

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Mar 23, 2021

SEAN F. McAVOY, CLERK

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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON
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9 In re matter of ICJ, an infant under the age
10 of 16,
11 KERRY JONES,
12 Petitioner,
13 v.
14 CASSANDRA FAIRFIELD,
15 Respondent.
16

No. 2:20-CV-00475-SAB

**ORDER DENYING MOTION
FOR RECONSIDERATION**

17 Before the Court is Petitioner's Motion for Reconsideration Pursuant to
18 FRCP 60(b), ECF No. 25. Petitioner Jones ("Jones") is represented by Robert
19 Michaels and Grant Courtney. Respondent Cassandra Fairfield ("Fairfield") is
20 represented by Kenneth Zigler and Joanna Puryear. The Court has determined that
21 oral argument is not warranted. *See* LR 7.1(i)(3)(B)(iii).

22 On January 17, 2021, the Court denied Jones' Verified Petition for the
23 Return of A Child Pursuant to the Hague Convention and ICARA. ECF No. 23. On
24 February 19, 2021, Jones filed his Motion for Reconsideration, asking the Court to
25 reconsider its ruling that Jones was not exercising his custody rights because
26 Fairfield and their child were living in a homeless shelter as she did not have the
27 funds to pay for other lodging, therefore because he was not exercising his
28 custodial rights at the time of the retention, the retention and removal of the child

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1 to the United States was not wrongful; and to reconsider its ruling that if the child
2 were ordered to be returned to France there is a grave risk the return would place
3 the child in an intolerable situation.

4 **Motion Standard**

5 Jones is bringing this motion under Fed. R. Civ. P. 60(b)(1), (3), and (6).
6 Under Fed. R. Civ. P. 60(b), courts may only reconsider a final order on certain
7 enumerated grounds. These grounds include:

8 (1) mistake, inadvertence, surprise, or excusable neglect;

9 . . .

10 (3) fraud . . . misrepresentation, or misconduct by an opposing party; or

11 (6) any other reason justifying relief from the operation of the judgment.

12 Rule 60(b)(6) is a “catchall provision” that applies when a party gives a
13 reason for granting relief from a final judgment or order that is not covered by any
14 of the other reasons set forth in Rule 60(b). Rule 60(b)(6) has been used sparingly
15 as an equitable remedy to prevent manifest injustice and only where extraordinary
16 circumstances prevented a party from taking timely action to prevent or correct an
17 erroneous judgment. *United States v. Alpine Land & Reservoir Co.*, 984 F.2d 1047,
18 1049 (9th Cir. 1993). To prevail, a party who moves for such relief must
19 demonstrate both injury and circumstances beyond his control that prevented him
20 from proceeding with the action in a proper fashion. *Cnty. Dental Servs. v. Tani*,
21 282 F.3d 1164, 1168 (9th Cir. 2002).

22 A Rule 60(b) motion is not an avenue to relitigate the same issues and
23 arguments upon which the Court already has ruled. *See Maraziti v. Thorp*, 52 F.3d
24 252, 255 (9th Cir. 1995).

25 **Analysis**

26 In his motion, Jones presents the same evidence the Court already
27 considered when it denied his Petition. He has not shown that a mistake,
28 inadvertence, surprise, or excusable neglect has occurred, has not shown that

1 Fairfield engaged in fraud, misrepresentation, or misconduct, and has not
2 convinced the Court that it erred in its findings of fact and conclusions of law. To
3 the extent it was not clear in its order, the Court finds by clear and convincing
4 evidence that if the child were ordered to be returned to France there is a grave risk
5 that the return would place the child in an intolerable situation, given that Jones has
6 attempted suicide, threatened to blackmail Fairfield, cut off her and their child's
7 financial support, and he viewed child pornography in the presence of their child.

8 Accordingly, **IT IS HEREBY ORDERED:**

9 1. Petitioner's Motion for Reconsideration Pursuant to FRCP 60(b), ECF
10 No. 25, is **DENIED**.

11 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order
12 and forward copies to counsel and **close** the file.

13 **DATED** this 23rd day of March 2021.



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A handwritten signature in blue ink that reads "Stanley A. Bastian".

19 Stanley A. Bastian
20 Chief United States District Judge
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