

NO. 42187-9-II

12 MAR 14 PM 1:09
STATE OF WASHINGTON
BY  DEPUTY

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.

APPELLANT'S REPLY BRIEF

Judy Dugger
WSBA No. 6136
PO Box 3463
Fairfax, VA 22038
(703) 591-2100

Shannon R. Jones
WSBA No. 28300
317 S. Meridian
Puyallup, WA 98371
(253) 848-3513

TABLE OF CONTENTS

I. INTRODUCTION..... 1

II. ARGUMENT 2

**A. REPLY TO RESPONDENT’S
RESTATEMENT OF THE CASE..... 2**

1. **Custody is not at issue, there has
been no “abduction,” and the only
person to benefit from enforcement
of the Japanese divorce judgments
is the minor heir. 2**

2. **None of the articles or treatises cite
cases similar to this action and
their generic analysis of Japanese
family and custody laws is not
helpful in this case. 6**

3. **Whether Peter has realistic means
of obtaining custody of his
daughter in Japan is inapposite,
particularly where he has elected
not to even try to obtain custody in
Japan and that was his decision
before he even knew of the
Japanese guardianship. 7**

**B. REPLY TO RESPONDENT’S LEGAL
ARGUMENT..... 9**

1. **It is immaterial that Etsuko’s
Estate seeks to enforce her divorce
judgments, rather than Etsuko
herself. 9**

2.	Enforcement of the Japanese divorce decree judgments does not violate public policy, nor inflict an “injustice” on anyone other than the minor heir.	11
3.	The Estate does not seek to register or enforce the Japanese guardianship and the only competent evidence before this court is that the guardianship has no effect on Peter’s right to petition for custody in Japan.	17
4.	The “effect” of the lower court order does not offend any due process rights of the father.	20
III.	CONCLUSION.	21

TABLE OF AUTHORITIES

CASES

Douglas v. Teller
53 Wash. 695, 102 P. 761 (1905)10

Rains v State of WA, Dept of Social and Health Services, Div of Child Support,
98 Wn.App. 127, 989 P.2d 558 (2000).....12

State v. Meyer
26 Wash.App. 119, 127, 613 P.2d 132 (1980)12

Troxel v. Granville
530 U.S. 57, 120 S. Ct. 2054 (2000)17

STATUTES

RCW 11.04.015(2)(a).....15

RCW 11.48.010.....9

RCW 11.76.09515, 16

RCW 11.76.095(1)16

RCW 11.76.095(2)16

RCW 11.76.095(3)16

RCW 11.114.....16

RCW 11.114010(6)16

OTHER

House Resolution 1326.....3

Restatement (Second) Conflict of Laws at §98	9
Restatement (Second) Conflict of Laws, §117, cmt. c.	12
Treaty of Mutual Cooperation and Security between the United States of America and Japan, Regarding Facilities and Areas and the Status of U.S. Armed Forces in Japan, 19th January, 1960 at Article 1	4

I. INTRODUCTION

On review of the Respondent's Brief, a stranger to this case would most certainly understand the dispute to be over enforcement of a Japanese custody decree. In fact, in Peter's¹ Maryland custody case against his minor child's grandmother (dismissed by the trial court and pending appeal before Maryland's Supreme Court), his Attorneys actually misrepresented Judge Culpepper's trial court order as having denied the Estate a request to register the grandmother's Japanese "guardianship judgment." Of course, the Estate is not seeking to register a Japanese "guardianship judgment" – no such judgment is a part of the Court's record on appeal. The Estate does not represent the grandmother of the minor child, nor is the grandmother a party or participant in this proceeding. Indeed, the grandmother's "guardianship judgment" is nothing but an order appointing her as guardian and involves no money or money judgments. It is truly irrelevant to whether Etsuko's Estate is entitled to enforce the judgments of her Japanese divorce decree. Custody is not before this Court; the sole issue is whether *comity* should be granted to enforce Etsuko's divorce judgments to benefit her minor child and sole heir.

¹ Consistent with the Appellant's opening brief, for brevity and ease of reference, the parties will be referred to by their first names (Peter and Etsuko), no disrespect intended.

II. ARGUMENT

A. REPLY TO RESPONDENT'S RESTATEMENT OF THE CASE

Peter's Statement of the Case is largely devoted to criticizing Japanese family and custody laws through citation to various articles and treatises and, particularly, "parental abduction" of children from the U.S. to Japan and Japan's failure to facilitate return of those children to the U.S. Peter details his misguided efforts to litigate custody of his child in U.S. court proceedings and to bolster those efforts through use of U.S. government officials and the media, despite the fact that his child has never lived anywhere but Japan and that her "home state" is Japan pursuant to a finding made by *this very court*. CP 213. Thus summarized, Peter's Statement of the Case is replete with factual misstatements and irrelevant citations.

1. **Custody is not at issue, there has been no "abduction," and the only person to benefit from enforcement of the Japanese divorce judgments is the minor heir.**

First and foremost, this is not a custody case. After initiation of an intestate probate proceeding, the duly-appointed personal representative commenced the underlying action to register and enforce Etsuko's Japanese divorce judgments. CP 25-27. The probate was filed in Washington because Etsuko had an asset in Washington, namely, the uncollected judgment against Peter on mandate of this Appeals Court.

The personal representative does not seek to enforce a Japanese custody order, or a Japanese guardianship order. Indeed, Washington has no jurisdiction over custody matters concerning this child, consistent with this Appeals Court's holding in 2007. CP 213.

By misrepresenting the facts of his initial separation from his wife and subsequent divorce, Peter attempts to characterize this case as one involving "parental abduction," akin to cases involving Japanese parents absconding from the U.S. and "secreting" their children to Japan. As part of this mischaracterization, Peter alleges the Estate is "advancing the interests of Erika's abductors," rather than Erika's interests. Respondent's Brief at pp. 10-11. This is untrue and there is nothing in the record to support this allegation.

There has been no "abduction." Erika resides in Japan, where she has always resided. CP 18, 328. Peter cites House Resolution No. 1326 as support for his allegation that Erika was "abducted," yet that very Resolution's express purpose is to address "abduction to" Japan and "retention of" minor U.S. citizens in Japan (CP 77). There is no explanation provided as to why Erika's case would be classified as an "abduction" when she was never taken "to" Japan, but was born there and has resided nowhere else. Peter cites to other sources (news media, uTube video, letters from government officials) concerning the custody dispute,

but the Court should note that all of these citations refer to records *to which only Peter had input*. The Japanese grandmother had no input into any of those records and the records are therefore completely one-sided.

Importantly, that Etsuko left a U.S. Navy base in Japan with Erika does not make this a case of “abduction.” A U.S. Navy base in Japan does not create an international border. It is still Japanese territory. The U.S. is merely granted use of facilities and areas in Japan for purposes of operating a naval base through an international treaty. See “Treaty of Mutual Cooperation and Security between the United States of America and Japan, Regarding Facilities and Areas and the Status of U.S. Armed Forces in Japan,” 19th January, 1960 at Article 1.

There is also no U.S. custody or visitation order in this case, so Japan’s policies and enforcement mechanisms with regard to U.S. custody and visitation orders has no bearing.

Peter claims he paid child support during Etsuko’s lifetime “into an account to which [Etsuko] had access.” Respondent’s Brief at p. 7. Peter cites to the Clerk’s Papers at 280 (in Companion Case No. 41388-4-II) in support of this allegation. The statement is untrue and the citation inaccurate. Peter claims that he requested “banking details” from the grandmother, implying that he would pay support but could not because Erika’s grandmother would not allow him to. This is also untrue and there

is nothing in the record to support the allegation. The grandmother requested that he send international money orders for child support, but Peter has failed/refused to do so and will not pay any support for his child, to anyone. It is certainly not impossible for Peter to support his child, and to suggest otherwise is disingenuous.

Furthermore, no one's interests but Erika's are advanced in this proceeding, as collection of the judgments will benefit her and her alone. More importantly, and as analyzed more thoroughly in legal argument below, no one's interests but Erika's are *harmed* if the Japanese divorce decree judgments are not enforced. Had the divorce judgments been paid while Erika's mother was living, Erika would undoubtedly have benefitted and her mother would have been able to use those monies for Erika's care and support. Would the court have refused to enforce these judgments if Erika's mother were alive because Etsuko was an "abductor"? Certainly not. The judgments would have been enforced and Peter would have no basis to argue to the contrary. Now, Erika is the sole beneficiary of the judgments, and no one other than Erika will benefit from monies collected on those judgments. To allege that Erika's grandmother will actually benefit from the "financial windfall" of Etsuko's Estate (Respondent's Brief at p. 9) misstates the facts and the law.

The grandmother is not now and never has been a party to any litigation in Washington. She has not asked for and will not be given the monies collected from the judgments. To say she will is patently false, totally unsubstantiated and another example of Peter's specious arguments.

2. None of the articles or treatises cite cases similar to this action and their generic analysis of Japanese family and custody laws is not helpful in this case.

Even assuming they were relevant to enforcement of the parties' Japanese divorce judgments, none of the extraneous articles and treatises cited by Peter concerning Japanese family law and international child abduction examine circumstances similar to this case and they are, therefore, not helpful in determining whether the court should enforce the Japanese divorce judgments through comity.

Peter cites four articles or treatises concerning Japanese family law and parental child abduction and also a U.S. Department of State travel warning to establish: (1) that the U.S. Dept of State is not aware of any case in which a child **taken from the U.S.** by one parent has been ordered to return to the U.S. by Japanese courts, (2) that Japan serves as a haven for Japanese citizens of international marriages who seek sole custody by **absconding** with their children **back to Japan**, and (3) that when a case involves a Japanese element (custodial parent **relocating** to Japan, non-

custodial parent seeking to take a child back to Japan for a visit, or any parent seeking relief from a **Japanese custody or visitation order**), Japan's legal system cannot be expected to provide the same level of protection as in American proceedings. See Respondent's Brief at pp.13-15, emphasis added. None of these precepts, even if accepted as accurate, are relevant. This is not a custody proceeding, nor is the minor heir to the Estate a U.S. child who has been taken from the U.S. and relocated or absconded to Japan. Moreover, none of the cited authorities examine Japanese guardianships or custody orders affected by the custodial parent's death. The only authority presented to this court concerning the grandmother's Japanese guardianship is the undisputed testimony of expert witness Yorimichi Ishikawa, who confirms that the Japanese guardianship does not stop or interfere with Peter's right to seek custody of Erika in Japan.

3. Whether Peter has realistic means of obtaining custody of his daughter in Japan is inapposite, particularly where he has elected not to even try to obtain custody in Japan and that was his decision before he even knew of the Japanese guardianship.

Peter complains he has no realistic means of obtaining custody of Erika in Japan and that the Estate "suggests" he should file an action in Japan only because it is confident he will not prevail. Respondent's Brief at p. 15. His complaint is equal parts pure speculation and preposterous.

Before Peter was ever aware of the Japanese guardianship, he expressly communicated that he has “no intention of engaging the Japanese legal system or recognizing their authority over [his] family affairs regarding Erika.” CP 325. Peter **will not** attempt to gain custody in Japan and that was his position even before Etsuko’s suicide as is demonstrated by his past, unsuccessful attempts to obtain a divorce in Virginia and Washington State. In fact, Peter continues his search for a U.S. forum to obtain a custody order over a child whose home state is Japan. It is complete speculation that, where the custodial parent has died, he would under no circumstances be awarded custody of his minor child in Japan. He has not even tried.

Neither the probate proceeding nor the foreign judgment registration has anything to do with Erika’s custody and the Estate has no control over that matter at all. It is not a “suggestion” that Peter file for custody in Japan, it is a fact that Japan has jurisdiction over this child and her custody, and that issue has already been ruled upon by this Appeals Court.

(the remainder of this page intentionally left blank)

B. REPLY TO RESPONDENT'S LEGAL ARGUMENT

1. It is immaterial that Etsuko's Estate seeks to enforce her divorce judgments, rather than Etsuko herself.

Peter correctly points out that the parties to this action are different than those to the original Japanese divorce, as Etsuko has died and her personal representative has petitioned to recognize her divorce judgments on behalf of Etsuko's Estate and for the benefit of her minor child. Peter's claim that this fact has "great legal significance" and mitigates against enforcement of the judgments is incorrect, however.

Peter offers no legal authority in support of the proposition that the Estate is limited in its right to seek enforcement of Etsuko's divorce decree. The Restatement (Second) Conflict of Laws at §98 states that valid foreign judgments will be recognized so far as "the immediate parties" and "the underlying action" are concerned, but nowhere in the comments or case law citing to this section is this interpreted to preclude an estate's action to enforce a foreign judgment. To limit an estate's right to enforce a valid foreign judgment runs contrary to Washington probate law.

Under RCW 11.48.010, it is the duty of Etsuko's personal representative to collect the debts owed by Peter: "The personal representative shall collect all debts due the deceased and pay all debts as

hereinafter provided.” Also under this section, Etsuko’s personal representative is authorized to bring suit:

“The personal representative shall be authorized in his . . . own name to maintain and prosecute such actions as pertain to the management and settlement of the estate, and may institute suit to collect any debt due the estate or to recover any property, real or personal, or for trespass of any kind or character.”

That Etsuko has died should mitigate in favor of enforcement of her divorce decree. Washington’s Supreme Court has recognized the importance of granting comity to a decree of divorce where one party has died. In Douglas v. Teller, 53 Wash. 695, 102 P. 761 (1905), an ex-wife sought to remove the administrator of her ex-husband’s estate and to claim title to real estate he had acquired in Spokane County. Decades earlier, the decedent sought a divorce in Illinois. Service on the wife was by publication, she did not appear, and a divorce was granted. The ex-wife challenged the decree for lack of jurisdiction, fraud, and failure to properly file or record. Recognizing that the court would not be bound by the Illinois judgment, Washington’s Supreme Court nonetheless upheld the validity of the decree as a matter of comity. In reaching its decision, the court noted that the decree was valid where rendered and would not disturb a judgment “especially where [it] is of such long standing and where one of the parties to it is dead.”

Peter claims that, because Estuko's Estate seeks to enforce the judgment, the court should consider the separate guardianship proceeding of the grandmother in determining whether he should pay his divorce judgments. He seeks to distinguish all of the comity cases cited by the Estate in one full swoop, simply because the cases did not involve a deceased spouse or her Estate as judgment creditor. The difference is without distinction. The Estate represents Etsuko and collects for her heir. Neither the Estate nor Etsuko was a party to the guardianship. The guardianship was filed **years after** the divorce decree. Peter refused to pay the judgments while Etsuko was alive; the guardianship instituted after her death has nothing to do with his refusal to pay the judgments.

2. Enforcement of the Japanese divorce decree judgments does not violate public policy, nor inflict an "injustice" on anyone other than the minor heir.

Peter misstates the role of public policy considerations in enforcing foreign judgments through comity and his allegation that enforcement of the judgments would require him to pay his minor child's grandmother and inflict an "injustice" on him ignores the facts and Washington law applicable to this case.

While public policy considerations are properly examined in determining whether to grant comity to a foreign judgment, a valid foreign judgment will be recognized except in "extraordinary circumstances" and

even where public policy in the State of recognition might preclude recovery on the claim had it been instituted in that State's courts. See State v. Meyer, 26 Wn.App. 119, 127, 613 P.2d 132 (1980) and Rains v. State of WA, Dept of Social and Health Services, Div of Child Support, 98 Wn.App. 127, 989 P.2d 558 (2000), citing to RESTATEMENT (SECOND) CONFLICT OF LAWS, §117, cmt. c.

Respondent's counsel cites no Washington cases where comity was denied based solely on public policy concerns when all other factors required to recognize a valid foreign judgment are present, and there appear to be no such cases. In fact, Washington has granted comity to foreign judgments even where the judgment contravenes an established Washington public policy. In Rains, supra, an Italian child support order contained post-majority support provisions which were not consistent with awards made under Washington law; however, the Italian court had jurisdiction to act, notice and opportunity to be heard was afforded the persons affected, and the judgment was rendered by a competent court. Under these facts, comity was extended to the Italian judgment.

This case is similar to Rains in that Etsuko's Japanese divorce judgment does contain an award for abuses suffered during her marriage ("solatium"), which Washington courts could not issue. But inclusion of an award for solatium does not preclude recognition of the Japanese

judgments through comity. In fact, Washington's public policy favors enforcement of foreign judgments of divorce where the required elements for comity are met, and particularly favors enforcement of child support orders.

Peter asserts the public policy at issue here is the fundamental importance of the parent-child relationship and his right to the care, custody and control of his child. Respondent's Brief at p. 27. He states that his liberty interests in guiding his minor child's interests will be "undermined" if the divorce decree is enforced. Id. at p. 29. His only real basis for these arguments is that Erika's grandmother will somehow obtain the judgment funds and use them to "prevent [Peter] access to [Erika]." Id. Peter's arguments are baseless in law and baseless in fact.

This court cannot rule on custody of a child whose home state is Japan. No matter what this court's ruling, it simply will have no effect on the custody of Erika. As the case now stands, Japan is the only country with jurisdiction to make orders concerning the custody of Erika. Peter assails Japanese family law in general but his primary allegation, that under those laws he will be unsuccessful in gaining custody of his child despite her mother's death, is pure speculation. Peter adamantly refuses to file for custody of his child in her home state of Japan, so it is impossible to know what the result of such a proceeding would be.

Peter conjectures that the length of time Erika has lived with her grandmother will militate against him if he files for custody in Japan (Respondent's Brief at p. 29), but he offers scant explanation as to why he did not then file for custody in Japan years ago, after Etsuko's death in 2007. Peter claims Erika's aunt misled him to believe the child would be returned to the U.S. after Etsuko's death, but the record belies this allegation. Erika's aunt, Dr. Yoko Futagi, had discussions with Peter about his desire to *visit* Erika in Japan after Etsuko's death, and *Peter proposed* Erika be moved to the U.S., but Yoko was without authority to make any agreement and discussions about a visit ended without an arrangement having been made. CP 317-325, 328, and 330-335. In any event, the last of those discussions ended only few months after Etsuko's death and Peter still took no action to seek custody of Erika in Japan. Until Etsuko's probate was filed and collection efforts were started against him, Peter took no legal action to seek custody of Erika at all. He filed a custody case against the Japanese grandmother in Maryland only *after* the Estate filed its foreign judgment registration action. That action was dismissed and is pending on appeal, but whatever the ultimate result of that proceeding, Peter's filing in Maryland proves he will uphold his personal maxim: "I have no intention of engaging the Japanese legal

system or recognizing their authority over my family affairs regarding Erika.” CP 325.

To the extent this court’s ruling might affect the “care” of the minor heir, the effect would only be to deprive Erika of a substantial asset of her mother’s estate (should the court uphold the lower court ruling and deny comity). Washington has jurisdiction over the probate proceeding and assets of the estate, and no money collected by the estate would be paid to the Grandmother under Washington law. Etsuko’s is an intestate estate. RCW 11.04.015(2)(a) provides that Etsuko’s net estate shall descend and be distributed to her issue, Erika. Etsuko’s mother, the minor heir’s grandmother, has no rights to any funds which Peter might pay toward the Japanese judgments.

Because Erika is a minor, Washington law affords her share in this Estate adequate protection from outside interests, including the alleged interests of her grandmother. RCW 11.76.095 is the statute applicable to this estate proceeding and distribution of estate assets to the Erika. RCW 11.76.095 provides:

“When a decree of distribution is made by the court in administration upon a decedent’s estate or when distribution is made by a personal representative under a nonintervention will and distribution is ordered under such decree or authorized under such nonintervention will to a person under the age of eighteen years, it shall be required that:

(1) The money be deposited in a bank or trust company or be invested in an account in an insured financial institution for the benefit of the minor subject to withdrawal only upon the order of the court in the original probate proceeding, or upon said minor's attaining the age of eighteen years and furnishing proof thereof satisfactory to the depository;

(2) A general guardian shall be appointed and qualify and the money or property be paid or delivered to such guardian prior to the discharge of the personal representative in the original probate proceeding; or(3) A custodian be selected and the money or property be transferred to the custodian subject to chapter 11.114 RCW.”

If the court elects to proceed under RCW 11.76.095(3), after selection of the custodian, the transfer will then proceed as directed in the Uniform Transfers to Minors Act (RCW 11.114 *et.seq.*).

RCW 11.76.095 does not provide for any special rights to Peter as Erika's surviving parent, but whether the court directs deposit of the estate assets per subsection (1), or selects a guardian or appoints a custodian under subsections (2) or (3), the court has the power to make sure that any funds Peter pays toward these judgments are for Erika and her benefit alone. Of course, there has been no transfer creating “custodial property” as defined by RCW 11.114.010(6), and the court has not yet been called upon to make an election under RCW 11.76.095, because Peter refuses to pay the judgments, and per the lower court's ruling, the Estate as yet has

no power to collect them.

Peter's reliance on Troxel v. Granville, 530 U.S. 57, 120 S. Ct. 2054 (2000) is misplaced. Peter's "fundamental liberty interest" in the welfare of Erika is truly unaffected by enforcement of the Japanese divorce decree judgments. Peter is a major debtor of his ex-wife's estate and the only interest affected by the court's refusal to enforce the divorce judgment against him is his own. He will not have to pay any property division of his divorce, nor any funds toward the support of his minor child at all. He argues he should not have to pay because he will not have control of the money. Why should he have control of the money? Troxel does not address to what extent a parent should be in control of his minor child's assets. Washington law affords protection to those assets under the probate statutes which dictate distribution of estates to minor heirs, and nowhere in those statutes is Peter afforded any especial rights as the surviving but non-custodial parent, nor should he be because *he himself owes the money to the Estate.*

3. The Estate does not seek to register or enforce the Japanese guardianship and the only competent evidence before this court is that the guardianship has no effect on Peter's right to petition for custody in Japan.

Peter claims the Estate has "vastly oversimplified" the effect of the grandmother's Japanese guardianship. Respondent's Brief at p. 32. Peter

then goes on to argue that, because he will not be “presumed” legal custodian under Japanese law:

“[A]ny Japanese custody judgment awarding Grandmother custody on a best interest standard should not be enforceable in Washington due to public policy consideration.” Id.

This quotation aptly demonstrates why Peter’s opposition to payment of his divorce judgments based on the Japanese guardianship is fatally flawed. There is no Japanese “custody judgment” awarding Erika’s grandmother custody of Erika under a best interest standard, nor is the Estate seeking to enforce any such judgment. There is a Japanese ***guardianship order*** which simply allows Erika’s grandmother to ensure Erika is enrolled in school and receives proper medical treatment in Japan, the order does not deprive Peter of any custodial rights. CP 168 and CP 376-377. Peter has the precise same rights now, post-guardianship, as he had prior to the guardianship. Peter must go to Japan and avail himself of these rights in the courts with proper jurisdiction over his child. That he refuses to do so is really inexplicable – because his attempt will result in failure? That is not the expert’s testimony before this Court. The expert’s testimony is that Peter can petition and a best interest standard will govern.

Interestingly, Peter claims that the length of time between his wife’s

death and the current date will militate against him if he files for custody in Japan now (“[T]he fact that Grandmother has had guardianship of Erika for four years will undermine his custody case,” Respondent’s Brief at p. 32). Perhaps this is true, although it is unknown because Peter will not file for custody in Japan. In fact, the only reason why four years has transpired under grandmother’s guardianship is because Peter will not recognize Japan’s right to “authority over his family affairs regarding Erika” (CP 325).

Erika’s grandmother is repeatedly criticized without any real analysis as to why her conduct is even improper. Under Japanese law, she was not required to give Peter notice of the guardianship. Under Japanese law, her guardianship does not affect Peter’s right to seek custody in Japan. What is the grandmother to do? Under Peter’s theory, she has no choice but to forgo Japan’s involvement in her granddaughter’s care and custody altogether, and agree that Erika’s care and custody be determined only according to Peter’s demands and under U.S. laws, even though the child has never even resided in the U.S.

Peter’s argument reveals why the guardianship should not be considered at all when determining whether to grant comity to the Japanese divorce decree judgments. This court has no jurisdiction over Erika’s custody and there has been no determination as to whether Peter

will be her custodian under Japan's best interests standard, because he will not file for her custody in Japan.

4. The "effect" of the lower court order does not offend any due process rights of the father.

Peter claims the lower court denied comity because the "effect of enforcement of the Japanese decree offended Father's due process rights by requiring him to pay monies to Grandmother even though he has no realistic opportunity to obtain custody of Erika." Respondent's Brief at p. 34. The lower court made no such ruling, and even if this were the basis for the trial court's ruling, it would plainly be erroneous.

The lower court denied comity to the Japanese divorce judgments because Peter had no notice of the Japanese guardianship filed two years later:

"[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. . . 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. . ."

RP, 3/25/2011, lines 11-24.

There was no finding that Peter would have to pay the divorce judgments to Erika's grandmother, or that he would not have a realistic

opportunity to obtain custody of Erika because of the guardianship. Peter argues a false record in an attempt to confuse the issues on appeal. The trial judge did not agree with Japanese guardianship law because the grandmother, under Japanese law, could obtain a guardianship without notice to a biological parent. Were the Estate trying to register the grandmother's Japanese guardianship, lack of notice of the guardianship might be relevant, and might preclude grant of comity to recognize the guardianship in the U.S. That is not this case, however. This case is over whether Peter should pay judgments rendered in his Japanese divorce. The guardianship has nothing to do with the divorce and its judgments. If recognized and enforced in Washington, the judgments will be paid to the Estate and then, to Erika, the minor heir, having nothing to do with Erika's "care and upbringing." There is no fundamental due process right or liberty interest at issue in this case.

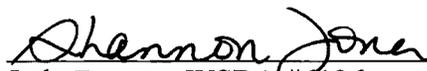
III. CONCLUSION

Peter's international custody dispute is not before this Court. Despite his attempts to characterize it otherwise, this is not a case between Peter and his child's grandmother. Peter alleges he has been denied visitation, that he is a "fit" parent, and vilifies Erika's Japanese grandmother in a proceeding to which she is not and never has been a party. Peter's allegations regarding visitation are inaccurate and contradict his admission

in his Maryland custody case that he has never even asked the Japanese grandmother for visitation with Erika. Washington has jurisdiction only over Estuko's Estate. In any event, the record before this Court is completely insufficient to make any determination regarding visitation or custody of Erika, whether Peter is a "fit" parent or otherwise.

Washington probate law has ample protections for the Estate's minor heir. Peter refuses to pay the Japanese divorce judgments, and that was his position long before his ex-wife's death. If this court reverses the trial court's ruling, and grants comity to those judgments, his minor child will be sole beneficiary of them. Indeed, if this court upholds the lower court's ruling, Erika will also be the only one to suffer the injustice of having her mother's divorce judgments go unrecognized only because her father elects not to seek her custody in her home state of Japan and because this Court accepts the premise that a Japanese guardianship order that was entered years after a Final Decree that awarded the judgment is allowed to bar recovery on those judgments.

Respectfully submitted this 14 day of March, 2012.



Judy Dugger, WSBA #6136
Shannon R. Jones, WSBA #28300
Attorneys for Appellant

12 MAR 16 PM 1:09
STATE OF WASHINGTON
BY [Signature]
DEPUTY

**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 March 14, 2012, I caused to be served a true and correct copy of the Appellant's Reply Brief by facsimile and ABC Legal

Messenger, routine delivery to:

Douglas Kiger
Blado Kiger, P.S.
Bank of America Bldg., 2nd Floor
3408 South 23rd Street
Tacoma, WA 98405
Fax #253-627-6252

ORIGINAL

Michael B. Smith
Comfort, Davies & Smith, P.S.
1901 65th Avenue West, Suite 200
Fircrest, Washington 98466
Fax #253-564-5356

and a copy by facsimile and first class mail to:

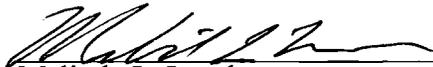
Kimberly A. Quach
1 SW Columbia, Ste 1800
Portland, OR 97214-2327
Fax #503-224-0092

That also on the 14th day of March, 2012 I caused to be filed the original and one copy of the Appellant's Reply Brief and the original Declaration of Service upon the Court of Appeals, Division II at the following address:

Court of Appeals, Division II
950 Broadway
Ste 300, MS TB-06
Tacoma, WA 98402-4454

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 14th day of March, 2012.


Melinda L. Leach