

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

NATHAN LAWRENCE,	:	Case No. 1:15-cv-191
	:	
Petitioner,	:	Judge Timothy S. Black
	:	
vs.	:	
	:	
NATALIE J. LEWIS,	:	
	:	
Respondent.	:	

**ORDER GRANTING IN PART PETITIONER’S REQUEST  
FOR PROVISIONAL REMEDIES (Doc. 3)**

This civil action is before the Court on a petition for return of child (“Petition”) made pursuant to the Convention on Civil Aspects of International Child Abduction (“Hague Convention”). (Doc. 3). Petitioner seeks the following provisional remedies pursuant to 22 U.S.C. § 9004:

Pending further hearing in this court, it is requested this Court issue an immediate Order prohibiting the removal of the child from the jurisdiction of this Court and requiring Respondent to post a bond in the amount of \$20,000, said bond to remain in effect until further order of the court.

(Doc. 3 at 6).<sup>1</sup> Given the nature of the provisional remedies sought, the Court construes this portion of the Petition as a motion for a temporary restraining order. *See*

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<sup>1</sup> Petitioner also seeks the following relief: “(a) That JRM be promptly and immediately returned to the child’s habitual residence in the United Kingdom to the Petitioner, at the sole cost of the Respondent; (b) The issuance of an Order directing that the child, JRM, together with the Respondent, Natalie Jane Lewis, be personally brought into this Court by any United States Marshal or Federal Officer to guarantee their attendance and effect service of the Civil Summons upon the Respondent Natalie Jane Lewis; (c) The issuance of an immediate Order prohibiting the removal of JRM from the jurisdiction of this Court through the confiscation of any and all passports or other travel documentation and the posting of an appropriate bond; (d) The issuance of an interim Order directing Respondent to make the child regularly available to the Petitioner by telephone or other electronic means, and to provide such information

*Marquez v. Castillo*, No. 8:14-CV-2407-T-30TBM, 2014 WL 5782812, at \*2 (M.D. Fla. Nov. 6, 2014) (finding that provisional relief is analogous to a temporary restraining order).<sup>2</sup>

## I. FACTUAL ALLEGATIONS<sup>3</sup>

Petitioner Nathan Lawrence and Respondent Natalie J. Lewis are the biological parents of minor child JRM. (Doc. 7-2). JRM was born in 2006, and is now eight years old. (*See id.*). Petitioner is designated as JRM’s father on her birth certificate. (*Id.*). As such, pursuant to law, Petitioner has parental responsibility of the child and possesses “all rights, duties, powers, responsibility and authority” given to a parent under the law. (*See* Doc. 7) (excerpts from the United Kingdom Children Act of 1989).

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necessary to effectuate the calls without interference; (e) That this Court award all costs and fees incurred to date as required by 22 U.S.C. 9007 and 42 U.S.C. § 11607 reserving jurisdiction over further expenses . . . ; and (f) Any such further relief as justified and its cause may require. (*Id.* at 6-7). The Court declines to address these requests at this time.

<sup>2</sup> Pursuant to 22 U.S.C. § 9003(b), “Any person seeking to initiate judicial proceedings under the Convention for the return of a child or for arrangements for organizing or securing the effective exercise of rights of access to 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.” Here, the Court has jurisdiction over this matter pursuant to 22 U.S.C. § 9003(a) and 28 U.S.C. § 1331. A respondent is entitled to notice of the proceedings “in accordance with the applicable law governing notice in interstate child custody proceedings.” 22 U.S.C. § 9003 (c). “In the United States, the Parental Kidnapping Prevention Act (‘PKPA’) and the Uniform Child Custody Jurisdiction Act (‘UCCJA’) govern notice in interstate child custody proceedings.” *Brooke v. Willis*, 907 F. Supp. 57, 60 (S.D.N.Y. 1995) (citing *Klam v. Klam*, 797 F. Supp. 202, 205 (E.D.N.Y. 1992)). The PKPA provides that “[b]efore a child custody or visitation determination is made, reasonable notice and opportunity to be heard shall be given . . . .” 28 U.S.C. § 1738A(e). However, nothing in the statute appears to prevent a temporary restraining order without notice that maintains the status quo as to physical custody where such an order is otherwise appropriate under Rule 65(b).

<sup>3</sup> These facts are drawn from the Petition (Doc. 3) and exhibits to the Petition, which were filed under seal and include excerpts from laws of the United Kingdom, JRM’s birth certificate, Petitioner’s affidavit, court orders requiring JRM’s return to the United Kingdom, and media accounts. (*See* Doc. 7).

Prior to March 24, 2014, JRM resided in Birmingham, West Midlands, England, United Kingdom for eight years. (Doc. 7-3). Pursuant to a Prohibited Steps Order entered by the Birmingham County Court in 2010, Respondent was prohibited from removing JRM from the United Kingdom “without the written consent of every person with parental responsibility for the children or leave of the court.” (Doc. 7-4).<sup>4</sup> Pursuant to a Contact Order, Petitioner was to have weekly telephone contact with JRM and custody on alternate weekends. (Doc. 7-3 at 5). Petitioner last saw JRM on March 24, 2014 when, following one of his weekends with JRM, he took JRM to school. (*Id.* at 6).

Upon learning that Respondent’s house had been abandoned, Petitioner contacted the local police, who, in turn, contacted authorities in the United States. (Doc. 7-3 at 7). Authorities located Respondent in Ohio and took pictures of Respondent and JRM as part of a “safe and well check.” (*Id.*) Petitioner believes that Respondent and JRM currently reside in Peebles, Ohio. (*Id.* at ¶¶ 4-5).

The United Kingdom High Court of Justice (“High Court”) has issued at least three Orders requiring Respondent to return JRM to the United Kingdom.<sup>5</sup> On December 10, 2014, At Petitioner’s request, the High Court entered a publicity order on December 10, 2014. (Doc. 3 at ¶ 24). Pursuant to that order, Petitioner discussed the removal of

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<sup>4</sup> Petitioner sought this order because he began to suspect that Respondent was planning to move to the United States to be with her new boyfriend (now husband). (Doc. 7-3 at 5).

<sup>5</sup> On September 25, 2014, the High Court ordered that JRM be designated ward of the court and that Respondent provide JRM’s whereabouts in the United States and return JRM to the United Kingdom by October 10, 2014. (Doc. 3 at ¶ 21; Doc. 7-6). On October 10, 2014, the High Court entered a second order on requiring the immediate return of JRM. (Doc. 3 at ¶ 22; Doc. 7-6). On March 16, 2015, the High Court held Respondent in contempt for failing to adhere to its previous orders and again ordered Respondent to return JRM to the United Kingdom. (Doc. 3 at ¶¶ 26-27; Doc. 7-8).

JRM with the British media. (*See* Doc. 7-7). Respondent also participated in an interview with the media, in which she indicated that she was in Cincinnati and that her husband is American. (*Id.*)

According to Petitioner, Respondent “has continually and intentionally deceived the High Court of Justice and Law Enforcement Authorities in the United Kingdom to keep secret JRM’s location so that the child cannot be located and returned to the United Kingdom.” (Doc. 3 at ¶ 29).

## **II. STANDARD OF REVIEW**

“The Hague Convention 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, as well as secure protection for rights of access.” *Maxwell v. Maxwell*, 588 F.3d 245, 250 (4th Cir. 2009) (quoting Hague Convention, pmb1., 19 I.L.M. at 1501) (internal quotations omitted).<sup>6</sup> The Court is permitted to take “measures under Federal or State law, as appropriate, to protect the well-being of the child involved or to prevent the child’s further removal or concealment before the final disposition of the petition.” 22 U.S.C. § 9004(a).

The Court evaluates Petitioner’s request for provisional relief pursuant to Federal Rule of Civil Procedure 65, which authorizes the Court to grant a temporary restraining order or a preliminary injunction. An “injunction is an extraordinary remedy which should be granted only if the movant carries his or her burden of proving that the

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<sup>6</sup> The Hague Convention was implemented into United States law through the International Child Abduction Remedies Act (“ICARA”), 22 U.S.C. §§ 9001–9011.

circumstances clearly demand it.” *Overstreet v. Lexington-Fayette Urban Cnty. Gov't*, 305 F.3d 566, 573 (6th Cir. 2002).

In determining whether to grant injunctive relief, the Court considers four factors:

- (1) whether the moving party has shown a strong likelihood of success on the merits;
- (2) whether the moving party will suffer irreparable harm if the injunction is not issued;
- (3) whether the issuance of the injunction would cause substantial harm to others; and
- (4) whether the public interest would be served by issuing the injunction. *Overstreet*, 305 F.3d at 573. The Court considers these same four factors in determining whether to issue a temporary restraining order or a preliminary injunction. *Northeast Ohio Coalition for Homeless v. Blackwell*, 467 F.3d 999 (6th Cir. 2006).

The court may issue a temporary restraining order without written or oral notice to the adverse party or its attorney only if:

- (A) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and
- (B) the movant’s attorney certifies in writing any efforts made to give notice and the reasons why it should not be required.

Fed. R. Civ. P. 65(b)(1).

### **III. ANALYSIS**

#### **A. Likelihood of Success on the Merits**

Under the Hague Convention, the removal or retention of a child is wrongful where (1) “it is a breach of rights of custody attributed to a person . . . either jointly or alone, under the law of the State in which the child was habitually a resident immediately

before the removal or retention” and (2) “at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.” Hague Convention, art. 3, 19 I.L.M. at 1501; *see also* 22 U.S.C. § 9003(e)(1)(A).

The Court finds that petitioner makes the requisite showing that JRM was a habitual resident of the United Kingdom before the removal; that the removal breached his rights to custody of JRM, and that he had been exercising his custodial rights at the time of the removal. JRM resided in the United Kingdom for eight years prior to April 24, 2014. (Doc. 7-3 at 2). Respondent is designated as JRM’s father on her birth certificate and, therefore, has parental rights under the Children’s Act of 1989. (Doc. 7 at 4-9; Doc. 7-2). Finally, Respondent had been exercising his custodial rights up until JRM’s removal. (*See* Doc. 7-3 at 6). These conclusions are further supported by the fact that the United Kingdom High Court of Justice has issued three orders requiring JRM’s return to the United Kingdom, at Petitioner’s request. For these reasons, the Court finds that Petitioner has shown a sufficient likelihood of success on the merits.

**B. Whether Petitioner Will Suffer Irreparable Harm**

One purpose of the Hague Convention is “to protect the well-being of the child involved or to prevent the child’s further removal or concealment before the final disposition of the petition.” 22 U.S.C. § 9004(a) (citing Hague Convention, art. 7(b), 19 I.L.M. at 1502). Based on the facts contained in the Petition and the supporting documentation, Respondent has retained the child in the United States for close to a year, despite Petitioner’s attempts to exercise his custodial rights and garner relief through the

High Court. This suggests to the Court that Respondent could seek to remove JRM from this jurisdiction, or further conceal her whereabouts. Such action would defeat the purpose of the Hague Convention and frustrate the effort of this Court in resolving the ultimate disposition of the Petition. *Alcala v. Hernandez*, No. 4:14-CV-4176-RBH, 2014 WL 5506739, at \*6 (D.S.C. Oct. 30, 2014) (citing *McCullough v. McCullough (In re McCullough)*), 4 F.Supp.2d 411, 416 (W.D. Pa. 1998). Were Respondent to flee the jurisdiction and conceal JRM prior to a hearing before this Court, Petitioner would certainly suffer irreparable harm.

**C. Whether the Issuance of an Injunction Would Cause Substantial Harm to Others Or the Public**

Petitioner cannot seek a permanent custody order from this Court. Instead, at this juncture, Petitioner seeks a temporary order restraining the movement of JRM. The Court will not determine whether JRM must return to the United Kingdom until the final disposition of the Petition. Thus, at this stage, Respondent stands to lose neither custody rights nor any other permanent rights. *See Alcala*, 2014 WL 5506739, at \*6 (citing *Abbott v. Abbott*, 560 U.S. 1, 20 (2010)). This order, if granted, is limited and temporary. Accordingly, the balance of the equities weighs in favor of Petitioner.

**D. Whether the Public Interest Would Be Served By Issuing the Injunction**

The public interest is served by granting the provisional relief sought. As set forth above, “The Hague Convention 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, as well as secure protection for

rights of access.” *Maxwell*, 588 F.3d at 250 (quoting Hague Convention, pmb., 19 I.L.M. at 1501). Congress made the following findings when enacting ICARA:

- (1) The international abduction or wrongful retention of children is harmful to their well-being.
- (2) Persons should not be permitted to obtain custody of children by virtue of their wrongful removal or retention.
- (3) International abductions and retentions of children are increasing, and only concerted cooperation pursuant to an international agreement can effectively combat this problem.

22 U.S.C. § 9004(a)(1)-(3). Granting the provisional relief sought, as a means to ensure that this matter is adjudicated on its merits, is the public interest.

In sum, the four factors discussed above weigh in favor of granting a temporary restraining order that prohibits the removal of JRM from the Southern District of Ohio, pending a final evidentiary hearing on the Petition or until further order of the Court.

#### **E. Rule 65(b)(1) Requirements**

Because Petitioner seeks provisional relief without notice to Respondent, the request must meet additional requirements. The Court finds that Petitioner has set forth specific facts that clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition.

Specifically, in light of Respondent’s failure to comply with orders issued by the High Court, including an order that Respondent provide JRM’s whereabouts in the United States, the risk that Respondent would attempt to evade an order from this Court by removing her from the Southern District of Ohio is likely. This would undoubtedly cause irreparable injury to Petitioner. *See supra* Part III.B. For these same reasons, notice would defeat the purpose of the provisional relief sought.



## F. Bond

Rule 65(c) of the Federal Rules of Civil Procedure requires that the movant post a security bond in the event that the Court grants a temporary restraining order. The Sixth Circuit has repeatedly held that District Courts possess discretion to issue such injunctive relief without the positing of a bond. *See Moltan Co. v. Eagle-Picher Industries, Inc.*, 55 F.3d 1171, 1176 (6th Cir. 1995); *Roth v. Bank of the Commonwealth*, 583 F.2d 527, 539 (6th Cir. 1978); *Urbain v. Knapp Bros. Mfg. Co.*, 217 F.2d 810, 815–16 (6th Cir. 1954). The Court exercises its discretion in favor of foregoing the posting of a bond by Petitioner. As a part of the provisional relief sought, Petitioner asks the Court to require that Respondent post a bond. In its discretion, the Court declines to grant this request.

## IV. CONCLUSION

Accordingly, for the foregoing reasons, **Respondent Natalie J. Lewis shall not remove JRM, nor allow any other person to remove JRM, from the jurisdiction of the Southern District of Ohio pending a final evidentiary hearing on the Petition or further order of the Court.** This Temporary Restraining Order shall expire fourteen (14) days from the entry of this Order.

**IT IS SO ORDERED.**

Date: 3/23/2015

/s/Timothy S. Black  
United States District Judge