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No. 88045-0

BY RONALD R. CARPENTER

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

No. 41388-4-II (Consolidated with No. 42187-9-II)

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

BRYCE H. DILLE, as Personal Representative of the Estate of Etsuko
Futagi Toland,

Petitioner,

v.

PETER PAUL TOLAND, JR.,

Respondent.

RESPONDENT'S SUPPLEMENTAL BRIEF

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INTRODUCTION

The doctrine of comity allows recognition of the Japanese divorce decree only if there is no significant conflict between enforcement of the decree and Washington law. Enforcement, however, would impermissibly infringe upon Father's due process rights by curtailing his ability to raise his daughter. Father would be required to pay Grandmother monies ostensibly for Erika's benefit over which he would have no decision-making authority. In addition, Grandmother's entitlement to the monies is founded upon a Japanese guardianship order that was obtained five years ago without any notice to Father. Finally, were Father to seek custody of his daughter in Japan to cut off Grandmother's entitlements, the Japanese court would employ a loose best interests test. For these reasons, the Japanese decree inequitably conflicts with the laws designed to protect Father, and it should not be registered.

ARGUMENT

A. The Court Should Affirm Father's Right to Participate In The Probate Action.

The Estate's Petition for Review did not challenge the Court of Appeals' decision regarding Father's entitlement to participate in

the probate proceeding. *See* Pet. As such, Father's supplemental brief addresses only the comity issue, and all references to the Clerk's Papers are to those filed in the registration case.

B. The Doctrine Of Comity Requires That Enforcement Of The Japanese Decree Not Offend Washington Public Policy Or Otherwise Be Unjust To Father.

1. **Comity Defined.** In the seminal case discussing the doctrine of comity, *Hilton v. Guyot*, 159 U.S. 113, 164 (1894), the United States Supreme Court described the doctrine's contours as follows:

“Comity,” in the legal sense, is neither a matter of absolute obligation, on the one hand, nor of mere courtesy and good will, upon the other. But it is the the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws.

159 U.S. at 163-64. The Court then enunciated the following rule regarding enforcement of transnational judgments in the United States:

[W]here there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, after

due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice between the citizens of its own country and those of other countries, *and there is nothing to show either prejudice in the court, or in the system of laws under which it was sitting*, or fraud in procuring the judgment, *or any other special reason why the comity of this nation should not allow it full effect*, the merits of the case should not, in an action brought in this country upon the judgment, be tried afresh, on a new trial or appeal, upon the mere assertion of the party that the judgment was erroneous in law or fact.

Id. at 202-03 (emphasis supplied).

2. Comity Is Not An Imperative. The enforcement of transnational judgments is therefore discretionary, and not mandatory.

“[T]he doctrine of comity is not a rule of law, but one of practice, convenience and expediency. *Mast. Foss & Co. V. Stover Mfg. Co.*, 177 US 485, 488, 20 S.Ct. 708, 709, 44 L.Ed. 856 (1900). Comity allows the courts of one jurisdiction to give effect to laws of another jurisdiction out of deference and respect, considering the interests of each state. *Mianecki* at 97, 658 P2d 422. The decision to invoke comity is within the court’s discretion. *Mianecki* at 98, 658 P.2d 422. *Smith v. Fletcher*, 102 Wash. 218, 222, 173 P 19 (1918).”

Haberman v. Wash. Public Power Supply Sys., 109 Wash.2d 107, 744 P2d 1032 (1987).

In *Mayekawa Mfg. Co., Ltd. v. Sasaki*, 76 Wash.App. 791, 888 P.2d 183 126 Wash.2d 1024, 896 P.2d 63 (1995), the court affirmed the trial court's unwillingness, under comity principles, to enforce a preliminary Japanese judgment against maker of note. The court explained comity does not require enforcement:

Comity is a recognition which one nation extends within its own territory to the legislative, executive or judicial acts of another. It is not a rule of law, but one of practice, convenience and expediency. Although more than mere courtesy and accommodation, comity does not achieve the force of an imperative or an obligation. Rather, it is a nation's expression of understanding which demonstrates due regard both to international duty and convenience and to the rights of persons protected by its own laws. *Sompotex Ltd. V. Philadelphia Chewing Gum Corp.*, 453 F.2d 435, 440 (3d Cir. 1971), *cert. denied*, 405 U.S. 1017, 92 S. Ct. 1294, 31 L.Ed.2d 479 (1972).

76 Wash. App. at 799.

3. Comity Is Dependent Upon The Congruence of Washington And Foreign Law. The enforcement of foreign orders or laws under the doctrine of comity is dependant predominantly upon the extent to which the foreign law or judgment conflicts with Washington law. This precept is frequently expressed in terms of whether or not the foreign law offends public policy or is otherwise unjust. Foreign orders

“will be recognized and given force if it be found that they do not conflict with the local law, inflict an injustice on our own citizens or violate the public policy of the state.” *Reynolds v. Day*, 79 Wash. 499, 506, 140 P 681 (1914) (quoting *State v. Nichols*, 51 Wash. 619, 621, 99 P 876 (1909)).

MacKenzie v. Barthol, 142 Wash.App. 235, 173 P3d 980 (2007).

As stated in *Mirgon v. Sherk*, 196 Wash. 690, 693, 84 P.2d 362 (1938):

A doctrine of comity, however, does not require that any sister state shall enforce contracts to be performed in another which are so contrary to the laws of the state in which they are sought to be enforced as to work a serious interference with its own policy or laws.

“The doctrine of comity must yield to the positive law of the land. Hence, the foreign law must give way when in conflict with the statutes of the forum or the settled current of its judicial decisions.”

“Foreign laws will not be given effect when to do so would be contrary to the settled public policy of the forum” 12 C.J. §§14 and 15.

196 Wash. at 693 (affirming trial court’s unwillingness to enforce usurious Oregon contract provision); *see also Richardson v. Pacific Power & Light Co.*, 11 Wash.2d 288, 300, 118 P.2d 985 (1941) (a foreign judgment will not be enforced “where to allow suit thereon would be contrary to strong public policy”).

In *Rains v. State, Dept. Of Social and Health Services, Division of Child Support*, 98 Wash.App. 127, 135, 989 P.2d 558 (1999), *rev. den.*, 141 Wash.2d 1013, 10 P.2d 1071 (2000), the Court expressed the limits of comity more broadly, concluding foreign judgments will not be enforced if they are “repugnant to fundamental notions of what is decent and just in the State where enforcement is sought.” (Citing RESTATEMENT (SECOND) OF CONFLICT OF LAWS §117 (1970) cmt. c).

The cases that explore application of the doctrine of comity can be divided into three categories: (1) cases in which there is complete congruence between Washington law and the foreign law or judgment; (2) cases in which litigants cannot prove there is a difference between Washington law and the foreign law or judgment; and (3) cases in which there is a conflict between Washington law and the foreign law or judgment.

a. Comity And Complete Congruence

Between Washington and Foreign Law. Where there is no conflict between Washington law and the foreign judgment, the Court has enforced the foreign judgment. As such, in *MacKenzie v. Barthol*, 142 Wash.App. 235, 173 P3d 980 (2007), the Court affirmed the

trial court's summary judgment enforcing a Canadian divorce decree awarding real property to one spouse. Significant to the Court's holding was the symmetry between the result in Canada and the result were the matter adjudicated in Washington. 142 Wash.App. at 238-39. Similarly, in *Pac. States Cut Stone, Co. v. Goble*, 70 Wash.2d 907, 425 P.2d 631 (1967), the court reversed the trial court's dismissal of a party because the result under Washington and the foreign law was substantively identical.

b. Comity And Unclear Congruence Between Washington And Foreign Law. Where a litigant makes no effort to demonstrate a difference between Washington law and foreign law, the court will enforce the foreign judgment. As such, in *State v. Meyer*, 26 Wash.App. 119, 613 P.2d 132 (1980), the court allowed the State to impeach a defendant based on ten Canadian criminal misdemeanor convictions in part because the defendant failed to prove counsel was required in the underlying actions pursuant to Canadian law, or whether or not he had the benefit of counsel or was under threat of imprisonment when convicted. 26 Wash.App. at 126-27; *see also In re Custody of R.*, 88 Wash.App 746, 753, 947 P.2d 745 (1997) (remanding to determine whether best interests standard

was applied in parental custody dispute heard by Philippine Muslim Shari'a Court).

c. Comity And Conflict Between

Washington And Foreign Law. Where foreign law and Washington law differ dramatically, however, Washington has refused to enforce application of foreign law. In *Haberman, supra*, the court reversed the trial court's determination that foreign utilities were immune from lawsuit based on Oregon and Idaho sovereign immunity principles, and instead applied Washington law which allowed the suit. 109 Wash.2d 107, 159-161.

The court also has affirmed a trial court's unwillingness to enforce a California contractual exemption from liability for railroad negligence as against public policy although the provision was valid under California law. *Carstens Packing Co. v. Southern Pac. Co.*, 58 Wash. 239, 108 P 613 (1910). The court described its rationale as follows:

Are not these considerations sufficient to show that no rule of comity requires us to ignore the declared public policy of our state, in order that the terms of a contract made in another state shall be recognized as valid here, simply because such terms are valid where made? It is not as much our right and duty to withhold the aid of our courts from the enforcement

of such a provision, as if it were made part of a contract entered into here? Is not the state of Washington as much a sovereign as the nation as to the matter here involved?

58 Wash. at 249.

Similarly, due to public policy considerations, the Court did not immunize first cousins from Washington criminal incest charges even though they had been validly married in another jurisdiction. *State v. Nakashima*, 62 Wash. 686, 692, 114 P. 894 (1911).

Where there are differences between the foreign and Washington law, the Court has enforced the foreign judgment *only if* the Washington citizen fully participated in and was clearly on notice of the effect of the foreign law. Thus, in *Rains, supra*, the Court enforced an Italian child support order extending father's obligation beyond his adopted twins' age of majority because the father fully participated in the Italian action and was acutely aware what his prospective obligation would be:

To some extent, Mr. Rains is right – *it would be repugnant to Washington public policy to require a Washington litigant to provide support past the age of majority without first giving some advance notice to the support paying parent.* However, it is not repugnant to Washington public policy to require a litigant to provide support past the age of majority *with advance notice.*

Rains, 98 Wash.App. at 138 (emphasis supplied); *c.f. Mosher v. Mosher*, 25 Wash.2d 778, 172 P.2d 259 (1946) (determination of age of majority for child support purposes was based upon law of state where divorce decree was obtained).

Similarly, in *Untersteiner v. Untersteiner*, 32 Wash.App. 859, 863-64, 650 P.2d 256 (1982), the Court enforced the parties' written agreement, entered into between their Austrian attorneys, that a former husband pay permanent alimony regardless of his former wife's financial condition and future employability even though such an award would otherwise violate Washington public policy. The court there concluded that

[n]othing in law, public policy or reason prohibits a former spouse from voluntarily and formally obligating himself or herself to do more than the law requires in providing support for a former spouse.

Id. at 864 (citing *Kinne v. Kinne*, 82 Wash.2d 360, 363, 510 P.2d 814 (1973)).

In contrast, Father in the case at bar was not on notice that he ultimately would pay the monies due under the decreeto Grandmother, who has successfully been able to prevent him from having any relationship with his daughter. Father could not foresee

Mother's suicide and Grandmother's unilateral retention of Erika to provide companionship for her, to care for her as she aged, and to serve as a salve for the loss of her daughter.

The *Untesteiner* decision has been cited for the proposition that a mere difference between Washington and foreign law does not imply the foreign law violates public policy. *See, e.g., Rains*, 98 Wash.2d at 137; *Estate of Toland*, 170 Wash.App. at 839. However, this aspect of the *Untesteiner* decision is *obiter dicta*, as that court determined the permanent alimony award *did* violate public policy, but would be enforced because the parties agreed to it. 32 Wash.App. at 863-64. Regardless, the differences between Japanese and Washington in the instant case are dramatic rather than incidental, and are supremely unfair to Father, thereby justifying non-recognition for the reasons detailed below.

4. The Court Is Required To Analyze Facts And Circumstances That Arose Between Entry Of The Japanese Judgment And Filing Of The Estate's Registration Action. The Estate argues that the validity of the Japanese decree is independently sufficient for it to be enforced. Pet. at 10. However, its validity standing alone does not make it equivalent to a

Washington decree of dissolution. In *Henley and Henley*, 95 Wash.App. 91, 974 P2d 362 (1999), the court concluded that the parties' Hong Kong divorce judgment terminated the marriage, but it did not trigger the automatic termination of the previous wife's entitlements as a beneficiary of the former husband's life insurance policy under RCW 11.07.010. The court explained:

Recognizing a foreign divorce as terminating a marriage does not give a foreign divorce legal status equivalent to a degree [sic] of dissolution entered by a Washington court. The issue here is not whether Edwin's Hong Kong divorce is valid under Washington law; rather, the issue is whether the Hong Kong divorce triggers the express terms of RCW 11.07.010. We hold that it does not.

Henley, 95 Wash. App. at 97 (footnote omitted). As in this case, the trial court acknowledged that the foreign divorce decree was valid. *Id.* at n. 7. However, it affirmed the trial court's summary judgment that the doctrine of comity *should not* be applied to a Hong Kong divorce judgment such that RCW 11.07.010 was triggered, thereby acknowledging that the effect on the parties' marital status would be respected, but the foreign decree otherwise was not equivalent in all respects to a Washington decree. 95 Wash.App. 91.

The Estate also incorrectly asserts that the changes in circumstances intervening between entry of the Japanese decree and the Estate's enforcement actions are irrelevant. Pet. at 10, 13. These intervening facts and circumstances are central to this dispute because the parties are different than those to the Japanese decree. *Estate of Toland v. Toland*, 170 Wash.App. 828, 838, 286 P.3d 60 (2012) (citing RESTATEMENT (SECOND) OF CONFLICT OF LAWS §98 (1971)).

Moreover, the intervening facts and circumstances allow the court to assess whether enforcement of the foreign judgment would be unjust, repugnant, or against public policy. The court in *Olympia Min. & Mill Co. v. Kerns*, 64 Wash. 545, 117 P. 260 (1911), when confronted with dramatic changes in circumstances between contracting parties occurring between entry of the Idaho judgment and the subsequent Washington proceeding, explained:

But, whether it be held to be local or transitory, and whatever may have been the original right of the parties under the contract, *intervening circumstances have so altered their relations to the subject-matter of the controversy that a court can no longer make a decree by reference to the contract alone, but must go beyond it and inquire into equities that cannot be held to be within the contemplation of the parties at the time the contract was made*, all of which may be

dependent on the application of some statute or rule of law local to the state of Idaho.

95 Wash. at 550 (emphasis supplied).

C. Enforcement Of The Japanese Decree Violates Well-Established Washington Public Policy.

1. Japan's Standards For Non-Parent Custody

Violate Father's Substantive Due Process Rights.

Japan does not recognize a biological parent's fundamental right to custody of his children. CP 418. In fact, a custodial parent has the right to have the child adopted without the non-custodial parent's consent. CP 423. Moreover, Japan does not give a surviving parent automatic authority to custody of a child following the custodial parent's death; in fact, there is not even a presumption that custody should remain with the surviving biological parent. CP 420, 443-44; *see also* Resp. to Pet. at 7-10.

If Father were to initiate a custody action against Grandmother in Japan, the Japanese court would employ a loose best interests analysis, with a strong preference given to perpetuating the child's current living arrangements. CP 446; Resp. to Pet. at 7-10. The following factors would apply: the current

strength of Father's relationship with Erika, whether Father has financially supported her to date, his ability to support her prospectively, his living arrangements, her schooling and friends, and her ability to communicate with him. CP 375; CP 431.

After Mother's suicide, Father had a *statutory right* in Washington to "full and complete control" of Erika. RCW 26.16.125. And unlike Japan where the child typically remains with either the maternal or paternal side of the family, Washington "recognizes the fundamental importance of the parent-child relationship to the welfare of the child . . ." RCW 26.09.002.

In addition to violating Father's statutory rights, Japan's use of a modified best interests standard in a custody dispute between Grandmother and Father violates Father's substantive due process rights. In *Troxel v. Granville*, 530 US 57, 65 (2000), a plurality of the Supreme Court determined that a non-parent *visitation* statute employing a best interests analysis violated the parent's fundamental rights as a parent. Japan's use of a best interests analysis in a third party *custody* action represents an even more egregious infringement of Father's rights, as Grandmother has the

benefit of an exceptionally low threshold to completely deprive Father of the right to parent Erika.

Washington courts likewise have consistently recognized that there is a presumption a child should be placed with a natural parent, and that “great deference is accorded to parental rights”. *See In re Marriage of Allen*, 28 Wash.App. 637, 645-46, 626 P.2d 16 (1981). If Grandmother is unable to provide substantial evidence that Father is unfit, or that Erika would suffer actual detriment to her growth and development if she lives with Father, her continued exclusive control over Erika’s care violates Father’s fundamental rights. *In re Custody of E.A.T.W.*, 168 Wash.2d 335, 344-45, 227 P.3d 1284 (2010); *In re Custody of Shields*, 157 Wash.2d. 126, 142-43, 136 P.3d 117 (2006); *In re Custody of Stell*, 56 Wash.App. 356, 783 P.2d 615 (1989); *Allen*, 28 Wash.App. at 645-646, 649. This standard is far more rigorous than a best interest standard, and requires a showing of “actual detriment to the child”. *Allen*, 28 Wash.App. at 649.

2. Registration Of The Japanese Decree Would Infringe Upon Father’s Fundamental Right To Make Parenting Decisions For Erika. Requiring Father to pay the monies due

under the Japanese decree to the Estate violates his fundamental right to parent Erika as her biological father under *Troxel*. The monies will be used by Grandmother to erect further impediments to his relationship with Erika, and it will prevent him from “caring for and guiding” Erika as she matures. *Id.* at 86-87; *see also id.* at 77-78 (J. Souter concurrence). Washington also has long recognized that parents have a fundamental right to autonomy in child-rearing decisions, and that these substantive due process rights are protected. *In re Parentage of C.A.M.A.*, 154 Wash.2d 52, 109 P.3d 405 (2005). A parent should be deprived of the right to make decisions concerning the rearing of his child only if he is deemed unfit. *Troxel*, 530 US at 67, 73.

3. The Secret Japanese Guardianship Action

Violated Father’s Due Process Rights. Aunt advised Father that Mother had committed suicide on December 4, 2007, over a month after her death. CP 302. Father worked directly with Aunt to negotiate Erika’s transition, with Aunt serving as an intermediary to Grandmother. CP 319 (“I will also have to send this to my mother, of course, and she’ll need time to digest as well.”) The terms of the transition were detailed, including specifics like Erika’s schooling,

transferring her belongings, obtaining her passport and military identification, and the time required for the transition. CP 319-22, 472-74. Aunt abruptly terminated those discussions on January 22, 2008. *See* CP 319, 323, 472. Grandmother obtained the Japanese guardianship seven days later, on January 29, 2008. CP 302-03.

Attorney Dugger professed no knowledge of the guardianship proceeding until it was finalized, although she forwarded correspondence to Father's counsel between January 22, 2008 and February 7, 2008 clarifying Aunt and Grandmother abandoned the deal that had been brokered. CP 258-59.

Father learned about the January 2008 Japanese guardianship over two years later quite by accident when he was served with this registration case. CP 302-03. The pleadings served referenced another action the Estate initiated in Pierce County: a probate action that had been pending for about a year. CP 302-03, 479, 618. The probate file, in turn, included a copy of the Japanese guardianship order. CP 302-03, 479-81. Japanese law did not require Grandmother to provide notice of the proceeding to Father, and she evidently did not intend to provide him notice at any time voluntarily. CP 303, 442, 537.

In January 2008, Grandmother and Aunt heartlessly created an expectation that Father could finally raise Erika by agreement with the family, and distracted him with those negotiations so that they could secretly obtain the Japanese guardianship without his interference. CP 250-51. While the Estate disputes it, Father cancelled his visit with Erika in Japan during the holiday season in 2007 to make arrangements for her imminent arrival in the United States. *Id.* If he would have been in Japan between Mother's suicide on October 31, 2007 and January 29, 2008, he would have had a better chance for success in an action against Grandmother. *Id.* Aunt terminated the settlement discussions on January 22, 2008 knowing that Grandmother's case was virtually completed.

The trial court was exceptionally troubled by this secret guardianship proceeding, inquiring of Attorney Dugger whether comity requires

some showing of due process in the other state and isn't it, at least, U.S. – isn't it kind of basic U.S. policy that a natural parent, at least, has some rights to be heard about what's going to happen with his or her child?

CP 259. The Court of Appeals agreed that Grandmother's failure to provide him notice of the guardianship proceeding violated Father's due process rights. *Estate of Toland*, 170 Wash.App. at 839.

The Estate minimizes both Grandmother's secret guardianship action and her failure to advise Father of the order, claiming it was merely "ministerial" in nature by allowing her to service Erika's immediate needs. This position is disingenuous. If the order was designed to give her authority to assist Erika only temporarily, then she would have provided notice of the proceeding to Father *at some point*. While it is true that Japanese law did not require her to provide Father notice of the action, Grandmother cannot rationally reconcile the efforts she and Aunt made to unify Erika and her Father in January 2008 while surreptitiously pursuing the Japanese guardianship. Grandmother *never* advised Father of the action, and, in fact, filed the Japanese decree registration case *separately from* the probate action so that Father would not receive a copy of the guardianship order she included in the probate case. Moreover, Grandmother believed the guardianship order was an integral precondition to the Estate's probate case as she included the order to justify her receipt of the Estate's funds. The guardianship

order was neither temporary, nor a matter of mere convenience; it was a critical part of Grandmother's and Aunt's design to keep Erika from Father and have Father pay her to raise Erika.

A different result is not implicated by the Maryland Court of Appeals decision in *Toland v. Futagi*, 425 Md. 365, 40 A.3d 1051, *cert. denied*, 133 S.Ct. 265 (2012). The court there denied Father's request to assume jurisdiction over Erika under the Maryland Uniform Child Custody Jurisdiction Enforcement Act. 425 Md. at 369. It concluded that the Japanese guardianship proceeding did not infringe upon Father's due process rights because Aunt was not attempting to enforce the Japanese guardianship order in Maryland. *Id.* at 387. It furthermore declined to determine whether Japanese family laws violated fundamental human rights because the question was not ripe as Father had not initiated a custody proceeding in Japan. *Id.* at 389-90. It therefore failed to address whether the standards for custody in Japanese actions between a non-parent and parent violated the standards enunciated in *Troxel*. *Id.* at 390.

In contrast to the Maryland action in which Father sought affirmative relief based upon the Japanese guardianship order's infirmities, the Estate is now using that order as the basis for

affirmative relief. The Estate – who is represented by Grandmother and Aunt – has justified payment of the monies due under the Japanese decree to Grandmother (and not Father) by filing the Japanese guardianship order. Unlike the Maryland case, the use of the order as the foundation for relief therefore places both Grandmother’s secret and misleading efforts to obtain the order, and the reality that Father cannot wrest custody from Grandmother under circumstances that comport with United States constitutional standards, squarely before this court.

4. The Estate Has And Will Erect Every Conceivable Obstacle to Prevent Father From Having Contact With Erika.

Erika is now ten years old. *See* CP 468. The last time Father saw her was when she was a toddler in 2004, and that very short visit was videotaped and supervised by court officers and Grandmother. CP 52-53.

The Estate has no intention of voluntarily providing Father with access to Erika. If its position in this case is to be believed, Father can have visitation only in Japan under supervision with severe time constraints. CP 248, 257-58, 271-72. Grandmother’s and

Aunt's actions, however, demonstrate that the Estate perceives Father is not entitled to any access whatsoever.

Grandmother told journalists at ABC Evening News that she would not allow Father to see Erika. CP 471. True to her word, he has been denied every opportunity to have visitation since 2004. In 2009, he attempted to deliver presents to Erika without success and Attorney Dugger complained that he "scared the child out of her wits." CP 248, 331-32, 468-69. And, when Father attempted personally to confirm that Erika was safe following the tsunami in 2011 by traveling to Tokyo, he was denied time and Attorney Dugger insisted that any communications go through her office, stating "my Clients [Aunt, Grandmother and Erika] do not wish to have any direct contact from or with him." CP 542. Attorney Dugger summarily confirmed that Grandmother and Erika "are fine" three days later without providing any further details. CP 547. She also prevented the US Department of State from conducting a welfare visit following the nearby nuclear accident. CP 620, 629.

The Estate absolutely will not negotiate access issues with Father; it instead insists that Father litigate his rights in Japan, and

then, if he can, enforce them in that country. Attorney Dugger argued:

I'm not saying he can just walk over there and pick her up. I'm not saying that at all. I'm saying that we tried to work out a supervised arrangement and he was totally unreasonable about it [because he wanted four hours a day], and a supervised arrangement has to be made in Japan.

We cannot do this in the United States. We have to work in Japan, and he won't go there. So I'm not saying no, here's an open door, just get on a plane and go see her. No, I'm not saying that at all. I never said that, and I won't have it said that I did say that. I did not. . . .

CP 272. Aunt confirmed: "it is the Japanese courts that need to determine Erika's custody, visitation, and all other issues." CP 334.

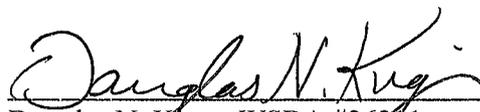
The Court of Appeals suggested this case is long overdue for a negotiated resolution. *Estate of Toland*, 170 Wash.App. at 837 n. 8. This dispute is intractable only because the Estate simply will not negotiate. It will not allow Father access to Erika in the absence of Father *enforcing* his rights in the Japanese courts. Father has no means to resolve this dispute by offering even exceptionally generous financial support to Grandmother in exchange for obtaining custody of Erika, as Grandmother and Aunt perceive that they are entitled to the entirety of Mother's estate. CP 333-34.

In the absence of Grandmother's death or disability, Father will likely never see Erika again. This tragedy should not be underscored by registering the Japanese decree in Washington and denying him the right to participate in the probate action.

CONCLUSION

For the foregoing reasons, Father respectfully requests that this Court affirm the trial court's determination that the Japanese divorce decree not be registered, and affirm the Court of Appeals' decision that Father be permitted to participate in the probate proceeding.

DATED this 29 day of April, 2013.


Douglas N. Kiger, WSBA #26211
Kimberly A. Quach, WSBA #19781
of Attorneys for Respondent

CERTIFICATE OF SERVICE

I hereby certify that I filed the original of RESPONDENT'S SUPPLEMENTAL BRIEF by courier to the following:

Washington Supreme Court
415 12th Avenue Southwest
Olympia, WA 98501

I further certify that I served 1 copy of the foregoing document upon:

Shannon Jones, WSBA #28300
Campbell, Dille, Barnett & Smith PC
317 South Meridian
Puyallup, WA 98371

Michael B. Smith, WSBA #13747
Comfort, Davies & Smith, P.S.
1901 65th Avenue West, Suite 200
Fircrest, WA 98466

by courier on the date indicated below.

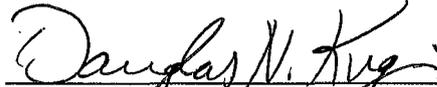
I further certify that I served 1 copy of the foregoing document upon:

Judy Dugger, WSBA #6136
Attorney at Law
PO Box 3463
Fairfax, VA 22038-3463

by depositing the document in the post office at the above-listed address.

DATED this 29 day of April, 2013.

BLADO KIGER BOLAN, P.S.



Douglas N. Kiger, WSBA #26211
of Attorneys for Respondent