

IN THE SUPREME COURT FOR
THE STATE OF WASHINGTON

Marriage of: CHANDRA LONG, Respondent, v. MICHELANGELO BORRELLO, Petitioner.	No. 96173-5 COA No. 77630-4-I ANSWER TO MOTION TO LIFT STAY
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I. Identity of Responding Party & Relief Requested

Petitioner Michelangelo Borrello asks this Court to deny Respondent Chandra Long's Motion to Lift Stay, and maintain the stay put in place by the appellate court while review in this Court is pending.

II. Facts Relevant to Motion

Borrello respectfully refers the Court to the facts as stated in his Petition for Review. Since Long provides almost none of the relevant background, Borrello briefly summarizes here.

The parties' only child "A," an Italian and American citizen, was born in Catania, Italy, on March 8, 2009. CP 557, 1106. She lived in Italy for 4.5 years, aside from a brief period in Spring 2011

when Long wrongfully retained her in Washington. CP 722, 933, 970-72; RP 18-19. On July 18, 2011, the Washington Superior Court ordered A's immediate return to Italy under the 1980 Hague Convention on the Civil Aspects of International Child Abduction. CP 970-72.

A then remained in Italy until Long relocated with her to Washington in September 2013. CP 555, 751; RP 19. In April 2015, Borrello petitioned the Court of Rome to modify the parties' "consensual separation" agreement, entered in that court. CP 555, 1103-05, 1115-1129. Long participated only to contest Rome's jurisdiction. CP 505, 562. She filed a dissolution petition in Washington and appealed the Court of Rome's decision taking jurisdiction to Italy's highest court, the Cassation Court. CP 503-04, 505, 1088-95. The Superior Court later stayed all proceedings. CP 750-51.

In late June 2016, the parties agreed in court that A would reside in Italy with Borrello for the 2016-2017 school-year. CP 505, 743. A has lived in Italy since. CP 372, 505, 562, 743. Long never exercised her court-ordered visitation during that time. *Id.*

On June 5, 2017, the Cassation Court published its decision that Italy lacked jurisdiction over Borrello's petition to modify the

parties' separation agreement, where A lived in Washington in 2015 when Borrello filed.¹ CP 506, 557-58. Borrello then moved the Court of Rome to exercise its jurisdiction under the 1996 HCCH Article 11, conferring jurisdiction to any Contracting State² where a child is present to take "any necessary measures of protection" in "cases of urgency." CP 561; 1996 HCCH Art. 11.1.

On June 21, 2017, the Court of Rome closed proceedings on Borrello's petition to modify, also granting Borrello's motion to take urgent measures under Article 11. CP 561-63. The Court of Rome deemed it "absolutely necessary for [A's] interest that she remain in Italy" with Borrello "[u]ntil such time when the US court may make any final decision" and "evaluate[s] the array of elements indicated" in its decision. CP 562-63. Long did not appeal.

On September 6, 2017, Borrello petitioned the Court of Milan (where he and A reside) to take jurisdiction under the 1996 HCCH Article 5, and to confirm A's sole custody with Borrello and continued residence in Italy. CP 365, 375-78, 382. On September 19, the

¹ Long mentioned that the Cassation Court ruled on February 7, 2017 (Mot. at 4), omitting that June was the first notice to the parties. CP 506, 558.

² A Contracting State has "consented to be bound by a convention, *whether or not that Convention has entered into force* for that State." **Long v. Borrello**, No. 77630-4, 2018 Wn. App. LEXIS 1578, at *6 fn 9 (July 9, 2018) (citing <https://www.hcch.net/en/instruments/conventions/specialised-sections/apostille/faq1>, emphasis original).

Washington Superior Court Commissioner lifted the stay and took jurisdiction over A under the UCCJEA, but refused to order her relocation to the US pending trial. CP 422, 1098; RP 32, 37. On revision, the trial court ordered Borrello to immediately relocate A pending trial. CP 356-57. The trial court registered, but did not address, the Court of Rome order requiring A to remain in Italy until a US court issues a final decision addressing Rome's reasons for taking urgent measures under the HCCH Article 11. CP 356-57, 423, 1098.

The appellate court accepted review and stayed all trial court proceedings, affirming in a published decision on July 9, 2018. **Long**, No. 77630-4-I. As mentioned, Borrello's petition was pending in the Court of Milan when the appellate court issued its opinion. CP 365-83. The Court of Milan has since ruled that Italy has Article 5 jurisdiction over A, suspending further proceedings until Washington rules that it lacks Article 5 jurisdiction. Pet. for Rev. at 17. Borrello has appealed the latter. His Petition for Review is pending before this Court.

Aside from her failure to provide any relevant background, Long bases her motion not on law or fact, but on generic criticisms of Borrello. Long claims that Borrello has "delayed for years the

return of the parties' daughter to her home state by repeatedly casting aspersions on Ms. Long." Mot. at 2. A brief review of the appellate pleadings proves that false. This matter has never been about Long, or about Borrello's opinions of her. It is about whether Italy or the United States has jurisdiction – a question based on the HCCH, the UCCJEA, and the facts of A's habitual residence. And A has remained in Italy from June 2016 to June 2017 per the parties' agreement, on record in the Italian Court. CP 372, 505, 562, 743, Following that, she has remained there per the Court of Rome order.

Long claims too that Borrello has "attempted to muddy the waters as to what the Italian courts ruled." Mot. at 2. This too is false, and ironic given that Long neglects to even mention the Court of Milan's most recent order. Borrello provided certified translations of the Cassation Court and Court of Rome orders. CP 552-67. He also provided expert opinion as to the meaning of both. CP 440-43, 500-14, 812-38.

As far as timing, it is worth mentioning that although the appellate court issued its opinion on July 9, 2018, Long waited to file her motion to lift the stay until late afternoon Friday August 31 before a holiday weekend. Everett public schools started on Wednesday September 5. <https://www.everettsd.org/>.

III. Grounds for Relief & Argument

This Court may stay trial court proceedings where necessary to insure “effective and equitable review.” RAP 8.3. This Court may also stay enforcement of trial court orders “upon such terms as are just.” See RAP 8.1(b)(3). In determining whether to issue a stay, this Court should: (i) consider whether the moving party has demonstrated debatable issues for an appeal; and (ii) compare the injury the moving party would suffer if a stay is denied, with the injury the objecting party would suffer if a stay is granted. *Id.*

Long first argues that the issues on appeal are no longer “debatable” simply because the appellate court affirmed. Mot. at 3-4. That is untrue so long as this Court continues to sit in review of appellate court decisions.

Perhaps the most “debatable” issue presented in Borrello’s Petition for Review is whether a Washington Court may, or should, exercise jurisdiction under the UCCJEA, when another country has taken jurisdiction based on the child’s habitual residence under the HCCH. Pet. at 16-20. This Court has not yet addressed this issue, the answer to which is plainly dispositive.

Slightly less complex, but also “debatable” is whether the Superior Court has the authority to ignore the Court of Rome order

on the premise (never raised in the trial court, or by Long on appeal) that Rome exceeded its Article 11 authority in ruling that A must remain in Italy until Washington enters a final order addressing Rome's reasons for taking urgent measures. Pet. at 14-16. This too presents an underlying debate – is the appellate court correct that Rome exceeded its authority? That is, that Rome plainly has the authority to exercise its Article 11 jurisdiction over A, but lacks the authority to determine when the urgency abates, such that the measures Rome has taken for A's protection lapse. This too is “debatable.”

And of course, this matter continues to present the same debatable issues it has presented since the outset: should a Washington Court order a child immediately relocated to the United States before trial, directly contradicting a foreign court order, and placing Borrello in the untenable position of being in contempt of one court to avoid being in contempt of the other? Pet. at 9-16. This raises debate as to whether the trial court has violated the doctrine of comity, as well as RCW 26.09.197. *Id.*

Long next claims that she faces a continuing “harm,” asserting that Borrello has precluded her from having visitation, and has abused the legal process by “filing serial trial court actions ... all of

which have been rejected.” Mot. at 4. This too is false. Long has court-ordered visitation in Italy, and Borrello has even invited her to see A. CP 372, 505, 562, 743. She refused. *Id.*

Although RAP 8.3(b)(ii) is a balancing of the harms each party faces, Long ignores that the trial court’s order, affirmed on appeal, forces Borrello to violate the Court of Rome’s July 2017 order, or risk contempt of the Washington Court. This is so because the trial court ordered Borrello to immediately relocate A to the US pending trial, flatly contradicting the Court of Rome’s July 2017 order requiring Borrello to keep A in Italy until a US Court makes a final decision that addresses Rome’s reasons for taking urgent measures. Complicating this further, the appellate court decided that Rome has exceeded its authority, yet no Italian Court has done so (nor did Long appeal from the Court of Rome’s order). Thus, Borrello remains in an impossible catch-22: he cannot follow both the Washington order and the Rome order.

Finally, Long also ignores the harm that A faces. A has lived in Italy with her father since June 2016, and for many years before that. *Supra*, Statement of Facts. Long acts as if it is a forgone conclusion that a trial will result in A being relocated to Washington, but she is wrong. Mot. at 4. This is exactly why it is rare for trial courts

to relocate children pending trial – no final decision weighing a child’s best interests has been made. RP 32-37. It is harmful to A to move her across the world before finally determining her residential placement. See RCW 26.09.197. This is particularly problematic, where Long has wrongfully retained A in the US previously. CP 722, 933, 970-72; RP 18-19.

IV. Conclusion

In short, a stay is as vital now as it was when Borrello initiated appellate review, perhaps more so given the Court of Milan’s recent decision. This Court should deny Long’s request and maintain the stay put in place by the appellate court while review in this Court is pending.

RESPECTFULLY SUBMITTED this 7th day of September 2018.

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CERTIFICATE OF SERVICE

I certify that I caused to be filed and served, a copy of the foregoing, **ANSWER TO MOTION TO LIFT STAY**, on the 7th day of September 2018, as follows:

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