

# Giray v. Cruey

Family Court, New York County  
NYLJ Publication Date: Jan 13, 2003  
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## Case Summary

### **Despite Statutory Prohibitions, Court Vacates Father's Pre-Application Support Arrears**

Judge Jurow

PRIOR TO petitioner's 1997 abduction and secretion of the parties' children in Turkey, respondent owed \$18,500 in child support arrears. An additional \$12,790 in arrears has accumulated since 1997 and \$8,400 that respondent paid to the support collections unit remains unclaimed. On Dec. 7, 2001, respondent moved to vacate all arrears, arguing that pursuant to Family Court Act 451 and *Matter of Reynolds v. Oster*, to require him to pay arrears would be a grievous injustice. Although FCA 451 and Domestic Relations Law 241 prohibit cancellation of pre-application arrears, the court ruled that under the exteme and unique circumstances, to require respondent to pay the arrears that accrued after the mother's 1997 disappearance with the children would constitute a grievous injustice. The court further held that should respondent's pre-flight arrears paymnet remain uncollected by the mother, he could seek the payment's return upon a showing that a diligent search for the mother had been made.

**Practice Area(s): Family Law**

GIRAY v. CRUEY - Before the court is respondent father's petition to vacate pre-application child support arrears. Respondent argues that payment of such arrears would result in a grievous injustice because the petitioner abducted the two subject children to an undisclosed location in Turkey thus depriving him of any contact with the children in violation of this Court's visitation order.

The Court has reviewed the respondent's motion and supporting documents. No response was filed by the petitioner. The Court makes the following findings and conclusions:

By order dated December 20, 1996, this Court entered a visitation order pursuant to which respondent was awarded alternate weekend and holiday visitation with the children. (Prior to this time, respondent had had unlimited visitation with the children pursuant to a divorce judgment dated November 14, 1995 entered by the Supreme Court of New York, Bronx County). Respondent enjoyed regular and meaningful visitation with the children until about June of 1997. Also pursuant to the divorce judgment, an order of support was entered requiring respondent to pay \$2000 per month for the two children.

On or about July 1997 the petitioner absconded with the children to her native Turkey. Respondent aggressively sought to locate his children and secure their return. His efforts included multiple trips to Turkey, communicating with the United States Embassy in Turkey, and retaining private attorneys and detectives in Turkey. With the exception of a four-day visit which took place in Turkey in 1998, arranged by the United States Embassy, respondent has been prevented from having any contact whatsoever with the children. It appears that the petitioner has since relocated to a secret location and all of respondent's efforts to find his children have been unsuccessful.<sup>1</sup>

In April of 2001, respondent filed a petition seeking the suspension of child support and the vacatur of arrears on the grounds that in July, 1997, the mother willfully and unlawfully prevented him from exercising his court-ordered visitation rights by abducting the children. A hearing was held before Hearing Examiner Schiraldi Stein on July 23, 2001. At that time the Hearing Examiner entered an Order suspending respondent's support obligations. With respect to that portion of respondent's application seeking the vacatur of pre-application arrears, the Hearing Examiner advised respondent to bring a separate motion before a judge of this Court.

Accordingly, on December 7, 2001, respondent filed the instant motion before this Court. A proceeding was held before this court on January 28, 2002. At that time the court reserved decision on the motion and requested that respondent submit an additional memorandum to clarify the amount of arrears owed in the pre-abduction versus the post-abduction period, and to cite to the applicable law. These papers have now been received and reviewed by the Court.

Prior to the mother's abduction of the children in July 1997, respondent owed arrears in the amount of \$18,500. Although this amount is disputed by respondent, a judgment of arrears was entered against respondent by this Court on November 26, 1996 in that amount.

The amount of arrears that has accrued since July of 1997 is \$12,790. In addition there is \$8,400 in child support monies that was paid by respondent to the Support Collection Unit since 1997 that remains unclaimed by the mother.

Respondent now contends that he should be entitled to vacatur of all arrears owed. He argues that, pursuant to FCA 451 and the case of *Matter of Reynolds v. Oster*, 192 A.D. 2d 794, 596 N.Y.S. 2d 545 (3rd Dept. 1993), to require him to pay the arrears under the circumstances in this case would constitute a grievous injustice, would facilitate the mother's continued violation of the law, and would deprive him of the necessary funds to locate his children.

It cannot be disputed that because of the mother's actions in this case the respondent has suffered a total and unjustified deprivation of his visitation rights. Moreover, the mother's disappearance with the children appears to be irreversible and not subject to any action this Court could take to compel her compliance with the outstanding visitation orders.

Although FCA 451 and Dom. Rel. Law 241 expressly prohibit the cancellation of pre-application arrears, this Court finds that under the extreme and unique circumstances of this case, to require the respondent to pay the arrears that accrued subsequent to the mother's disappearance with the children in July of 1997 would constitute a grievous injustice. *Reynolds v. Oster*, 192 A.D. 2d 794, 596 N.Y.S. 2d 545 (3rd Dept. 1993); Cf. *Doyle v. Doyle*, 603 N.Y.S 2d 526 (2nd Dept.1993). Accordingly, the \$12,790 in arrears that has accrued since July, 1997 is hereby vacated. Similarly, the \$8,400 that was paid by the respondent to the Support Collection Unit since July, 1997 and remains unclaimed by the mother is ordered to be returned to respondent. Clearly, the mother has renounced any claim she might have to this money.

With respect to the remaining arrears of \$18,500 that accrued prior to the petitioner's abduction of the children, the court makes the following determination: In discussing the impact of wrongful interference with visitation on the non-custodial parent's support obligation, Douglas J. Besharov in the Practice Commentaries to FCA 447 states: When the custodial parent's behavior seems irreversible (for example, the parent refuses to move back to the community), the court may completely lift the non-custodial parent's support obligation by vacating the original order of support.<sup>2</sup> While petitioner's flagrant violation of the law and clear disdain for this court's orders warrant an extreme remedy, there is a countervailing argument that there is no basis to vacate the pre-flight arrears because the state of the arrears may have been a factor that contributed to the mother's flight in the first place. In this case, because the pre-flight arrears were relatively extensive (\$18,500), this court finds that cancellation of such arrears would not be appropriate. Following payment of these arrears, however, should the money remain uncollected by the mother after a reasonable time has passed, the respondent may petition the court for a return of the funds upon showing that a diligent search was made for the mother.