

No. 96173-5

Court of Appeals No. 77630-4 I

IN THE SUPREME COURT FOR
THE STATE OF WASHINGTON

IN RE MARRIAGE OF:

MICHELANGELO BORRELLO,

Petitioner,

v.

CHANDRA LONG,

Respondent.

RESPONSE TO
MOTION TO ACCEPT
CERTIFIED
TRANSLATION OF
COURT OF MILAN
ORDER

I. Identity of Replying Party and Relief Requested

Respondent Chandra Long asks this Court to deny Petitioner Michelangelo Borrello's Motion to Accept Certified Translation of Court of Milan Order.

II. Restatement of Facts Relevant to Motion

This is a family law case on appeal after the Snohomish County Superior Court entered temporary orders.¹ The case was stayed while the Italian Supreme Court (the Cassation Court) reviewed rulings by

¹ For a full recitation of the chronology of events in this case, please see Facts section in Ms. Long's Answer to Petition for Review.

the trial court in Rome. In re Marriage of Long, 4 Wn. App. 231, 236, 421 P.3d 989 (2018) (Court of Appeals Opinion). The Italian Supreme Court held that Italy did not have Article 5 jurisdiction over the child, and that instead Washington court did because Washington was the home state of the child. Id. On remand, the trial court in Rome issued orders under temporary emergency jurisdiction, pending action by the Washington courts. Id. at 236-37. The Snohomish County Superior Court lifted the stay, heard argument from both parties (including expert testimony) on the meaning of the Rome court order, and then entered temporary orders. Id. at 237.

The above is what is on appeal here – the interaction between the Rome case and the Washington case; not anything at all from some new action filed in a different trial court (Milan). To be clear: this appeal has nothing whatsoever to do with Milan, and it is baffling Mr. Borrello is trying to pretend otherwise. He started a new lawsuit in an entirely different jurisdiction after the Italian Supreme Court ruled, the translation of the order he seeks to make part of the record is brand new, and it is not anywhere in the record below at all. It would be as if a party appealing from a King County decree of dissolution moved

the Supreme Court to supplement the record with an interim ruling from a newly filed dissolution action in Clark County. It makes no sense at all, and this Court should deny the motion.

III. Grounds for Relief & Argument

It is not entirely clear what grounds for relief Mr. Borrello has invoked. His Motion is styled as one asking the Court “to accept” this new translation of a ruling from a different case that is nowhere in the record. He fails to cite to any authority at all as to why this Court should grant his relief, however. He talks about Italian statutes and the merits of his various jurisdiction claims, but he does not cite a single case or a single court rule on the issue of whether this Court should grant his relief in his Motion.

His Motion is one to supplement the record, but he fails to cite to or even mention the rule: RAP 9.11(a). Under that rule, an appellate court cannot supplement the record unless all six of the following criteria are satisfied:

- (1) additional proof of facts is needed to fairly resolve the issues on review,
- (2) the additional evidence would probably change the decision being reviewed,
- (3) it is equitable to excuse a party's failure to present the evidence to the trial court,
- (4) the remedy available to a party through post-judgment motions in the trial court

is inadequate or unnecessarily expensive, (5) the appellate court remedy of granting a new trial is inadequate or unnecessarily expensive, and (6) it would be inequitable to decide the case solely on the evidence already taken in the trial court.

See RAP 9.11(a).

Here, none of the criteria are met (let alone all six) and as such, the Court should deny Petitioner's Motion. Again, Petitioner seeks to supplement the record with a new order issued in a different lawsuit initiated by Petitioner in a different venue. Petitioner says in his Motion, "Borrello's Petition for Review also notifies this Court that the Court of Milan recently ruled on Borrello's custody petition." See Motion at 2. This is a deliberate attempt to mislead the Court. First, this order is nowhere in the record. It is simply not there, so Mr. Borrello's attempt to "notify" the Court is nothing more than telling the Court about things that are not in the record. Second, it is misleading nearly to the point of lying to the Court to say the Milan court "ruled on Borrello's custody petition." Any rulings made in this new lawsuit in Milan have nothing to do with the custody case in front of this Court. His use of the phrase "Borrello's custody petition" is

designed to make this Court believe the Milan court is involved in the case on appeal. It is not.

Make no mistake, Petitioner Borrello lost at the Italian Supreme Court, so he attempted to get the trial court in Rome to take jurisdiction anyway. When that did not work, he filed a new case in a different jurisdiction (Milan), and is now pretending this new case has something to do with this appeal. He is asking the Court to supplement the record, but he has failed walk through the analysis under RAP 9.11 or even cite to the rule. The Court should deny his Motion.

IV. Conclusion

For the reasons described herein, this Court should deny Petitioner Borrello's Motion.

RESPECTFULLY SUBMITTED this 8th day of October, 2018.

MCKINLEY IRVIN, PLLC



Matthew D. Taylor, WSBA # 31938
Counsel for Chandra Long

CERTIFICATE OF SERVICE

I certify that I caused to be served a true and correct copy of the above RESPONSE TO MOTION TO ACCEPT CERTIFIED TRANSLATION OF COURT OF MILAN ORDER on the 8th day of October 2018, as follows:

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October 08, 2018 - 11:19 AM

Transmittal Information

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