

Court of King's Bench of Alberta

Citation: Khvyl v Khvyl



Date:

Docket: FL03 71190

Registry: Edmonton

Between:

Yurii Khvyl

Applicant

- and -

Kateryna Khvyl

Respondent

**Memorandum of Decision
of the
Honourable Justice C.D. Millsap**

[1] On October 26, 2023 following a hearing under the *Hague Convention on the Civil Aspects of International Child Abduction*, Can TS 1983 No 35, 19 ILM 1501 (*Hague Convention*), the Applicant was successful in his effort to have his children returned to his care in Denmark. The Respondent was determined to have unlawfully removed the parties' children from Denmark and relocated with them in Alberta. Following that decision, the Applicant attended Alberta retrieved the children and returned to Denmark with them.

[2] Being successful on his application the Applicant now seeks to have costs awarded against the Respondent.

[3] The Applicant seeks costs on a full indemnity basis in the amount of \$115,129.63 and cites numerous authorities to support that position. The Respondent implicitly concedes that

costs can be awarded to the Applicant but asks for the costs award to be awarded on a party-party basis pursuant to column 1 of Schedule C of the *Alberta Rules of Court*.

[4] Having carefully reviewed the positions of the parties and the relevant caselaw, in particular the cases of *Lawrence v Lawrence*, 2017 ONCJ 431 and *Beatty v Schatz* 2009 BCSC 769, it is the decision of this Court that the Applicant is entitled to costs in the amount of \$45,329.06. The total amount of the costs is payable by the Respondent to the Applicant by no later than December 31, 2024 in monthly installments of at least \$2,500.00 starting February 1, 2024. Obviously, the minimum monthly payment will not cause the entire amount to be paid by the due date. It is contemplated by this decision that the Respondent may either increase the monthly payment at her leisure to ensure the final due date is met, or she may make only the minimum payment and pay the remainder in a lump sum at some point prior to December 31, 2024.

[5] The costs award is broken down as follows:

- a) Travel costs: \$12,517.22 (100% of actual expense)
- b) Legal fees of Mr. Blitt: \$45,329.06 (60% of actual expense)
- c) Legal fees of Danish counsel: \$0.00 (0% of actual expense)

[6] In *McAllister v Calgary (City)*, 2021 ABCA 25, Courts were given direction on what is an appropriate level of indemnification where solicitor/client costs are being sought and re-established the range of 40-50% as being generally desirable. This position of the Alberta Court of Appeal must be read in conjunction with the principles that influence costs awards in *Hague Convention* proceedings.

[7] Article 26 of the *Hague Convention* has three objectives: to compensate the left behind parent for costs incurred in the location and recovery of the children; to punish the abducting parent; and to deter further abductions (see *Beatty v Schatz*). The latter two principles are punitive in nature, which brings costs awards in *Hague* cases outside the normal scope of indemnification contemplated by *McAllister*.

[8] As such, indemnification over and above the high end of the *McAlister* range is appropriate and would fall between 50-100% depending on numerous factors. The Applicant is awarded 100% of his travel costs that were necessary to allow him to come to Alberta and return the children to Denmark. I am not persuaded that this amount should be reduced because the Respondent would have been able to use her connections as a travel agent to get cheaper flights and accommodations. The willingness of the Respondent to cooperate in the return of the children cannot be reasonably expected by the Applicant in light of the facts of this case.

[9] The Danish legal fees are too uncertain with respect to what portion of those fees are attributable to this action and what are attributable to the ongoing litigation between these parties in Denmark. It is not certain from the material provided if the amount sought in this regard is an actual legal bill to the Applicant, an estimate of possible expenses or something else. Given this uncertainty and the potential for the Applicant to seek costs in Denmark, the Danish legal fees cannot be included here.

[10] The legal fees of Mr. Blitt appear reasonable for counsel of his seniority and a case of this level of complexity. The position of the Respondent, while not accepted as a justification for a permanent relocation to Canada, was not completely meritless, inasmuch as the Applicant provided a written consent for the Respondent to travel to Canada with the children. That consent was real and voluntarily given. The scope of that consent was subject to scrutiny by the Court in this case and ultimately the Respondent's position was rejected, though it was not frivolous or whimsical.

[11] The punitive aspect of the costs award must be tempered slightly by the fact that there was a reasonable position put forward by the Respondent, as such the percentage of legal fees that are payable to the Applicant are on the lower end of the 50-100% range and they are set at 60% as noted above.

Dated at the City of Edmonton, Alberta this 22nd day of December, 2023.



C.D. Millsap
J.C.K.B.A.

Appearances:

Max Blitt, KC
for the Applicant

Tsitsi Chiwara
for the Respondent