. 750 ILCS §§60-201(b) and 103(7) provide that a person who shares children in common shall be presumed to cause emotional distress when improperly concealing the children from the other parent.

50. Regardless of the aforesaid statutory presumptions, Viera in fact suffered mental anguish and emotional distress when her children were abducted, transported around the world without her knowledge or protection, and Jeremy, Maya, and Oren did not tell her where they were.

Damages

51. As a result of Defendants' interference with her custody rights, Viera suffered significant financial damages, for which Defendants remain jointly and severally liable to her, including but not limited to:

A. Attorney fees and expenses in The District Court Case.

B. Prior and future attorney fees and expenses in the Bankruptcy Case, wherein Jeremy acting in concert with Defendants is attempting to avoid paying by seeking discharge of his obligations to reimburse Viera for her District Court Case fees and expenses and which Bankruptcy Case, upon information and belief, Defendant Maya is financing.

C. Past and possible future lost income, transportation, and living expenses arising from Defendants, acting in concert with Jeremy, forcing Viera to suspend her employment temporarily in Slovakia to come to the Unites States for extended periods to successfully reobtain custody of her Children, litigate the Bankruptcy Case, litigate this case, and take other actions necessary to collect her District Court award.

D. Mental anguish resulting from Defendants abducting her Children with no warning, transporting them across the world, refusing to return them despite custody orders to the contrary, and failing to tell her where her children were located.

Declaratory Judgment

52. 735 ILCS 5/2-701 provides that a Court has the power to issue a declaration of parties' rights if: 1) an actual and legal controversy exists; 2) the controversy is susceptible to an immediate and definitive determination or will aid in the termination of the controversy; and 3) the plaintiff has standing by virtue of a tangible and legal interest in the controversy.

53. Here, an actual and legal controversy exists as to whether Defendants must pay Plaintiff's past and future financial damages resulting from their misconduct involved in the unlawful abduction and harboring of Plaintiff's children.

54. The instant controversy is susceptible to an immediate and definitive determination of the parties' rights, the resolution of which will aid in the termination of the controversy of some part thereof; in particular, whether Defendants must pay damages for Plaintiff's future financial losses as well as her past and present losses, the determination of which would obviate Plaintiff's need to litigate future losses not yet incurred.

55. Plaintiff has a tangible and legal interest in having her past, present, and future financial losses paid resulting from the kidnapping of her children.

Count I
(Tortious interference with custodial rights)
(Maya Hulsh and Oren Hulsh)

56. Plaintiff realleges ¶¶1 – 55 as if fully set forth herein.

57. 720 ILCS 5/10-5 provides that it is a criminal offense to abduct children in knowing violation of custody orders. Maya and Oren violated §10-5 by abducting Viera's Children as described herein.

58. Defendants Maya and Oren knowingly interfered with Viera's custodial rights by directly participating in abducting Viera's children for the intended purpose of violating Viera's custodial rights.

59. As a result of Defendants' interference with her custodial rights, Viera suffered damages.

60. As a result of Defendants' interference with her custodial rights, Viera requires declaratory relief per 735 ILCS 5/2-701.

WHERFORE, for the foregoing reasons, Plaintiff VIERA HULSH, prays that this Honorable Court enter Judgment against Defendants MAYA HULSH and OREN HULSH:

A. For damages in an amount in excess of any jurisdictional limit applicable to this Court in an amount to be determined at trial;

B. For a declaration that Defendants must pay Viera an amount equal to all future lost income and attorney fees and expenses reasonably incurred in litigating the Bankruptcy Case pending in the United States Bankruptcy Court for Northern District of Illinois, cause 20-16482, and all future lost income, transportation and living expenses, and attorney fees and expenses reasonably incurred

obtaining payment of the fee and expense award entered by the United States District Court for the Northern District of Illinois in cause 119-CV-7290;

C. For reasonable punitive damages commensurate with Defendants' outrageous misconduct; and/or

D. For any other relief this Court deems equitable and proper.

Count II

(Civil conspiracy to aid and abet tortious interference with custodial rights)
(Maya Hulsh and Oren Hulsh)

61. Plaintiff realleges ¶¶1 -- 60 as if fully set forth herein.

62. 720 ILCS 5/10-7 provides that is a criminal offense to aid and abet child abduction. Maya and Oren violated §10-7 by aiding and abetting Jeremy's abduction of Viera's Children as described herein.

63. Defendants Maya and Oren reached an agreement with Jeremy to engage in an unlawful scheme of abducting Viera's Children in knowing violation of custody orders, the Hague Convention, ICARA, 720 ILCS 5/10-5(b), and/or 720 ILCS 5/10-5(b).

64. Defendants' agreement with Jeremy, and with each other, was both for an unlawful purpose and otherwise conducted by each in an unlawful manner.

65. Regardless of whether Maya and Oren also did so, Jeremy, acting in concert with them pursuant to agreement and with their substantial assistance, violated the Hague Convention, ICARA, 720 ILCS 5/10-5(b), and/or 720 ILCS 5/10-5(b).

66. Viera's financial and emotional injuries were caused by Defendants' overt acts stated herein caused by Maya, Oren, and Jeremy, acting individually and in concert with each other.

67. Maya's, Oren's, and Jeremy's overt acts were done pursuant to and in furtherance of the common scheme to abduct Viera's Children.

68. As a result of Defendants' aiding and abetting Jeremy's abduction of her Children, Viera suffered financial damages.

69. As a result of Defendants' aiding abetting Jeremy's abduction of her Children, Viera requires declaratory relief per 735 ILCS 5/2-701.

WHERFORE, for the foregoing reasons, Plaintiff VIERA HULSH, prays that this Honorable Court enter Judgment against Defendants MAYA HULSH and OREN HULSH:

A. For damages in an amount in excess of any jurisdictional limit applicable to this Court in an amount to be determined at trial;.

B. For a declaration that Defendants must pay Viera an amount equal to all future lost income and attorney fees and expenses reasonably incurred in litigating the Bankruptcy Case pending in the United States Bankruptcy Court for Northern District of Illinois, cause 20-16482, and all future lost income, transportation and living expenses, and attorney fees and expenses reasonably incurred obtaining payment of the fee and expense award entered by the United States District Court for the Northern District of Illinois in cause 119-CV-7290;

C. For reasonable punitive damages commensurate with Defendants' outrageous misconduct; and/or

D. For any other relief this Court deems equitable and proper.

Count III
(Intentional Infliction of Emotional Distress)
(Maya Hulsh and Oren Hulsh)

70. Plaintiff realleges ¶¶1 -- 68 as if fully set forth herein.

71. Defendants' kidnapping, and aiding and abetting Jeremy's kidnapping, of Viera's Children was extreme and outrageous beyond all bounds of decency.

72. Defendants intended to cause, and/or recklessly or consciously disregarded the probably of causing, Viera emotional distress.

73. Pursuant to Illinois law, 750 ILCS §§60-201(b) and 103(7), a person who shares children in common shall be presumed to cause emotional distress when improperly concealing the children from the other parent. Jeremy shared the Children in common with Viera and improperly concealed them from Viera thus raising a statutory presumption of emotional distress.

74. Regardless of the statutory presumption, Viera in fact suffered severe mental anguish no mother should be expected to endure when Defendants kidnapped, and/or aided and abetted Jeremy kidnapping, her Children.

75. Viera's mental anguish and emotional distress was the direct proximate result of Defendants kidnapping, and/or aiding and abetting Jeremy kidnapping, her Children.

76. Defendant's misconduct was extreme and outrageous.

WHERFORE, for the foregoing reasons, Plaintiff VIERA HULSH, prays that this Honorable Court enter Judgment against Defendants MAYA HULSH and OREN HULSH:

A. For damages in an amount in excess of any jurisdictional limit applicable to this Court in an amount to be determined at trial;

B. For reasonable punitive damages commensurate with Defendants' outrageous misconduct; and/or

C. For any other relief this Court deems equitable and proper.

Respectfully submitted,

VIERA HULSH

By: /s/Thomas Kanyock
One of her attorneys

Thomas Kanyock
Karen I. Bridges

Andrew R. Schwartz
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VERIFICATION

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in her Verified Complaint for Damages and Declaratory Relief, are true and correct, except as to matters therein stated to be on information and belief and as to any such matters the undersigned certifies that she verily believes the same to be true. The undersigned further certifies that any allegations of lack of knowledge are true and correct.

Viera Hulsh

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

VIERA HULSH, Plaintiff,	)	
v.	)	Cause:
MAYA HULSH, AND OREN HULSH, Defendants.	)	**JURY DEMANDED**

SUPREME COURT RULE 222 AFFIDAVIT OF DAMAGES

The undersigned deposes and states pursuant to 735 ILCS 5/1-109, that he is counsel for the plaintiff in the above entitled cause of action seeking money damages or collection of taxes, and states, to the best of his knowledge and belief, that the total amount sought in this cause of action exceeds $50,000.

/s/ Thomas Kanyock

120931

Fill in this information to identify your case:

United States Bankruptcy Court for the:

NORTHERN DISTRICT OF ILLINOIS

Case number *(if known)* _____

Chapter you are filing under:

- ■ Chapter 7
- ☐ Chapter 11
- ☐ Chapter 12
- ☐ Chapter 13

☐ Check if this is an amended filing

Official Form 101

Voluntary Petition for Individuals Filing for Bankruptcy

04/20

The bankruptcy forms use *you* and *Debtor 1* to refer to a debtor filing alone. A married couple may file a bankruptcy case together—called a *joint case*—and in joint cases, these forms use *you* to ask for information from both debtors. For example, if a form asks, "Do you own a car," the answer would be *yes* if either debtor owns a car. When information is needed about the spouses separately, the form uses *Debtor 1* and *Debtor 2* to distinguish between them. In joint cases, one of the spouses must report information as *Debtor 1* and the other as *Debtor 2*. The same person must be *Debtor 1* in all of the forms.

Be as complete and accurate as possible. If two married people are filing together, both are equally responsible for supplying correct information. If more space is needed, attach a separate sheet to this form. On the top of any additional pages, write your name and case number (if known). Answer every question.

Part 1: Identify Yourself

	About Debtor 1:	About Debtor 2 (Spouse Only in a Joint Case):
1. Your full name Write the name that is on your government-issued picture identification (for example, your driver's license or passport). Bring your picture identification to your meeting with the trustee.	**Jeremy** First name **Barock** Middle name **Hulsh** Last name and Suffix (Sr., Jr., II, III)	First name Middle name Last name and Suffix (Sr., Jr., II, III)
2. All other names you have used in the last 8 years Include your married or maiden names.		
3. Only the last 4 digits of your Social Security number or federal Individual Taxpayer Identification number (ITIN)	**xxx-xx-7783**	

Debtor 1 **Jeremy Barock Hulsh** Case number (*if known*)

14. **Within 2 years before you filed for bankruptcy, did you give any gifts or contributions with a total value of more than $600 to any charity?**

■ No

☐ Yes. Fill in the details for each gift or contribution.

Gifts or contributions to charities that total more than $600 Charity's Name Address (Number, Street, City, State and ZIP Code)	Describe what you contributed	Dates you contributed	Value

Part 6: List Certain Losses

15. **Within 1 year before you filed for bankruptcy or since you filed for bankruptcy, did you lose anything because of theft, fire, other disaster, or gambling?**

■ No

☐ Yes. Fill in the details.

Describe the property you lost and how the loss occurred	Describe any insurance coverage for the loss Include the amount that insurance has paid. List pending insurance claims on line 33 of *Schedule A/B: Property.*	Date of your loss	Value of property lost

Part 7: List Certain Payments or Transfers

16. **Within 1 year before you filed for bankruptcy, did you or anyone else acting on your behalf pay or transfer any property to anyone you consulted about seeking bankruptcy or preparing a bankruptcy petition?**
Include any attorneys, bankruptcy petition preparers, or credit counseling agencies for services required in your bankruptcy.

☐ No

■ Yes. Fill in the details.

Person Who Was Paid Address Email or website address Person Who Made the Payment, if Not You	Description and value of any property transferred	Date payment or transfer was made	Amount of payment
Ottenheimer Law Group, LLC 750 Lake Cook Road Suite 290 Buffalo Grove, IL 60089 lottenheimer@olawgroup.com	**Attorney Fees**		**$3,200.00**

17. **Within 1 year before you filed for bankruptcy, did you or anyone else acting on your behalf pay or transfer any property to anyone who promised to help you deal with your creditors or to make payments to your creditors?**
Do not include any payment or transfer that you listed on line 16.

☐ No

■ Yes. Fill in the details.

Person Who Was Paid Address	Description and value of any property transferred	Date payment or transfer was made	Amount of payment
Attorneys for Debtor	**Maya Hulsh has paid Debtor's ongoing legal fees and helped to support Debtor's living expesnes.**		**$800,000.00**

18. **Within 2 years before you filed for bankruptcy, did you sell, trade, or otherwise transfer any property to anyone, other than property transferred in the ordinary course of your business or financial affairs?**
Include both outright transfers and transfers made as security (such as the granting of a security interest or mortgage on your property). Do not include gifts and transfers that you have already listed on this statement.

■ No

☐ Yes. Fill in the details.

Person Who Received Transfer Address Person's relationship to you	Description and value of property transferred	Describe any property or payments received or debts paid in exchange	Date transfer was made

A-40

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

VIERA HULSH, formerly known as VIERA WISTEROVA,	)	
Petitioner,	)	No. 19 C 7298
v.	)	Judge Virginia M. Kendall
JEREMY HULSH,	)	
Respondent.	)	

MEMORANDUM ORDER AND OPINION

Respondent Jeremy Hulsh removed his sons, H.P.H. and T.S.H. (ages eight and six), from the territory of Slovakia on or about October 24, 2019 without the consent of the children's mother, Petitioner Viera Hulsh. (Tr. at pp. 73–75, 360.)[1] On November 5, 2019, Viera Hulsh filed this petition to regain custody of her children. A Slovakian court had previously declared that the children—both of whom were born in Israel—made their place of habitual residence in Slovakia. (*Id.* at p. 76; Petitioner Ex. 9.) Jeremy brought the children to Chicago, Illinois, where they have resided ever since.

The first concern for the Court was to ensure that the children were in a safe and nurturing environment and that they would not be harmed by the ongoing litigation. As the attorneys gathered evidence for the hearing, the Court worked with the parties to create a custody agreement that would be in the children's best interest while ensuring access to both parents. The Court is grateful to the generous service of guardians ad litem Bruce Boyer and Stacey Platt from Loyola University Chicago School of Law's Civitas ChildLaw Center. They tirelessly came on board the case during challenging times—first, the holiday season and second, a world pandemic—and they

[1] The Court uses the abbreviation "Tr." to refer to the transcript of the evidentiary hearing, docket number 165.

continued to meet with the children, their monitors, and their parents to report to the Court regularly. They ensured that the children were enrolled in school, had regular contact with both parents, and that no discussion of this litigation was made in their presence. Their service enabled the Court to focus on the legal issues and the evidentiary hearing, and as such, they deserve this Court's gratitude for their professionalism and service. It should be noted that one significant factor that came from the guardians ad litem is that both parents love their children and wish for their best.

Shortly following the children's arrival in the United States, Viera filed the instant Petition pursuant to the Hague Convention on the Civil Aspects of International Child Abduction ("the Convention") seeking to have the children returned to Slovakia. (Dkt. 1.) Jeremy does not contest that he abducted the children. (*See* Tr. at p. 644, wherein counsel for Respondent refers to Jeremy's action as a justified abduction.) Instead, he invokes two treaty exceptions, which if established, would permit the Court to decline to return the children to Slovakia. First, he posits that the Article 13(b) exception applies, claiming that his children would face a grave risk of physical or psychological harm upon returning to Slovakia because he believes that Viera's paramour, Michal Svarinksy, has pedophilic tendencies and has exhibited "grooming" behavior toward the children. Second, he raises an Article 20 defense, arguing that returning the children to Slovakia would violate the fundamental principles of the United States relating to the protection of human rights and fundamental freedoms.

For the reasons set forth below, the Court finds that Jeremy wrongfully removed H.P.H. and T.S.H. from Slovakia, the country of their habitual residence, in violation of Article III of the Convention and that Jeremy has not met his burden to establish any treaty exception. Accordingly, the Petition (Dkt. 1) is granted.

LEGAL STANDARD

The United States and Slovakia are both signatories to the Convention. Hague Conference on Private Int'l Law, Convention of 25 Oct. 1980 on the Civil Aspects of Int'l Child Abduction, Status Table, https://www.hcch.net/en/instruments/conventions/status-table/?cid=24. Congress implemented the Convention domestically via the International Child Abduction Remedies Act ("ICARA"). *See* 22 U.S.C. §§ 9001–11. The Convention entitles a parent who believes her children have been wrongfully removed from the children's country of habitual residence to petition a federal court to order the children returned. *Id.* The Convention and the implementation statute only allow federal courts to determine whether children have been wrongfully removed and whether any exception applies; courts are not permitted to decide the merits of any underlying custody claims. 22 U.S.C. § 9001(b)(4).

The burden lies with the petitioner in a wrongful removal action to establish by a preponderance of the evidence that the children have been wrongfully removed within the meaning of the Convention. 22 U.S.C. § 9003(e)(1). A removal is wrongful under the Convention if:

> (a) it is in breach of rights of custody attributed to a person . . . under the law of the State in which the child was habitually resident immediately before the removal . . . ; and
> (b) at the time of removal . . . those rights were actually exercised . . . or would have been so exercised but for the removal . . . .

The Hague Convention on the Civil Aspects of International Child Abduction, art. 3, Oct. 25, 1980, T.I.A.S. No. 11,670, 1342 U.N.T.S. 89. If the petitioner establishes a *prima facie* case of wrongful removal under Article 3, the burden shifts to the respondent to prove that a treaty exception applies. 22 U.S.C. § 9003(e)(2). The Convention provides for five distinct exceptions. *See Chafin v. Chafin*, 568 U.S. 165, 169 (2013) (explaining each of the Convention exceptions). A respondent bears the burden of establishing an Article 13(b) or Article 20 exception by clear and convincing

evidence. 22 U.S.C. § 9003(e)(2)(A). If no exception applies, the federal court must order the prompt return of wrongfully removed children to their country of habitual residence. *Monasky v. Taglieri*, 140 S. Ct. 719, 723 (2020).

FINDINGS OF FACT

Having heard testimony in open court over the course of five days,[2] having received documents into evidence, and having heard argument from both parties' counsel, the Court makes the following findings of fact.

I. The Hulsh Family

Viera Hulsh, née Wisterova, is 42 years-old and is a citizen of both Slovakia and Israel. (Tr. at p. 15.) She is an entertainment moderator and presenter on Slovakian television and radio programs. (*Id.*) She resides in Bratislava, Slovakia. (*Id.*)

Jeremy Hulsh is 41 years-old and is a citizen of Israel and the United States. (Tr. at p. 155.) He currently resides in Chicago.

Together, Jeremy and Viera had two children, H.P.H. and T.S.H, both of whom were born in Tel Aviv, Israel. (Tr. at p. 16.) H.P.H. was born in October, 2011. (Tr. at p. 16.) T.S.H was born in April, 2014. (*Id.*) Both children hold American, Israeli, and Slovakian passports. (Tr. at pp. 35–36.)

[2] The Court heard testimony on February 18–21 and the hearing was expected to reconvene by agreement of the parties in March. Unfortunately, the evidentiary hearing was interrupted due to the COVID-19 pandemic. The Court is aware that the Convention recommends that courts decide such cases within six weeks of the commencement of proceedings. The Court wishes it could have complied with that timeline here, but given the extraordinary public health circumstances, this delay was unavoidable. Once the situation stabilized. the Court notified the parties as soon as it was permitted to conduct a hearing in person and reconvened the hearing on June 17-18, 2020, provided for post-hearing briefings with a transcript, and issued this Opinion as expeditiously as possible.

II. Relocation from Tel Aviv and Life in Bratislava

In May of 2014, five weeks after T.S.H.'s birth in Israel, the parties and their children relocated from Tel Aviv to Bratislava. (Tr. at pp. 16–17.) They made this move because they did not think that Israel was a safe place to live and because Viera had better career opportunities as a radio and television presenter in Slovakia. (Tr. at p. 17.) Jeremy contests the notion that anyone ever "moved" to Bratislava, but the Court finds Viera's interpretation of the events to be more persuasive, as described in further detail below. Before the family flew to Bratislava, they vacated the small apartment that they rented in Tel Aviv. (Tr. at pp. 18–19.) They packed up their belongings, shipped many of them to Bratislava, and kept some items in a storage unit in Tel Aviv. (*Id.*) By the end of 2014, they sold or gave away almost all of their belongings in Israel with the exception of two boxes that remained at a family member's home. (Tr. at p. 19.) They stopped paying rent for the Tel Aviv apartment in August, 2014. (Tr. at p. 270.) After taking the initial flight to Bratislava from Tel Aviv in May, 2014, the children only spent two to three weeks in Israel for the remainder of 2014. (Tr. at p. 266.) Also in 2014, H.S.H., who was then two-and-a-half years-old, enrolled in "preschool and kindergarten" in Bratislava at the "Bambi Kindergarten." (Tr. at p. 20.) Both boys also saw a pediatrician in Slovakia beginning in 2014. (Tr. at pp. 21–22.) Jeremy, Viera, and the boys lived in a two-bedroom apartment beginning in 2014, which was located at Bradacova 6 in Bratislava. (Tr. at p. 25.)

In 2015, the children spent a total of 56 days in Israel over four trips. (Tr. at p. 268:22–24.) During that year, H.P.H. attended a Jewish preschool and kindergarten in Bratislava called Lauder Gan Menachem. (Tr. at p. 26.) The family continued to live at the apartment at Bradacova 6 in Bratislava. (Tr. at p. 26:7–11.)

In 2016, the children spent just twenty days in Israel over three trips, during which they stayed with family. (Tr. at pp. 32, 271–72.) The family continued to live at the same Bratislava apartment. (Tr. at p. 31.) H.P.H. attended Lauder Gan Menachem again in 2016 and took swimming classes in Bratislava in 2016. (Tr. at pp. 30, 273–74.) Both children attended gymnastics courses in Bratislava. (Tr. at p. 31.) H.P.H also saw a speech therapist in Bratislava that year. (Tr. at p. 31.) Viera and Jeremy's relationship began to deteriorate in or around 2016; Viera consulted a divorce lawyer for the first time in 2016. (Tr. at p. 142.)

Before Viera and Jeremy's relationship began to deteriorate, the parties had been discussing the possibility of moving to the United States since approximately 2014. (Tr. at pp. 143, 446.) Indeed, these discussions appear to have been quite serious, given that Viera went through the process of getting a "Green Card," which she was able to obtain in 2016 through the sponsorship of her brother-in-law, Oren Hulsh. (Tr. at p. 370.) Jeremy had conducted research into neighborhoods, schools, and possible employment in Southern California, including taking a trip there in November 2016 for those purposes. (Tr. at pp. 418–20.) Viera also conducted some research into schools for the children and homes in the greater Los Angeles area and in New York. (Tr. at pp. 117, 455.)

The children spent a total of eight days in Israel in 2017, all at the very beginning of the year, and they have not returned to Israel since. (Tr. at pp. 273–74.) The family had traveled to Israel in December 2016 in part because Viera and Jeremy intended to file for a religious divorce, or a "Get." (Tr. at p. 33.) On January 8, 2017, Viera returned to Slovakia with the children without having received a Get. (Tr. at pp. 34, 488.) Viera considered herself separated from Jeremy as of January 8, 2017. (Tr. at p. 50.) Given that the parties had separated, the record is replete of any

suggestion that the parties continued discussing moving to the United States after January 2017. Indeed, Viera relinquished her Green Card on August 14, 2017. (Tr. at p. 115.)

Both children attended the "Fantastika" school in Bratislava in 2017. (Tr. at pp. 51–52.) They both attended swimming classes, gymnastic classes, and Sunday Jewish school in Bratislava that year. (*Id.*) H.P.H. also attended a weekly climbing school and regular "sand therapy" sessions in Bratislava in 2017. (Tr. at pp. 52–54.) H.P.H. also saw a pediatric psychiatrist in Bratislava in 2017. (Tr. at pp. 54–55.)

Also in 2017 (and through to this present date), Viera had a Slovakian paramour named Michal Svarinsky, with whom she had been having an affair prior to the family's December 2016 trip to Israel. (*See* Tr. at pp. 40, 44, 494.) According to Viera, Jeremy threatened to kill Svarinsky during a confrontation in January of 2017 in Israel. (Tr. at p. 44.) Jeremy believes that Mr. Svarinksy has engaged in sexually inappropriate grooming behavior toward H.P.H. and T.S.H. (Tr. at p. 341.) Jeremy's central piece of evidence of Svarinsky's sexually inappropriate behavior is a WhatsApp message thread between Viera and Svarinsky from December 28th, 2016 that, translated from the original Slovak, reads as follows:

> Viera: How come you are up?
> Svarinsky: Seriously?
> Svarinsky: I jerked off
> Viera: And I caught you
> Svarinsky: But I stopped
> Viera: Well, go on ;-)
> Svarinsky: He is here next to me, I cannot
> Svarinsky: He put his legs on me and that's it
> Svarinsky: I am going to the bathroom :-)
> Viera: Ok
> Svarinsky: Wow
> Svarinsky: I would put it to your mouth
> Viera: I would love it very much
> Svarinsky: I am done

(Respondent Ex. 115 at p. 5589.) It is undisputed that the "he" to whom Svarinsky refers in this thread is Svarinsky's then-nine year-old son. (Tr. at p. 101.) Jeremy also believes that a WhatsApp message from Svarinsky to Viera that reads "good night and say hello to these sweet smelling boys from the gentleman with the strange lamp" (Respondent Ex. 115 at p. 5505) suggests that Svarinsky is disposed to pedophilia or was otherwise engaged in grooming behavior.[3] Having reviewed these messages, Jeremy has spent the last few years learning about grooming behavior and attempting to educate his children about pedophilia and sexual abuse because he believed that his children needed to be educated about the risk he believed Svarinksy posed to them. (Tr. at p. 364.) Jeremy instructed his children on grooming, boundaries, and sexually inappropriate behavior through the use of children's books on the subject. (Tr. at p. 364.)

In 2018, the boys continued to attend the Fantastika School in Bratislava where they lived with Viera at Viera's father's apartment. (Tr. at p. 56:11–18.) That year, the boys also attended ice skating class, gymnastics class, swimming class, and "pony calming" sessions, all in Slovakia. (Tr. at pp. 56–57.) Both boys also saw a psychotherapist in Slovakia that year. (Tr. at p. 58.)

In 2019, Viera and the boys (by then, ages seven and five) continued living in Viera's father's apartment in Bratislava. (Tr. at p. 59:9–13.) The boys attended a new school in Bratislava starting in September of 2019, close to Viera's father's apartment. (Tr. at p. 61:19–23.) They continued many of the same extracurricular activities that they had engaged in during prior years. (Tr. at pp. 64:22–65:5.) The parties obtained a legal divorce in Slovakia in 2019. (Petitioner Ex. 1 at p. 2.)

[3] The Father's response to interrogatory number five lists 150 WhatsApp messages from Svarinsky that he believes demonstrate pedophilia or grooming behavior (Petitioner Ex. 44 at pp. 14–18), but the two threads referenced above were discussed the most during the evidentiary hearing.

On October 24, 2019, Jeremy was exercising his parenting time under the supervision of Viera's father. (Tr. at p. 73:9–18.) Viera came to understand through a series of calls and emails that her father had lost track of Jeremy and the children and that Jeremy had taken the children to the Tatras Mountains region of Slovakia. (Tr. at pp. 73–74.) In fact, Jeremy had taken the children with him via car to Hungary, took them on a private jet to London, flew them from London to Toronto on a commercial flight, and drove them to Chicago, all without Viera's knowledge or consent. (Tr. at pp. 74–75, 499; Dkt. 30 at pp. 24–25.) The instant Petition followed shortly thereafter.

III. Hague Proceedings in Israel and Slovakia

In June of 2017, Jeremy filed a child abduction case under the Convention in Slovakian courts, demanding that the children be returned to Israel. (Petitioner Ex. 7.) According to Viera's lawyer, Anna Niku,[4] the Slovakian court held a hearing that took place over the course of two days, both parties were represented by counsel at this hearing, and both parties presented evidence to the court. (Tr. at pp. 189–91; *see also* Petitioner Ex. 9, the Slovakian district court opinion.) Jeremy, who does not speak Slovak, was provided an interpreter throughout the proceedings. (Tr. at pp. 194–95.) On January 8, 2018, the Slovakian district court issued a written ruling (it also issued an oral ruling to the same effect on August 17, 2017), in which the court found that Slovakia had been the children's place of habitual residence and dismissed Jeremy's petition. (Dkt. 92-5; Petitioner Ex. 9.) Jeremy, through counsel, then appealed the district court's decision to the regional appellate court. (Tr. at 193–94; Petitioner Ex. 10.) The appellate court, with a panel comprising three judges, none of whom Jeremy alleges had any bias against him, upheld the

[4] The Court considers Niku's testimony only as a fact witness regarding the Hulsh cases in Slovakian courts. Viera proferred Dr. Niku as an expert in Slovakian family law, (Tr. at p. 173) but given that she is also Viera's lawyer in Slovakia, the Court has serious doubts about her impartiality and reliability as an expert.

decision of the district court. (Dkt. 92-7; Petitioner Ex. 12.)[5] Jeremy then appealed that decision to the Constitutional Court of Slovakia, which also denied the appeal, finding the appeal "manifestly unfounded." (Petitioner Ex. 13.) He further appealed to the European Court of Human Rights, which found no evidence that the Slovakian courts misapplied the Convention or otherwise violated Jeremy's human rights. (Dkt. 30 at ¶¶ 58–59; Petitioner Ex. 15.)

ANALYSIS

I. *Prima Facie* Case

Article III of the Convention requires the Court to make the following findings to determine whether Viera has made out a *prima facie* case of wrongful removal. *See Redmond v. Redmond*, 724 F.3d 729, 737–38 (7th Cir. 2013). First, where were the children "habitually resident" as of October 24, 2019, the date of the removal and retention? Second, did the removal and retention breach Viera's custody rights under the law of the country in which the children were habitually resident? Third, was Viera exercising her custody rights at the time of removal and retention? The Court addresses each of these questions in turn.

a. Habitual Residence

As outlined above, the Slovakian court system, as affirmed by the European Court of Human Rights, has already ruled that Slovakia was the children's place of habitual residence as of 2014. Before reaching the merits of the habitual residence question, the Court first considers whether to give preclusive effect to the Slovakian district court's judgment regarding habitual residence. Viera's contends that the issue of the children's habitual residence was already litigated in Slovakian courts and that this Court should give that determination preclusive effect. Jeremy

[5] Jeremy alleges that Judge Patricia Zeleznikova was biased in favor of Viera because of Dr. Niku's previous representation of Zeleznikova, but Zeleznikova was not a judge in any of the Hague proceedings in Slovakia. (Petitioner Ex. 12 at p. 28.)

contends that even if issue preclusion might normally apply in this situation, this Court cannot give preclusive effect to the judgment of a foreign court system that he contends fails to protect fundamental human rights.

Federal courts "should generally give preclusive effect to [a] foreign court's finding as a matter of comity." *United States v. Kashamu*, 656 F.3d 679 (7th Cir. 2011). Indeed, "American courts apply the American doctrine of res judicata even to a foreign judgment of a nation . . . that would not treat an American judgment the same way." *Gabbanelli Accordions & Imports, LLC v. Gabbanelli*, 575 F.3d 693, 697 (7th Cir. 2009).[6] The doctrine of issue preclusion "bars 'successive litigation of an issue of fact or law actually litigated and resolved in a valid court determination essential to the prior judgment.'" *Taylor v. Sturgell*, 553 U.S. 880, 892 (2008) (quoting *New Hampshire v. Maine*, 532 U.S. 742, 748 (2001)). Issue preclusion applies when 1) the issue sought to be precluded is the same as that involved in prior litigation, 2) the issue was actually litigated in the prior litigation, 3) determination of the issue was essential to the final judgment in the previous litigation, and 4) the party against whom issue preclusion is invoked in the current action was fully represented in the prior action. *Matrix IV, Inc. v. Am. Nat'l Bank & Trust Co. of Chi.*, 649 F.3d 539, 547 (7th Cir. 2011).

Here, the habitual residence issue before the Slovakian court that ruled on Jeremy's Convention petition was the place of the children's habitual residence as of January 8, 2017, the date on which Jeremy alleged that the children were wrongfully removed from Israel. (Petitioner Ex. 9 at ¶ 24.) The habitual residence issue before this Court, by contrast, is the location of the children's habitual residence as of October 24, 2019, the date on which Jeremy removed the children from Slovakia and brought them to the United States. *See* The Convention, art. 3(a)

[6] Jeremy contends that the Slovakian courts' habitual residence determination should not be granted comity because the Slovakian court system is corrupt, as explained in more detail in Section III of this Opinion.

(A removal is wrongful if it was in breach of the laws of the country in which the child "was habitually resident immediately before the removal or retention."); *Monasky*, 140 S.Ct. 719 at 727 ("The place where the child is at home, *at the time of removal or retention*, ranks as the child's habitual residence.") (emphasis added). Because the instant Petition pertains to a different allegedly wrongful removal, this Court must make an independent determination about the children's habitual residence at the time of that second removal. The children's habitual residence on October 24, 2019 is not the same issue that was litigated in the Slovakian Hague proceedings, so the Slovakian Hague decision has no preclusive effect. The Court must make its own habitual residence determination.[7]

The Convention does not define the term "habitual residence." *Monasky*, 140 S.Ct. at 726. The Supreme Court defines the term as the "place where the child is at home, at the time of removal or retention." *Id.* Determining where a child is at home is a fact-driven inquiry, that requires courts to use common sense and consider the unique circumstances of each case. *Id.* at 727 (citing *Redmond*, 724 F.3d at 744). Parents' intentions and circumstances pertaining to the parents, like their place of work, are relevant considerations in this inquiry, especially when the children at issue are too young to have acclimated to a particular environment. *Id.* at 727. "No single fact, however, is dispositive across all cases." *Id.*

The facts of the instant case lead to the inescapable conclusion that at the time of their removal from Slovakia by their father, H.P.H. and T.S.H. were "at home" in Slovakia and no place else. Both boys attended school in Slovakia. They participated in a myriad of extracurricular

[7] Of course, if two removal dates were very temporally proximate, it is possible that a court could find two distinct Convention cases to present precisely the same issue. But the Court need not reach the question of how close those dates would need to be to present the same issue. Here it is enough to note that much can change over the course of nearly three years, especially considering that those three years made up a substantial percentage of the children's lives up to that point.

activities in Slovakia. They saw a pediatrician in Slovakia. They saw a psychotherapist in Slovakia. Their mother worked in Slovakia. They lived in their grandfather's apartment in Slovakia.

In T.S.H.'s case, he had never known a home other than Slovakia. By the Court's arithmetic, T.S.H. spent the first five weeks of his life in Israel and since then has spent just over 100 days in that country. Before Jeremy removed T.S.H. from Slovakia late last year, T.S.H. had not visited Israel since January, 2017. T.S.H., a five-year-old, could hardly have been at home in a country he had not visited since he was two years-old. And before Jeremy brought T.S.H. to Chicago late last year, T.S.H. had never been to the United States. (Tr. at p. 500:10–11.) A five year-old child is certainly not at home in a country to which he has never been. T.S.H. has also visited a few other countries with his family on short vacations, including Austria, Hungary, and the Maldives, but he is certainly not at home in any of those places. (Tr. at p. 418.) Slovakia is the only country in which T.S.H. could plausibly have been at home on October 24, 2019.

In H.P.H.'s case, he lived in Israel for approximately the first two-and-a-half years of his life. Between May, 2014 and October 24, 2019, however, he spent the vast majority of his life in Slovakia, with the exception of some family trips to Israel and elsewhere. Like his younger brother, he attended school in Slovakia, went to the doctor in Slovakia, participated in extracurricular activities in Slovakia, etc. Given his young age when his family moved to Slovakia, he likely knows no home other than Slovakia. Like his younger brother, H.P.H. was "at home" in Slovakia as of October 24, 2019.

b. Breach of Custody Rights

It is uncontested in the record before the court that Jeremy's removal of the children from Slovakia without Viera's permission violated her custody rights under the laws of Slovakia. Indeed, the 2017 decision of the District Court of Bratislava V specifically forbade Jeremy from

removing the children from Slovakia without Viera's permission. (Respondent Ex. 101 at p. 1) ("[T]he minor children's father shall not be permitted to remove the minor children from the territory of the Slovak Republic without the consent and presence of the children's mother.").

c. Exercising Custody Rights

On the day of the removal on October 24, 2019, Jeremy was exercising his supervised parenting time under the supervision of Viera's father because Viera had to work that day. (Tr. at p. 72.) In 2019, Viera was the children's primary caregiver; the children lived with her, she arranged for their schooling and extracurricular activities, etc. (Tr. at pp. 59–67.) Viera was exercising her custody rights at the time of the removal.

Viera has established all three prongs of wrongful removal under the Convention. The burden now shifts to Jeremy to establish by clear and convincing evidence one or both of the invoked exceptions.

II. Article 13(b) Defense

Article 13(b) of the Convention provides that "when a respondent demonstrates by clear and convincing evidence that there is a grave risk that the child[ren]'s return would expose the child[ren] to physical or psychological harm or otherwise place the child[ren] in an intolerable situation, the automatic return provided by the Convention should not go forward." *Norinder v. Fuentes*, 657 F.3d 526, 534 (7th Cir. 2011). The risk must be truly grave to justify declining to send children back to their place of habitual residence, and although the safety of children is the paramount consideration, courts must interpret the "grave risk" defense narrowly out of concern for comity among nations. *Id.* at 535. The State Department has also stressed that Article 13(b) "was not intended to be used . . . as a vehicle to litigate (or relitigate) the child[ren]'s best

interests." Hague International Child Abduction Convention; Text and Legal Analysis, 51 Fed.Reg. 10494 (1986).

The Court appointed an independent psychologist under FRE 706, Dr. Sol Rappaport, to make an expert assessment of the risks to which the children would be exposed were they to be returned to Slovakia. Rappaport found that Svarinksy likely does not have an interest in pedophilia and that he does not believe the children are at risk of being sexually molested by Svarinsky. (Petitioner Ex. 1 at pp. 29–30.) In his professional opinion, sending the children back to Slovakia would not create an "intolerable situation" for them. (*Id.* at p. 27.) This would have been helpful expert opinion had it been given entirely independent of either side's input. Unfortunately, there is some reason to suspect that his analysis was not as independent as the Court had ordered. Jeremy's counsel's cross-examination of Dr. Rappaport revealed that Dr. Rappaport and Viera's counsel, Ms. Feinberg, have known each other for quite some time. (Tr. at pp. 585–86.) Indeed, Dr. Rappaport attended dinner at Ms. Feinberg's home on one occasion. (Tr. at p. 586:10–11.) Dr. Rappaport spoke with Ms. Feinberg about his testimony before he testified (Tr. at p. 576.) and Ms. Feinberg whispered in Dr. Rappaport's ear about questioning during a recess in the proceedings in this Court. (Tr. at p. 575.) Ms. Feinberg and Dr. Rappaport should have disclosed their preexisting relationship to counsel and the Court. Their failure to do so and the *ex parte* communications in which they engaged during this litigation is troubling to the Court and makes Rappaport's opinions less reliable. Therefore, the Court gives little weight to Dr. Rappaport's report or testimony in reaching a decision in this case and only relies on his conclusion the way in which a common sense juror could make a similar conclusion based upon the facts before her.

In support of Jeremy's contentions that Svarinsky presents a grave risk of harm to the children, Jeremy called Dr. Peter Favaro, who testified as an expert in forensic psychology in

rebuttal to the testimony of Dr. Sol Rappaport. Favaro's principal conclusion was that Rappaport too conclusively ruled out that the children were exposed to sexually inappropriate or grooming behavior. (Respondent Ex. 169.) In Favaro's words, Rappaport "couldn't 100 percent rule [sexual abuse and sexual grooming] out because he didn't have access to all the experience that the children might have had. So I think the statement that he ruled out sexual abuse or sexual grooming was overstated." (Tr. at p. 526.)

Jeremy has not proven that the children would face a grave risk of harm were they to return to Slovakia and interact with Michal Svarinsky. Jeremy's proposed evidence of Svarinksy's pedophilic tendencies and grooming behaviors are unpersuasive. The Court understands the WhatsApp thread regarding masturbation in the presence of Svarinsky's son to suggest, contrary to Jeremy's interpretation, that the presence of his son *detracted* from his sexual arousal, rather than increased it, and that he chose to masturbate in the bathroom rather than doing so in front of his son. And while the Court has serious doubts about the efficaciousness of penile plethysmographs (*see* Tr. at p. 532, wherein Doctor Favaro explains that it is not a reliable method for ruling out sexually inappropriate behavior), the fact that Svarinsky was willing to subject himself to such an invasive test suggests, at a bare minimum, that he cares about the children and would go through that process to show that he should be able to be with them. Moreover, the WhatsApp message referring to H.P.H. and T.S.H. as "sweet-smelling boys" does not strike the Court as particularly troubling, even less so when one considers that the message was translated from the original Slovak and could be lost in translation to a certain extent. In short, the Court does not find that Michal Svarinsky poses a grave risk of harm to the children. Dr. Favaro's testimony makes clear that one cannot—in this case or any case—rule out the possibility of sexual abuse and sexual grooming with one hundred percent certainty. But not being able to rule out sexual abuse

is a far cry from establishing a grave risk that sexual abuse or grooming is present. Jeremy bears the burden of establishing that the children would face a grave risk of being subject to sexual abuse or grooming behavior were they to return to Slovakia. He has failed to establish by the clear and convincing evidence standard required by the ICARA that the children would be exposed to a grave risk of harm were they to return to Slovakia.

Jeremy also argues that it would be an "intolerable situation" for the children to return to Slovakia because their father would not be able to see them. This is because were he to return to Slovakia, he might be arrested due to the criminal stalking charges that are pending against him. (*See* Petitioner Ex. 17.) That the Slovakian authorities might arrest him on "reasonable suspicion" that he committed a crime (*Id.* at p. 9) cannot plausibly be the basis for an Article 13(b) defense. If that were grounds for an Article 13(b) defense, a respondent in a Convention case could manufacture the defense by committing a crime in the country from which he removed the children. Further, during the proceedings before the Court, Viera Hulsh stated that she would be willing to suggest dropping the charges against him were she to return to Slovakia with custody of the children enabling him to see them.

Jeremy has not made out an Article 13(b) defense.

III. Article 20 Defense

Article 20 of the Convention provides that "[t]he return of the child[ren] . . . may be refused if this would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms." Convention, art. 20. This exception is meant to apply in a rare circumstance in which returning a child to his country of habitual residence "would utterly shock the conscience of the court or offend all notions of due process." Dep't of State Legal Analysis, 51 Fed.Reg. at 10510 (1986). Nor is the exception a mechanism for courts

to pass "judgment on the political system from which the child was removed." *Id.* Like all the other Convention exceptions, this exception is narrow. *See* 42 U.S.C. § 11601(a)(4); *see also Guerrero v. Oliveros*, 119 F. Supp. 3d 894 (N.D. Ill. 2015) (quoting *Hazbun Escaf v. Rodriguez*, 200 F. Supp. 2d 603, 614 (E.D. Va. 2002)) (explaining that the Article 20 exception must be "restrictively interpreted and applied"). The Respondent bears the burden of establishing this exception by clear and convincing evidence. 22 U.S.C. § 9003(e)(2)(A). The parties to this litigation have not identified a single case in which a respondent has successfully met that burden in an American court. *C.f. Uzoh v. Uzoh*, No. 11 C 9124, 2012 WL 1565345, at *7 (N.D. Ill. May 2, 2012) (explaining that the Article 20 exception "has never been asserted successfully in a published opinion in the United States"); *see also Guerrero*, 119 F. Supp. 3d at 916 (denying an Article 20 defense and returning children to Mexico despite high rates of domestic violence in that country and noting that "Respondents have not provided, and the Court was unable to find, a single case where the court refused to return a child based on Article 20").

Jeremy raises seven concerns related to the Slovakian judicial system that he believes violate two fundamental principles of the United States—namely, the right to due process and the right to parent. Indeed, the right to due process of law is enshrined in our Fifth and Fourteenth Amendments, and the Supreme Court has held that the "interest of parents in the care, custody, and control of their children is perhaps the oldest of the fundamental liberty interests" protected by our Constitution. *Troxel v. Granville*, 530 U.S. 57, 64 (2000). Thus, if Jeremy could show by clear and convincing evidence that returning the children to Slovakia would violate Constitutional due process standards or the fundamental right to parent, the Court would not return the children to Slovakia. As outlined below, Jeremy has not met that burden.

a. Right to Notice and Opportunity to Be Heard in Child Custody Proceedings

Dr. Anna Niku, Viera's Slovakian lawyer, testified that, in her experience, Slovakian courts enter temporary custody orders that can last up to three years without giving an opposing parent notice of the proceedings or an opportunity to be heard at the proceedings. (Tr. at pp. 211:15–17, 212:4–8.) In fact, the District Court of Bratislava V granted temporary custody of the children to Viera and ordered payments of child support following an *ex parte* request about which Jeremy received no notice. (*See* Respondent Ex. 101.)

In the United States, the Uniform Child Custody and Jurisdiction and Enforcement Act ("UCCJEA"), which has been adopted in forty-nine states,[8] requires that parents have notice and the opportunity to be heard before custody orders are entered, including temporary ones. *See, e.g.* 750 ILCS 36/205(a) ("Before a child-custody determination is made under this Act, notice and an opportunity to be heard . . . must be given to . . . any parent whose parental rights have not been previously terminated . . . ."); 750 ILCS 36/102(3) ("'Child-custody determination' means a judgment, decree or other order of a court providing for the legal custody, physical custody, or visitation with respect to a child. The term includes a permanent, temporary, initial, and modification order."). Given this framework, the temporary child custody order that the Slovakian district court entered would likely be unlawful had it been entered by a state court in the United States. That being said, the Slovakian court's decision was premised on the notion that Jeremy was likely to try to remove the children from Slovakia, thereby violating Viera's rights to the custody of her children. (*See* Respondent Ex. 101 at ¶ 9) ("The mother is feared [sic] that [the father] might unlawfully remove the children from Slovakia to Israel or any other state since the children also

[8] Massachusetts, the lone hold-out, has the same requirement. *See* Mass. Gen. Laws. ch. 209B, § 5.

have US passports which are now in his possession. Such unlawful conduct would mean that she would be separated from the children for a long time, which would cause an inevitable mental harm to the children at their tender age . . . ."). In other words, the Slovakian court issued a temporary order meant to protect Viera's parenting rights from what the court viewed, based on the evidence before it, as an imminent threat to those rights. The court also made clear that the decision it made was: 1) "an immediate provisional measure" that 2) "does not constitute a final decision," 3) that it did not "grant definitive rights" to Viera, and 4) that definitive rights "shall be finally determined only in the main proceedings." (*Id.* at ¶ 31.)

The procedure used to adjudicate temporary custody rights in the Slovakian judicial system is not contemplated by our UCCJEA, but that does not mean that returning the children to Slovakia would violate Jeremy's fundamental right to be a parent. Instead, this Court reads the Slovakian decision to suggest that Slovakian courts emphasize upholding parental rights, but that the procedures by which they do so differ from the procedures employed in our courts. Even if Slovakian law does not provide the same procedures for entering temporary orders, the district court's decision makes clear that it is only temporary in nature and further adjudication would be necessary for the entry of a final order. This Court does not see clear and convincing evidence that sending the children back to a country that respects parental rights but does not follow the UCCJEA's procedural protections vis-à-vis temporary custody orders would violate a fundamental freedom of the United States.

b. Separation of Powers

Jeremy explains that under the Slovakian judicial system, an official known as the "Public Prosecutor" can intervene in court proceedings and set aside final judgments. He also contends, citing case law from the European Court of Human Rights finding issues with the Slovakian courts,

that there is undue political interference in the judiciary. *See, e.g., Bosits v. Slovakia* (no. 750941/17, May 2020) (awarding money damages of €3,900 for emotional distress to a citizen whose private property was taken for the government by the Prosecutor General of Slovakia contrary to a court order). He suggests that interference of a political branch of government into the workings of the judicial branch is anathema to the American system of separation of powers.

It is true that separation of powers and an independent judiciary are important principles of the American system, but they are not in and of themselves fundamental freedoms; rather, they are design features of our government that are thought to better protect citizens' fundamental rights enshrined in our Constitution. That Slovakia might not have a similar system insulating different branches of government from one another does not mean that Slovakia fails to protect freedoms deemed fundamental in the United States. Even assuming that there is a high level of political interference into the Slovakian judiciary, it does not follow that sending the children back to Slovakia would therefore violate anyone's due process rights or Jeremy's parental rights. Jeremy essentially invites this Court, contrary to State Department guidance on the Convention, to pass judgment on the political system of Slovakia; the Court must decline that invitation.

c. Testimony of Janos Fiala-Butora

Jeremy called Dr. Janos Fiala-Butora, a lecturer in law at the National University of Ireland Galway, who presented testimony regarding human rights law and fundamental freedoms, the European Court of Human Rights, the Council of Europe and the Venice Commission, and the application of human rights law in Slovakia. (Dkt. 165 at p. 286.) Jeremy proffered Dr. Fiala-Butora as an expert in each of those fields; Viera objected that Fiala-Butora was not qualified to give expert testimony under FRE 702 with respect to questions of Slovakia-specific law. (Tr. at p. 286.) He is, however, admitted to the practice of law in Slovakia. (Tr. at p. 281:17–18.)

He graduated from law school in Slovakia. (Tr. at p. 281:19–20.) He has litigated cases before the European Court of Human Rights relating to Slovakia. (Tr. at p. 283:18–20.) He has written several published articles pertaining to Slovakian law, with an international comparative focus. (*See* Respondent Ex. 133 at pp. 2–3.) The Court concludes that he is qualified to opine about the Slovakian legal system based on his academic background, the facts and data on which he relied, and because he applied those facts and data in a reliable way to reach his opinions in this case.

Fiala-Butora's opinion testimony consisted of five basic contentions: 1) there exists a systemic problem within the Slovakian legal system as a whole—namely that lawyers and judges collude with one another, thereby undermining public confidence in the justice system; 2) in some of the cases involving the Hulsh family in the Slovakian legal system, a biased judge presided; 3) the Constitutional Court of Slovakia does not fulfill its primary function of upholding human rights; 4) Slovakian courts fail to enforce custody orders; and 5) Slovakian courts fail to adequately protect individuals' speedy trial rights. (Resp. Ex. 163.) The Court addresses each of these contentions and their application to Article 20 in turn.

i. Issue of Systemic Collusion in General

Fiala-Butora explains, based on his review of case law from the European Court of Human Rights and analysis by the United States Department of State, that there are problems of political influence in the judiciary that undermine public trust in the system. (*Id.* at p. 6.) But Jeremy fails to draw a connection between lack of public faith in the judicial system and any fundamental freedoms that prohibit the Court from returning the children to Slovakia. Although the United States prides itself on the independence of the federal judiciary, it would not "utterly shock the conscience" to return the children to a country whose judges may be more influenced by political considerations than members of the federal judiciary in the United States.

ii. Judicial Impartiality in Hulsh Cases

Anna Niku, Viera's lawyer in Slovakia, represented Judge Patricia Zeleznikova in the judge's divorce proceedings in 2009. (Tr. at p. 196.) Although Niku testified that she did not represent Zeleznikova at any time after 2009, (Tr at p. 195), Jeremy's expert, Dr. Fiala-Butora, discovered after the close of evidence in this case that Niku appears to have again represented Zeleznikova between 2013 and 2015. (Dkt. 170-1 at ¶ 27.)[9] Niku then represented Viera beginning in 2017. (Tr. at p. 196.) Zeleznikova is an appellate judge who sat on four appellate panels on various Hulsh matters, none of which related to the underlying Convention case. (Respondent Ex. 163 at p. 6; Tr. at p. 304.) Jeremy argues that Zeleznikova should not have been on any panel in a Hulsh matter given the possible conflict of interest caused by Niku's previous representation of her. The Supreme Court of Slovakia has ruled, however, in a written decision, that Zeleznikova is capable of impartiality even in cases where Niku serves as counsel. (Respondent Ex. 156.) Zeleznikova is therefore permitted to preside over cases in which Niku serves as counsel. (*Id.* at p. 7) (the opinion of the Slovakian Supreme Court explaining that "the single fact that the judge personally knows the attorney, because she represented her in the past in a personal legal matter, cannot without some additional reasons, constitute the sole reasons for her exclusion from hearing and deciding the given matter").

Jeremy points to the fact that Zeleznikova was able to preside over Hulsh matters despite her previous relationship with Niku as evidence that sending the children back to Slovakia would violate Jeremy's fundamental right to be a parent. But the fact that the American judiciary might

[9] Fiala-Butora discovered this by happenstance by cross-referencing a series of redacted cases from the Constitutional Court of Slovakia. The Court accepts his affidavit (Dkt. 170-1) and case law exhibits as supplemental evidence. The Motion to Reopen for Additional Evidence (Dkt. 170) is granted. The Court assumes on the basis of this newly presented evidence that Niku indeed represented Zeleznikova as late as 2015. It is also clear, however, from a 2015 Slovakian Supreme Court decision that was already in evidence that Niku represented Zeleznikova as late as 2015. (Respondent Ex. 156 at p. 2) ("Dr. Niku was (and most likely still is today) the legal representative of the presiding judge.").

have more robust recusal requirements than Slovakia appears to have does not mean that the judicial system would be biased against Jeremy were the children to return to Slovakia. The possibility that Zeleznikova might serve on a future appellate panel adjudicating another Hulsh matter is speculative and does not "utterly shock the conscience," so it is not a basis for an Article 20 defense. This is especially true given that the Slovakian Supreme Court has considered the issue of Zeleznikova's impartiality and found no evidence of bias. (Respondent Ex. 156; Tr. at p. 197.) That an American court might not have ruled the same way is insufficient to entitle Jeremy to the extraordinary relief provided for by Article 20. Jeremy's argument strikes the Court as another invitation to pass judgment on Slovakia's system of government, which this Court must not and will not do.

iii. Issues with the Slovakian Constitutional Court

Fiala-Butora explains that the Constitutional Court of Slovakia has been criticized by the European Court of Human Rights for failing to ensure that litigants receive fair trials. (Respondent Ex. 163 at p. 6.) Fiala-Butora also opines that the Constitutional Court has not had a full complement of judges and as such has published low-quality decisions. (*Id.* at pp. 6–7.) But the fact that the European Court of Human Rights can provide (and has provided) litigants with relief from potentially misguided decisions of the understaffed Slovakian Constitutional Court assures this Court that the Hulshes fundamental rights and freedoms will not be trammeled in Slovakia.

iv. Enforcement of Custody Orders

Fiala-Butora's report explains that Slovakian police fail to enforce many child custody orders or that when they attempt to enforce them, they are only able to impose nominal fines. (*Id.* at p. 7; Tr. at p. 297.) Fiala cites two cases in which the European Court of Human Rights

found that Slovakia violated the right to family life protected by Article 8 of the European Convention on Human Rights by failing to enforce custody orders. In both cases, the European Court of Human Rights stepped in and provided parents with relief. *See Frisancho Perea v. Slovakia* (no. 383/21, July 2015); *Mansour v. Slovakia* (no. 60399/15, November 2017). While it is troubling that custody orders are not always enforced, Fiala-Butora has not provided the Court with any comparative context for the Court to assess whether the United States or any other country achieves a greater rate of custody enforcement than Slovakia. It is nonetheless reassuring to see that the European Court of Human Rights has stepped in where necessary to provide safeguards so as to uphold parents' fundamental right to the custody of their children.

v. Length of Proceedings

Fiala-Butora explained that judicial proceedings often take a long time to reach resolution in Slovakia. (Respondent Ex. 163 at pp. 7–9.) This issue of slow proceedings sometimes affects child custody cases. (*Id.* at p. 8.) Fiala-Butora explained that 14.38% of child custody cases in Slovakia in 2016 lasted more than a year. (*Id.*) That figure is of limited value to the Court because the Court has nothing to which to compare it, not even the comparable figure in the United States. (*See* Dkt. 76 at p. 309, wherein Fiala-Butora explains that he does not know the comparable figure in Cook County, the United States at large, or any other European country.) Fiala-Butora again points to European Court of Human Rights cases finding that Slovakian courts did not protect speedy trial rights. In each case, the Court then provided relief from what it viewed as unduly lengthy proceedings in the Slovakian courts. *See, e.g.*, *Hoholm v. Slovakia* (no. 35632/13, January 2015) (finding that Convention proceedings took too long in this case); *Lubina v. Slovakia* (no. 50232/99, May 2005) (finding that proceedings in Slovakian courts took too long and ordering Slovakia to pay money damages to the applicant). Once again, this evidence cuts both ways for

Jeremy's Article 20 case. On the one hand, the Slovakian courts have had issues with delays. On the other hand, Slovakia has willingly subjected itself to the jurisdiction of a supranational court that intervenes to provide relief where domestic courts have failed to protect fundamental rights.

Fiala-Butora's opinions do not persuade this Court that returning the children to Slovakia would violate fundamental principles of the United States relating to the protection of human rights and fundamental freedoms. Jeremy has not met his burden to establish the Article 20 defense by clear and convincing evidence.

CONCLUSION

The Petition for Return of Minor Children (Dkt. 1) is granted. The Court hereby orders that H.P.H and T.S.H. be returned to Slovakia, at Respondent's expense, within twenty-one days from the entry of this Opinion.[10] If the public health crisis prohibits the return within that timeframe, the parties shall immediately inform the Court and the guardians ad litem and make arrangements for the speediest possible return.

[10] The parties engaged in a significant amount of motion practice in this case. This Opinion disposes of pending motions as follows. Petitioner's Motion to Expedite Discovery (Dkt. 47) is dismissed as moot. Petitioner's Motion to Stay Discovery on the Issue of Habitual Residence (Dkt. 78) is dismissed as moot. Petitioner's Motion for Summary Judgment (Dkt. 92) is dismissed as moot. Petitioner's Motion *in Limine* (Dkt. 96) is dismissed as moot because the Court resolved all issues pertaining to the relevance of proposed evidence at the evidentiary hearing. Petitioner's Motion for Leave to File a Reply (Dkt. 109) is dismissed as moot. Respondent's Motion *in Limine* (Dkt. 151) is dismissed as moot because the Court did not consider any of the contested exhibits in this ruling nor were any of the exhibits at issue offered as evidence at the evidentiary hearing. Petitioner's Motion for Rule to Show Cause (Dkt. 154) is denied for lack of evidence regarding parental communications pertaining to this case. Petitioner's Motion *In Limine* to Bar Further Testimony (Dkt. 156) is dismissed as moot.

The Court also grants the Motion to Require Respondent to Pay for Supervisor's Fees and Costs. (Dkt. 63.) The Court will entertain a motion from Petitioner pursuant to 22 U.S.C. § 9007(c) for fees and costs. Any such motion shall be filed, along with an accounting of fees and costs, within 21 days from the entry of this Opinion.

Virginia M. Kendall
United States District Judge

Date: July 21, 2020

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

VIERA HULSH, formerly known as VIERA WISTEROVA,	)	
Petitioner,	)	No. 19 C 7298
v.	)	Judge Virginia M. Kendall
JEREMY HULSH,	)	
Respondent.	)	

MEMORANDUM ORDER AND OPINION

Before the Court is Petitioner Viera Hulsh's Amended Fee Petition. (Dkt. 248). Petitioner seeks recovery of the attorneys' fees and expenses under the International Child Abduction Remedies Act. She seeks taxable costs under Fed. R. Civ. P. 54 and 28 U.S.C. §1920. This Court previously reviewed the legal framework guiding the award and found that Petitioner is entitled to an award of fees and costs, but found that it could not grant a precise amount as Petitioner had not properly supported her request. (See Dkt. 241). Petitioner has now resubmitted an accounting of her fees and costs. Petitioner requests $406,615.70 in attorneys' fees, $9,692.00 in expenses, and $80,435.60 in taxable costs. For the following reasons, the Court grants Petitioner $239,955 in attorneys' fees and expenses and $25,141.87 in taxable costs.

I. Bankruptcy Proceedings

Respondent Jeremy Hulsh has filed for bankruptcy in the Northern District of Illinois. The Court previously found that Viera Hulsh was entitled to attorneys' fees and expenses under the relevant statutes. (See Dkt. 241). The Court refrained from deciding a precise amount until the bankruptcy court decided whether the fees were subject to an automatic stay. On January 11, 2021,

Judge Goldgar denied in part Viera Hulsh's Motion for Relief from the Automatic Stay. Judge Goldgar wrote:

> To the extent the motion seeks to modify the stay to permit the movants to pursue their fee petition in *Hulsh v. Hulsh*, No. 19 C 7298 (N.D. Ill.), the motion is denied as unnecessary because the stay does not apply. *See* 11 U.S.C. § 362(b)(2)(A)(ii). The movants may liquidate the fees and costs but may not collect them. *Id.* To the extent the motion seeks to modify the stay to permit movant Viera Hulsh to pursue tort claims against the debtor without first obtaining a judgment that the claims are nondischargeable under 11 U.S.C. § 523(c)(1), the motion is denied.

Jeremy Barock Hulsh, Case No. 20-16482, Dkt. 32 (Bankr. N.D. Ill., Jan. 11, 2021). The Court can thus take up the issue and decide the specific amount of attorneys' fees owed by Respondent Hulsh. As discussed by Petitioner in her Motion for Attorneys' Fees, fees awarded under ICARA constitute domestic support obligations under the Bankruptcy Code and so are likely nondischargeable as other court confronting this issue have found. *See e.g. In re Weed*, 479 B.R. 533, 544 (Bankr. D. Minn. 2012) (providing thorough analysis of whether ICARA awards constitute "domestic support obligations" and finding that it is nondischargeable); *In re Coe*, 2017 WL 5054312, *3 (Bankr. E.D.Va. Nov. 2, 2017) (applying the reasoning of *In re Weed* to find ICARA awards are nondischargeable). The Court will now determine what precise amount Petitioner Hulsh may recover under ICARA and FRCP 54 and 28 U.S.C. §1920.

II. Fees under 22 U.S.C. § 9007(b)(3)

The ICARA provides under 22 U.S.C. § 9007(b)(3) that:

> Any court ordering the return of a child pursuant to an action brought under section 9003 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.

Under the Hague Convention, an award of fees and costs serves two purposes: (1) "to restore the applicant to the financial position he or she would have been in had there been no removal or retention" and (2) "to deter such removal or retention." *East Sussex Children Services v. Morris*, 919 F.Supp. 721, 734 (N.D. W. Va. 2013) (citing Hague Convention; Text and Legal Analysis, 51 Fed. Reg. 10494–01, 10511 (Mar. 26, 1986)). Respondent again objects on two grounds: first that petitioner has not submitted reasonable attorneys' fees; and second, that he meets the grounds for ICARA's clearly inappropriate caveat.

The Court notes at the outset that Petitioner has somehow increased her attorneys' fees request from the original August 2020 request. Not to mention, Petitioner requests that she is entitled under ICARA to receive attorneys' fees resulting from the related bankruptcy proceedings, as well as a contingency fee she paid to her lawyers representing her before that court. Even more baffling, Petitioner's attorney, Joy Feinberg, attempts to collect fees she has expended defending *herself* in the bankruptcy proceedings where she was named as a creditor. Petitioner provides no support that she can receive attorneys' fees associated with her bankruptcy proceedings under ICARA and the Court can find no support that would allow this request. As stated above, the purpose of awarding attorneys' fees under ICARA is to "to restore the applicant to the financial position he or she would have been in had there been no removal or retention." *Morris*, 919 F.Supp. at 734. The bankruptcy proceedings are unrelated to the proceedings that were before this Court. The Court declines to award any attorneys' fees stemming out of Petitioner's bankruptcy proceedings and instead will only focus on Petitioner's fees associated with the Hague Convention hearings. *See Saldivar v. Rodela*, 894 F.Supp.2d 916, 938 (W.D. Tex. 2012) (declining to award fees associated with "tasks undertaken after the child had been returned).

A party may seek attorneys' fees under ICARA and a court will determine whether those fees are reasonable using the lodestar method. *Norinder v. Fuentes*, 657 F.3d 526, 536–37 (7th Cir. 2011). The Court first calculates the "lodestar figure" by multiplying "the number of hours reasonably expended on the litigation [ ] by a reasonable hourly rate." *Schlacher v. Law Offices of Phil J. Rotche & Assocs.,* 574 F.3d 852, 856 (7th Cir.2009) *(citing Hensley v. Eckerhart*, 461 U.S. 424, 433–37 (1983)). This determination may be adjusted based on:

> the time and labor required; the novelty and difficulty of the questions; the skill requisite to perform the legal services properly; the preclusion of employment by the attorney due to acceptance of the case; the customary fee; whether the fee is fixed or contingent; time limitations imposed by the client or the circumstances; the amount involved and the results obtained; the experience, reputation, and ability of the attorneys; the "undesirability" of the case; the nature and length of the professional relationship with the client; and awards in similar cases.

Mathur v. Bd. of Trs. of So. Ill. Univ., 317 F.3d 738, 742 n. 1 (7th Cir. 2003). The party requesting fees bears the burden of adducing "satisfactory evidence ... that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation." *Blum v. Stenson*, 465 U.S. 886, 895–96 n. 11 (1984).

i. Calculation of Attorneys' Fees

Petitioner has submitted more support justifying her attorneys' fees. Petitioner has attached billing statements that indicate that each attorney on the case contributed the following hours.

Attorney	Hours	Rate (per hour)	Total
Joy Feinberg	430.65 (376.35 hours office time, 44.3 hours court time).	$600 out of court /$650 in court	$254,605
Reuben Bernick	209.1 (178.1 hours office time, 31 hours court time).	$400 out of court/$425 in court	$84,415
Jennifer Tier	26 hours (all in office)	$375 out of court	$9,750

Shannon Luschen	408.15 (378.65 hours office time; 29.5 court time).	$200 out of court/$250 in court	$89,005

The Court notes that there is a major, unexplained discrepancy between the attorneys' fees previously sought which was $362,300 in total for the Hague Convention proceedings.[1] (See Dkt. 241at 3). The Court includes the previously sought attorneys' fees in the chart below.

Attorney	**Hours**	**Rate**	**Total**
Joy Feinberg	347.8 (67.8 hours removed, 280 charged)[2]	$600/650	$188,800
Reuben Bernick	350 (80 hours deducted, 270 charged)	$400/425	$126,400
Shannon Luschen	203.5	$200/250	$47,100

The purpose of having Petitioner re-submit her fee petition was to attempt to sort through the unsupported Motion she had initially submitted and ascertain what fees were justified. Petitioner now seeks another bite at the apple, including in her petition attorneys that she has never mentioned before and includes work that was not discussed in her earlier Motion. For example, Petitioner never mentioned the work of attorney Jennifer Tier previously. And there is no explanation for the addition of approximately 80 hours to attorney Joy Feinberg's time and for an additional 200 hours to attorney Shannon Luschen's time. It would perversely incentivize litigants to submit unsupported attorneys' fees and then attempt to collect more if the Court gave them another chance. The Court was well within its rights to previously reduce Petitioner's fee petition based on the lack of support but chose not to; instead hoping to fairly award Petitioner her due

[1] The Court notes that Petitioner had previously requested $24,096.00 related to her travel, which was unsupported by any receipt or documentation. (Dkt. 241 at 5). Mysteriously, this request has disappeared from the fee petition without explanation.

[2] Petitioner indicates these hours were removed because they were duplicitous.

amount. Perhaps Petitioner's attorneys reviewed their records and determined that they had allocated more time to the case than they previously thought. But Petitioner could have and should have submitted this more accurate amount on the first attempt. The Court declines to award almost $100,000 more for Petitioner's inaccurate accounting. Therefore, the Court will only award up to $362,300 in attorneys' fees based on Petitioner's earlier representations to the Court. *See e.g.*, *Uphoff v. Elegant Bath, Ltd.*, 176 F.3d 399, 409 (7th Cir. 1999) (explaining that where counsel fails to provide clear explanations of the work completed or the basis for the hourly rates charged, the Court has the discretion to reduce counsel's proposed compensation to an amount that it deems reasonable, in accordance with an appropriate market rate).

Continuing to the traditional analysis, the Court first looks to the reasonableness of Petitioner's request for attorneys' fees. The reasonableness of the time expended by an attorney on behalf of a client depends not only on the total number of hours involved but also on the particular tasks to which the attorney devoted ... her time." *Trustees of Chicago Plastering Inst. Pension Trust v. Cook Plastering Co.*, 570 F.3d 890, 905 (7th Cir. 2009). It is not at all unusual for a court to determine that some aspects of an attorney's work were not fruitful, were unnecessary, or merited less time than the attorney devoted to them, and to deny compensation for those portions of the attorney's work." *Id.* at 905; *see also JCW Investments, Inc. v. Novelty, Inc.*, 509 F.3d 339, 342–43 (7th Cir. 2007). Petitioner has attached 76 pages of billing statements and time statements that indicate how her attorneys allocated their time. (Dkt. 248-5). These billing statements indicate that work was not duplicated among her attorneys and justifies the work that was conducted. The case involved massive amount of research and took several fast-paced months to fully litigate. This case started in November 2019 and the appeals concluded in August 2020, a heightened pace that placed a great deal of pressure on the attorneys to complete a great amount

of work in a short amount of time. Not to mention, the trial itself lasted over a week and was interrupted by the COVID-19 pandemic. In reviewing the billing statements, the Court finds that the attorneys had to complete a substantial amount of research; had to review and analyze numerous documents; were required to draft multiple lengthy motions (*see* Dkt. 248-4 for details on motions); had to prepare for a long deposition with Respondent Hulsh; and had to prepare for a lengthy trial that was interrupted, in part, by the pandemic. The Court finds that Petitioner has sufficiently justified her hours request.

The next question looks to the billing rates. Generally, the "reasonableness of an attorney's billing rate depends on the experience and qualifications of the professional." *Trustees of Chicago Plastering Inst. Pension Trust*, 570 F.3d at 905. In this instance, the Petitioner has the burden of showing that the fee counsel seeks is proper and "in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation. A rate determined in this way is normally deemed to be reasonable, and is referred to—for convenience—as the prevailing market rate." *Blum v. Stenson*, 465 U.S. 886, 896 n. 11 (1984); *Jeffboat, LLC v. Dir., Office of Workers' Comp. Programs*, 553 F.3d 487, 490 (7th Cir.2009); *Small v. Richard Wolf Med. Instruments Corp.*, 264 F.3d 702, 707 (7th Cir. 2001) (noting that a fee applicant must prove the market rate for services rendered). The Seventh Circuit has stated its "preference ... to compensate attorneys for the amount that they would have earned from paying clients, i.e., the standard hourly rate." *Mathur v. Board of Trustees of So. Il. Univ.*, 317 F.3d 738, 743 (7th Cir. 2003).

Petitioner has not met her burden of proving that her fees were reasonable. She has only attached a self-serving affidavit stating that all attorneys' fees were reasonable given their experience. *See Uphoff*, 176 F.3d at 409 (affirming the district court's reduction of the lawyers'

proposed fee by where the lawyers provided nothing but self-serving affidavits in support of their proposed rates). Generally, an attorney seeking to prove her fees were reasonable cites to cases pertaining to a similar subject matter where attorneys' fees were granted to show their market rate. Petitioner has not cited to any cases. However, Respondent cites to a case from the Southern District of New York where litigation is similar to Chicago, that stated, "courts in this District have not awarded more than $425 per hour in a Hague Convention case." *Nissim v. Kirsh*, No. 1:18-CV-11520 (ALC), 2020 WL 3496988, at *3 (S.D.N.Y. June 29, 2020). Here, attorney Joy Feinberg bills $600/hr for her office work and $650/hr for her time in court. She has been practicing law for over 40 years. (See Dkt. 248-5 at 2). Attorney Reuben Bernick, who is only described as a senior attorney, bills $400/hr for his office work and $425/hr for his time in court. Attorney Jennifer Tier, a partner at the firm, bills $375/hr for her office work. Attorney Shannon Luschen is an associate attorney who bills $200/hr for her office work and $250/hr for her in court work. The Court, based off the Court's lead in *Nissim*, will thus cap attorney Feinberg's fees at $425/hr for both her work in and out of court, which is a generous amount. The Court will commensurately lower the remaining attorneys' fees in line with this.[3][4]

Attorney	Hours	Rate (per hour)	Total
Joy Feinberg	420.65 (376.35 hours office time, 44.3 hours court time).	$425	$178,776.25
Reuben Bernick	209.1 (178.1 hours office time, 31 hours court time).	$280	$58,548
Jennifer Tier	26 hours (all in office)	$262	$6,812

[3] The Court found these rates by lowering the indicated rate by .3. The Court found this by dividing the requested out-of-court rates for attorney Feinberg, the most senior attorney on the team, by 425, which was the maximum amount in *Nissim*.

[4] The Court notes that in Nissim, the Court looked at the amount of experience that each attorney associated with the case had. The Court cannot make a similar determination as Petitioner nowhere provides that information.

Shannon Luschen	408.15 (378.65 hours office time; 29.5 court time).	$175	$71,426.25

Based upon the above, the Court will award Petitioner $315,562.50 in attorneys' fees under ICARA.

Petitioner also requests $9,692 in expenses related to filing fees, court reporter expenses and private detective fees. She further requests an additional $4,377.5 in connection with a mediation shortly after the Court ordered Petitioner's children be returned to Slovakia. Finally, she requests $24,372.50 for work associated with the fee petition. She also believes her attorneys' will incur an additional $20,000 in work due to the fee petition "given Jeremy's extreme litigiousness." The Court will not award expenses here as she seeks duplicative expenses under taxable costs. Not to mention, after digging through all the billing statements, the Court can only find about $3,500 of justified costs for filing fees, court reporter expenses, and private detective fees. The Courtgrants the $4,377.5 in connection with the mediation.

However, the Court does not award expenses in relation to the fee petitions as these were incurred after the children were returned and the purpose of ICARA is to recover fees spent in returning the children. *See Saldivar*, 894 F.Supp.2d 938 (declining to award fees associated with "tasks undertaken after the child had been returned). Not to mention, Petitioner's request for $20,000 in future expenses is complete conjecture. Therefore, in total, Petitioner may recover $319, 940 under ICARA.

B. Clearly Inappropriate

As discussed by this Court previously, ICARA's presumption of an award of expenses to a prevailing petitioner is "subject to a broad caveat denoted by the words, 'clearly inappropriate.'"

Whallon v. Lynn, 356 F.3d 138, 140 (1st Cir. 2004). Circuits that have examined this caveat have found "the equitable nature of cost awards," so that a prevailing petitioner's presumptive entitlement to an award of expenses is "subject to the application of equitable principles by the district court." *Souratgar v. Lee Jen Fair*, 818 F.3d 72, 79 (2d Cir. 2016) (discussing *Ozaltin v. Ozaltin*, 708 F.3d 355, 375 (2d Cir. 2013). "Absent any statutory guidance to the contrary, the appropriateness of such costs depends on the same general standards that apply when 'attorney's fees are to be awarded to prevailing parties only as a matter of the court's discretion.'" *Id.* (citations omitted).

Reasons for denying or reducing attorneys' fees include the losing party not being able to afford fees and where the prevailing party's attorney failed to appropriately account for fees, *Morris*, 919 F. Supp. at 734; where the losing party had a reasonable basis to believe that removal of children was appropriate, *Ozatlin*, 708 F.3d 375; where the losing party had little savings and the fact that most of the losing party's expenses went towards childcare, *In re Application of Stead v. Menduno*, 77 F. Supp.3d 1029, 1037–38 (D. Co. 2014); where the prevailing party contributed to the contentious relationship and abused respondent, *Souratgar*, 818 F.3d at 79; and combinations of the prevailing party contributing to the enmity and the other party not being able to afford fees, *Whallon v. Lynn*, No. Civ.A. 00–11009–RWZ, 2003 WL 1906174, at *4 (D. Mass. Apr. 18, 2003).

A court looking at the clearly inappropriate caveat must therefore sift through the facts. While courts looking at the caveat have made a number of exceptions based on the facts in front of it, two main considerations have emerged: (1) "whether a fee award would impose such a financial hardship that it would significantly impair the respondent's ability to care for the child";

(2) "whether a respondent had a good faith belief that her actions in removing or retaining a child were legal or justified." *Rath v. Marcoski*, 898 F.3d 1306, 1311 (11th Cir. 2018).[5]

The Court therefore must first determine whether an award of attorneys' fees would be clearly inappropriate. Respondent indicates that he cannot afford the attorneys' fees sought here and that he has recently filed for bankruptcy. (Dkt 255 at 22). In particular, Respondent argues that he does not have a job and that being forced to cover attorneys' fees would inhibit his ability to care for his children, especially in consideration of the fact that he will likely have to return to Slovakia to see his children. (*Id.*). Respondent states that he has approximately $4,100 in assets. (*Id.*). The Court previously noted that neither Respondent nor Petitioner had an ability to pay for the monitoring required and were borrowing money in order to fund the litigation. Tr. 1/13/20, pp. 3, 8. Further, the Court does not wish to impose a greater burden on Respondent when he will be required to pay child support. (Dkt. 255 at 22). Petitioner argues that the Court should ignore the father's financial situation as Respondent's family assisted in paying for his own attorneys' fees.

The Court further notes that Respondent does not argue he had a good faith basis for believing the removal of his children was reasonable. Respondent did not deny that he abducted his children, but later argued at trial that he met two treaty exceptions that would have permitted the Court to decline to return the children to Slovakia. (Dkt. 177 at 2). It would be difficult to argue a good faith basis when Respondent has already acknowledged that he abducted his children.

As always, the Court's main concern is the care of the children. It is undisputed that Petitioner will be the primary caregiver for the children in Slovakia. By requiring Respondent to

[5] In this circuit, the Seventh Circuit has acknowledged that financial hardship is a factor other courts have considered, but ultimately found it did not apply to the case in front of it. *Norinder v. Fuentes*, 657 F.3d 526, 536–37 (7th Cir. 2011).

pay a substantial amount of the attorneys' fees, the Court hopes to alleviate Petitioner's burden while fulfilling the policy goals of deterring others from removing children without the consent of the other party. However, it is undisputed that Respondent is undergoing bankruptcy proceedings and has few assets. Petitioner urges this Court to consider that Respondent's family is assisting him financially with his legal fees which is undisputed. The Court seeks to find an amount that will adequately deter Respondent and others from absconding with their children while also acknowledging that the Respondent has few assets to his name. As such, the Court will lower the attorneys' fees further by one-fourth to $239,955. Such an amount will ensure that Petitioner may adequately care for her children while still meeting the policy goals of ICARA.

III. Fees and Costs

Petitioner requests $80,435.60 in taxable costs under Rule 54 and 28 U.S.C. § 1920. Again, inexplicably, Petitioner has raised her taxable costs from her initial request of $73,755.26. (See Dkt. 233). As the prevailing party, Petitioner also seeks to recover, and is entitled to recover, an award of costs under Fed. R. Civ. P. 54(d) and 28 U.S.C. § 1920. Rule 54 provides, in pertinent part, that "[u]nless a federal statute, these rules, or a court order provides otherwise, costs—other than attorney's fees—should be allowed to the prevailing party." Fed. R. Civ. P. 54(d)(1). Pursuant to 28 U.S.C. § 1920, the following costs may be taxed:

> (1) Fees of the clerk or marshal;
> (2) Fees of the printed or electronically recorded transcripts necessarily obtained for use in the case;
> (3) Fees and disbursements for printing and witnesses;
> (4) Fees for exemplification and the costs of making copies of any materials where the copies are necessarily obtained for use in the case;
> (5) Docket fees under section 1923 of this title;
> (6) Compensation of court appointed experts, compensation of interpreters, and salaries, fees, expenses, and costs of special interpretation services under section 1828 of this title

28 U.S.C. § 1920.

Only where it is immediately apparent that the costs were necessary and appropriate will the Court grant them due to the "narrow scope of taxable costs." *Taniguchi v. Kan Pacific Saipan, Ltd.*, 566 U.S. 560, 572 (2012). "Taxable costs are limited to relatively minor, incidental expenses as is evident from § 1920, which lists such items as clerk fees, court reporter fees, expenses for printing and witnesses, expenses for exemplification and copies, docket fees, and compensation of court-appointed experts. Indeed, the assessment of costs most often is merely a clerical matter that can be done by the court clerk." *Id.* (citations omitted). Taxing costs against a losing party requires two inquiries: (1) whether the cost imposed on the losing party is recoverable and (2) if so, whether the amount assessed for that item was reasonable." *Majeske v. City of Chicago*, 218 F.3d 816, 824 (7th Cir. 2000). "There is a presumption that the prevailing party will recover costs, and the losing party bears the burden of an affirmative showing that taxed costs are not appropriate." *Beamon v. Marshall & Ilsley Trust Co.*, 411 F.3d 854, 864 (7th Cir. 2005). That presumption does not, however, relieve the prevailing party of the burden of establishing that potentially recoverable costs it incurred were reasonable and necessary. *See e.g. Telular Corp. v. Mentor Graphics Corp.*, No. 01 C 431, 2006 WL 1722375 at *1 (N.D. Ill. June 16, 2006). The district court's determination whether particular costs are reasonable and necessary is given considerable deference. *SK Hand Tool Corp. v. Dresser Industries, Inc.*, 852 F.2d 936, 943 (7th Cir. 1988).

As discussed above, Petitioner sought to recover some of the expenses under ICARA and then requested duplicative payments under § 1920. The Court declined to consider these costs above but will consider them here. Petitioner seeks to recover the following costs as detailed at Dkt. 248-14. The Court notes that Petitioner, while attaching more receipts, has not supported a number of her requests, leaving it to the Court to determine whether the costs are appropriate under § 1920. The Court provided Petitioner clear guidance in its October 30, 2020 Order as to how to

fix her fee petition before allowing her to refile (which was generous and not required). The Court stated:

> Petitioner has attached some receipts (Dkt. 233-1), however she does not attempt to explain the costs or whether the expenses were necessary to the litigation. The Court declines to sift through the jumble of disorganized receipts to determine what is necessary or not. Should Petitioner wish to collect these costs, she must provide further analysis and support to show that they were both reasonable and necessary.

Dkt. 241 at 8. However, Petitioner has failed to heed this advice.[6] Petitioner only attached some receipts, but there are many that are still missing. Not to mention, Petitioner failed to justify these costs. Once again, Petitioner acknowledged the case law guiding § 1920 in her Motion, but somehow failed to address whether her costs were reasonable or necessary in her second attempt. The Court already took the unusual step of giving Petitioner another chance to fix her Motion; that Petitioner has not followed this Court's instruction is lamentable. Therefore, the Court will review the attached receipts and Motion and grant costs only where it is immediately apparent that they were reasonable and necessary.

A. Petitioner's Requested Taxable Costs

Petitioner's requests are as follows:

- Filing fee $400.00 (Request N-1)
- Flight for Mother $1,866.00 (Request N-2)
- Martin Cap translations $13,575.00 (Exhibit N-3)
- Flights and accommodations for Dr. Anna Niku $1,547.74 (flight) and $1,467.00 (accommodation) (Request N-4)

[6] Respondent correctly acknowledges that in addition to the above failings, Petitioner has failed to follow Local Rule 54.3. However, as the Court discussed in its previous Order, this is not a reason to completely deny Petitioner's request. *See Jones v. Ameriquest Mortg. Co.*, 05 C 0432, 2008 WL 4686152, *1–7 (N.D. Ill. May 19, 2008) (thorough discussion of Local Rule 54.3 and denying dismissal of petition for costs).

- Dr. Rappaport retainer $5,000.00 and evaluation/report $14,041.87 (Request N-5)
- Dr. Anna Niku "flights/hotel/Airbnb/report" $8,200.00 (Request N-6)
- Peter Erdos expert report ($2,800.00) (Request N-7)
- (Second) Martin Cap translations $16,011.00 (Request N-8)
- Invoice for deposition transcript of Father $1,452.75 (Request N-9)
- MSI Detective Services for location and service of process $1,465.00 (Request N-10)
- Court transcripts for trial $721.00 (Request N-11)
- Dr. Rappaport trial retainer $5,150.00 (Request N-12)
- Court reporter payment $504.00 (Request N-13)
- Flights from Chicago to Baltimore for Mother and children $446.94 (Request N-14)
- Retainer fee to bankruptcy attorney for Feinberg Sharma $2,500.00 (Request N-15)
- Federal Express fee to return original documents $280.61 (Request N-16)
- Payment to bankruptcy attorney for Feinberg Sharma $1,374.65 (Request N-17)
- Payment to bankruptcy attorney for Feinberg Sharma $1,631.95 (Request N-18)

1. Petitioner's Requests for Payment in Unrelated Bankruptcy Proceedings

The Court can easily dispense with several of these payments as inappropriate under the statute. Petitioner's requests for payment relating to the bankruptcy proceedings are clearly unrelated and unrecoverable in the instant actions. Requests N-15, N-17, and N-18 are denied.

2. Filing Fees and Court Reporter Fees

The costs associated with the filing fees and court reporter fees are appropriate under the statute. However, the Court notes that in her prior request, Petitioner sought $424.80 and $504.00 in payments to the Court reporter. Petitioner now seeks $504 and $721 for the Court reporter. The Court notes that the request for $504 is adequately supported (see also Dkt. 348-5 at 50), but at

Dkt. 248-5 at p. 35 & p. 40, this $721 payment on March 3, 2020 was only an estimated cost for the transcript. Later, at Dkt. 248-5 at p. 51, Petitioner's charges indicate that she received a $275.20 refund from the Court Reporter from the $721 deposit. Therefore, the Court will reduce Petitioner's court reporter fees to $504 and $446.

3. Petitioner's Flights

The Court cannot find support that Petitioner's flights are recoverable costs under § 1920 and Petitioner has provided none. Not to mention, Petitioner's flight to Baltimore appears wholly discretionary. Therefore, Requests N-2, and N-14 are denied.

4. Written Translations

Petitioner requests $13,575.00 (see Request N-3) for December 2019 translations and $16,011.00 (Request N-8) for February 2020 translations provided by Martin Cap. Dkt. 248-14 indicates that the total for translations was €26,336.36 or $31,413.62, which is more than the $29,586 Petitioner requests at N-3 and N-8. The Court cannot discern for what purpose the translator served but ascertains that it was for written translation of court documents originally in Slovak. In the end, the difference is immaterial as Petitioner cannot recover for written translations. *See Taniguchi*, 566 U.S. at 574–75 (2012).

5. Expert Witnesses

Petitioner requests costs related to two experts she retained: Dr. Anna Niku and Dr. Peter Erdos. Petitioner seeks $1,547.75 for a flight and $1,467 in accommodation for Dr. Niku from December 17, 2019 to January 9, 2020 at Request N-4. She further requests $8,200 for Dr. Niku in "flights/hotel/Airbnb/report" at Request N-6. Expert fees are not recoverable under Rule 54(d) or 28 U.S.C. § 1920, to the extent that they exceed 28 U.S.C. § 1821(b)'s cap on witness fees of $40 per day. *See Rimini St., Inc. v. Oracle USA, Inc.*, 139 S. Ct. 873, 877 (2019) ("In defining

what expenses qualify as 'costs,' §§ 1821 and 1920 [like Rule 54(d)] do not include expert witness fees.") (citing *Crawford Fitting Co. v. J. T. Gibbons, Inc.*, 482 U.S. 437, 442 (1987)). This is to say that unless the expert is court appointed, *see* 28 U.S.C. § 1920(6), the only fees that are recoverable as witness fees under § 1920(3) are those allowed by statute for a witness' attendance at court or a deposition. *See* 28 U.S.C. § 1821. This amounts to $40 per day, plus subsistence. *Portman v. Andrews*, 249 F.R.D. 279, 282 (N.D. Ill. 2007).

The only supported request that Petitioner makes for Dr. Niku is a roundtrip flight from Vienna, Austria to Chicago, Illinois from December 17, 2019 to December 26, 2019. (Dkt. 248-14 at 8). Other than that, there are no receipts attached and no discussion as to whether Dr. Niku's costs were reasonable. Petitioner does not even explain how she arrived at the dates for Dr. Niku's stay when there is nothing submitted that shows she was in Chicago, Illinois for the trial. The one flight receipt attached for Dr. Niku indicates she flew back to Vienna, Austria on December 26, 2019, so the Court cannot say this flight was incurred in relation to her attendance at trial. Petitioner does not request the $40 appearance fee granted to witnesses who appear at trial, so the Court will not grant it. This request is wholly denied.

Petitioner requests $2,800 for an expert report at Request N-7. Costs submitted in connection to an expert report are not recoverable under the statute. *See e.g. Vukadinovich v. Hanover Community School Corp., et al.*, No. 2:13-CV-144-PPS, 2017 WL 242985, *2 (N.D. Ind. Jan. 20, 2017).

Petitioner requests costs associated with the court-appointed expert Dr. Sol Rappaport. Petitioner attaches receipts to support her request for $5,000.00 for Dr. Rappaport's retainer and $14,041.87 for his evaluation/report (Request N-5), with an additional $5,150 for Dr. Rappaport's trial retainer. (Request N-12). Respondent does not dispute that these are recoverable costs and

indeed they are under the statute; but only claims that they should not be recoverable because Dr. Rappaport was not unbiased. He does not support this request with any case law. As the fees associated with Dr. Rappaport are recoverable under § 1920, the Court grants this request.

6. Deposition Transcript

Petitioner requests $1,452.75 for the deposition transcript of Respondent at Request N-9. First, as an initial matter, the receipt attached only supports a request for $360 for the deposition transcript of Jeremy Hulsh. (Dkt. 248-14 at 18). It appears that $1,092.75 is a transcript for the deposition of an unrelated party in the case of *Wilhelm v. Wilhelm*. With regard to deposition transcripts, it is well established that "the expenses of discovery depositions shown to be reasonably necessary to the case are recoverable even if the depositions are not used as evidence at trial." *State of Ill. v. Sangamo Const. Co.*, 657 F.2d 855, 867 (7th Cir. 1981). The "introduction of a deposition at trial is not a prerequisite for finding that it was necessary to take the deposition," as long as the deposition was not "purely investigative in nature." *Hudson v. Nabisco Brands, Inc.*, 758 F.2d 1237, 1243 (7th Cir. 1985), overruled on other grounds by *Provident Bank v. Manor Steel Corp.*, 882 F.2d 258 (7th Cir. 1989). Petitioner has not supported her request whatsoever. The Court has no means of knowing whether the deposition of Respondent was necessary for trial and was not purely investigatory in nature. This request is therefore denied in whole.

7. Investigator Fees

Petitioner requests $1,465.00 for MSI Detective Services for "attempts to locate Jeremy and the children after abduction" at Request N-10. The receipt lists "stakeout, mileage, and parking" as part of its fees. (See Dkt. 248-14 at 28). There is nothing in the statute that allows for costs to private investigators. Respondent has provided case law that indicates that this cost is not recoverable under the statute. *See e.g. Myres v. Hooten*, No. CIV. A. 1:03-CV-104, 2007 WL

2963915, at *3 (E.D. Tenn. Oct. 9, 2007) ("28 U.S.C. § 1920 makes no provision for fees incurred to pay private investigators..."); *see also Associated Gen. Contractors of Am. v. Stokes*, No. 1:11CV795 GBL/TRJ, 2012 WL 7782745, at *11 (E.D. Va. Nov. 20, 2012), report and recommendation adopted, No. 1:11-CV-795 GBL/TRJ, 2013 WL 1155512 25 (E.D. Va. Mar. 19, 2013) (noting that private investigator's charges "are not contemplated as allowable expenses under 28 U.S.C. § 1920"). This request is denied.

8. Shipping Fees

Finally, Petitioner requests $280.61 for a "Federal Express fee to return original documents" at Request N-16. However, delivery or shipping costs "have generally been deemed ordinary business expenses that may not be recovered by the prevailing party." *Menasha Corp. v. News America Marketing Instore, Inc.*, No. 00 C 1895, 2003 WL 21788989, *3 (N.D. Ill. July 31, 2003) (citing *Rodgers v. City of Chicago*, No. 00 C 2227, 2002 WL 423723 at *2 (N.D. Ill. Mar.15, 2002)); *see also Stark v. PPM America, Inc.*, No. 01 C 1494, 2003 WL 21223268 at *8 (N.D. Ill. May 23, 2003) (citing *Wahl v. Carrier Mfg. Co., Inc.*, 511 F.2d 209, 217 (7th Cir.1975)) (denying request for delivery services and postage because those expenditures were not expressly provided for in §1920). This request is denied in whole as it is an ordinary business expense and is unjustified.

B. Whether Respondent's Indigency Rebuts the Presumption of Costs

Respondent argues that he is indigent and that therefore awarding Petitioner her taxable costs is inappropriate. Rule 54(d) gives district courts the discretion to not assess costs against the losing party. *Rivera v. City of Chi.*, 469 F.3d 631, 634 (7th Cir. 2006). One reason courts consider in denying costs is a plaintiff's indigency. *Id.* (citing *Mother & Father v. Cassidy*, 338 F.3d 704, 708 (7th Cir. 2003)). Despite this, the presumption that costs will be awarded is a strong one. *U.S.*

Neurosurgical, Inc. v. City of Chi., 572 F.3d 325, 333 (7th Cir. 2009). Denial of costs for indigency is only allowed in limited circumstances. A party who fails to establish he is incapable of paying court-imposed costs now "or in the future" is not entitled to avoid court-assessed costs via the indigency exception. *McGill v. Faulkner*, 18 F.3d 456, 459–60 (7th Cir. 1994). The presumption is so strong that in *McGill*, despite the court finding plaintiff was presently indigent did not prevent costs from being assessed against him, since the court was "not convinced that [the plaintiff] will not ever be able to pay the order imposing costs." *Id.*

Respondent argues that he has few assets now, but the Court is unconvinced he will never be able to pay the fees. Therefore, the Court will allow Petitioner to recover her reasonable and justifiable costs in the amount of $25,141.87.

CONCLUSION

After two attempts to allow Petitioner to submit justifiable and supported attorneys' fees and costs and reviewing the supported documentation, the Court grants Petitioner $239,955 in attorneys' fees and expenses and $25,141.87 in taxable costs.

Virginia M. Kendall
United States District Judge

Date: March 15, 2021

EXHIBIT H

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Chapter 7
	)	
JEREMY BAROCK HULSH,	)	No. 20 B 16482
	)	
Debtor.	)	
	)	
VERA HULSH,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 20 A 417
	)	
JEREMY BAROCK HULSH,	)	
	)	
Defendant.	)	Judge Goldgar

RULE 7058 JUDGMENT DECLARING DEBT NONDISCHARGEABLE

This matter came before the court on the motion of plaintiff Vera Hulsh for summary judgment on Counts I and III (the only remaining counts) of her adversary complaint against defendant Jeremy Barock Hulsh. In a separate order dated today, the court granted the plaintiff's motion as to Count I and denied the motion as moot as to Count III. Accordingly, IT IS HEREBY ORDERED:

Judgment is entered in favor of plaintiff Vera Hulsh and against Jeremy Barock Hulsh on Count I of the adversary complaint. Jeremy Barock Hulsh owes Vera Hulsh a debt of $265,096.87, and that debt is declared nondischargeable under 11 U.S.C. § 523(a)(5).

Dated: October 25, 2021

A. Benjamin Goldgar
United States Bankruptcy Judge

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

VIERA HULSH,	)	
	)	
Plaintiff,	)	
	)	No. 21 CH 831
vs.	)	
	)	Honorable Patrick J. Sherlock
MAYA HULSH and OREN HULSH,	)	
	)	
Defendants.	)	

ORDER

This matter coming to be heard on the motions of 1) defendant Maya Hulsh ("Maya") to dismiss plaintiff's verified complaint pursuant to 735 ILCS 5/2-615; and 2) defendant Oren Hulsh ("Oren") to dismiss the plaintiff's complaint pursuant to 735 ILCS 5/2-615.

Facts

The complaint stems from a custodial dispute between plaintiff and her former husband, non-party Jeremy Hulsh ("Jeremy.") Plaintiff and Jeremy litigated a divorce in Slovakia and plaintiff was awarded custody of their two children. Plaintiff alleges in October 2019, Jeremy kidnapped the children and returned to Illinois. Plaintiff alleges Maya, the mother of Jeremy, cared for the children in the house and believes Maya helped financed the children's concealment and care. Plaintiff alleges Oren, Jeremy's brother, facilitated the transport of the children and helped conceal the children. Plaintiff filed a petition in federal court for the return of her children that the trial court granted. The court additionally granted plaintiff leave to file her petition for attorneys' fees and costs associated with seeking the return of her children.

On August 31, 2020, Jeremy filed for bankruptcy but failed to list plaintiff as a creditor. Instead, he listed plaintiff's attorney as a creditor for attorneys' fees, expenses and costs in the amount of $436,055.26, although judgment had not been entered.

Plaintiff now seeks to find these defendants jointly and severally liable for all attorney fees and expenses incurred, past and possible future lost income, transportation, and living expenses and mental anguish. Plaintiff filed a declaratory judgment action and three counts including: Count I: Tortious Interference with Custodial Rights; Count II: Civil Conspiracy to Aid and Abet Tortious Interference with Custodial Rights; and Count III: Intentional Infliction of Emotional Distress

Court's Analysis

Defendants' Motions to Dismiss[1]

Defendants move to dismiss the complaint pursuant to §2-615. §2-615 motions are based solely on defects on the face of the complaint rather than proof of underlying facts. *City of Chicago v. Beretta U.S.A. Corporation*, 213 Ill.2d 351, 364 (2004). The motion admits all well-pleaded facts as true, as well as all reasonable inferences that can be drawn from the facts, construing them most favorably to plaintiff. *Tuite v. Corbitt*, 224 Ill.2d 490, 509 (2006).

Count I: Tortious Interference with Custodial Rights

Defendants move for dismissal on the grounds the claim is not a recognizable claim under Illinois law. This issue was squarely addressed in *Whitehorse v. Critchfield*, 144 Ill. App. 3d 192, 193 (4th Dist. 1986). In *Whitehorse*, a Native American plaintiff sent his child to a local school in Utah. In an attempt to get the child to leave the home and change her religion, teachers at the school sent the child to Illinois under an assumed name and attempted to conceal her

[1] Because the motions make the same arguments, the Court addressed the arguments simultaneously.

whereabouts from her parent. The defendants in that case attempted to adopt the child. The father sued the defendants asserting a claim of tortious interference with parental rights arguing the defendants deprived plaintiff of the care, custody, and services of his daughter. Plaintiff asked for his expenses, costs, in addition to damages for the emotional distress. Plaintiff argued the defendants (those attempting to adopt) aided and abetted the teachers in carrying out their plan. *Id.* When called to recognize a claim based upon a tortious interference with a custodial parent's right to custody, care, and companionship, the Court expressly stated: "[w] e decline to do so, feeling this area, because of its multiple ramifications and potential for abuse, is more properly a subject for the legislature's consideration. The tort of outrage in this case is derivative of the tort of parental interference. Since we find that the latter tort does not exist in this State, the former must also fall." *Id.* at 194. The Court acknowledges the caselaw provided by plaintiff from other jurisdictions, but the case law in Illinois is clear that at this time there is no cause of action recognized in Illinois.

Count II: Civil Conspiracy to Aid and Abet Tortious Interference with Custodial Rights

The elements of a civil conspiracy are: (1) a combination of two or more persons, (2) for the purpose of accomplishing by some concerted action either an unlawful purpose or a lawful purpose by unlawful means, (3) in the furtherance of which one of the conspirators committed an overt tortious or unlawful act. *McClure v. Owens Corning Fiberglass Corp.*, 188 Ill. 2d 102, 133 (1999); *Ill. State Bar Ass'n Mut. Ins. Co. v. Cavenagh*, 2012 IL App (1st) 111810, ¶ 37; *Midwest Enterprises, Inc v. Noonan*, 2015 IL App (1st) 132488, ¶ 82. Civil conspiracy is not an independent tort, "if a plaintiff fails to state an independent cause of action underlying [the] conspiracy allegations, the claim for conspiracy also fails." *Indeck North American Power*

Fund, L.P. v. Norweb PLC, 316 Ill. App. 3d 416, 432 (2000). Because plaintiff is unable to plead a viable tort claim, the conspiracy claim is similarly deficient.

Count III: Intentional Infliction of Emotional Distress ("IIED")

In order to state a cause of action for intentional infliction of emotional distress, facts must be alleged which establish: (1) that the defendant's conduct was extreme and outrageous; (2) that the emotional distress suffered by the plaintiff was severe; and (3) that the defendant's conduct, if alleged to have been "reckless," was such that the defendant knew severe emotional distress would be certain or substantially certain to result. *Public Finance Corp. v. Davis* (1976), 66 Ill. 2d 85, 89-90, 360 N.E.2d 765.

Regarding the first element, the nature of defendants' conduct, liability exists only where their conduct is "'so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency * * *.'" *Plocar v. Dunkin' Donuts of America, Inc.* (1981), 103 Ill. App. 3d 740, 745-46, 431 N.E.2d 1175, quoting Restatement (Second) of Torts sec. 46, comment d (1965). With respect to the second element, the severity of plaintiff's distress, "'[t]he law intervenes only where the distress inflicted is so severe that no reasonable man could be expected to endure it. The intensity and duration of the distress are factors to be considered in determining its severity.'" *Public Finance Corp. v. Davis* (1976), 66 Ill. 2d 85, 90, quoting Restatement (Second) of Torts sec. 46, comment j (1965). Pertaining to the recklessness of defendants' conduct, "liability extends to situations in which there is a high degree of probability that severe emotional distress will follow and the actor goes ahead in conscious disregard of it." *Plocar v. Dunkin' Donuts of America, Inc.* (1981), 103 Ill. App. 3d 740, 746, citing Restatement (Second) of Torts sec. 46, comment i (1965), and Prosser, Torts sec. 12, at 60 (4th ed. 1971).

In order to determine whether a plaintiff has stated a cause of action for intentional infliction of emotional distress, the must accept as true the allegations contained in the complaint. Here, plaintiff's complaint charges that defendants knew that Jeremy did not have custodial rights outside of Slovakia, he was not allowed to remove his child from the country, the defendants knew that Jeremy was not allowed to remove his child from Slovakia, notwithstanding their knowledge defendants assisted in the improper removal of the child and their actions caused severe emotional distress to plaintiff.

This Court finds that defendants' actions (if proved) might support a conclusion that their actions were so outrageous, so atrocious and so utterly intolerable that a person of ordinary sensibilities could not reasonably be expected to endure it.

WHEREFORE, by reason of the foregoing, the Court hereby orders: 4271 | 5271

A. Defendant Maya Hulsh's Motion to Dismiss plaintiff's complaint pursuant to 735 ILCS 5/2-615 is granted, in part, and denied, in part.

B. Defendant Oren Hulsh's Motion to Dismiss plaintiff's complaint pursuant to 735 ILCS 5/2-615 is granted, in part, and denied, in part. 4271 | 5271

C. Defendants shall answer Count III on or before March 24, 2022. 4234

D. The parties shall initiate written discovery not later than March 31, 2022. 4231

E. The previously set status of March 8, 2022 is stricken. 4304

F. Status for this matter is set for June 6, 2022 at 9:45 am. Due to COVID-19 limitations, the status will not be held in open Court but will be held remotely via Zoom conference. To attend hearing, go to www.zoom.us or telephone to 312-626-6799 and, when prompted, enter 4806 6315

Meeting ID: **994-2739-7392** and Password: **2007**

ENTER:

Judge Patrick J. Sherlock

Honorable Patrick J. Sherlock
Judge Presiding

FEB 24 2022

Circuit Court – 1942

February 24, 2022

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

VIERA HULSH,	)	
	)	
Plaintiff,	)	
	)	No. 21 CH 831
vs.	)	
	)	Honorable Patrick J. Sherlock
MAYA HULSH and OREN HULSH,	)	
	)	
Defendants.	)	

ORDER

This matter was heard on defendants' motion to reconsider the Court's order denying their motion to dismiss plaintiff's claim for intentional infliction of emotional distress.

Facts

The complaint stems from a custodial dispute between plaintiff and her former husband, non-party Jeremy Hulsh ("Jeremy.") Plaintiff and Jeremy litigated a divorce in Slovakia and plaintiff was awarded custody of their two children. Plaintiff alleges in October 2019, Jeremy kidnapped the children and returned to Illinois. Plaintiff alleges Maya, the mother of Jeremy, cared for the children in the house and believes Maya helped financed the children's abduction, concealment and care. Plaintiff alleges Oren, Jeremy's brother, facilitated the transport of the children and helped conceal the children. Plaintiff filed a petition in federal court for the return of her children which ultimately was granted. The Court additionally granted plaintiff leave to file her petition for attorneys' fees and costs associated with seeking the return of her children.

On August 31, 2020, Jeremy filed for bankruptcy but failed to list plaintiff as a creditor. Instead, he listed plaintiff's attorney as a creditor for attorneys' fees, expenses and costs in the amount of $436,055.26, although judgment had not been entered.

Plaintiff now seeks to find these defendants jointly and severally liable for all attorney fees and expenses incurred, past and possible future lost income, transportation, and living expenses and mental anguish.

Court's Analysis

The Court previously dismissed Count I (Tortious Interference with Custodial Rights) and Count II (Civil Conspiracy to Aid and Abet Tortious Interference with Custodial Rights) because the issues with those claims were squarely addressed in *Whitehorse v. Critchfield*, 144 Ill. App. 3d 192, 193 (4th Dist. 1986). The *Whitehorse* court found that Illinois does not recognize a cause of action for intentional interference with parental rights. Defendants are correct that *Whitehorse v. Critchfield* also found (144 Ill. App. 3d at 194):

> 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 the legislature's consideration. The tort of [intentional inflication of emotional distress] in this case is derivative of the tort of parental interference. Since we find that the latter tort does not exist in this State, the former must also fall. (emphasis added).

But, this Court denied the motion with respect to plaintiffs' claim for intentional infliction of emotional distress for a variety of reasons. The Court believes that the Illinois Supreme Court has opened the door for this claim in *Dralle v. Ruder*, 124 Ill. 2d 61 (1988).

In *Dralle*, the Illinois Supreme Court held that a drug manufacturer could not be held liable to the parents of child born with birth defects for a claim of loss of society arising from nonfatal injury to a child. In reaching that conclusion, the *Dralle* court engaged in a lengthy discussion of why parents cannot recover for loss of a child's society finding: (i) allowing the

injured party and the injured party's family to recover damages would invite duplicate recoveries, and (ii) assigning a monetary figure to the reduced value of the parent-child relationship is near impossible.

But, the *Dralle* court also cited with approval *Dymek v Nyquist*[1], 128 Ill. App. 3d 859 (1st Dist. 1984) for the proposition that a parent can recover for a child's loss of companionship and society and *Kunz v. Deitch*, 660 F. Supp 679 (N.D. Ill. 1987), a case that allowed a widowed father to bring a claim against his deceased wife's parents for their alleged efforts to have the couple's child put up for adoption with the father's knowledge or approval. The *Dralle* court found it significant that "[t]he torts in *Dymek* and *Kunz* did not arise as the derivative consequence of an injury to the child, as the basis for the action. . . Rather, the plaintiffs in *Dymek* and *Kunz* alleged acts intentionally and directly interfering with the parent child relationship." *Dralle*, 124 Ill. 2d at 73.

Similary, plaintiff is not seeking recovery for any harm suffered by her children. The harm for which plaintiff seeks recompense is the attorney fees she incurred in recovering her children, lost income from having to suspend her employment in Slovaki to regain custody of her children and mental anguish resulting from abducting her children, transporting them around the world and secreting their location from her. Notably absent from the complaint, is any allegation that plaintiff's injuries are derivative of any injuries to her children (indeed, plaintiff does not allege that her children suffered any injuries).

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[1] In *Dymek*, the trial court dismissed the intentional infliction of emotional distress claim finding that the psychiatrist defendant did not engage in outrageous behavior. The court found that plaintiff made no factual allegations that psychiatric care was not required for the minor child and further plaintiff made no factual allegations that the psychiatric care was detrimental to the child's mental state or well-being. Accordingly, the court found that "we simply cannot conclude that the psychiatrist's actions reached such an extreme level of outrageousness and severity 'beyond all bounds of decency' so as to give rise to a cause of action for [I]ED.]" *Dymek*, 128 Ill. App. 3d at 862.

Plaintiff also alleges that defendants' conduct intentionally and directly interfered with her relationship with her children. Plaintiff alleges that defendants knew that the Slovakian courts had granted primary child custody to Viera. Plaintiff alleges that defendants provided substantial assistance with the Children's abduction, including chartering a private jet, flying them to Florida, driving them to the Chicago area and housing the Childen in Chicago and in Fox Lake. Plaintiff alleges that defendants were active in the Slovakian court proceedings and know that removing the Children from Slovakia was a violation of that court's custody order.

For these reasons, the Court declines to reconsider its prior order.

The case is set for status for this matter is set for June 6, 2022 at 9:45 am. The status will be held remotely via Zoom conference. To attend hearing, go to www.zoom.us or telephone to 312-626-6799 and, when prompted, enter 4315 4806

Meeting ID: **994-2739-7392** and Password: **2007**

ENTER:

Honorable Patrick J. Sherlock
Judge Presiding

Judge Patrick J. Sherlock
MAY 17 2022
Circuit Court – 1942

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

VIERA HULSH,	)	
	)	
Plaintiff,	)	
	)	Case No. 21 CH 00831
vs.	)	(transferred to Law Division)
	)	
MAYA HULSH, AND OREN HULSH,	)	
	)	
Defendants.	)	

ORDER

THIS CAUSE COMING to be heard on Plaintiff, Viera Hulsh's ("Hulsh"), Motion for Voluntary Dismissal of Count III of the Verified Complaint, no parties being in opposition, it is hereby ORDERED:

1. Hulsh's motion is granted and Count III of the Verified Complaint is voluntarily dismissed. 4336
2. As Counts I and II were previously dismissed, this action is terminated in its entirety. 4040

ENTERED:

DATED: _____

_____
Honorable Patrick J. Sherlock, Presiding
No. 1942

Judge Patrick J. Sherlock

SEP 0 8 2022

Circuit Court – 1942

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

VIERA HULSH,

Plaintiff-Appellant,

v.

MAYA HULSH and OREN HULSH,

Defendants-Appellees.

No. 1-22-1521

ORDER

On the Court's own motion, the parties are ordered to submit supplemental briefs on or before January 26, 2024, discussing the applicability of the following cases to the issues raised on appeal:

- *Rishmawy v. Vergara*, 540 F. Supp. 3d 1246 (2021)
- *Mendoza v. Silva*, 987 F. Supp. 2d 910 (2014)

ENTER:

/s/ Sharon Oden Johnson
Presiding Justice Sharon O. Johnson

ORDER ENTERED

DEC 22 2023

APPELLATE COURT FIRST DISTRICT