UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

LIUDMILA NEVAREZ,	§	
	§	
Plaintiff,	§	
v.	§	**NO. EP-22-CV-442-DCG-MAT**
	§	
RUBEN NEVAREZ,	§	
	§	
Defendant.	§	

ORDER

Before the Court is Plaintiff Liudmila Nevarez's ("Plaintiff") Motion for Preliminary Injunction ("Motion"). (ECF No. 10). Plaintiff filed the Motion on January 20, 2023. (*Id.*). On May 1, 2023, upon consent of the parties, United States District Judge David Guaderrama referred the case to the undersigned for all pretrial proceedings and referred the Motion to the undersigned for determination ("Referral Order"). (ECF No. 44, p. 1). For the following reasons, the Motion is **DENIED**.

I. FACTUAL AND PROCEDURAL BACKGROUND[1]

Plaintiff was born in the Soviet Union and is a citizen of the Russian Federation. (ECF No. 11, ¶ 4). She is currently a conditional lawful permanent resident of the United States. (*Id.* ¶ 10). On February 14, 2022, to support Plaintiff's Application for Permanent Residency ("Residency Application"), Plaintiff's estranged husband, Defendant Ruben Nevarez ("Defendant"), executed a Form I-864 Affidavit of Support ("Affidavit of Support" or "Affidavit") in which he agreed to maintain Plaintiff at an annual income of at least 125 percent

[1] At this stage of the litigation, the Court accepts as true facts that are not disputed by the parties. *See Nwauwa v. Ugochukwu*, No. 1:18-CV-1130-RP, 2019 WL 2077048, at *2 n.1 (W.D. Tex. May 10, 2019) (accepting factual allegations as true at the preliminary injunction stage because they were not in dispute). "Furthermore, at the preliminary injunction stage, . . . the district court may rely on otherwise inadmissible evidence, including hearsay evidence. Thus, the district court can accept evidence in the form of deposition transcripts and affidavits." *Sierra Club, Lone Star Chapter v. FDIC*, 992 F.2d 545, 551 (5th Cir. 1993) (citations omitted).

of the federal poverty line. (ECF No. 10, p. 3–4) (citing ECF No. 11-1, p. 6). Defendant's execution of the Affidavit was required as part of Plaintiff's Residency Application. (*Id.*) (citing 8 U.S.C. § 1182(a)(4)(C)). On May 13, 2022, U.S. Citizenship and Immigration Services ("USCIS") approved Plaintiff's Residency Application, and she became a U.S. resident as of that date. (ECF No. 11, p. 5) (citing ECF Nos. 11-4, 11-5).

In June 2022, the parties separated, and Defendant has not made any payments to Plaintiff pursuant to the Affidavit of Support since that time. (ECF No. 11, ¶ 26).

Plaintiff alleges that she has become indigent as a result of Defendant's refusal to make the Affidavit payments. (ECF No. 10 p. 1). Specifically, she purports that she is "unemployed, living in a domestic violence shelter, and has been reduced to selling her own blood plasma." (*Id.* at 13). She currently "survives off food stamps and the generosity of El Paso area non-profits." (*Id.* at 1). A bank account statement submitted to the Court shows that she had a balance of $1,112.08 on January 9, 2023. (ECF No. 11-10, p. 1). She requests injunctive relief requiring Plaintiff to comply with his obligations under the Affidavit of Support until the Court enters a final judgment in this case. (ECF No. 10, p. 18–19).

II. LEGAL STANDARDS

A preliminary injunction is an "extraordinary remedy" that should only be granted if the movant establishes:

> (1) a substantial likelihood of success on the merits, (2) a substantial threat of irreparable injury if the injunction is not issued, (3) that the threatened injury if the injunction is denied outweighs any harm that will result if the injunction is granted, and (4) that the grant of an injunction will not disserve the public interest.

Byrum v. Landreth, 566 F.3d 442, 445 (5th Cir. 2009) (quoting *Speaks v. Kruse*, 445 F.3d 396, 399–400 (5th Cir. 2006)). Indeed, "the movant has a heavy burden of persuading the district court that *all four elements are satisfied*." *Enter. Int'l, Inc. v. Corporacion Estatal Petrolera*,

762 F.2d 464, 472 (5th Cir. 1985) (emphasis added).[2] A grant of a preliminary injunction is "the exception rather than the rule." *Texas v. Seatrain Int'l, S. A.*, 518 F.2d 175, 179 (5th Cir. 1975).

III. DISCUSSION

A. Preliminary Injunction Factors

Plaintiff seeks an injunction requiring Defendant to make monthly payments to her under the Affidavit of Support "until the case at bar is resolved or until the occurrence of one of the five terminating conditions set forth in the Affidavit of Support, whichever occurs first." (ECF No. 10, p. 19). She also requests attorney fees and court costs should the Court grant the Motion. (*Id.* at 18–19). The Court will address the preliminary injunction factors in turn.[3]

1. Likelihood of Success on the Merits

"[T]o assess the likelihood of success on the merits, [courts] look to standards provided by the substantive law." *Jordan v. Fisher*, 823 F.3d 805, 809 (5th Cir. 2016). At the preliminary injunction stage, the movant "must establish at least some likelihood of success on the merits,"

[2] Certain Fifth Circuit decisions have endorsed a "sliding scale" approach whereby courts "balanc[e] the hardships associated with the issuance or denial of a preliminary injunction with the degree of likelihood of success on the merits." *See, e.g., Fla. Med. Ass'n, Inc. v. U.S. Dep't of Health, Educ. & Welfare*, 601 F.2d 199, 203 n.2 (5th Cir. 1979). However, the "sliding scale" does not relieve the movant of its obligation to prove all four elements of the test. *See Mi Familia Vota v. Abbott*, 497 F. Supp. 3d 195, 212 (W.D. Tex. 2020) ("*While the movant must prove all four elements*, none of these elements is controlling. Rather, this Court must consider the elements jointly, and a strong showing of one element may compensate for a weaker showing of another." (emphasis added) (citations omitted) (citing *Fla. Med. Ass'n*, 601 F.2d at 203 n.2)); *see also Medlin v. Palmer*, 874 F.2d 1085, 1091 (5th Cir. 1989) ("The failure of a movant to establish one of the . . . four elements will result in the denial of a motion for temporary injunction."). In other words, while a strong showing of one factor may compensate for a weak showing of another, a plaintiff must still prove each one.

[3] The Court finds that it is unnecessary to hold a hearing before ruling on the Motion because the Court does not rely on any disputed facts in reaching its decision and Fifth Circuit precedent clearly requires denial of the Motion. *See* Fed. R. Civ. P. 65(a)(1) (providing that "no preliminary injunction shall be issued without notice to the adverse party"); *Kaepa, Inc. v. Achilles Corp.*, 76 F.3d 624, 628 (5th Cir. 1996) ("We have interpreted the notice requirement of Rule 65(a)(1) to mean that 'where *factual disputes* are presented, the parties must be given a fair opportunity and a meaningful hearing to present their differing versions of those facts before a preliminary injunction may be granted.'" (emphasis added) (quoting *Com. Park at DFW Freeport v. Mardian Constr. Co.*, 729 F.2d 334, 342 (5th Cir. 1984))); *see also id.* ("In the instant case, the district court did not rely on any disputed facts in determining whether it could properly grant an antisuit injunction. . . . Accordingly, the district court did not violate Rule 65(a)(1) by failing to conduct an oral hearing before granting the antisuit injunction."); *Com. Park*, 729 F.2d at 341 ("preliminary injunctions are denied without a hearing, despite a request therefor by the movant, when the written evidence shows the lack of a right to relief so clearly that receiving further evidence would be manifestly pointless." (quoting Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2949 (1973))).

Jefferson Cmty. Health Care Cntrs., Inc. v. Jefferson Par. Gov't, 849 F.3d 615, 626 (5th Cir. 2017), but "need not prove [their] case." *Lakedreams v. Taylor*, 932 F.2d 1103, 1109 n.11 (5th Cir. 1991).

Upon review of the undisputed facts of this case, Plaintiff has done enough to show that she is likely to succeed on the merits of her claim. A sponsor's contractual obligations under an affidavit of support continue until any one of five "terminating events" occurs. These are when the sponsored immigrant:

> [1] becomes a citizen of the United States, [2] [h]as worked, or can be credited with, [fourty] qualifying quarters of coverage under title II of the Social Security Act, . . . [3] [c]eases to hold the status of an alien lawfully admitted for permanent residence and departs the United States . . . [,] [4] [o]btains in a removal proceeding a new grant of adjustment of status as relief from removal . . . [,] or [5] [d]ies.

8 C.F.R. § 213a.2(e)(2)(i). Defendant does not dispute that he executed the Affidavit of Support or that he failed to make the payments that Plaintiff claims he did not make. (ECF No. 19, ¶ 55); (*see* ECF No. 34, p. 2).[4] Plaintiff, on the other hand, has provided evidence that she has little money in her bank account and that she has been relying on blood plasma donations to make ends meet. (ECF Nos. 11-10, 11-16). This evidence is sufficient, at this stage of the litigation, to show that Defendant has not been fulfilling his obligations under the contract. *Cf. Nwauwa v. Ugochukwu*, No. 1:18-CV-1130-RP, 2019 WL 2077048, at *3–4 (W.D. Tex. May 10. 2019) (finding that the plaintiff had not shown a likelihood of success where the defendant provided

[4] In his Answer, Defendant denies Plaintiff's allegation in her Complaint that "[s]ince her separation from Mr. Nevarez, he has provided Ms. Nevarez with no financial support." (ECF No. 19, p. 9) (citing ECF No. 4, p. 10). However, to the extent that this statement meant that he had, in fact, been fulfilling his obligations under the Affidavit of Support, he appears to abandon that argument in his Response, which makes no such claim and, instead, argues that his obligations under the contract are "void." (*See* ECF No. 34, p. 2).

evidence that he had "sought diligently to provide support to [the plaintiff]" and where the plaintiff had "not offered into evidence any bank statements, tax filings, or other documentation to support her claim.").

Furthermore, Defendant does not assert that any of the five "terminating events" set out in the regulations have occurred, and Plaintiff provides sufficient evidence that they have not. (*See* ECF No. 10, p. 10–11). Rather, Defendant argues that his obligations under the Affidavit are "void" because Plaintiff fraudulently induced him to execute the contract and that Plaintiff has failed to mitigate damages by "choosing to be unemployed" and not "avail[ing] herself of any kind of support order from the State of Texas that she would have been entitled to seek." (ECF No. 34, p. 2). However, courts have held that traditional contract defenses do not apply to affidavits of support. *See Sultana v. Hossain*, No. 3:21-CV-1219-BK, 2022 WL 4125221, at *3 (N.D. Tex. Sept. 8, 2022) (collecting cases); *see also Nwauwa*, 2019 WL 2077048, at *2 n.3 (declining to consider a fraud in the inducement defense to the defendant's obligations under an affidavit of support because "the validity of a marriage is a question for determination in state court."); *Wenfang Liu v. Mund*, 686 F.3d 418, 423 (7th Cir. 2012) (holding that mitigation is not a valid defense to a sponsor's obligation under an affidavit of support). Thus, at this stage of the litigation, the Court concludes that Defendant's assertion of these defenses does not undermine Plaintiff's showing of a substantial likelihood of success on the merits. *See Nwauwa*, 2019 WL 2077048, at *2 n.3.

For the foregoing reasons, the Court finds that Plaintiff has met the first prong of the preliminary injunction test.

2. Irreparable Injury

The Court turns next to the question of whether there is a substantial threat of irreparable injury if an injunction is not issued. While asserting that Defendant's failure to meet his obligations under the Affidavit of Support has left her in a state of poverty, Plaintiff nevertheless concedes that she would be made whole if she prevails on her case in chief and the Court grants her the monetary relief that she seeks in a final judgment:

> A monetary judgment months from now is *adequate to address the harms the Plaintiff suffers now* from Mr. Nevarez's continuing breach of contract. She needs her legally mandated financial assistance now simply to maintain a minimally dignified existence.

(*See* ECF No. 10, p. 13) (emphasis added). Thus, the question becomes whether Plaintiff is entitled to a preliminary injunction because she is indigent, even if her injury is redressable by monetary damages.

"Federal courts have long recognized that, when 'the threatened harm is more than de minimis, it is not so much the *magnitude* but the *irreparability* that counts for purposes of a preliminary injunction.'" *Enter. Int'l*, 762 F.2d at 472 (emphasis added) (quoting *Canal Auth. of Fla. v. Callaway*, 489 F.2d 567, 575 (5th Cir. 1974)). As a corollary to this rule, the Fifth Circuit has long held that "[t]here can be no irreparable injury where money damages would adequately compensate a plaintiff." *DFW Metro Line Servs. v. Sw. Bell Tel. Co.*, 901 F.2d 1267, 1269 (5th Cir. 1990); *see also Bluefield Water Ass'n, Inc. v. City of Starkville*, 577 F.3d 250, 253 (5th Cir. 2009) ("[I]n traditional terms of equity, the remedy at law is adequate. That is, any harm is financial, and monetary compensation will make [the plaintiff] whole if [the plaintiff] prevails on the merits."); *Heil Trailer Int'l Co. v. Kula*, 542 F. App'x 329, 335 (5th Cir. 2013) ("An irreparable injury is one that cannot be undone by monetary damages or one for which monetary damages would be especially difficult to calculate." (citations omitted)).

The focus of the irreparable injury inquiry is whether the movant's predicament, if allowed to continue until the time of the court's final judgment, would "seriously prejudice" their "opportunity for full recovery." *See Bluefield*, 577 F.3d at 253; *see also* 11A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2948.1 (3d ed.) ("Only when the threatened harm would impair the court's ability to grant an effective remedy is there really a need for preliminary relief."). Thus, exceptions to the adequate-remedy-at-law rule have been found where the movant shows that their injury would undermine the court's ability to provide the final relief that they seek or where it would be difficult for the court to calculate damages. *See Atwood Turnkey Drilling, Inc. v. Petroleo Brasileiro, S.A.*, 875 F.2d 1174, 1179 (5th Cir. 1989) (finding exception where a business would likely cease to exist); *Doran v. Salem Inn, Inc.*, 422 U.S. 922, 932 (1975) (finding exception because a business's imminent bankruptcy meant that "a favorable final judgment might well be useless"); *Milsen Co. v. Southland Corp.*, 454 F.2d 363, 367 (7th Cir. 1971) (finding exception where a business would "lose their stores and may not be able to finance the trial on their legal claims"); *Heil Trailer*, 542 F. App'x at 445 ("An irreparable injury is one . . . for which monetary damages would be especially difficult to calculate." (citations omitted)); *see also Bond Pharmacy, Inc. v. AnazaoHealth Corp.*, 815 F. Supp. 2d 966, 974 (S.D. Miss. 2011) ("It is well settled that monetary loss, even where substantial, does not, in and of itself, constitute irreparable harm. *Monetary loss may constitute irreparable harm only where the movant's very existence is threatened*, i.e., where an act threatens an ongoing business with destruction as opposed to mere disruption." (emphasis added)). Taken together, a reasonable interpretation of the above-cited decisions is this: to justify the extraordinary relief of a preliminary injunction, a plaintiff alleging financial injury

must show that the calculation of damages would be inherently difficult or that their injury is tied to a circumstance that imperils or eliminates the opportunity for recovery.

Plaintiff's Complaint requests final relief in the form of direct damages for all Affidavit of Support payments that Defendant has failed to make through the date of a final judgment in this case. (*See* ECF No. 4, p. 13). She does not allege that there is uncertainty or ambiguity in the calculation of these payments; indeed, she requests a specific sum to reimburse her for payments that were due through November 30, 2022, and requests that damages for subsequent months be made "in the amount of 125% the Poverty Line for her household size, less actual income, until the occurrence of one of the Terminating Events." (*Id.* at 13–14).

However, Plaintiff argues that her injury is irreparable because "living under the poverty line is irreparable harm [*per se*]." (ECF No. 10, p. 12). While stating that eventual monetary relief would make her whole, Plaintiff contends that injunctive relief is necessary "simply to maintain a minimally dignified existence." (*Id.* at 13). However, Plaintiff does not point to, and this Court has not discovered, any binding decision creating an exception to the adequate-remedy-at-law rule where an individual plaintiff shows only that their alleged injury causes them to be indigent or impoverished. Moreover, Plaintiff does not make any argument or showing that would lead the Court to make such an exception in this case; notwithstanding her clearly difficult financial situation, there is no evidence that the Court's ability to redress her injury would be undermined, or that eventual success on the merits would be meaningless or ineffective. *See Bluefield*, 577 F.3d at 253; 11A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2948.1 (3d ed.).[5] Indeed, as stated, Plaintiff concedes that monetary damages in a

[5] Plaintiff cites two district court decisions in support of her contention that living below the poverty line constitutes irreparable harm. (ECF No. 10, p. 12) (first citing *Sultana v. Hossain*, 575 F. Supp. 3d 696, 699 (N.D. Tex. 2021); then citing *Mao v. Bright*, No. 3:22-cv-201, 2022 WL 17546712, at *11–12 (S.D. Ohio Dec. 8, 2022)). Both cases involved plaintiffs seeking to enforce affidavits of support against their sponsors. First, *Sultana* does not consider

final judgment would sufficiently redress her injuries. (ECF No. 10, p. 13). Under Fifth Circuit precedent, this means that temporary injunctive relief is not warranted.

Accordingly, because Plaintiff has failed to prove each element of the preliminary injunction test, the Court denies her request for injunctive relief. *See Medlin*, 874 F.2d at 1091.

IV. CONCLUSION

For the foregoing reasons, the Court **DENIES** Plaintiff's Motion for Preliminary Injunction. (ECF No. 10).

SIGNED and **ENTERED** this 7th day of June, 2023.

MIGUEL A. TORRES
UNITED STATES MAGISTRATE JUDGE

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the adequate-remedy-at-law rule at all. Rather, the court concluded, without citation, that "living under 125% of the poverty line constitutes irreparable harm *per se*." *Sultana*, 575 F. Supp. 3d at 699. This holding does not address Fifth Circuit precedent providing that financial injury compensable by monetary relief generally does not constitute irreparable harm. The *Sultana* court did not explain why the plaintiff's injury affected the court's ability to provide the relief she sought in a final judgment. Next, while *Mao* does mention a version of the adequate-remedy-at-law rule, the *Mao* court's reasoning also conflicts with Fifth Circuit precedent. Specifically, the *Mao* court reasoned that the plaintiff suffered irreparable injury because she was "having to live in poverty" and because there was no adequate remedy at law given that the plaintiff had not, and was "not required to," seek a remedy "in the context of . . . pending divorce proceedings." *Mao*, 2022 WL 17546712, at *5. However, as stated, the Fifth Circuit has made clear that monetary relief available on a final judgment is the type of final remedy whose availability precludes the grant of a preliminary injunction. *See Bluefield*, 577 F.3d at 253. That standard is not altered by a court's belief that a movant is not required to attain relief in divorce proceedings. Thus, Fifth Circuit precedent requires the Court to refrain from following these decisions.