

IN THE SUPREME COURT FOR
THE STATE OF WASHINGTON

Marriage of:

CHANDRA LONG,

Respondent,

v.

MICHELANGELO BORRELLO,

Petitioner.

No. 96173-5

REPLY RE MOTION TO
ACCEPT CERTIFIED
TRANSLATION OF COURT
OF MILAN ORDER

I. Identity of Moving Party & Relief Requested

Petitioner Michelangelo Borrello asks this Court to accept the certified translation of the Court of Milan's order on Borrello's petition to have the Court of Milan confirm A's sole custody with him and continued residence in Italy.

II. Facts Relevant to Reply

Long's continued reliance on the Cassation decision is misplaced. Resp. at 2. The Cassation Court ruled only that the United States, not Italy, had 1996 HCCH Article 5 jurisdiction over Borrello's April 2015 motion to modify the parties' "consensual separation" agreement. CP 555-56, 558. The basis of that decision was that when Borrello moved to modify, A resided in Washington. *Id.* That is,

the Cassation Court decided jurisdiction over one motion, at one point in time CP 506-07. It did not, and could not, decide jurisdiction over matters filed years later when A's habitual residence had changed. *Id.* This is consistent with the 1996 HCCH, providing that when a child's habitual residence changes, "the authorities of the State of the new habitual residence have jurisdiction." Art. 5.2.

Long erroneously claims that the only issue on appeal is "the interaction between the Rome case and the Washington case," not the Milan case. Resp. at 2. The trial court's failure to follow the Court of Rome order was one issue on appeal. ***Marriage of Long***, 4 Wn. App.2d 231, 421 P.3d 989 (2018). The appellate court's decision that the Court of Rome exceeded its authority is one issue over which Borrello seeks this Court's review. Pet. at 14-16. Borrello also raises questions regarding jurisdiction over A. Pet. at 9-11. Jurisdiction is an issue in every case, whether at the trial or appellate level. It can be raised at any time.

Borrello agrees that the Milan decision is "brand new, and it is not anywhere in the record below at all." Resp. at 2. It could not be in the "record below" precisely because it is "new." Borrello has been candid about this throughout, advising the trial court, the appellate court, and this Court, that he was awaiting a decision from the Court

of Milan on his petition 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; Pet. at 8.

Finally, Long's analogy is inapt. Resp. at 2-3. As the Court of Milan correctly recognized, the issues pending before that court are "the same" as those pending before the Washington Superior Court, where both actions pertain to the parental responsibility of A. Court of Milan Order at 11 (App. A to underlying motion). That is, both the Washington Court and the Milan Court are tasked with entering orders regarding A's residential placement.

III. Reply Argument

Long does not address the merits of Borrello's motion. As just one example, the Court of Milan order is directly relevant to Borrello's request that this Court accept review of the appellate court's holding that the Court of Rome order exceeds that Court's authority, so need not be enforced. Pet. at 14-16; Mot. at 4 (citing **Long**, 4 Wn. App. at 240). Directly contrary to the appellate court, the Court of Milan ruled that the Court of Rome order remains effective. Court of Milan Order at 13. This alone warrants accepting the translation. Long has no response.

Borrello also asked this Court to accept review to determine whether a trial court in this State should proceed under the UCCJEA, when a Contracting State in which the 1996 HCCH has taken force has Article 5 jurisdiction. Pet. at 16-20. The Court of Milan ruled that it has 1996 HCCH Article 5 jurisdiction over Borrello's pending custody petition. Court of Milan Order at 10. But Milan also recognized that the Washington court has "affirmed that it has jurisdiction also over the matters relating to the child." *Id.* at 11. So again, the Milan decision is directly relevant to the issues on review.

Long faults Borrello for failing to address the RAP 9.11 factors applicable to motions to supplement the record on review. Resp. at 3-4. Borrello did not address RAP 9.11 because he is not asking this Court to direct the trial court to take new factual evidence. RAP 9.11 does not apply.

Finally, Borrello must answer Long's assertions that: (1) in calling his petition pending in Milan a "custody petition"; or (2) in notifying this Court that Milan has issued a ruling, he is attempting to "mislead" this Court "nearly to the point of lying to the Court." Resp. at 4-5. Borrello's Petition for Review states that "On September 6, 2017, Borrello petitioned the Civil 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." Pet. at 8. In context, Borrello is plainly talking about a petition he filed in Milan, not the proceedings pending in Washington. *Compare* Pet. at 3-9 *with* Resp. at 4-5.

The pleading pending before the Court of Milan is called a "Petition Seeking Provisions Regarding a Minor Child." CP 365. In it, Borrello asks the Court of Milan to take jurisdiction based on A's habitual residence in Italy, and to confirm A's "current sole custody to the father and her stable placement in Italy with him." CP 375-78. Borrello has at times referred to this petition as his "custody petition" because he is seeking "custody" as the term is used in Italy, and because in context it was abundantly clear that he was referring to his petition pending in Milan. *Compare* Mot. at 2,5; Pet. at 8, 17 *with* Resp. at 4-5. This was not "designed to make this Court believe the Milan court is involved in the case on appeal." *Id.*

Nor is Borrello attempting to "mislead" this Court by providing notice that the Court of Milan ruled on Borrello's custody petition. Resp. at 4. Borrello readily acknowledges that the Milan "order is nowhere in the record. It is simply not there" *Id.* It cannot be because it was issued after this matter was briefed and argued to the appellate court. It has been well known throughout the Washington

matter that Borrello was pursuing a petition in Italy concerning A's residential placement. It is not misleading to keep the Washington courts apprised of that action, nor is it improper to ask this Court to recognize another court's order, particularly an order addressing jurisdiction.

IV. Conclusion

This Court should accept the certified translation of the Court of Milan's order, where it bears directly on the issues presented for review.

RESPECTFULLY SUBMITTED this 11th day of October 2018.

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CERTIFICATE OF SERVICE

I certify that I caused to be filed and served a copy of the foregoing **REPLY RE MOTION TO ACCEPT CERTIFIED TRANSLATION OF COURT OF MILAN ORDER** on the 11th day of October 2018 as follows:

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