

argentina

US mother fights for sons' custody

Hague Convention-related case in Argentine courts

BY GUILLERMO HÁSKEL
Herald staff

A US mother has been fighting for nine years now for custody and relocation to the US of the two sons she had with an Argentine citizen who were sent back to this country by a US judge in a ruling that a leading US expert in domestic violence said was "a tragedy" for children.

Therapist Cathleen Pizzutello, who arrived in Buenos Aires in July, told the *Herald* that she divorced agronomist engineer Teófilo Méndez Lynch in 1999 and that since then they have been fighting for custody of their Argentine-born US-citizen children Dylan, 15, and Brandon, 12.

"A US federal judge from Atlanta, Georgia — against the children's wishes, welfare and the Hague Convention spirit — repatriated to Argentina the two boys last February after they had been living with me for almost three years in the US," Pizzutello said.

Both the Atlanta judge and an Argentine criminal court ruled that under the 'parent-left behind concept' envisaged by the Hague Convention, the children must remain at their last legal address home in the Greater Buenos Aires district of Pilar.

They had no US legal address as they were there on a 30-day holiday under an Argentine family court permission. They overstayed their visit in the US for nearly three years after the permit expired.

"I am convinced that the judge should not have returned these children," Merle Weiner, a US expert who trains US judges on Hague Convention proceedings on domestic violence said by email.

The Hague Convention is a private international treaty. It was passed under the auspices of the Hague Conference on Private International Law. About 80 countries, among them Argentina, are party to it.

The US is the only country in the world that have not ratified the International Convention on Children's Rights — which in some aspects collides with the Hague Convention — such as happened in the Méndez Lynch case in the US court, Argentine court sources told the *Herald*.

BACK IN ARGENTINA. The children arrived together with their father, who travelled to the US to bring them back to Argentina.

Pizzutello did not travel to Buenos Aires at the time because of a then outstanding Interpol arrest warrant on Argentine criminal court charges that, by overstaying in the US after the 30-day holiday, she had presumably incurred in kidnapping her own children.

The Argentine criminal court later granted Pizzutello freedom on bail, after which she was able to



Cathleen Pizzutello and her two sons, Dylan and Brandon.

freely enter Argentina. She went to live in the Buenos Aires province district of San Antonio de Areco, close to her sons.

Pizzutello resorted to Juvenile Judge Marcelo Giacoia, who ordered the children taken away from their father's custody and appointed a US pastor as a guardian for 60 days pending final disposition of the custody and relocation cases by a family court in the San Isidro district.

The 60 day custody deadline expired in late October. The children are still with the pastor.

"I am obliged to adopt some measures... to stop violence against Brandon and Dylan. That is a crime against the minors," Judge Giacoia wrote in a file to which the *Herald* had access.

The files showed profuse evidence that the children want to go with their mother back to the US, where they spent "the better years of their lives." Also, they say that living with their father is tantamount to "hell."

The files are also full with their allegations that their father beats them and kicks them, threatens to burn their faces in the stove, frightens them with reckless driving changing lanes and telling them "you want to commit suicide," prevents them from seeing their mother, walks naked around the house urging the children to do the same, shows them porno magazines, leaves them locked and incommunicated when going away, and sleeps with a machete and a rifle besides his bed.

A neighbor of theirs, María Marta García Belsunce, was killed with five shots to the head in 2002 in a case that shocked Argentina's public opinion. One of the children said that they thought that it had been their father who had

killed her.

Teófilo Méndez Lynch has only admitted to some disciplinary spanking of his sons.

However, in the Buenos Aires province district of Mercedes, a prosecutor is probing charges that he inflicted minor injuries to their children, aggravated for his being their father, and another prosecutor is probing charges that he threatened Pizzutello and attempted to kidnap her last August.

Pizzutello said that he used to call the children "Nazis" and also quoted him as warning that his upper-class, influential family, "will take care of the case." Teófilo Méndez Lynch is the son of a high-ranking navy officer, the grandson of a former Argentine ambassador who was decorated by Nazi Germany, and the grand-nephew of Ernesto Guevara Lynch, the Argentine-born Cuban revolutionary better known as "Che Guevara."

According to the court files, despite the communication restrictions, the children managed to go out and see their mother on the sly at a cemetery nearby their home, to get access to a computer and to a cellular phone to send S.O.S. messages to the US embassy and one of them even managed to escape and take a taxi to the embassy to ask for help. Judge Giacoia also reported the case to the embassy and officials from the US embassy and consulate offered the children help and testified in court as witnesses.

Even Teófilo Méndez Lynch's sister, a psychologist, told Judge Giacoia that he "is violent" and that she considers him capable of retaliation against her. "As a psychologist and the children's aunt I believe that they must be living with their mother in the US," she said.

Another psychologist testifying in court said that the case could be considered "a filicide" and that the children were suffering the "Tupac Amaru syndrome," a reference to the Inca leader who was dismembered by the Spanish conquerors in Peru. The psychologist concluded that the mother is able to properly raise her children.

"AMEND THE HAGUE CONVENTION". Pizzutello's lawyer Aldo Spicacci told the *Herald* that "based on the whole evidence, it would be highly convenient that the Hague Convention is amended to allow the revision of the suitability of the parent who files the application, when placement is manifestly not in the best interest of the child."

US law expert Weiner said that the US judge "totally disregarded" the children's testimony, "saying the father's rights trumped their rights, without considering the children's interests or rights. The court gave absolutely no justification for disregarding their views, i.e., he never said they were too young, too immature, inappropriately influenced by their mother, etc."

"The Hague Conference on Private International Law would be responsible for reforming the Convention. At least one country, however, Switzerland, has taken to reforming the Convention through its internal legislation. Now in Switzerland, if a child will be returned, and be placed in foster care pending a determination of the safety of the petitioner, that is an 'intolerable situation' and the child should not be returned."

Weiner added: "The Swiss also require all children to have a representative during the proceedings, something that regrettably did not happen for the Méndez-Lynch children in the United States."

CREDIT CARDS

City gov't plans to raise taxes

The Buenos Aires City Government announced it plans to increase taxes by extending the Seal Tax — which is used to authorize various transactions — on the purchase of used cars, insurance and credit-card bills.

Officials of the Peronist national administration, opposed to the City's ruling centre-right coalition PRO, yesterday criticized the move, which they claim will be an excessive burden on taxpayers amid the financial economic crisis. The bill will be submitted to the City Legislature on Monday, where the pro-government caucus has a majority of legislators.

The tax hike will increase revenue in some 350 million pesos, and would be used to pay for public works in Buenos Aires, City Cabinet Chief Horacio Rodríguez Larreta said yesterday. "The seal tax is collected in the entire country except in the capital, where it was suppressed following an order by (former president Carlos) Menem in 1994. It was supposed to be annulled at a national level, but no other provinces followed the government's order" the City Cabinet chief added.

"We are attempting to equal the City to the rest of the country, as the City currently is a financial loophole," Rodríguez Larreta said. Pro-Kirchner officials blasted the measure, which they claim will affect the economy. Most economic theories agree governments should increase spending and reduce taxes during the times of crisis.

The opposition in the City Legislature said it will vote against the government's initiative. "It's a wrong measure. I don't believe any lawmakers will vote in favour of this bill in this times of crisis," said Diego Kravetz, head of the Victory Front caucus in the City Legislature.

Senator Daniel Filmus, the Victory Front candidate who ran against City Mayor Mauricio Macri in last years mayoral elections, yesterday said "the government had already increased the ABL municipal taxes by 300 percent in certain cases and an increase in toll both prices, but we haven't noticed any budget increases for health or solutions to the main problems of the City."

Other opposition parties also criticized the move by the Macri administration. "The measure is regressive, and will affect mostly the middle classes," former Socialist Party Deputy Héctor Polino said. The head the Argentine Medium Sized Companies' Chamber (CAME) Osvaldo Cornide, said he is "totally against" the implementation of the new tax of 0.6 percent on credit-card bills, which he predict will affect consumption.