

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

EMMANUEL N. LAZARIDIS,            )  
  )  
      Petitioner,                    )  
  )  
                  v.                    ) Civil Action No. 02-1681-SLR  
  )  
CHRISTINA L. LAZARIDIS,            )  
  )  
      Respondent.                    )

**MEMORANDUM ORDER**

**I. INTRODUCTION**

On December 16, 2002, petitioner Emmanuel Lazaridis filed a petition pursuant to the International Child Abduction Remedies Act, 42 U.S.C. § 11601 et seq., seeking an order directing the return of his minor child to France, petitioner's place of residence. (D.I. 1) Because petitioner has failed to show that this court has jurisdiction over the matter, the case is dismissed and petitioner's motion for reargument (D.I. 14) is denied as moot.

**II. BACKGROUND**

This case is but one waypoint upon a long and tumultuous procedural path; the relevant material facts are as follows. Petitioner Emmanuel Lazaridis and respondent Christina Lazaridis were married in April 1995 in Indiana. In 1998 the Lazaridises moved to Florida. In July 2000, the Lazaridises had a daughter. In December 2001 petitioner accepted a job in Lyon, France with

the International Agency for Research on Cancer ("IARC"), an agency of the World Health Organization. In February 2002, the parties moved from their home in Florida to Wilmington, Delaware, where they temporarily resided with petitioner's parents. In May 2002, the parties moved to Lyon, France.

By September 2002, the relationship between petitioner and respondent had deteriorated. As a result, respondent returned to the United States with the parties' daughter. Upon returning to this country, respondent and the daughter moved in with respondent's parents in West Olive, Michigan. Shortly thereafter, petitioner began corresponding with respondent and her parents. Petitioner attempted to persuade respondent and her parents to agree to return the daughter to France and give petitioner sole custody of the child.

Subsequently, respondent sought in-patient psychiatric care requiring hospitalization. As a result of respondent's hospitalization, her parents filed a motion in a Michigan state court seeking temporary guardianship over the child. This motion was granted and the child remained under the care of her maternal grandparents. However, when the grandparents sought an extension of their guardianship, petitioner returned to the United States to oppose the motion, which was then denied.

In November 2002, petitioner filed a petition in the Michigan state court for sole legal and physical custody of the

child. In response to the petition, the Michigan court granted temporary custody to petitioner. Upon respondent's release from the hospital she requested that the Michigan court enter an order prohibiting petitioner from removing the child from this country pending a full hearing on petitioner's custody petition. The court granted this request and set a hearing date for December 17, 2002.

Prior to the Michigan hearing, petitioner obtained a new passport for the child and filed a motion to rescind the Michigan court's order prohibiting the removal of the child from the United States. That motion was denied and on December 16, 2002, a day before the Michigan hearing, petitioner filed the present petition in this court. In his petition, petitioner asserted that jurisdiction was proper in the District of Delaware because the child was under the care of her father and his parents in Wilmington, Delaware at the time of the filing of the petition. Petitioner's signature was not on the petition or accompanying declaration.

Petitioner did not attend the Michigan hearing on December 17, 2002, and on that day he also faxed his Delaware counsel in the Delaware case from his place of work in France terminating their representation. In response to a request by respondent, the New Castle County Police attempted to perform a welfare check on the child at the home of petitioner's parents in Wilmington,

Delaware on January 17, 2003. During the check, the police were told by petitioner's parents that they had not seen petitioner or the child since November and did not know their whereabouts.

Since December 2002, petitioner has not taken any further action in either the Michigan or Delaware cases but instead has continued to pursue and attend divorce and custody proceedings in the French court system. Upon hearing of the proceedings in this court, the French judge postponed the proceedings in France pending resolution of this case. Respondent has not seen her daughter since late November 2002 and has not had contact with her on the phone for months. In fact, the actual whereabouts of the child have not been confirmed by petitioner and respondent contends that petitioner has taken the child back to France in violation of the Michigan court's order and an order of this court dated January 31, 2003 prohibiting removal of the child from this jurisdiction pending resolution of the case. (D.I. 9)

### **III. DISCUSSION**

In reply to the petition, respondent asserts, inter alia, that petitioner has failed to show this court has jurisdiction over the matter under 42 U.S.C. § 11603. (D.I. 17) Section 11603 states in relevant part:

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.

Respondent argues that petitioner has failed to show that the child was in Delaware on December 16, 2002, when he commenced the present civil action. In support of her contention, respondent points to the circumstantial evidence surrounding the child's whereabouts during the relevant period. Respondent points to petitioner's obtaining a passport for the child in November, a December 1, 2002 flight manifest with petitioner and the child's names on the list, his failure to appear at the December 17 hearing in Michigan, the fax to his Delaware attorney from France, the New Castle County Police's failed attempt to locate the child in Delaware in January 2003, and, most convincing, petitioner's failure to produce the child in Delaware or divulge his knowledge of her whereabouts.

In his response, petitioner offers no argument refuting the evidence presented by respondent and produces no evidence of his own to the contrary. Petitioner simply states "since [the] Michigan Court granted the Petitioner temporary legal custody of the parties' minor child, we must assume that the child was in Delaware at the time the petition was filed in the United States District Court...." (D.I. 20 at 11)

It is well settled that "[o]nce jurisdiction is challenged, the party asserting subject matter jurisdiction has the burden of

proving its existence. Carpet Group Int'l v. Oriental Rug Importers Ass'n, Inc., 227 F.3d 62, 69 (3d Cir. 2000). "When a defendant raises the defense of the court's lack of personal jurisdiction, the burden falls upon the plaintiff to come forward with sufficient facts to establish that jurisdiction is proper." Mellon Bank (East) P.S.F.S. v. Farino, 960 F.2d 1217, 1223 (3d Cir. 1992). In this case, petitioner has come forward with no evidence or facts that indicate the child was in Delaware when he filed his petition. In fact, the only evidence, presented by respondent, convincingly indicates the opposite. In the absence of any argument refuting this evidence or any affirmative evidence offered by petitioner, the court concludes that petitioner has failed to carry his burden of proving this court has jurisdiction over the present action. As such, the above captioned case shall be dismissed.

#### **IV. CONCLUSION**

At Wilmington this 7th day of May 2003, for the reasons stated;

IT IS ORDERED that the above captioned case is dismissed and petitioner's motion for reargument (D.I. 14) is denied as moot.

Sue L. Robinson  
United States District Judge