Supreme Court No. 95327-9

Court of Appeals No. 50360-3-II

SUPREME COURT OF THE STATE OF WASHINGTON

In Re the Matter of the Marriage of

RALUCA VETRICI,

Respondent,

v.

GRIGORE VETRICI,

Petitioner.

PETITIONER'S AMENDED COMBINED REPLY TO RESPONDENT'S COMBINED ANSWER TO THE PETITION FOR REVIEW AND RESPONSE TO THE MOTION TO EXTEND TIME

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A. Raluca does not address a principal point for this Court - relitigation of the 2009 separation agreement

The issue for this Court is whether the evidence supports findings of contempt, including for relitigating the 2009 separation agreement. The superior court judge below found that it was "expressly not recognized in the Washington Decree of Dissolution of Marriage", and is consistent with *RCW 26.09.070(5)*. The finding was not appealed, and the Court is not justified in looking behind the face of the order. *Svatonsky v. Svatonsky, 63 Wn.2d 902, 904, 389 P.2d 663 (1964)*.

At trial, Raluca shifted the blame to her Canadian lawyer for not admitting the Washington dissolution findings to the Canadian court – the dissolution findings convey the invalidity of the 2009 separation agreement. CP 61. She also failed to admit her Washington stipulations and attacked the decree. CP 381. Had Raluca not filed the false document and if her lawyer had exercised candor, the British Columbia courts could not have enforced the terminated 2009 separation agreement instead of the decree and its stipulations. Raluca's successful fraud upon the Canadian court cannot support a claim that issues were "fully litigated".

B. Raluca misapplies *Svatonsky*

Raluca argues that a reversal in Grigore's position should not be tolerated, citing *Svatonsky*. Combined Answer (hereinafter "Answer") at

18. *Svatonsky* is analogous to this case, but Raluca misapplies it. *Svatonsky* holds that a party who procures or gives consent to a decree is estopped to question its validity where he has obtained a benefit therefrom. Raluca procured the Washington dissolution decree and obtained benefits including the right to remarry and to be free of the constraints of day-to-day care for the children. To avoid paying child support, she then invoked the jurisdiction of the British Columbia court to reduce Grigore's benefit of residential time with his children under the pretense that she was enforcing a valid separation agreement. Raluca recognizes the "parenting arrangement" Grigore "enjoyed prior to May 2013." Answer at 5. In the face of the present enforcement action, she repudiated the action of the dissolution court on the ground that it was without custody jurisdiction.

At no time has Grigore waived his fundamental right to care for his children, changed his position, or challenged the validity of the Washington decree. "[A] court must indulge every reasonable presumption against waiver of fundamental rights." *Bellevue v. Acrey, 103 Wn.2d 203, 207, 691 P.2d 957 (1984)* citing *Glasser v. United States, 315 U.S. 60, 86 L.Ed. 680, 62 S.Ct. 457 (1942)*. Grigore consented to Washington's jurisdiction at dissolution in writing (CP 26), in open court (CP 51-52), registered the decree in British Columbia in 2011 (CP 435-

436), told Raluca's lawyer he woud seek to affirm custody (CP 283), tried to avert the Canadian trial through summary judgment to recognize the decree when no other avenue seemed open (CP 83), objected to re-opening of dissolution matters in that trial (CP 332), and paid court costs there only under threat of arrest (CP 47).

C. Raluca pleads unsettled law: UCCJEA jurisdiction

In her on again, off again arguments, Raluca seeks review under *RCW 26.27.201* regarding UCCJEA home state jurisdiction. Answer at 17. Raluca introduced the UCCJEA in the superior court (VRP at 17), then objected to arguments relating to the UCCJEA. Br. of Resp't. at 19 and 22. The law bears on the case. Raluca agrees that Washington courts have subject matter jurisdiction over domestic relations but argues that the parties waived the Washington dissolution court's jurisdiction over the children. Answer at 16-17.

The UCCJEA gives courts a mechanism by which to prevent forum shopping. *In re Custody of A.C., 165 Wn.2d 568, 200 P.3d 689 (2009)*. It does this by generally selecting the first, most convenient, or most closely connected state for the initial custody determination, and then considers whether significant connections to that state continue to exist before the court of another state can modify that determination. What the UCCJEA does not do is to deny the authority of a court to enforce its

own custody determination unless properly modified by another court.

Since *A.C.*, two published decisions of the Court of Appeals conflict in respect of the UCCJEA. In *In re Parentage of Ruff, 168 Wn. App. 109, 275 P.3d 1175 (2012)*, Division 3 reversed a Washington court's exercise of jurisdiction because it said the trial court did not explicitly comply with the UCCJEA. Both parties independently petitioned for relief on the same day in the same Spokane court, and later consolidated their cases. The parties then obtained a stipulated order from Montana dismissing the initial temporary custody order to allow the Washington court to enter a parenting plan and child support. The only issue on appeal was whether the Washington court had authority, given the requirements of the UCCJEA, to address parenting.

Division 3 held that the UCCJEA's procedural requirements control the court's exercise of its subject matter jurisdiction, are thus jurisdictional, and the superior court's order was void. The parties could not waive the jurisdiction of one state in favor of another by their conduct or agreement; the Montana court had improperly declined jurisdiction under the UCCJEA if one party was resident in Montana. The court said the Montana court had exclusive jurisdiction when it first entered a custody order. Montana's jurisdiction continued and included the exclusive jurisdiction to modify its order. This Court declined review.

In *In re Marriage of McDermott, 175 Wn. App. 467, 307 P.3d 717 (2013)*, Division 1 rejected the analysis in *Ruff*. *McDermott* holds that the UCCJEA's procedural requirements are not jurisdictional in nature despite the wording, and do not curtail a court's subject matter jurisdiction. *McDermott* quotes *A.C.* – a quote rejected by *Ruff* – to support its contention: the UCCJEA "might have more accurately used the term 'exclusive venue.'" Both Kansas and Washington courts were petitioned on the same day. Since the parents had intended to return with their newborn child to Kansas soon after the birth in Costa Rica, Kansas was the home state despite temporary absences. Because the Kansas court had not declined to exercise jurisdiction, the Washington court should not make custody determinations involving the child. This Court declined review.

While in *Ruff* it appears as if Mr. Knickerbocker had engaged in forum shopping or that *Svatonsky* should apply since he consented to jurisdiction of the Washington trial court and then did an about-turn and challenged jurisdiction on appeal, the appellate rules permitted him to do so and he had obtained no benefit. The welfare of children appears to have had paramount consideration over other judicial principles.

In *In re Marriage of Buecking, 179 Wn.2d 438, 316 P.3d 999 (2013)*, this Court identified only two components to a court's jurisdiction: jurisdiction over the person and subject matter jurisdiction. The UCCJEA

dispenses with jurisdiction over the person. *RCW 26.27.201(3)* ("Physical presence of, or personal jurisdiction over, a party or a child is not necessary or sufficient to make a child custody determination.") The Court distinguished between permissible legislatively-imposed limitations on jurisdiction and impermissible statutory prerequisites to the courts' exercise of jurisdiction. The decision quotes *Ruff*, "[n]othing in our constitution prohibits the legislature from creating procedural prerequisites to a court's exercise of jurisdiction". *Ruff*'s quote of *A.C.* further supports the contention that the UCCJEA is a limit on subject matter jurisdiction, "to permit waiver of the jurisdictional provisions of the UCCJEA would undermine the goals of avoiding conflicting proceedings." If the UCCJEA is mandatory and a court cannot exercise discretion in applying it, then it controls a court's exercise of jurisdiction.

Applying either *Ruff* or *McDermott* to the present case, Washington was the home state and could make the initial child custody determination. The court, "before hearing a child custody proceeding," must examine the information provided by the parties. *RCW 26.27.251(2)*. At dissolution, the Washington court was the initial and only forum. CP 14 ("The Petitioner does not know of any other legal proceedings concerning the children"). Despite not checking the boxes in the petition specifying home state, she gave an account of the children having lived

with her in Washington and meeting the conditions for home state jurisdiction.[1] See *Pierce v. Aetna Cas. & Sur. Co., 29 Wn. App. 32, 627 P.2d 152 (1981)* (A child of divorced parents who regularly spends every weekend in his father's house and every weekday in his mother's house is a resident of both households). Washington was the home state for the parties' children at commencement of dissolution and the appropriate forum for an initial child custody determination. *RCW 26.27.201(1)(a)*.

The UCCJEA treats a foreign country as if it were a state of the United States. *RCW 26.27.051*. Applying *Ruff*, British Columbia could not have acquired jurisdiction under the UCCJEA to modify the initial child custody determination because Raluca was residing in Washington when she commenced that proceeding. CP 307. Under *Ruff*, that order is void. *McDermott* describes such an order as "draconian and absolute". *McDermott, 175 Wn. App. 467*. Given the subject matter jurisdiction distinction under *McDermott*, British Columbia could have exercised jurisdiction but should not have exercised it for the same reason – that Raluca was living in this state and she could not waive Washington's subject matter jurisdiction.[2] Under *McDermott*, that order is voidable and

[1]As the 2009 separation agreement was not officially terminated until the dissolution, the children had lived in Washington for over six months with their mother by the time of the commencement of dissolution. CP 13. In total, the children had lived in Washington for over three years. *Id*.

[2]British Columbia law promotes similar principles for recognition and enforcement of extraprovincial orders at Sections 73-75 of the *Family Law Act*. CP 198-200. At Section 75(1), "A court must recognize an extraprovincial order").

conflicts with Washington's decree until voided.

The statutory prerequisites imposed by the UCCJEA require courts to act for the greater good. The welfare and the best interests of children at the center of such litigation can only be truly protected if the UCCJEA scheme is adhered to, even if it means a court has to push back against a non-complying extra-territorial court as in *Ruff* or as this Court should do.

D. Due considerations are not inflammatory accusations

In a civil contempt proceeding, a court is not limited to a determination of the question of contempt, but is authorized to consider and determine to what extent the parties should perform the duties imposed upon them by the decree of dissolution. *In re Marriage of Wulfsberg, 42 Wn. App. 627, 632, 713 P.2d 132 (1986)* citing *Bradley v. Fowler, 30 Wn.2d 609, 192 P.2d 969, 2 A.L.R.2d 822 (1948)*. See also *State v. Ervin, 169 Wn.2d 815, 820, 239 P.3d 354 (2010)* (In determining the plain meaning of a provision, the courts also look to the context of the statute and related provisions).

Raluca supports a ruling on the UCCJEA. The federal criminal statute at issue exists to enforce UCCJEA rulings across international borders. Washington's custodial interference statute does likewise without expressly addressing the UCCJEA or borders. The duties imposed by such ruling in this enforcement action involving international borders is thus an

important consideration of substantial public interest. As the UCCJEA is a uniform law affecting all states of the United States, the principled and considered decision of this Court has the potential to create persuasive authority across all of the United States.

Despite that he appears to assume he is being accused of having aided Raluca's action in Canada, the author of the Answer cannot be held to personal account beyond the extent of his liability as Raluca's counsel since the date of entry of his appearance. In her declaration in the trial court below, Raluca diverted blame to her Canadian counsel for not admitting the dissolution findings and conclusions into evidence in her Canadian action. Although filing of the doctored separation agreement was by her own hand, it remains to be determined whether the subsequent appearance by her Canadian counsel in that action was sufficiently proximate to the filing to affect the extent of her liability for the claims below. There may also be consideration whether that legal representative has liability in Washington for prosecuting the Canadian action on behalf of Raluca contrary to the Washington decree and Washington statute.

E. Inequity demands extension of time to prevent further miscarriage of justice

Raluca's sole objection to extension of time to file the petition for review hinges on the timeliness of the motion for reconsideration. Answer

at 14. But she concedes that Grigore moved the court to extend time in respect of the latter (Answer at 13), and that the court did not enter a mandate (Answer at 22). A ruling then issued on the motion for reconsideration; no ruling would have issued had the motion for extension of time been denied.[3] The motion for reconsideration was thus timely and Raluca's objection is addressed.

Raluca seeks attorney fees for motions she did not oppose, whether they be to extend time or to amend, and argues about appeal fees she has already waived. Answer at 22. She argues the motions were frivolous. Answer at 2, 21. Because the motions were granted, *a fortiori* they were not frivolous. The request is unwarranted and is bad faith. Raluca shows more bad faith by omitting words of the dissolution court's intent on how the children's interest in the educational account might be addressed. Answer at 4 omits "I don't know that I can put it with the children if they're minor children." Even at this stage of the proceedings, Raluca manifests the moral and ethical challenges that plague this litigation.

Grigore has shown his good faith. Grigore has struggled throughout these proceedings but has acted in good faith. Erin Lennon, Deputy Clerk of this court, has made a finding of his good faith. Letter

[3]The Court of Appeals issued a ruling of untimeliness in respect of a motion to publish which was not timely filed and for which no motion to extend time was filed. No ruling was made on the motion itself.

ruling dated November 4, 2016, ("he has consistently complied, showing a good faith effort to comply with the Court's rules"). Raluca does not admit that Grigore is an oppressed parent who is personally trying to correct an abuse of the process of a court, with its attendant emotional challenges.

Raluca's request to forgo the merits is inequitable and would amount to a gross miscarriage of justice. This Court has recognized that forum shopping by one parent creates situations where the other parent is faced with procedural obstructions. *In re Marriage of Verbin, 92 Wn.2d 171, 595 P.2d 905 (1979)*. As a general principle, the rules of procedure are the servant of substantive rights and not the master. The forum shopping in the instant case has coerced Grigore to enforce in Washington due to Raluca having prejudiced the more convenient Canadian courts through misrepresentations. Without review of the merits, resolution would be left in the hands of the Canadian Supreme Court, subject to its discretion to accept the case. Raluca does not shed light on how the purpose of finality intended by RAP 18.8(b) would be achieved.

Raluca does not justify the inequity to Grigore of the Court of Appeals' obvious error of reviewing her proposed findings rather than the entered findings. Despite timely briefs perfected for review, Grigore is now challenged with additional steps, procedure, and opportunities to falter, including discretionary review of the petition, before his chance at a

first review of the entered findings.

Raluca fails to account for or address an essential element of *Reichelt v. Raymark Indus., 52 Wn. App. 763, 764 P.2d 653 (1988)*. In that decision addressing RAP 18.8(b), the court expresses an openness to reasonable diligence. In this case, action was taken to extend time before expiration of the specified period. See Letter ruling, *supra* ("For the Appellant's future reference […] If additional time is needed […] the proper procedure is to make a motion for extension of time.")

Raluca provides no authority for the Court of Appeals' disregard of consideration for the welfare of the children. The decision being appealed is the denial of the motion to hold Raluca in contempt of the decree of dissolution, but the overriding interest is the welfare of the children. Raluca disregards or ignores the Court's *parens patriae* jurisdiction and inherent obligations.

> "A stable, loving home life is essential to a child's physical, emotional and spiritual well-being.… In addition to the child's interest in a normal home life, the State has an urgent interest in the welfare of the child.... Thus the whole community has an interest that children be both safeguarded from abuses and given opportunities for growth into free and well-developed citizens."

Santosky v. Kramer, 455 U.S. 745, 789-790, 102 S. Ct. 1388, 71 L. Ed. 2D 599 (1982).

F. Raluca offers no precedent to control the case or cite to evidence or show clear discretion to support denial of the petition

Raluca provides no basis why the petition lacks merit and does not validly oppose it. She does not support the disputed findings entered by the court with citation to the evidence in the record, or establish that the decision was clearly within the discretion of the trial court.

Raluca does not cite controlling settled law, nor can she do so in its absence, contradicting the dissolution court's exercise of subject matter jurisdiction and "UCCJEA home state jurisdiction" to enter a custody decree setting out that the children reside with Grigore. Critically, Raluca does not cite controlling settled law absolving her of liability for having violated the contempt statutes *RCW 26.09.160* or *RCW 26.18.050* in relation to that custody decree and her obligation to pay child support.

Raluca cites *In re Marriage of James, 79 Wn. App. 436, 440, 903 P.2d 470 (1995)* as authority that "a party cannot be found in contempt without a written finding that the party intentionally violated a court order or did so in bad faith." Answer at 18. *James* conflicts with published decisions and settled law. In *In re Marriage of Stern, 68 Wn. App. 922, 846 P.2d 1387 (1993)*, the court held that the failure to enter findings was an inadvertent oversight and not a substantive error. *Stern, 68 Wn. App. At 927-28*. The *Stern* court relied on *In re Marriage of Lee, 57 Wn. App.*

268, 272-73, 788 P.2d 564 (1990) (an absence of findings and conclusions in the record on appeal requires reversal and remand). On the basis of *Stern* and *Lee*, the *James* court erred in not remanding for entry of mandatory findings of bad faith as required by settled law.

> A parent who refuses to perform the duties imposed by a parenting plan is per se acting in bad faith. *RCW 26.09.160(1)*. Parents are deemed to have the ability to comply with orders establishing residential provisions and the burden is on a noncomplying parent to establish by a preponderance of the evidence that he or she lacked the ability to comply with the residential provisions of a court-ordered parenting plan or had a reasonable excuse for noncompliance. See *RCW 26.09.160(4)*; *In re Marriage of Rideout, 150 Wn.2d 337, 352-53, 77 P.3d 1174 (2003)*.

In re Marriage of Myers, 123 Wn. App. 889, 99 P.3d 398 (2004). Applying *Myers* and *Rideout* to *James* would result in mandatory findings of contempt. In the instant case, the court found that the 2009 separation agreement was "expressly not recognized" in the decree and that Raluca sought relief in the Canadian court (Finding of Fact 10). Raluca's relitigation of that document (CP 321) is in contempt of the decree's purpose to terminate the separation agreement. Applying *Myers* and *Rideout*, Raluca's settlement offer (CP 277-78) and litigation (CP 323) are deemed bad faith under *RCW 26.09.160* for attempting to regain custody in order to further her objective to not pay child support, for not paying child support and for hindering Grigore's exercise of his parenting duties by acting upon the Canadian order.

Dated this 6th day of April, 2018.

Respectfully submitted,

s/ Grigore Vetrici
Petitioner, pro se

GRIGORE VETRICI - FILING PRO SE

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