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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Akwasi Damoah Asumadu,

10 Petitioner,

11 v.

12 Hannah Boahemaa Baffoe,

13 Respondent.
14

No. CV-18-01418-PHX-DLR

ORDER

15
16 Before the Court are Petitioner Akwasi Damoah Asumadu's motion for necessary
17 expenses (Doc. 68), and Respondent Hannah Boahemaa Baffoe's motion for review of the
18 Clerk of Court's judgment on taxation of costs (Doc. 76). Both motions are fully briefed.
19 (Docs. 73, 77-78.) For the following reasons, Asumadu's motion is denied, Baffoe's
20 motion is granted, and the Clerk of Court's judgment on taxation of costs is modified as
21 explained herein.

22 **I. Motion for Necessary Expenses**

23 Asumadu seeks recovery of "necessary transportation expenses" pursuant to the
24 International Child Abduction Remedies Act ("ICARA"), 22 U.S.C. § 9007(b)(3). (Doc.
25 68 at 6.) Specifically, Asumadu seeks: (1) \$1,201.73 for transportation and lodging related
26 to the July 31, 2018 bench trial, and (2) \$674.31 for transportation and lodging related to
27 K.A.A.'s return to Canada. (*Id.*) In relevant part, ICARA provides that:

28 Any court ordering the return of a child . . . shall order the
respondent to pay necessary expenses incurred by or on behalf

1 of the petitioner, including . . . transportation costs related to
2 the return of the child, unless the respondent establishes that
such order would be clearly inappropriate.

3 22 U.S.C. 9007(b)(3). ICARA “contemplates the use of such awards to restore a petitioner
4 to the financial position he or she would have been in had there been no removal or
5 retention, as well as to deter violations of the Hague Convention.” *Aguilera v. DeLara*,
6 No. 14-01209-PHX-DGC, 2014 WL 4204947, *1 (D. Ariz. Aug. 25, 2014). As the
7 respondent, Baffoe bears the burden of establishing that an award of fees and costs would
8 be clearly inappropriate under the circumstances. *Id.* at 2.

9 Baffoe asserts that an assessment of the sought-after expenses against her is clearly
10 inappropriate because her actions were a result of Asumadu’s physical abuse, and that any
11 assessment of expenses would cause her financial hardship. (Doc. 73 at 1.) Baffoe also
12 argues that some of the sought-after expenses were unnecessary or excessive. (*Id.* at 4-5.)

13 “Generally, in determining whether expenses are ‘clearly inappropriate,’ courts
14 have considered the degree to which the petitioner bears responsibility for the
15 circumstances giving rise to the fees and costs associated with a petition.” *Souratgar v.*
16 *Lee Jen Fair*, 818 F.3d 72, 79 (2d Cir. 2016) (citing cases). For example, awarding
17 expenses is clearly inappropriate where the prevailing petitioner physically abused the
18 respondent, *see, e.g., Aguilera*, 2014 WL 4204947, at *1-2, because “a [parent] should not
19 be required under the threat of monetary sanctions to choose between continued abuse
20 (mental as well as physical) and separation from a young child[.]” *Guaragno v. Guaragno*,
21 No. 09-CV-187, 2010 WL 5564628, at *3 (N.D. Tex. Oct. 19, 2010), *adopted by* 2011 WL
22 108946 (N.D. Tex. Jan. 11, 2011).

23 The Court previously found that “the description of events provided by Baffoe is
24 consistent with her having been the victim of some form of domestic violence,” and that
25 “Asumadu likely struck Baffoe on more than one occasion.” (Doc. 60 at 7.) Under the
26 circumstances, the Court finds that Baffoe “was faced with a cruel dilemma, whether to
27 continue to receive the physical abuse . . . from [Asumadu], or retreat and suffer from the
28 separation of the child.” *Guaragno*, 2010 WL 5564628, at *3. Accordingly, an award of

1 expenses would be clearly inappropriate in this case.¹

2 **II. Motion for Review of the Clerk of Court's Judgment on Taxation of Costs**

3 Baffoe moves the Court for review of the Clerk of Court's Judgment on Taxation of
4 Costs. (Doc. 75.) Of the \$3,150.02 in costs awarded to Asumadu, \$2,233.94 were
5 attributed to service fees. (Doc. 75 at 1.) Baffoe challenges the Clerk of Court's finding
6 with respect to the service fees only, arguing that the Clerk's finding "was not limited to
7 fees incurred in connection with service of process" and therefore should be reduced from
8 \$2,233.94 to \$532.50." (Doc. 78 at 1.)

9 Upon motion for review of a clerk's taxation of costs, a district court reviews de
10 novo the clerk's judgment. *United States ex rel. Lindenthal v. Gen. Dynamics Corp.*, 61
11 F.3d 1402, 1412 n.13 (9th Cir. 1995). "The general rule on the taxation of costs is that the
12 district court has discretion to fix the costs." *Johnson v. Pac. Lighting Land Co.*, 878 F.2d
13 297, 298 (9th Cir. 1989).

14 After review of the record, the Court finds that the Clerk of Court awarded service
15 fees for activities undertaken after, and unrelated to, the service of process. (Doc. 66-2.)
16 Process was served on Baffoe on May 12, 2018, and the affidavit of service was completed
17 by Inter-State Investigative Services ("IIS") on May 13, 2018. Based on ISS's invoice, the
18 service of process fees should be reduced from \$2,233.94 to \$1,107.50.² (*Id.* at 3-4.)
19 Accordingly,

20 **IT IS ORDERED** that Asumadu's motion (Doc. 68) for necessary expenses is
21 **DENIED.**

22 ¹ The Court need not discuss Baffoe's other arguments concerning financial
23 hardship and the necessity of the expenses Asumadu incurred.

24 ² Baffoe also argues that the fees "are inappropriate in light of [her] financial
25 condition. (Doc. 76 at 4.) Baffoe, however, does not present any evidence of her current
26 financial circumstances. Instead, she argues that her financial circumstances were
27 negatively impacted by Asumadu. For example, Baffoe contends that Asumadu failed to
28 provide financial support for their children from February until the end of August 2018.
(*Id.*) The Court finds this argument unpersuasive. Whether Asumadu provided financial
support during the period after Baffoe removed the children from Canada does not serve
as probative evidence of Baffoe's "limited financial resources." *Day v. LSI Corp.*, No. 11-
CV-186-TUC-CKJ, 2017 WL 4876413, at *2 (D. Ariz. Jan. 5, 2017). Without evidence of
Baffoe's current financial circumstances, the Court has no basis to find her unable to pay
the \$1,107.50 in service fees, or the remainder of the judgment on taxation of costs.

IT IS FURTHER ORDERED that Baffoe's motion for review of the Clerk of Court's judgment on taxation of costs (Doc. 76) is **GRANTED** as explained herein.

IT IS FURTHER ORDERED that the Clerk’s judgment on taxation of costs is **VACATED**. The Clerk of Court is directed to modify the judgment on the taxation of costs in accordance with this order.

Dated this 5th day of April, 2019.