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NO. 42187-9-II

COURT OF APPEALS FOR DIVISION II

STATE OF WASHINGTON

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

Appellant,

v.

PETER PAUL TOLAND, JR.,

Respondent.

BRIEF OF APPELLANT

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ORIGINAL

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I. ASSIGNMENTS OF ERROR

A. Assignments of Error

1. The trial court erred when it denied comity to enforce a valid, Japanese divorce decree entered officially in March, 2006 based on what occurred in a separate Japanese guardianship established in January, 2008.

2. The trial court erred when it denied comity based on a separate Japanese guardianship proceeding because the guardianship had no effect on the father's legal ability to bring a custody action in Japan.

3. The trial court erred in finding that the separate Japanese guardianship offended substantial due process rights.

4. The trial court erred, and the trial judge abused his discretion, by denying comity to enforce the Japanese divorce decree because (a) the Japanese court had jurisdiction to enter the divorce decree, (b) there was notice to the husband/father and he participated in the Japanese divorce, and (c) the Japanese court was competent to issue the judgments contained in the divorce decree.

5. The trial court erred in refusing to reconsider its decision to deny comity when its decision was based on a separate guardianship proceeding and there is no legal basis under the established doctrine of comity to consider a separate action in determining whether to enforce a foreign judgment.

6. The trial court erred in refusing to reconsider its decision to deny comity when its decision resulted in a substantial injustice, namely, to deny the minor heir to this Estate the benefit of receiving payment of back child support, a tort award, and a property division resulting from her mother's valid Japanese divorce.

B. Statement of Issues

Issue No 1: Is a separate legal proceeding for guardianship established years after the parties' divorce decree, properly considered in determining whether to grant comity to enforce monetary judgments rendered in a Japanese divorce decree? Assignment of Error 1.

Issue No. 2: Are the proceedings in a post-divorce, separate guardianship action a proper basis to deny comity to enforce monetary judgments rendered in a Japanese divorce decree? Assignments of Error 2 and 3.

Issue No. 3: Should the monetary judgments rendered in a Japanese divorce decree be enforced by grant of comity when Japan had jurisdiction to enter the judgments, the Respondent had notice of and participated in the Japanese divorce proceeding, and the Japanese court was competent to issue the judgments? Assignment of Error 4.

Issue No. 4: Did the trial court abuse its discretion by denying comity to enforce monetary judgments rendered in a Japanese divorce decree where the judgments, including an award for back child support, solely benefit the minor heir to the Estate of Etsuko Futagi Toland? Assignments of Error 5 and 6.

II. STATEMENT OF THE CASE

A. Factual Summary

Etsuko Futagi Toland, Decedent, and Peter Paul Toland, Jr., the Respondent, were married on March 22, 1995 in Japan.[1] CP 175. During the marriage, Etsuko and Peter lived for a short time in Kent, Washington, where the Navy had stationed Peter, but they lived in Japan for the majority of their marriage. CP 184.

Etsuko and Peter's daughter, Erika, was born in Japan on October 17,

[1] For brevity and ease of reference, the parties hereafter will be referred to by their first names, no disrespect intended.

2002. CP 185. Erika has lived in Japan all of her life, has never resided outside that country, and speaks only Japanese. CP 328.

Etsuko suffered verbal and emotional abuse from Peter during their marriage. CP 16-18. On July 13, 2003, when Erika was still an infant, Etsuko separated from Peter. CP 18. The family was then living on a Navy base near Tokyo. CP 18, 327. When she left, Etsuko took Erika with her and left a note for Peter informing him she was going to live near the base. CP 327. Later, Etsuko moved with Erika and her mother (Erika's grandmother), to live in Tokyo. Etsuko again gave Peter notice, including providing him with her address and telephone number. CP 327.

In November of 2003, Estusko started a mediation procedure which is preliminary to divorce in Japan. CP 5 and 328. During the mediation procedure, there were two trial visitations afforded Peter and he exercised those visits, in Japan. CP 6. The parties agreed upon a visitation schedule for Erika in July 2004, but Peter returned to the United States and did not exercise those agreed visitation rights. CP 18, 169-171. Attempts at reconciliation were unsuccessful, and Etsuko moved forward with the divorce proceeding. CP 3-24.

As set out in the Japanese Final Decree of Divorce, Peter was represented

by four attorneys throughout the entire divorce (CP 14), but they were discharged on the final day of the divorce and did not appear at the Final Hearing. RP, 8/6/2010, p. 4, lines 19-24, CP 329. The divorce was unofficially entered in September, 2005 and after further proceedings through the Japanese court system, an official Japanese Final Decree was entered in March, 2006. CP 3-24.

Peter filed two complaints for divorce in the United States, one in Pierce County, Washington in September, 2003 (where Etsuko and Peter had lived in 1999) and another in Virginia (where Peter had also been stationed by the Navy). CP 15, 16. Both cases were dismissed. CP 7-8. Peter appealed dismissal of the Washington divorce, and this Court of Appeals affirmed the dismissal in mid-October, 2007. CP 118-133. A Mandate of this Court issued awarding Etsuko reimbursement of attorney's fees (which she had paid during the case with funds borrowed from her sister to defend the action, CP 329). Id. On October 31, 2007, approximately fifteen days after the Court of Appeals decision, Etsuko committed suicide. CP 327.

Since her mother's death, Erika has continued to reside in Japan with her maternal Grandmother in the same home where she was living with her mother prior to the suicide. CP 327. Although Peter has alleged there was an

"abduction," Erika's residence is the same as when Peter twice exercised visitation during the Japanese divorce mediation. CP 17-18.

Etsuko's surviving sister and Erika's aunt, Dr. Yoko Futagi, has responded to the false reports of abduction. CP 328, 331-332. Yoko and her mother had been willing to allow Peter to see Erika in a supervised visitation setting in Tokyo (CP 331-332), but Peter has failed and refused to file for custody of Erika in Japan and has remained adamant that he will not do so ("I have no intention of engaging the Japanese legal system or recognizing their authority over my family affairs regarding Erika," CP 325).

After Etsuko's death, Yoko did have discussions with Peter concerning Peter's desire to visit with Erika in Japan. CP 317-325. The discussions ended without any arrangement having been made. CP 330-335.

In January of 2008, Etsuko's mother hired an attorney to file for guardianship of Erika in Japan. CP 376. The guardianship was necessary to enroll Erika in school, take care of her medical needs and the like. Id. Peter was not notified of the guardianship proceeding because that is not required under Japanese law. Id. Erika's grandmother was not granted full, permanent custody of Erika, and the guardianship does not stop or interfere with Peter's right to pursue custody of Erika in Japan. CP 168 and CP 376-

377.

B. Procedural Summary

Etsuko's Will provides that Erika is her sole heir. CP 167. Subsequent to Etsuko's death, Peter refused to pay the divorce decree judgments or the attorney's fees awarded in the Appeals case[2]; therefore, Yoko Futagi filed a Petition for Probate in Washington to collect on the judgments for the benefit of her niece, Erika. CP 332-334. As Yoko was unable to post the bond required to serve as Personal Representative, attorney Bryce Dille was court-appointed to serve as Personal Representative of the Estate. CP 1-2. The court also appointed a guardian ad litem for Erika, attorney Michael Smith, although Mr. Smith has not taken an active role in the instant case or in the probate of Etsuko's Estate.

After his appointment, Bryce Dille sought to register the Japanese divorce decree judgments for enforcement in Washington for the benefit of the Estate's minor heir. CP 1-24, 25-26. Peter was personally served with the registration documentation on April 2, 2010. CP 35-36. On April 19, 2010, he filed an Answer denying the judgments were enforceable in Washington (CP 28-30), along with a motion to dismiss the case or for an order denying

[2] The appeals judgment has been paid to the Estate after a Court order requiring payment entered in Etsuko's probate in August, 2011.

recognition of all, or part of, the Japanese divorce decree. CP 32.

On December 7, 2010, the trial court entered its order denying the Motion to Dismiss, which included a finding that:

> "The court cannot find anything facially wrong with the Japanese divorce decree as it addressed all of the issues, including support, property division, and other matters, the judgments of which are of valid amounts under Japanese law. The property and support aspects of the Japanese Divorce Decree need not be re-litigated."
>
> CP 292, lines 9-13.

The trial judge concluded that the Estate could bring the matter before the court again if it could establish the Japanese Decree should be recognized under the doctrine of comity. CP 293, lines 4-6. The trial judge further concluded that the Estate would need to establish "at a minimum" that Peter had received actual notice of Erika's grandmother's guardianship action in Japan before the grandmother was appointed guardian, or otherwise that the Estate would have to establish that "fundamental due process and fairness was available to Father in any Japanese guardianship proceeding." CP 293, lines 6-10.

In response to the December 7, 2010 order, the Estate retained Yorimichi Ishikawa, a Japanese lawyer with expertise in family law matters, to testify concerning the grandmother's Japanese guardianship proceeding. CP 374-379. Mr. Ishikawa's undisputed testimony is that Peter did not receive notice

of the Japanese guardianship because Japanese law did not require the attorney who represented the Grandmother to notify Peter of the proceedings. CP 376. Mr. Ishikawa's undisputed testimony is also that the guardianship does not stop or interfere with Peter's right and ability to pursue custody of Erika in Japan. CP 376.

Mr. Ishikawa's written expert testimony, dated February 9, 2011, was also needed to defend a Maryland custody case filed by Peter against the Grandmother. CP 375, 377. After disclosure of Ishikawa's testimony in the Maryland case, Peter promptly filed a Motion for Summary Judgment to dismiss the Estate's action seeking recognition of the Japanese divorce decree judgments in Washington. CP 297-301. Citing Mr. Ishikawa's affidavit, Peter claimed that the case must be dismissed, as a matter of law, because he did not receive notice of the Japanese guardianship until after the grandmother was appointed guardian of Erika. CP 303-304.

The Estate's response to the summary motion highlighted several disputed facts with respect to Peter's testimony. CP 305-313. Although the Estate could not dispute that Peter did not receive notice of the Japanese guardianship, the Estate argued that the valid divorce judgments should not be denied comity due to actions taken nearly two years after the divorce decree was entered and after the ex-wife had died. Id. Furthermore, even

Peter's expert witness in the Maryland custody proceeding agreed that the Japanese guardianship did not impair Peter's right to seek custody of his daughter in Japan; therefore, his lack of notice of the guardianship was harmless, and did not affect any fundamental right with respect to the judgments rendered in the Japanese divorce decree nearly two years earlier. CP 310-312.

The trial court rejected the Estate's arguments and granted Peter's summary motion, denying enforcement of the Japanese divorce decree judgments as a matter of law. CP 543-544. On reconsideration, the trial judge again denied enforcement of the Japanese divorce decree judgments and, in his oral ruling, made clear his basis was the guardianship, which had nothing to do with the divorce proceeding:

> "[Peter] was not given notice of [the Japanese guardianship]... Now, whether that was intentional on Grandmother's part or just her attorney's advice in Japan, I don't know, but it kind of offends, at least, what I think are the substantial due process rights he would have in the U.S. Any state in the United States he would have at least the right to notice, to know what's happening with his daughter. That was denied him by the Japanese courts... Since the Japanese courts deny what I think are fundamental due process rights of a father, I don't see any imperative to grant comity to this particular decree, so I'm going to deny the motion to reconsider."
>
> RP, 3/25/2011, lines 11-24.

The Estate filed its timely appeal of the summary judgment and Ruling on

reconsideration.

III. STANDARD OF REVIEW

The trial court's summary judgment dismissal is subject to *de novo* review. MacKenzie v. Barthol, 142 Wn.App. 235, 240, 173 P.3d 980 (2007), *citing* Korslund v. Dyncorp Tri-Cities Servs. Inc., 156 Wn.2d 168, 177, 125 P.3d 119 (2005). Summary judgment is proper if the pleadings, affidavits, depositions, and admissions on file demonstrate that there are no genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. CR 56(c). In considering whether to grant summary judgment, the facts and reasonable inferences therefrom must be viewed in the light most favorable to the non-moving party. Korslund, 177, supra.

The trial court's denial of the Estate's Motion for Reconsideration is reviewed for abuse of discretion. Kleyer v. Harborview Med. Ctr. of Univ. of Wash., 76 Wn. App. 542, 545, 887 P.2d 468 (1995).

IV. ARGUMENT

A. THE TRIAL COURT SHOULD HAVE GRANTED COMITY TO THE JAPANESE DIVORCE JUDGMENTS INSTEAD OF REACTING TO AN IRRELEVANT JAPANESE GUARDIANSHIP FILED TWO YEARS AFTER THE DIVORCE WAS FINALIZED.

It is undisputed that enforcement of the Japanese divorce decree judgments in Washington depends upon whether the Court will grant

"comity." The trial court summarily denied comity in this case, but its reasoning had nothing to do with the parties' divorce proceedings. The trial court denied comity based on one undisputed fact – that Peter had no notice of a Japanese guardianship proceeding brought by his child's grandmother in Japan nearly two years after his divorce. RP 3/25/2011, lines 11-24. It was error for the trial court to consider what occurred in that guardianship proceeding.

By law, to determine whether to grant comity, the trial court should only have considered what occurred in the Japanese divorce proceedings:

> "'The doctrine of comity directs that we give full effect to foreign judgments, except in extraordinary cases.' State v. Meyer, 26 Wash.App. 119, 127, 613 P.2d 132 (1980)."

RESTATEMENT (SECOND) OF CONFLICT OF LAWS § 98 (1971) provides:

> **"A valid judgment rendered in a foreign nation after a fair trial in a contested proceeding will be recognized in the United States so far as the immediate parties and the underlying cause of action are concerned.' A judgment is valid if the court had jurisdiction, there was notice, and the court was competent."**
>
> RESTATEMENT, supra § 92; FN 1 In re Custody of R., 88 Wash.App. 746, 756-57, 947 P.2d 745 (1997) (citing RESTATEMENT, supra § 98 cmt. c, § 92, § 104)." Rains v State of WA, Dept of Social and Health Services, Div of Child Support, 98 Wn.App. 127, 989 P.2d 558 (2000), Emphasis added.

RESTATEMENT (SECOND) CONFLICT OF LAWS, supra § 92, as cited by Rains in turn provides:

> A judgment is valid if

> (a) the state in which it is rendered has jurisdiction to act judicially in the case; and
>
> (b) a reasonable method of notification is employed and a reasonable opportunity to be heard is afforded to persons affected; and
>
> (c) the judgment is rendered by a competent court; and
>
> (d) there is compliance with such requirements of the state of rendition as are necessary for the valid exercise of power by the court."
>
> Furthermore, as again cited by Rains, supra:
>
> "A judgment rendered in a foreign jurisdiction will usually be given the same effect as the judgment of a sister state. RESTATEMENT, supra § 117 cmt. c. Section 117 provides that: 'A valid judgment rendered in one State of the United States will be recognized and enforced in a sister State even though the strong public policy of the latter State would have precluded recovery in its courts on the original claim.' Enforcement will usually be accorded to the judgment of a foreign country unless the original claim is 'repugnant to fundamental notions of what is decent and just in the State where enforcement is sought.' RESTATEMENT, supra § 117 cmt. c.

In Rains, an ex-husband/father sought a declaratory judgment finding an Italian child support order unenforceable. Rains v State of WA, Dept of Social and Health Services, Div of Child Support, 98 Wn.App. 127, 989 P.2d 558 (2000). The trial court refused to grant comity, finding that the order's post-majority support provisions contravened Washington's public policy, which limits post-majority support. The trial court's decision was reversed on appeal, and the appeal's court concluded the order would be enforced under the principles of comity. Guided by the RESTATEMENT principles, both the trial court and the appeals court inquired only into the Italian child support

proceedings to determine whether comity should be granted.

Similar to Rains, the trial court in the instant case did examine what occurred in the underlying Japanese divorce proceeding. The trial court found nothing facially wrong with the Japanese divorce decree and noted that it addressed all of the issues including support, property division, and other matters, and that the judgments were for valid amounts under Japanese law. CP 292, lines 9-13. The trial court in fact found that the property and support aspects of the Japanese Divorce Decree "need not be re-litigated." Id. The trial court recognized that Peter was represented by four different attorneys in the Japanese divorce proceeding, as reflected in the Japanese decree itself. Id., CP 14. The trial court was presented with no evidence to dispute that all factors required to grant comity (by the RESTATEMENT, as cited by Rains) were met in this case. Jurisdiction of the Japanese court to enter the decree, and the absence of U.S. jurisdiction, was in fact recognized by this appellate Court. CP 118-133.

Unlike in Rains, the trial court's inquiry in the instant case did not stop with the Japanese divorce proceeding. The trial court also inquired into a Japanese guardianship filed nearly two years after the Japanese divorce was finalized, and after Etsuko had died. Notably, Peter had failed to pay any of the Japanese divorce judgments, including those for back child support, during that two year period. The guardianship of course did not involve the same parties as the divorce, the guardianship having been filed by Erika's grandmother when, as a result of Etsuko's death, the Grandmother needed legal authority over her granddaughter for medical purposes, to enroll her in

school, and for similar reasons. CP 376. Peter was not provided notice of the guardianship because that is not required by Japanese law. Id. Importantly, Peter had not sought custody of his child in Japan, and still refuses to do so (CP 325), which would leave the grandmother with little choice but to file for guardianship in order to make necessary decisions about her granddaughter's welfare in Japan.

While Peter has alleged a scheme whereby notice of the guardianship proceeding was deliberately kept from him, the simple reason no notice was provided was that a Japanese lawyer handled the matter and notice to Peter was not required. Etsuko's sister, Dr. Yoko Futagi, has testified at length to refute Peter's testimony in this regard. CP 317-325, CP 330-335. Yoko never misled Peter to believe his daughter was returning to the U.S. during the time the Grandmother was seeking guardianship.

There is not a single case in Washington where the comity analysis to enforce a foreign judgment involved the consideration of a separate legal proceeding. In the fifteen (15) reported cases found which address the issue, all applied the simple test of validity. None of the cases support consideration of extraneous legal proceedings on different issues.[3] This

[3] Kammerer v. W.Gear Corp., 96 Wn.2d 416, 635 P.2d 708 (1981); Escrow Serv. Co. v. Cressler, 59 Wn.2d 38, 365 P.2d 760 (1961); Mosher v. Mosher, 25 Wn.2d 778, 172 P.2d 259 (1946); Shibley v. Shibley, 181 Wash. 166, 42 P.2d 446 (1935); Harju v. Anderson, 133 Wash. 506, 234 P. 15 (1925); Sheppard v. Coeur D'Alene Lumber Co., 62 Wash. 12, 112 P. 932 (1911); Douglas v. Teller, 53 Wash. 695, 102 P. 761 (1909); Childs v. Blethen, 40 Wash. 340; 82 P. 405 (1905); MacKenzie v. Barthol, 142 Wn.App. 235, 173 P.3d 980 (2007); Olivine Corp. v. United Capitol Ins. Co., 122 Wn.App. 374, 92 P.3d 273 (2004); Rains v. DSHS et al, 98 Wn.App. 127, 989 P.2d 558 (1999); In re the Matter of Custody of R., 88 Wn.App. 746, 947 P.2d 745 (1997); State v. Medlock, 86 Wn.App. 89, 935 P.2d 693 (1997); Mayekawa Mfg. Co. v. Sasaki, 76 Wn.App. 791, 888 P.2d 183 (1995); State v. Meyer, 26 Wn.App. 119, 613 P.2d 132 (1980).

makes both practical and legal sense. To grant comity means to recognize the validity of a foreign court order. Whether to grant comity to a foreign court order requires examination only of ***that particular court order***, the underlying court proceeding which resulted in issuance of that order, and the laws applied in that proceeding. Examination of other laws of the foreign country, which laws were not implicated or applied to reach the judgment sought to be enforced, is unreasonable and inequitable and this case aptly demonstrates why.

Etsuko was granted a divorce similar to those granted every day in Washington. She was granted a judgment for back child support, tortious abuse, and property division. While the award for tortious abuse is not something a Washington court would specifically award, Washington applies equitable principles in rendering divorce judgments, and judgments awarded by a foreign jurisdiction need not be identical to judgments which could be awarded in the jurisdiction which grants comity. See Rains, supra, at 564, where the appeals court gave effect to the Italian support order even when Italian law differed from Washington law in determining post-majority support obligations. See also Hughes v. Fetter, 341 U.S. 609, 611, 95 L.Ed. 1212, 71 S.Ct. 980 (1951); *cf.* Miller v. Kingsley, 194 Neb. 123, 230 N.W.2d 472 (1969) (must enforce foreign judgment containing punitive damages, but apparently would not have granted punitive damages if original action had been brought in that state).

To deny Etsuko, and now her minor child, the right to collect her valid divorce judgments when her husband had notice of, and participated in, the

Japanese divorce, and the Japanese court had jurisdiction to award those judgments, simply because her mother filed a Japanese guardianship after Etsuko's death, is inequitable. Etsuko's ex-husband will not recognize that Japan has any legal authority over his family's affairs when, in terms of his Japanese-born daughter, who has never resided outside that country, the Japanese court clearly does have such legal authority. This very Court of Appeals has recognized that Japan is Erika's home-country. CP 129-130. Peter has tried unsuccessfully in three different States to litigate his divorce and custody. His refusal to follow valid court orders is now rewarded and he is not required to pay even back child support, simply because his child's grandmother followed Japanese law in order to make medical and similar decisions for her granddaughter while she cares for her in Japan.

B. THE FATHER WAS NOT HARMED BY LACK OF NOTICE OF THE JAPANESE GUARDIANSHIP AND THE TRIAL COURT IMPROPERLY RELIED ON THIS FACTOR WHEN IT DENIED COMITY.

Assuming *arguendo* that the trial court properly considered the Japanese guardianship, Peter's lack of notice of those proceedings has no effect on his ability to bring a custody action in Japan and does not offend any substantial due process right. The trial court's summary dismissal of the foreign judgment registration based on a lack of notice of the guardianship was error.

1. The Japanese guardianship had no effect on the father's rights or obligations in the Japanese divorce decree which was entered nearly two years earlier.

The undisputed evidence concerning the effect of the Grandmother's Japanese guardianship is that a Japanese guardianship has no bearing on Peter's ability or right to file a proceeding and seek custody (or guardianship) of his minor daughter in Japan. CP 375-376. In a Japanese custody proceeding, the Court will consider Peter's relationship with his child, how or whether he has supported her in the past, his financial wherewithal to support her in the future, his living arrangements and where the child will live if in his custody, the child's schooling and friends, ability to communicate with her father, and the like. CP 375. In a custody proceeding in Japan, the Court thus examines factors similar to those examined in Washington, to determine what is in the child's best interest. Washington courts give effect to custody decrees of foreign nations on assurance that custody decisions were based on the best interest of the child. See In re Ieronimakis, 66 Wn.App. 83, 831 P.2d 172 (1992).

Peter's own expert witness agreed with the opinions of the Estate's expert witness, with the small exception that his expert believed there would be a direct (rather than transitional) change of custody if Peter was awarded custody of Erika by a Japanese Court. CP 425-433.

It is undisputed that the Grandmother in Japan does not have full, permanent custody of Erika, and Japanese guardianship does not stop or interfere with Peter's right to pursue custody. CP 376.

The undisputed facts viewed most favorably to the Estate (Appellant) establish that the Japanese Guardianship was not a proceeding which would

in any way deprive Peter of any custodial right he were to establish. The trial judge erred in determining that the Japanese guardianship proceeding prevented granting comity to the divorce judgments.

2. The trial court erroneously concluded that the Japanese guardianship offends substantial due process rights.

The trial judge's finding that the Japanese guardianship "offends . . . substantial due process rights," was not supported by the evidence and is erroneous. RP 3/25/2011, lines 11-24. The unrefuted evidence concerning the effect of the guardianship was that it gave the Grandmother legal authority to make decisions for her granddaughter, but did not deprive Peter from asserting his right to make those decisions should he obtain guardianship or custody of Erika. Peter here has "no intention of engaging the Japanese legal system or recognizing their authority over [his] family affairs regarding Erika." (CP 325) and this was his expression ***before he was even aware of the Japanese guardianship.*** Under the circumstances of this case, lack of notice to Peter of the Japanese guardianship had no adverse consequence to him – it does not prevent him from filing for custody in Japan, which he refuses do in any event. There is absolutely no evidence to suggest that Peter has been deprived of any right because of the guardianship. Peter has the same rights after the guardianship as he did before; which rights he will not exercise. It is clear from his own words that Peter would not have participated in the Japanese guardianship had he known about it.

C. THE VALID JAPANESE DIVORCE DECREE JUDGMENTS ARE ENTITLED TO ENFORCEMENT

UNDER THE EQUITABLE DOCTRINE OF COMITY.

The Estate does not dispute that there are no genuine issues of material fact with respect to enforcement of the Japanese divorce judgments by grant of comity. The trial court erred in denying comity when all of the essential elements required to grant comity have been met, and Washington's public policy favors enforcement of the judgments.

Comity rests on considerations of practice, convenience, and expediency in the judicial system. Haberman v. Wash. Pub. Power Supply Sys., 109 Wash.2d 107, 160, 744 P.2d 1032 (1987). The doctrine of comity directs that the Court give full effect to foreign judgments, **except in extraordinary cases**. State v. Meyer, 26 Wash.App. 119, 127, 613 P.2d 132 (1980), emphasis added. 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)).

Any argument that enforcement of a foreign judgment violates state constitutional rights against deprivation of life, liberty, or property without due process of law is inapplicable where the parties brought the matter before the foreign jurisdiction and presented evidence there to resolve the dispute. MacKenzie v Barthol, 142 Wn.App. 235, 240-241,173 P.3d 980 (2007).

Under the law cited above, the doctrine of comity requires the Court to consider: (1) whether Japan had jurisdiction to enter the decree; (2) whether there was a reasonable method of notice and a reasonable opportunity to be

heard afforded affected parties ***in the Japanese divorce proceeding***; (3) whether the Japanese court was competent to render the judgment; and (4) if there is compliance with Washington law in procedures required to register the Japanese judgments.

In the trial judge's August 6, 2010 oral ruling on Peter's Motion to Dismiss, the Court stated:

> "First, with respect to the decree in Japan, I, frankly, don't see a problem with it. I read through it three or four times. It appears to me the Japanese court addressed all the issues. I don't know exactly what the law of custody in Japan is. Of course, we have some opinions that may or may not be correct.
>
> . . . [the decree] addressed support. It's, it would seem to me, at least on the face of the document, an appropriate amount. They did a division of property which seemed to me to be certainly within the ballpark of anything the court here would do, so I'm certainly not going to relitigate the dissolution decree, which appears to me to have valid amounts of judgment, at least, under Japanese law."
>
> RP, 8/6/2010, p. 3, lines 6-21.

The trial court correctly decided that comity factors #1 and #3 were met with respect to the Japanese decree. As to factor #4, there was never a dispute that the appropriate pleadings were filed in Washington to request recognition of the Japanese judgments. As to comity factor #2, there was a reasonable method of notice and opportunity to be heard by the affected parties in the Japanese divorce proceeding, and the trial court so ruled:

> "I think [defendant] did appear in the divorce and his firing of lawyers may have just been a strategic packet [*sic*] when things weren't going for him, but four attorneys are

> mentioned in the decree and representing him, so we can later get information about that."
>
> RP, 8/6/2010, p. 4, lines 20-24.

Peter also filed a petition to mediate a visitation schedule in Japan, as part of the preliminary proceedings which later culminated in divorce. CP 18, 169-171. He was an active participant in the divorce proceeding, and had notice and an opportunity to be heard in the proceeding. His participation was noted by this Appeals Court in its earlier ruling on the Toland divorce. CP 128.

Excluding interest and converted from Japanese Yen to U.S. Dollars, the Japanese divorce decree awarded a judgment of $8,204.01 for child support (calculated from 4/1/2006 to Etsuko's date of death 10/31/2007), a judgment of $69,084.64 for property division, and a judgment for $8,635.58 for "solatium" (recompense for abuses suffered during the marriage). CP 587. None of these judgments have been paid and, with interest, the total balance owed is in excess of $100,000.00. Washington has recognized foreign divorce decrees for property division under comity. See MacKenzie v. Barthol, supra. Washington has also recognized divorce judgments for child support and noted the "strong public policy in favor of enforcing valid [child] support orders." Rains, supra, at 138-139.

There are no extraordinary circumstances surrounding entry of the divorce decree which should prevent its recognition in Washington. The judgments should be enforceable in Washington under the doctrine of comity.

D. THE TRIAL COURT ABUSED ITS DISCRETION BY DENYING RECONSIDERATION OF ITS SUMMARY JUDGMENT DISMISSAL.

A trial court abuses its discretion when its decision or order is manifestly unreasonable, exercised on untenable grounds, or exercised for untenable reasons. Noble v. Safe Harbor Family Pres. Trust, 167 Wn.2d 11, 17, 216 P.3d 1007 (2009). An error of law constitutes an untenable reason. Id.; Wash. State Physicians Ins. Exch. & Ass'n v. Fisons Corp., 122 Wn.2d 299, 339, 858 P.2d 1054 (1993).

After the trial judge summarily dismissed the foreign judgment registration, with prejudice, the Estate brought a Motion for Reconsideration based on the following sections of CR 59:

1. That there is no evidence or reasonable inference from the evidence to justify the verdict or the decision, or that it is contrary to law (CR 59(a)(7)); and

2. That substantial justice has not been done (CR 59(a)(9)).

The trial court abused its discretion by denying the Motion to Reconsider.

First, as state above, there is no legal authority for the trial court to refuse recognition of the valid divorce decree judgments because of an extraneous guardianship proceeding which took place nearly two years after the decree

was entered and did not involve the parties to the divorce. The doctrine of comity does not depend upon examination of extraneous legal proceedings. Furthermore, the guardianship simply involved the legal rights of the Grandmother to handle her granddaughter's affairs after her mother's suicide. The guardianship had nothing to do with the Japanese divorce decree or its unpaid judgments. **This is not an action to enforce a Japanese custody or guardianship order.** In any event, undisputed expert testimony substantiates that the guardianship has no effect on Peter's ability to file for custody, or guardianship, of his daughter in Japan. CP 376-377. Peter simply refuses to exercise any rights he may have to seek custody in Japan. CP 325.

Second, the summary judgment dismissal promotes a substantial injustice by depriving Erika, as the sole heir to her mother's Estate, from recovery of her mother's valid divorce settlement, including back child support. The summary ruling directly contradicts the trial court's August 6, 2010 oral ruling -- that it had "no problem with" the Japanese decree, and would not re-litigate the issues covered by the decree. RP, 8/6/2010, p. 3, lines 6-21. The summary judgment dismissal is contrary to public policy, which provides that a parent support his minor child pursuant to valid court orders.

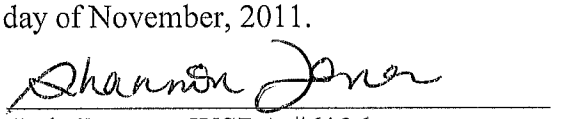
On reconsideration of the law and the facts germane to summary

judgment, the trial judge abused his discretion in failing to reverse dismissal and grant comity to recognize the valid Japanese judgments.

IV. CONCLUSION

The trial court's dismissal of the foreign judgment action allows Peter to completely evade his parental responsibility to support his minor child. Peter has had the right to file for custody of his minor child in Japan for years. He willfully and admittedly refuses to even attempt such a proceeding. He can seek custody in Japan regardless of the Grandmother's guardianship proceeding; yet, the Court rewards his failure to support his child and his refusal to go to his child's home-country to seek her custody, by ordering that his child is not entitled to any support, or any judgments her mother was awarded in her divorce. This is an absurd result and contrary to the established doctrine of comity, most egregious because Erika is substantially harmed by the trial court's erroneous decision. It is respectfully requested that the trial court's decision be reversed and that the Japanese divorce judgments be granted comity and subject to enforcement under Washington law.

Submitted this 2nd day of November, 2011.



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COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

BRYCE H. DILLE, as Personal Representative of the Estate of Etsuko Futagi Toland, Appellant, v. PETER PAUL TOLAND, JR., Respondent.	No. 42187-9-II **DECLARATION OF SERVICE**

I, Melinda L. Leach, hereby declare as follows:

That I am now and at all times herein mentioned a citizen of the United States and a resident of the State of Washington, over the age of 18 years, competent to testify, and have personal knowledge of the facts set forth in this declaration.

1. On November 3rd, 2011, I caused to be served a true and correct copy of the Brief of Appellant, by ABC Legal Messenger, to:

Douglas Kiger
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3408 South 23rd Street
Tacoma, WA 98405

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Fircrest, Washington 98466

ORIGINAL

and a copy by first class mail to:

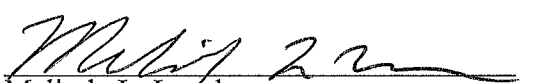
Kimberly A. Quach
1 SW Columbia, Ste 1800
Portland, OR 97214-2327

That also on the 3rd day of November, 2011 I caused to be filed, by ABC Legal Messenger, an original and one copy of the Brief of Appellant and Declaration of Service upon the Court of Appeals, Division II at the following address:

Court of Appeals, Division II
950 Broadway, Ste 300
Tacoma, WA 98402

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at Puyallup, Washington this 3rd day of November, 2011.



Melinda L. Leach