

B229324

**In the Court of Appeal of the State of California
Second Appellate District
Division 1**

MAURIZIO RIGAMONTI
Appellant

vs.

LURA CALDER
Respondent

REPLY BRIEF

Appeal from the Superior Court of the State of California
County Los Angeles County
Hon. Marjorie Steinberg

BH 006827

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I.

INTRODUCTION

Lura took the law into her own hands by moving Leo to California without Maurizio's consent (4 RT 966:7-11), instead of allowing a court in Italy to make a custody determination. Lura wanted to end Maurizio's relationship with Leo by taking him thousands of miles away from Maurizio. She admittedly believes that the California court will treat her more favorably than the Italian court. (3 AA 559:15-17.) By deciding to raise Leo in Italy, Lura subjected herself to having custody determined in Italy, not California. (*Cuellar v. Joyce* (9th Cir. 2010) 596 F.3d 505, 510 ["Once the child is born, the remote parent must accept the country where the child is habitually resident and its legal system as given"].) Lura's purpose in taking Leo to California was nothing more than forum shopping. Parental abduction of this sort has been described as one of the " 'worst forms of child abuse.' " (*Abbott v. Abbott* (2010) 560 U.S. ___ [130 S.Ct. 1983, 1996].)

In her quest to prevent Leo from being returned to Italy, Lura fabricated a story that she had to escape Italy to seek asylum in the United States, alleging that Maurizio sexually abused Leo and physical abused her. She now claims, for the first time on appeal, that Maurizio consented to her leaving Italy. (RB, p. 16.) The court found that Maurizio never consented to the removal of Leo from Italy. (4 RT 966:7-11.) The trial court also found that Lura failed to prove her sex abuse and physical abuse allegations (4 RT 984:8-21), but she persists in making them in response to this appeal (RB, pp. 10-12). The court's finding that the evidence was not sufficient to prove her sex abuse and physical abuse claims is not open for review, since that finding is supported by substantial evidence.

The court's finding that Leo suffers from symptoms of post-traumatic stress disorder (PTSD) is not sufficient to constitute a grave risk of harm to Leo because the court could not determine the cause of those symptoms. (4 RT 966:27-967:4.) The child custody evaluator found evidence of alienating behavior by Lura against Maurizio, which may have caused Leo to have unjustified negative feelings about Maurizio. (1 RT 125:10-11.) This alienation furthered Lura's plan to keep Leo in California, so Leo would parrot her words to the evaluator. Outside of Lura's influence, Leo showed no sign of fear of Maurizio and acted like a perfectly normal and happy child with Maurizio after spending just a little time together with Maurizio during the visits they were allowed to have together before the Hague petition was denied. Leo had no trouble separating from Lura to go visit Maurizio. (2 AA 439.)

The trial court tried to fashion a remedy for Leo's return to Italy in Lura's custody. Lura, however, objected and refused to go back to Italy. (3 AA 554:24-555:3.) She attempted to undermine the court's efforts by having her attorneys in Italy object to the very orders which the California court asked to be entered for her own protection. (3 AA 565.) As soon as Lura won in court, she cut off all contact between Maurizio and Leo. Maurizio has not been permitted to speak to or see Leo since then. The court denied his request for visitation.

Conduct like this subverts our system of justice, and should not be rewarded. Our treaty obligations under the Hague Convention mandate the immediate return of Leo to Italy. Lura decided to raise a child in Italy, so she must use the courts in Italy to determine her rights to custody. There is no reason to believe that Lura will be treated unfairly by the court in Italy.

Lura has lawyers in Italy, who can argue for Lura's right to relocate to California with Leo, as she should have done in the first place.

II.

THE TRIAL COURT FOUND THAT THE SEX ABUSE ALLEGATIONS WERE NOT PROVEN, SO THEY ARE IRRELEVANT TO THIS APPEAL

“ ‘The sufficiency of evidence to establish a given fact, where the law requires proof of the fact to be clear and convincing, is primarily a question for the trial court to determine, and if there is substantial evidence to support its conclusion, the determination is not open to review on appeal.’ [Citations.]” (*Crail v. Blakely* (1973) 8 Cal.3d 744, 750 [106 Cal. Rptr. 187].) “It is the trial court’s role to assess the credibility of the various witnesses, to weigh the evidence to resolve the conflicts in the evidence. [Appellate courts] have no power to judge the effect or value of the evidence, to weigh the evidence, to consider the credibility of witnesses or to resolve conflicts in the evidence or the reasonable inferences which may be drawn from that evidence.” (*In re Casey D.* (1999) 70 Cal.App.4th 38, 52-53 [82 Cal.Rptr.2d 426].)

The rule applies equally to the appellant and the respondent in an appeal. The trial court listened to Lura’s claims of sexual abuse, and Maurizio’s denial of those outrageous allegations. After weighing the evidence and the credibility of the witnesses, the trial court found that Lura had failed to prove her allegations. (4 RT 984:8-12.) Deference must be given to that finding on appeal. When this Court makes its de novo review of the grave risk determination, the sex abuse allegations cannot be considered because the trial court expressly found that those allegations had not been proven.

The trial court's finding is not open to review, so long as the finding is supported by substantial evidence. (*Crail v. Blakely, supra*, 8 Cal.3d at p. 750.) Lura did not argue in her brief that the trial court's finding lacks substantial evidence. Therefore, the allegations should not be considered.

Lura acknowledges the trial court's adverse finding (RB, p.31), but nevertheless found it necessary to spend several pages of her brief summarizing her allegations under the heading "Maurizio's Inappropriate Sexual Contact with Leo." (RB, pp. 10-12.) She states her unproven allegations as a matter of fact in her brief. There was no legitimate reason to rehash those allegations. Maurizio believes that Lura is just trying to poison this Court's impression about him. The allegations were not proven at the trial court level, so they should not be considered here.

Still, due to the shocking nature of Lura's allegations, Maurizio feels that he must respond, at least briefly. Leo touched Maurizio's penis when the two of them were taking a shower together. (2 AA 468.) Leo also touched Lura's private parts under the same circumstances. (*Ibid.*) This was normal curiosity by a young child about a parent's anatomy. If a young child innocently touches the private parts of a parent while the two are showering, it is not sexual abuse. As was explained in one study:

[C]uriosity about other people's genitals is a quite general phenomena in children who have at least some opportunity for exploration. . . . The parents are important objects of sexual curiosity even in the preschool years. . . . Therefore the exploration of the parental body may give children the opportunity to connect more theoretical knowledge they may gain about reproduction later on at least to some realistic experience with other people's bodies.

But probably many modern parents find themselves confronted with different demands: to give their children a basically good feeling about matters of sexuality, to protect their own physical privacy, and to avoid any behavior that might be interpreted as incestuous or sexually overstimulating for their children.

(Schuhrke, *Young Children's Curiosity About Other People's Genitals in Childhood Sexuality: Normal Sexual Behavior and Development* (Sandfort & Rademakers edits., 2000), pp. 42.43, co-published in *Journal of Psychology & Human Sexuality*, vol. 12, numbers 1/2 2000.)

Leo never told the investigator at the Department of Child and Family Services that Maurizio put his penis in Leo's mouth. (3 RT 622:13-15.) Leo never told the investigator that he put Maurizio's penis into a vacuum cleaner. (3 RT 622:16-18.) Leo never told the investigator that he tried to lick Maurizio's anus. (3 RT 622:10-12.) This what occurred: As a joke, Leo put his mouth on Maurizio's lower back and made a farting noise. (3 RT 658:24 - 659:7.) The investigator did not consider any of the contact between Leo and Maurizio to be sexual abuse. (3 RT 615:1 - 616:18.) The investigator found that all of the described behavior was "normal" between a young child and a parent. (3 RT 615:16-18.)

Lura took this normal behavior and confabulated a story of sexual abuse to gain an advantage in her custody case. She failed to prove those allegations in the trial court, so renewing them on appeal was totally improper.

III.

MAURIZIO DID NOT CONSENT TO THE REMOVAL OF LEO FROM ITALY

Lura states in her brief that Maurizio consented to the removal of Leo from Italy to California. (RB, p. 16.) She cites to a string of emails (1 AA 55-57) in support of her claim. Nowhere in those emails does Maurizio consent to the removal. In fact, her first email to Maurizio (which is not one of the emails cited in her brief) admits that she took Leo to California without telling Maurizio. In her email to Maurizio, Lura's states: "I decided to take Leo to see his grandma and grandpa. I didn't tell you because I didn't want to have another big fight, and I'm pretty sure you would have said I couldn't go..." (1 AA 50.) Lura called Leo's school in Italy and told the teacher that she had gone to the United States with Leo to visit her sick grandmother, and that they "would be returning within a brief period of time." (3 RT 694:28 - 695:8.)

At trial, Lura did not argue that Maurizio had consented to the removal. Lura, in fact, stipulated that her only defense under the Hague Convention was the grave risk exception. (2 AA 437.) The court found that "Italy is the habitual residence of this child; that he was wrongfully removed by his mother last February in violation of the father's custodial rights. The father did not consent or acquiesce in that removal." (4 RT 966:7-11.) Lura's brief does not challenge the finding, or even acknowledge that it was made. She, instead, argues for the first time on appeal that Maurizio consented to the removal. This is clearly improper. (*Mattco Forge, Inc. v. Arthur Young & Co.* (1997) 52 Cal.App.4th 820, 847 [60 Cal.Rptr.2d 780] [parties not permitted to adopt new and different theories

on appeal unless it involves a pure legal question on an uncontroverted record].)

IV.

THE OPENING BRIEF DOES NOT STATE ONLY THE FACTS FAVORABLE TO MAURIZIO

Lura claims that Maurizio glossed over the testimony of the child custody evaluator and ignored other evidence in his opening brief. (RB, p. 19, n. 3.) There was no need to recite the evidence in support of Lura's claims which the trial court expressly found had not been proven. For example, just like the sex abuse allegations, Lura failed to prove her claim that Maurizio physically abused her and Leo. (4 RT 984:19-21.) Summarizing evidence supporting that claim would be pointless since the trial court's finding is entitled to substantial deference. (*Crail v. Blakely*, *supra*, 8 Cal.3d at p. 750.)

Maurizio's opening brief acknowledges the trial court's finding that Leo suffers from symptoms of post-traumatic stress disorder (PTSD), including the finding that the court could not determine the source of those symptoms. (4 RT 984:12-13 & 983:17-28.) Since the PTSD symptoms could not be linked to anything Maurizio did to Leo, they are not relevant to the grave risk assessment.

Evidence which the trial court did not find persuasive cannot be used by this Court in making the grave risk assessment. Factual findings are not reviewed de novo. (*Escobar v. Flores* (2010) 183 Cal.App.4th 737, 748 [107 Cal.Rptr.3d 596].) The factual findings by the trial court are binding, unless they lack substantial evidence. When this Court makes its grave risk

determination, it cannot use evidence which the trial court expressly found was insufficient, such as the sex abuse and physical abuse allegations. Likewise, the evidence that Leo has symptoms of PTSD is not relevant because the trial court expressly found that it could not determine the source of those symptoms. This is discussed in more detail in the following sections of this brief.

If this Court were to rely on evidence which the trial court found was insufficient, this Court would be substituting its judgement for that of the trial court's on issues of credibility, etc. It was for that reason that Maurizio's brief did not summary evidence which had been rejected by the trial court.

V.

EMOTIONAL BONDING WITH THE ABDUCTOR IS NOT A DEFENSE UNDER THE HAGUE CONVENTION

Lura argues that Maurizio's brief misrepresents the holding in *Friedrich v. Friedrich* (6th Cir. 1996) 78 F.3d 1060, which states that a child's "extraordinary emotional dependence" could constitute a grave risk. (RB, p. 43.) Lura states that Leo should not be returned to Italy because he is bonded with her, and that removing Leo from her custody would cause him harm. (RB, pp. 28, 37 & 43.)

True, the *Friedrich* decision mentions “extraordinary emotional dependence” as a potential source of grave risk, but the decision does not elaborate on what evidence would be needed to prove such dependence.

The court in *Friedrich*, in fact, criticized the mother’s:

wide interpretation of the grave risk of harm exception that would reward her for violating the Convention. A removing parent must not be allowed to abduct a child and then - when brought to court - complain that the child has grown used to the surroundings to which they were abducted. [fn. omitted.]

(*Friedrich, supra*, 78 F.3d at p. 1068.)

The mother in *Friedrich* presented evidence that the child had “grown attached to family and friends in Ohio” and introduced testimony by a psychologist that returning the child to German “would be traumatic and difficult for the child, who was currently happy and healthy in America with his mother.” (*Friedrich, supra*, 78 F.3d at p. 1067.) The psychologist testified that the child “definitely would experience the loss of his mother ... if he were to be removed to Germany. That would be a considerable loss.”

(*Ibid.*) In evaluating this evidence, the court in *Friedrich* held:

If we are to take the international obligations of American courts with any degree of seriousness, the exception to the Hague Convention for grave harm to the child requires far more than the evidence that Mrs. Friedrich provides. Mrs. Friedrich alleges nothing more than *adjustment* problems that would attend the relocation of most children. There is no allegation that Mr. Friedrich has ever abused Thomas.

(*Ibid.* (emphasis in original).)

The court in *Friedrich* also noted: “The only other circuit addressing the issue had its own doubts about whether a psychological report concerning the difficulty that a child would face when separated from the abducting parent is ever relevant to a Hague Convention action. *Nunez-Escudero* [*v. Tice-Menley* (8th Cir. 1995)] 58 F.3d [374] at 378 (such reports are not per se irrelevant, but they are rarely dispositive).” (*Friedrich, supra*, 78 F.3d at p. 1069, fn. 10.)

The bonding or attachment defense has been criticized, and is not followed in the Ninth Circuit Court of Appeal. (*Asvesta v. Petroutsas* (9th Cir. 2009) 580 F.3d 1000, 1020-1021.) In *Asvesta*, a Greek court denied a Hague Convention petition based on the grave risk exception, finding

a severe danger that [the child’s] return to the USA to [sic] expose him to mental tribulation, since he will be deprived of his mother's presence, affection, love and care at the delicate age of 12 months, he will be deprived of the security and stability that he feels near his mother and his mental bond with her will be broken.

(*Asvesta, supra*, 580 F.3d at p. 1020.)

In holding that the Greek court improperly denied the petition for the return of the child to the United States, the Ninth Circuit in *Asvesta* stated:

the Greek court stepped out of its role as a Hague Convention tribunal by inquiring into the best interests of the child. Although we express no views on the wisdom of such a determination, it is a determination pertinent only to the merits of the underlying custody dispute which must be resolved not by a Hague court, but rather the courts of the child’s habitual residence. [¶] [T]he Greek court failed to support its conclusion with evidence that the

child, if returned to the United States, would have experienced ‘something greater than would normally be expected on taking a child away from one parent and passing him to another.’ [Citation.] Although the Greek court opined that the child would suffer more trauma as a result of his young age, allowing an exception to return in cases involving young children wrongfully removed or retained by their mothers would swallow the Convention's rule of return. [¶] By basing its analysis largely on matters properly reserved for the courts of the child's habitual residence and by construing Article 13(b)'s grave risk exception so broadly, the Greek court's Article 13(b) determination contravened the intent of the Convention's drafters. As a result, this determination cannot properly support the Greek court's denial of Petroutsas's petition.

(*Asvesta, supra*, 580 F.3d at pp. 1020-1021.)

In *Diorinou v. Mezitis*, another Greek court based a grave risk determination on similar reasoning. (*Diorinou v. Mezitis* (2d Cir. 2001) 237 F.3d 133.) In *Diorinou*, the Greek court stated that “if the children were forced to leave their mother, there would be grave danger of exposing them to psychological harm and place them in an intolerable situation.” (*Diorinou, supra*, 237 F.3d at 144 (internal quotation marks omitted).) The court in *Diorinou* stated that it was “dubious” about the Greek court's reasoning, since the grave risk exception is “to be narrowly construed to preclude return only in extreme circumstances.” (*Diorinou, supra*, 237 F.3d at p. 145, citing *Friedrich, supra*, 73 F.3d at pp. 1068-69).

Here, Lura makes the same arguments based on similar evidence as the abducting parents did in *Friedrich*, *Asvesta*, and *Diorinou*. All of those decisions reached the same conclusion: that the effects on the child from being separated from the abducting parent are custody considerations, and do not constitute a grave risk. Only the court in Italy has the power to make a custody determination. (Fam. Code, § 3421, subd. (b); *In re Stephanie M.* (1994) 7 Cal.4th 295, 310 [27 Cal.Rptr.2d 595].) Lura can litigate her custody claims in the Italian court.

VI.

THE FINDING THAT LEO WOULD SUFFER PROBLEMS IF TAKEN AWAY FROM LURA’S CUSTODY IS NOT SUFFICIENT TO POSE A GRAVE RISK TO LEO

Lura states in her brief that the court made a “factual determination that Leo ‘would be very, very injured’ and would experience ‘some very, very major problems’ if returned to Italy in Maurizio’s custody. (4 RT 984:1-7.)” (RB, 36.) This is not an accurate representation of the court’s finding. The court started to make that finding, but then corrected itself. The court said that Leo would have problems if he were removed from Lura’s custody (as opposed to being placed with Maurizio). The court stated:

I think [Leo] would be very, very injured if he were turned over to his father’s custody at this point – – *or if he were taken away from his mother’s custody, let me put it that way.* But right now he could not sustain that without some very, very major problems.

(4 RT 984:1-7 (emphasis added).)

The distinction is significant. The court went to the trouble of rephrasing its finding to say that the harm to Leo would result from being removed from Lura's custody – not from being placed with Maurizio, as Lura's brief states. This is not a custody case. The court's concern about removing Leo from Lura's care is not a proper factor to consider when making a grave risk assessment, as discussed above.

In any event, Lura could have avoided the "grave risk" by agreeing to return to Italy with Leo to litigate custody there. The court found that there would be no grave risk to Leo if he were returned to Italy in Lura's custody. (4 RT 967:19-26 & 968:21-25.) Lura, however, refused to go back to Italy, arguing that any order requiring her to return to Italy would violate her constitutional rights. (3 AA 554:24 - 555:3.) Feeling compelled to honor that decision, the trial court used Lura's refusal to return to Italy to conclude that returning Leo to Italy would pose a "grave risk" to him. Had Lura agreed to return to Italy, the court would have ordered Leo's return to Italy. (4 RT 967:19-26 & 968:21-25.) A party cannot be allowed to create her own prejudice.

VII.

THERE IS EVIDENCE THAT LEO'S PTSD SYMPTOMS ARE THE RESULT OF ALIENATING BEHAVIOR BY LURA

The court found that there may be more sources for Leo's symptoms than simply Maurizio's conduct. (4 RT 966:27-967:4.) In the report of Terri Asanovich, MFT, the court-appointed child custody evaluator, Ms. Asanovich stated that "there may be alienation occurring of the child to the father by either Lura or some of her family members, or at the very least,

the case is being discussed with him.” (2 AA 435:3-6.) This conclusion was formed in the course of her evaluation of Leo. For example:

- Leo was “obviously ill” when Lura’s sister (Aunt Tammy) brought Leo to Ms. Asanovich’s office for a joint interview between Leo and Maurizio. (2 AA 434:20-22.) Ms. Asanovich reported Leo’s condition to Aunt Tammy, who stated that Leo “woke up this morning with a little fever, and that it happens like this on the days when he sees his father.” (2 AA 434:23 - 434:1.) Leo, however, reported to Ms. Asanovich that “he had been out the night before, with Aunt Tammy, her friend, and Grandpa for a concert at the Santa Monica Pier and was tired from not getting to bed until late.” (2 AA 434:20-22.)
- Leo said at the meeting with Ms. Asanovich that Maurizio “is only pretending to be nice.” (2 AA 434:16-17.) Ms. Asanovich’s asked Leo if anyone had told him say these things about Maurizio. (1 RT 142:28 - 143:1.) Leo said that his grandmother (Lura’s mother) had told him: “You have to remember that daddy pretends to be nice when someone else is around.” (1 RT 143:2-12.)
- Ms. Asanovich was told by one witness in Italy that Lura’s parents were pressuring Lura to return to the United States because they “wanted Lura back in the states to live with the child.” (2 RT 236:10-12.)

- Many of the witnesses interviewed by Ms. Asanovich who had observed Lura interact with Leo in Italy felt that Lura was “smothering.” (1 RT 118:26-27.) “That was a word that kept coming up over and over again by various witnesses....” (1 RT 118:28 - 119:1.) One witness said that “Lura was not able to set boundaries with [Leo].” (1 RT 119:7-8.)

Based on these observations, Ms. Asanovich testified: “I do believe there may be some issues of alienation occurring in this case.” (1 RT 125:10-11.) When asked by the court whether Leo’s symptoms were caused by “emotional abuse by [Maurizio] as opposed to any other cause,” Ms. Asanovich responded: “See, that’s the problem here. It could be alienation. I don’t know.” (2 RT 255:3-11.)

By contrast to the way Leo acted during his interview with Ms. Asanovich, Leo showed no sign of fear of Maurizio during the monitored visits Maurizio and Leo were allowed to have with each other during the pendency of the Hague hearing. (2 RT 325:5-9.) At first, Leo was “hostile” and said, “I don’t want to live with you.” (2 AA 448.) Maurizio was “very affectionate and sweet” with Leo. (2 AA 448.) As time progressed, though, Leo began playing games with Maurizio and they had fun together. (2 AA 448-451.) Leo was affectionate with Maurizio, calling Maurizio “big love.” (2 RT 325:10-22.) Leo asked Maurizio to visit him at Lura’s home during one of the visits. (2 RT 349:24-26.) At the end of one visit, they hugged and kissed each other and Maurizio said, “You’re the best, Leo!” and Leo said, “You’re the best too.” (2 AA 453.)

Leo became more comfortable the more they visited. On the visit of May 3, 2010, Leo got excited when he saw Maurizio and said “Hi Daddy!” (2 AA 439.) The monitor reported: “Leo hardly notices Mother as we walk toward Father. Immediately, there is rapport and conversation between Father and Leo.” (2 AA 439.) “Leo is comfortable touching his father incidentally and affectionately as well as being touched by his father.” (2 AA 439.) “At the exchange point, Leo gets out of the car and is affectionate with Father – gives him a hug and a kiss. Father: Did you like the visit? Leo: Yes.” (2 AA 439.)

These are not the actions of a young boy who is terrified of his father. The affection and ease the monitors saw Leo display with Maurizio stands in stark contrast to the story Lura and her therapist are telling. They predict that Leo would be severely traumatized if he were to have any contact with Maurizio, but Leo’s undeniable expression of love for Maurizio tells the truth. There is nothing wrong with Leo’s relationship with Maurizio, other than the harm Lura has caused by removing him from Leo and her efforts to alienate him against Maurizio.

Leo’s teacher in Italy, Cecilia Vescovi, testified via telephone at the trial about how Leo interacted with Maurizio when Leo was in preschool in Italy. Ms. Vescovi testified that Maurizio and Lura would alternate taking Leo to and from school every day. (3 RT 694:19-27.) Ms. Vescovi never saw Leo show any fear of Maurizio. (3 RT 693:17-19.) In fact, Ms. Vescovi said that Leo would “rush towards [Maurizio] when he arrived, and he would take [Maurizio’s] hand or he would ask to be picked up.” (3 RT 693:10-16.) One time, Leo asked Ms. Vescovi to retrieve a scarf from his school locker. (3 RT 693:21 - 694:1.) She asked, “Are you cold?” and Leo

responded, “No, I just want to have it near me because it’s my father’s. Because that way I can – I can smell him next to me.” (3 RT 694:2-8.)

Lura has been trying to systematically alienate Leo against Maurizio since she took him to California. She was able to influence or scare Leo into making negative statements about Maurizio to the evaluator, but Leo’s behavior around Maurizio after that influence wore off reveals the truth. It has been hypothesized that “children under age 7 are less likely to become alienated because they are less able to ‘hold onto’ the resistance when they are with the otherwise-rejected parent.” (Stahl, *Understanding and Evaluating Alienation in High-Conflict Custody Cases*, 24 Wisc. J. Fam. L. 1 (2003), p. 2.)

Leo’s behavior is similar to that of other alienated children, such as the inconsistent statements and behavior he exhibited toward Maurizio, and the use of generalized statements (e.g., he is “mean”) to describe Maurizio without providing any specific instances of conduct. (Stahl, *Understanding and Evaluating Alienation in High-Conflict Custody Cases*, *supra*, p. 4.)

The trial court’s finding that the causes of Leo’s PTSD symptoms cannot be determined is entitled to deference on appeal. There is ample evidence to suggest that those symptoms are being caused by Lura. In making the grave risk assessment, this Court should not consider the PTSD symptoms since they cannot be tied to any conduct by Maurizio, and are just as likely the result of alienation by Lura.

VIII.

LURA'S TESTIMONY ABOUT MAURIZIO IS INCONSISTENT WITH THE LETTER SHE WROTE HIM BEFORE THE COURT CASE

In her court testimony and appellate brief, Lura describes Maurizio as an awful human being, who sexually abused his own son and physically abused her. She paints a picture of a wife who was forced to live under intolerable conditions and had to escape with Leo for their very lives.

What she said to Maurizio before this case was quite different. Admitted into evidence was the following letter by Lura to Maurizio:

[¶] I am continuously impressed by your generous nature. You are so caring, you always think of others and you are loyal to your friends. With me, you are all of this and more. It's amazing. Tenderness, love, affection all flowing from your heart. To make love with you is to make love with a god. And always, always, there is respect. . . . You have integrity my darling. This is something most people don't have, even me. I don't always have integrity, nor do I always think of others. But you know this about me. . . .

(2 AA 486.)

In these words, when there was nothing for her to gain, Lura was for once telling the truth about Maurizio's character – and her own.

IX.

LAURA TRIED TO FOIL MAURIZIO'S ATTEMPT TO HAVE THE ITALIAN COURT ENTER THE ORDERS REQUESTED BY THE CALIFORNIA COURT

Lura's brief denies any interference with the entry of the orders in Italy, which the California court asked Maurizio to obtain as a condition to Leo's return. (RB, 46.) Her explanation, however, for why she objected to the entry of those orders is vague. Her brief states: "In fact, Lura's Italian attorney appealed an Italian Court action based on procedural irregularities that occurred in contravention of certain Italian rules. (3 AA 565.)" (RB, p. 46.)

The document she refers to in the Appellant's Appendix is the declaration of her Italian lawyer, confirming that Lura appealed the very order which the California court asked Maurizio to obtain for Lura's protection. (3 AA 565.) If Lura were truly concerned about the safety of herself and Leo, she would not object an order granting her temporary custody and a restraining order. Lura was clearly trying to prevent Maurizio from meeting the conditions imposed by the trial court, so it would deny his petition under the Hague Convention.

X.

THERE IS NO EVIDENCE OF ANY DEATH THREAT

Lura told Ms. Asanovich that she had been warned by her lawyer in Italy that Maurizio may want to have her killed. (2 AA 431-432.) Lura provided a letter to Ms. Asanovich from her Italian lawyer, which stated:

We were told unofficially that Maurizio Rigamonti got in touch with someone [area blacked out] in Parma, asking him to do something illegal [?] against Lura/Leo, but this person refused to do anything illegal. Please note that the person who told us the above won't confirm it anywhere. . . We have been seriously urged to alert Lura to the danger (or concrete risk) for her/his safety, meaning also that someone could make an attempt on Lura's life and adding that Maurizio has certainly put under control either Lura or Leo. Now, we don't really know whether these news are serious or exaggerated, but it is certain that we don't to run any risk by not reporting them to Lura."

(2 AA 431-432.)

No more specifics were ever provided. Lura mentions the alleged death threat in her brief. (RB, p. 19.) Based on the letter, Ms. Asanovich determined that there would be a grave risk to Leo if he were returned to Italy. (2 RT 253:16-27; 2 AA 435:11-12.) Ms. Asanovich conceded that there was no way to verify whether the threat was actually made, so she decided to err on the side of caution and assume that the incident had occurred and the threat was real. (2 RT 254:6-10.)

The letter is not evidence that Maurizio tried to hire a hit man. It is second or third hand information by an unidentified person who, according to the letter, will not confirm that Maurizio ever made the request to harm Lura or Leo. The letter, itself, questions whether the information is "serious or exaggerated." The trial court did not mention the letter in its ruling. Surely, something more than conjecture is needed to constitute a grave risk under the Hague Convention. (See *Roddenberry v. Roddenberry* (1996) 44 Cal.App.4th 634, 651 [51 Cal.Rptr.2d 907] [expert opinion testimony which

is conjectural or speculative “cannot rise to the dignity of substantial evidence”].)

XI.

MAURIZIO NEVER VIOLATED THE RESTRAINING ORDER

Lura’s brief claims that Maurizio violated the restraining order by staring at her, walking toward her in a threatening manner, and coming close to her, despite the temporary restraining which the court had issued based on her allegations of domestic violence. (RB, p. 17.) Lura states that this occurred “when Lura was picking up Leo at school after a visitation with Maurizio.” (*Ibid.*) Lura reported the incident to the police. (*Ibid.*)

There is no finding that Maurizio ever violated the restraining order and nothing ever came of her police report. Lura fails to mention in her brief that there was a witness who observed the incident and testified in court. Eileen Hastings, a court-appointed visitation monitor, was present for the visitation between Maurizio and Leo. (2 RT 326:13-20.) Ms. Hastings testified that she observed Maurizio’s behavior at the end of the visitation when Maurizio dropped off Leo at his preschool (2 RT 327:4-6), and that she did not see Maurizio exhibit any threatening behavior towards Lura (2 RT 327:11-14).

Lura also did not mention in her brief that the court had ordered the visitation to occur, as an exception to the stay-away order. (1 RT 48:25 - 49:5; 1 AA 104-105.) In fact, the visitation had been scheduled so Maurizio could drop off Leo at the preschool 30 minutes before the school day ended. Lura’s counsel suggested that the exchanges occur at the school

and that Lura would pick up Leo “a half hour” after Maurizio returned Leo to the school. (1 RT 44:13-23.) Lura asked the court how the exchange would occur, and the court explained: “The monitor has to be with him. So you need to give the sign-in and sign-out authority to the individual who is identified as your monitor here.” (1 RT 45:2-7.) Lura, however, decided to be present when Maurizio dropped off Leo. She was not supposed to be there in the first place.

There was no threatening behavior by Maurizio, and there was no violation of the restraining order.

XII.

CONCLUSION

The court acted in excess of its jurisdiction in denying the petition for his return. This Court should reverse with directions to grant the petition and order Leo’s return to Italy forthwith without conditions.

WORD COUNT

This brief contains 5,871 words according to the program used to create this document.

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Respectfully submitted,

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