

For now in custody saga, a mother's sigh of relief

The little American girl who faced deportation to Argentina this week received a reprieve yesterday because her father — who wants her in South America so he can gain custody of the 6-year-old child — is in the Union County jail and can't make bail.

The federal deportation proceedings scheduled to begin in Newark yesterday were put off until March because Arianna Adan's father, Ariel Adan, was arrested Saturday six blocks from her home in Elizabeth.

His lawyer, Walter Lesnevich of Hackensack, told a federal judge yesterday that Ariel Adan, 45, could not make the \$12,500 bail needed to get out of jail on contempt charges in time to make the federal hearing.

Lesnevich said he knew little of his client's arrest, but Arianna's mother, Elena Mazza, said she called police Saturday after she learned Ariel, who lives in Buenos Aires, was in her neighborhood.



**BOB
BRAUN**

Mazza had earlier obtained restraining orders to keep him away from her and her daughter.

"I wasn't going to wait until he slit my throat," Mazza

said yesterday.

"As soon as I learned he was in the neighborhood, I called the police," she said. "His lawyer is in Hackensack and he's staying with relatives in Paterson — what was he doing in Elizabeth so close to where I live? I am sure he was coming after me and my daughter."

Lesnevich said Adan was arrested on an outstanding warrant only hours after he arrived here from Argentina to attend this week's federal court hearing. He called the charges against his client

[See **BRAUN**, Page 18]

BRAUN

CONTINUED FROM PAGE 15

Deportation hearing pushed to March

"a minor contempt matter."

The lawyer said the warrant was issued because of Adan's failure to abide by terms of probation imposed the last time he pleaded guilty to violating a restraining order to stay away from Mazza. In that incident, which happened while he was here for the last federal court hearing, he tried to break into a safe room maintained by Union County officials to protect victims of abuse and was arrested by sheriff's officers.

Mazza's lawyer, Elliot Gourvitz of Springfield, said Adan was in Elizabeth "stalking" her and demanded the case seeking the little girl's deportation be dismissed.

District Court Judge William H. Walls refused to dismiss the case and said he was determined to hold a hearing on the litigation that has gone on for nearly two years.

"This case is going to be fully

addressed," Walls said. "All T's will be crossed and all I's will be dotted." He said he would not go ahead with the case if Adan could not be there.

"I am not interested in why he's been arrested," Walls said.

Walls' earlier decision to deport Arianna, a born American citizen, was overturned by the 3rd Circuit Court of Appeals. The appellate judges ruled the judge failed both to determine whether Adan had any custody rights and whether he abused her and her mother, also an American.

Gourvitz argued the delay was "greatly prejudicial" to Mazza and the case was leaving his client penniless because of continuing legal costs.

"She's had to beg and borrow to pay for all of this," Gourvitz said about Mazza, 42, who drives an ice cream delivery truck.

Although he owns apartment buildings in Buenos Aires, Argentina has paid Adan's legal and travel expenses because he brought the case under an international treaty. Mazza, however, has had to pay her legal expenses. The two never married.

For yesterday's hearing, she had an Argentinian lawyer flown in from Buenos Aires to testify that, under the South American country's law, Mazza had sole custody of the child and her father had no rights recognizable in Argentinian courts. Mazza also had to hire an interpreter because her expert could not speak English.

"I don't know whether she can afford to bring him back here again," Gourvitz told the judge. Walls said he would consider requiring Adan to pay for some of Mazza's legal costs, but only after the hearing was conducted.

The case comes under the Hague Convention on the Civil Aspects of International Child Abduction, a treaty designed to prevent parents from abducting children to countries whether their spouses' rights are denied.

Arianna was born in the United States. Her mother, also an American, moved to Argentina with Adan but fled because, she said, he abused her and her daughter. Her court papers include restraining orders she obtained in Argentina where, she argued, the police failed to enforce them.

In custody of forces beyond her world

An Elizabeth first-grader, a born American who lives with her mother and grandmother, faces deportation and foster home placement in Argentina this week.

The fate of 6-year-old Arianna Adan rests with a federal judge in Newark who ordered her deportation once before. The decision by Judge William Walls was overturned by an appellate panel that ordered a new hearing. That hearing opens Wednesday.

The appeals judges ruled Walls had failed both to determine whether Arianna's father — an Argentinian citizen seeking the girl's deportation so he can gain custody in Argentinian courts — had any custody rights recognizable here and whether the child and her mother had been sexually abused



**BOB
BRAUN**

while living with him.

In preliminary proceedings earlier this year, Walls said he would follow a case that resulted in the deportation of a child in similar circumstances, although that child was not an American.

And, despite the allegations of abuse, no third-party child welfare agency has investigated what may have happened to the child. Arianna herself has never been questioned by the judge.

Her mother, Elena Mazza, also is an American. She was never

[See **BRAUN**, Page 18]

Her world of treaties and courtrooms

married to the child's father, but moved to Argentina with him after Arianna was born.

Mazza says no child welfare agency has wanted to take the case because the alleged abuse took place in Argentina before she fled here with her daughter.

"Everyone tells me they have no jurisdiction," says Mazza.

She has, however, filed reports from private therapists treating her daughter for the effects of abuse. The child's father, Ariel Adan, has denied abusing the child.

He did, however, admit violating a restraining order aimed at keeping him away from Mazza. While in the Union County courthouse awaiting a hearing on the violation, he tried to break into a room where victims of domestic violence are kept safe and was charged again. His lawyer explained Adan was "emotionally overwrought" and was merely trying to speak with Mazza.

The case comes under an international treaty known as the Hague Convention on the Civil Aspects of International Child Abduction. It was originally designed to prevent parents from abducting children to countries where their spouses had no legal rights.

More recently, however, some legal experts and organizations — including the NOW Legal Defense Fund (now known as Legal Momentum) — have warned the Hague Convention has been used by men to prevent women and children from escaping abuse.

In the past, American courts have looked only at whether the children were taken from their "habitual residence." Absent proof of "grave risk" of direct harm to the children, the courts have ordered their return.

A recent New York case, however, sided with a French mother who said she escaped from abuse by her husband. The federal court ordered her children, also French citizens, kept in the United States because, the judge ruled, nothing French authorities could do could prevent psychological harm to the children because of the abuse directed at their mother.

So far, however, Walls has ignored that precedent in favor of another that did result in the return of children to Argentina.

Mazza contends that, when she lived in Buenos Aires, she was abused by Adan but that local authorities failed to act. She includes in her court papers a restraining



A school picture of Arianna Adan, 6, who is the subject of an international custody battle.

order against Arianna's father from Buenos Aires. It refers to "the father's pathology" that, along with the inability of the couple to get along, "exposes the minor child, their daughter, to actual and potential risk situations."

Adan has admitted he had drug problem but contends he has been rehabilitated.

The court papers also include a California domestic violence restraining order obtained in 1985 against Adan from a previous wife and another obtained in 1996 from a woman with whom he lived. Mazza has obtained new restraining orders against him in New Jersey.

Adan's lawyer argues that the Argentine courts can and should deal with any allegations of abuse against Mazza or her daughter, as well as with custody. His file contains a letter from an Argentine judge indicating his court can protect Arianna.

It's the same judge who provided Mazza's attorney with a copy of the restraining order against Ariel Adan. Mazza said she fled Argentina after the local police failed to enforce the restraining order.

Adan, who owns rental properties in Buenos Aires, has had his legal bills paid by the Argentinian government under the terms of the Hague Convention. Mazza, who drives an ice cream delivery truck and lives in an Elizabeth rental apartment, has had to pay her own legal bills and says she still owes her attorney more than \$75,000.

She says she has no money to go to Argentina to fight a custody case there.

The brief by Adan's lawyer ends with the request that, if his client wins this round in court, "we respectfully request that the child be placed on an airline, nonstop to Buenos Aires."

Bob Braun's columns appear Monday and Thursday. He may be reached at rbraun@starledger.com or at (973) 392-4281.