

2D Civil No.
B287735

IN THE
Court of Appeal
STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION EIGHT

W.M.,
Petitioner and Appellant,

vs.

V.A.
Respondent.

APPEAL FROM
SUPERIOR COURT OF LOS ANGELES COUNTY
HONORABLE MARK H. EPSTEIN
DEPT. 81, (213) 830-0781
L.A.S.C. Case No. 17STPT00486

**RESPONDENT'S SUR-REPLY
IN OPPOSITION TO
PETITION FOR WRIT OF SUPERSEDEAS**

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INTRODUCTION

Respondent, V.A. (“Victoria”), submits this Sur-Reply in opposition to the Petition for Writ of Supersedeas filed by Appellant, W.M. (“William”), as allowed by this Court in its Order of February 21, 2018. This Sur-Reply should be read together with the Opposition to the Petition and the Supplemental Brief re Jurisdiction filed by Victoria.

This Sur-Reply will address four issues:

- 1) Victoria is not—and never has been—a flight risk;
- 2) Victoria is—and has been—a cooperative parent;
- 3) William can travel to Belarus to see his son: he has the ability financially, he is currently a resident of Belarus, and he is protected with status to travel there as the father of a Belarus citizen; and
- 4) William’s participation in the custody and visitation proceedings currently pending in Belarus.

DISCUSSION

1. Victoria is not a flight risk.

In its ruling on Victoria’s Motion to Quash, filed January 12, 2018, the trial court found that Victoria is not a flight risk. The court specifically said, “[T]he Court does not believe that Ms. Azarenka remains the flight risk she was originally thought to be.” [See Petitioner’s Exhibits in Support of Petition for Writ of Supersedeas, Exhibit 5, page 91 (“P.E. 5:91, lines 26-27”).]

Victoria was “originally thought to be” a flight risk because she was an unknown to the court in July 2017, when the court issued the initial restraining orders. In July 2017, when seeking *ex parte* orders for custody and to prohibit Victoria from leaving California, William

represented her to be both a United States and Belarus citizen [P.E. 8:178, Item 3.c(1)], who “travels [to Belarus] frequently for her tax planning purposes.” [P.E. 8:178, Item 3.c(2), and see 8:195, ¶27, lines 24-26.] An accurate statement would have been that Victoria is neither an American citizen nor a California resident, that she travels to the United States frequently to train and participate in tournaments, but she lives in Belarus, has family there, and that William also lived there while he and Victoria were together as a couple. (Indeed, such an accurate statement might have given the court pause about exercising emergency jurisdiction.)

As early as August 29, 2017, after reviewing more complete pleadings and hearing some testimony, the trial court—the judge assigned to the matter, different from the judge who issued the July 2017 *ex parte* orders that began this case—recognized that Victoria was not a flight risk. [See Exhibits in Support of Sur-Reply Exhibit 1, page 111, lines 22-24 (“Sur-E. 1:111:22-24).] In granting Victoria’s request to travel to New York to participate in the United States Open Tournament, the court said, “[S]he can go to New York and not put her career at risk [¶] ... There has been no effort whatsoever by Respondent [Victoria] to leave ... the jurisdiction with Leo.” (*Ibid.*)

In its Ruling on Motion to Quash, the court explained why it found the Victoria is not a flight risk: she had shown herself to be trustworthy by scrupulously obeying the court’s travel orders for months:

For a period of many months, she has scrupulously obeyed the Court’s order concerning travel. Of course, the Court imposed additional safeguards, such as security guards during her nighttime visitations, at attempt to ensure that she would not leave California. But, as she pointed out (credibly,

in the Court's view), had she really wanted to leave, she likely could have done so. She obeyed the Court's order, and she did so at substantial financial cost, personal cost, and professional cost.

[P.E. 5:91:27-92:6.]

Thus, continuing allegations that Victoria is a flight risk are without merit.

2. Victoria is a cooperative parent.

In his initial request for restraining orders and emergency custody orders, William alleged that Victoria severely limited his time with Leo and limited his ability to take the child from her home. [See P.E. 8:194, lines 20-26, 195, lines 12-13, 20.] These allegations were contradicted by communications between the parties in June and July, before William filed the underlying action.

Numerous text-communications show that William and Victoria often spoke comfortably about Leo and about William's time with the child. [See, e.g., Sur-E. 10:564, 565.] On a particularly hot day, Victoria asked that Leo stay inside because of the heat [Sur-E. 10:568]; but, with her request apparently being misunderstood, she assured William that he did not need to be supervised or to stay in the house when visiting Leo. [Sur-E. 10:568.] Indeed, William walked around Manhattan Beach with Leo [Sur-E. 10:566, 567] or spent the time however he wanted, as demonstrated by his meeting his brother for lunch in a restaurant with Leo. [Sur-E. 3:348.] Even after the restraining orders were issued against Victoria, she continued to invite him to join her for activities involving Leo. [See, e.g., Sur-E. 10:560.]

Further, in his deposition, William acknowledged that in January 2017, soon after Leo was born, when he chose to stay in his parents' home for a short time, he was not denied any visits with the baby. [Sur-E. 3:212.] And he was free to see the child whether or not Victoria was present in her home. [Sur-E. 3:213.] He missed one day seeing the child because he (William) was not feeling well. [Sur-E. 3:212],

Similarly, between July 15 and 20, 2017, before he filed his request for a restraining order and custody claiming that Victoria limited his time with the child, William was able to see the child every day, except for one day when he was not feeling well. [Sur-E. 3:345.] He would simply message Victoria and arrange a time to see Leo, coordinated with the baby's sleep schedule. [Sur-E. 3:345.] William's family also saw the baby: his sister joined him one day in a visit to Victoria's home, and William, with Leo, visited with his brother and sister-in-law in a restaurant. [Sur-E. 3:348.] Indeed, William acknowledged that he was never denied access to Leo. [Sur-E. 3:213.] Thus, William's claims that he could not see the child were unfounded.

During one email conversation, in April 2017, when responding to William's claim that she was inflexible, Victoria plaintively explained that her job—being a professional athlete—“is my security to take care of my family. ... I don't have anyone to rely on to provide for my family.” [Sur-E. 3:462.] She also reassured William that he was an important part of Leo's life:

[¶] ... I'm gonna make sure he has the best life possible, ***including his father. Because once again no one is going to take away you from him.***

[Sur-E. 3:462.]

Thus, William's claims that Victoria is not cooperative were without merit when they were made to obtain emergency jurisdiction—and remain without merit.

2-A. Victoria's efforts to resolve custody

Victoria has made several efforts to resolve custody. She has offered to pay for William's travels and lodging. And Victoria's attorney in Belarus sent William and his Belarus attorney a proposal to resolve custody. [Sur-E. 8:536-538.]

In August 2017, unable to resolve the question of custody in New York for Victoria's participation in the United States Open tennis tournament, Victoria withdrew from the U.S. Open. Still, Victoria had certain sponsorship commitments and obligations in New York during the tournament, and she sought assistance from the trial court to resolve the custody issues. At the hearing on her request to go to New York for these business commitments, William's attorney instructed him to not go to New York with the child. [Sur-E. 1:108, line 9.] (The court viewed that instruction unfavorably. See Sur-E. 1:109, line 19-110, line 12.) Victoria agreed to pay William's air-fare and hotel and to have monitors to assure William that she would not take the child out of New York or to the airport. [Sur-E. 1:108-116.] The court issued orders allowing Victoria to go to New York on those conditions and one additional condition requested by William: that Leo fly with him, separately from Victoria. [Sur-E. 2:121, ¶1.] In the end, William never went with the baby to New York, effectively sabotaging the court's order. Mysteriously his flight reservations were cancelled, and he never left Los Angeles.

Not willing to leave her infant, Victoria also did not leave Los Angeles and lost this business opportunity. [See Respondent's Exhibits in Opposition to Petition, Exhibit 1, page 11, lines 5-20 ("R.E. 1:11, lines 5-20).]

This was not the result of Victoria being an uncooperative parent.

3. William's Ability to Travel to Belarus

William is able to travel to Belarus to see Leo, both financially and due to his flexible schedule. He has \$300,000 in liquid assets [Sur-E. 7:526, Item 11.b.], which he asserts is from "smart investments." [Sur-E. 3:234.] He is currently working approximately 10-15 hours per week as a real estate salesperson [Sur-E. 7: Item 1.499], which gives him sufficient flexibility to travel.

Further, William currently has temporary residency status in Belarus, due to expire in May 2018. [P.E. 5:35:22-24.] Even after May 2018, he will be able to enter Belarus to see his son, as residency status is always allowed a parent of a child who is a citizen or resident of Belarus. [Sur-E. 5:499:3-5.]

Thus, nothing will preclude William from going to Belarus to see his son. (Similarly, these same factors will not preclude him from participating in Belarus legal proceedings, as he is currently doing, as discussed *infra*.)

4. William's Participation in Current Belarus Proceedings

There have been four civil or legal proceedings involving Leo in Belarus:

- 1) **March 2017**, Leo was registered as a citizen of Belarus, entitling him to a government stipend, medical insurance, local doctors, and a pre-school spot, and he was issued a Belarus passport. William signed for all these benefits to Leo and for the child's passport. [Sur-E. 6:520:7-12, 520:24-60:2; and Sur-E. 3:339, lines 6-12.]

- 2) **May 25, 2017**, Victoria filed a Statement of Claim to Establish Leo's Place of Residence with Victoria, which is a proceeding to establish physical custody of the child. [R.E. 1:9, 98-102, P.E. 5:69, lines 3-19.] On **June 7, 2017**, after a hearing, the Belarus court issued orders regarding Victoria being the primary custodial parent of Leo. [R.E. 1:9, lines 19-23, 1:107-10.] (William raised the issue of notice of this proceeding.)

- 3) **July 28, 2017**, Victoria filed a proceeding to determine William's visitation rights. [R.E. 1:10, lines 1-2.] On **August 3, 2017**, the Belarus court issued its visitation ruling. [R.E. 1:10, lines 2-4, 1:115-117.] On **August 15, 2017**, pursuant to William's request [R.E. 1:123], the Belarus court issued its Statement of Reasons explaining its decision. [R.E. 1:10, lines 16-18, 1:131-135.] Bill appealed from the visitation decision [R.E. 1:128-130], which was affirmed. [R.E. 1:225-

229.] (William raised the issue of notice of this proceeding.)

- 4) **January 19, 2018**, in response to the California court's concerns about notice, Victoria filed a proceeding in Belarus to re-open the issue of visitation for William. [R.E. 4:333-341.] These proceedings were filed after the California trial court had ruled that Belarus has jurisdiction and were filed as a courtesy to William, to assure that he would have an opportunity to address any of his concerns or requests regarding visitation. [See Opposition to Petition for Writ of Supersedeas, Declaration of Victoria A., p. 13, ¶28.] A hearing on Victoria's filing took place on February 22. Those proceedings are discussed below.

4-A. The February 22, 2018 Proceedings in Belarus

On February 22, 2018, a preliminary hearing on Victoria's claim to address William's visitation in Belarus, filed January 19, was heard. William was not present in court, but he was represented by A.S. Danilevich throughout the proceedings. [See Sur-E. 9:540, ¶3.] On William's behalf, Mr. Danilevich filed three motions: 1) a motion to recuse the judge, claiming bias in favor of Victoria; 2) a request for stay pending the decision on jurisdiction by the California Court of Appeal, and 3) a challenge to Belarus's jurisdiction. [Sur-E. 9:540, ¶¶4, 5, 7, and see Sur-E. 9:543, 548, and 555-557.] The court denied all three motions. [Sur-E. 9:540, ¶¶4, 5, 7, and see 543, 548, and 556.]

Most critical to our California proceedings, the court declined to stay its proceedings pending a decision by our California Court of Appeal because, the court reasoned, the Belarus court was considering custody issues, which were unrelated to the jurisdictional issues and

lifting of the emergency travel-ban pending here, in California. [See Sur-E. 9:548.]

As to William’s challenge to jurisdiction, the court explained that it had jurisdiction over William, under the Belarus civil procedure statutes, because he is a foreign citizen who has a temporary residence permit and a stated address (Minsk, 12, Polevaya Street, Apt. 7). [See Sur-E. 9:556.] As a resident, foreign citizen, William is subject to the jurisdiction of the Belarusian court. [Sur-E. 9:556.]

Apart from these motions, Victoria’s attorney, Anton Grinevich, argued Victoria’s positions, commented on the custody terms in the statement of claim, and answered the court’s questions. [Sur-E. 9:540, ¶¶6, 8.] Mr. Danilevich expressed concerns about some of the custodial terms, but largely argued his motions. [Sur-E. 9:540, ¶¶4, 7.]

At the end of the proceedings, the court—like many of our courts—urged that the parties begin a “constructive dialog between each other and even try to finish the case” by approving a settlement agreement. [See Sur-E. 9:540, ¶9.]

CONCLUSION

Respondent, Victoria A., thanks the Court for the opportunity to respond on certain critical allegations contained in the Reply re Petition for Writ of Supersedeas. Victoria respectfully requests that in weighing the considerations related to a stay, the Court consider that she is not a flight risk—she can be trusted to return to California if required to do so after review of the underlying jurisdictional orders; that she is a cooperative co-parent and will not seek to limit William’s custodial rights as Leo’s father; that William is able to travel to see Leo in Belarus and other places where Victoria may be participating in a tournament; and that, Victoria’s having addressed the notice concerns

of the California courts, William is able to participate fully in any proceedings in Belarus, as he has been participating in the current proceedings with able counsel.

Respondent, Victoria A., again respectfully submits that the considerations for issuing a writ of supersedeas weigh heavily against its issuance: the emotional and economic hardships to Victoria, being separated from her family and her country and being compromised in her ability to pursue her career, out-weigh the hardships William will suffer if the stay is lifted. Further, William has failed to show that he is likely to prevail on appeal. Thus, the writ of supersedeas should be denied.

If, *arguendo*, supersedeas is granted, then Respondent, Victoria A., respectfully submits that the trial court has jurisdiction pending appeal to make temporary orders concerning the custody of baby Leo and his removal from California and the United States, which this Court should authorize it to exercise. Victoria further submits that, if the trial court is empowered to act pending appeal, any conditions on her leaving California are issues for the trial court to weigh and consider in the first instance.

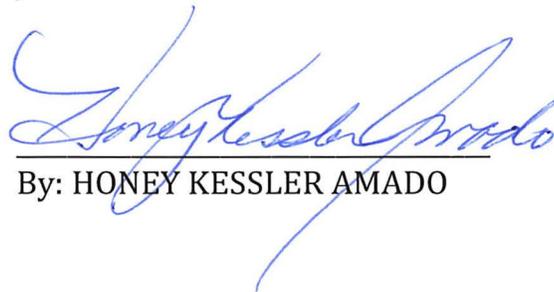
Given that these are two parents from distant countries, the physical separation of one of them from the child for extended periods of time is inevitable. Ultimately, the Court cannot prevent that; even King Solomon of old would have had no solution for this modern dilemma. But the difficult decision regarding jurisdiction and allowing Victoria to leave California and the United States with her baby has been made by the trial court. The narrow question before this Court is whether to allow that decision to go into effect pending appeal. Victoria has demonstrated compelling reasons—legal and factual—for the decision to go into effect now, for supersedeas to be denied.

Respondent, Victoria A., thanks this Honorable Court for the attention and careful consideration it has given this matter.

Dated: March 2, 2018

Respectfully submitted,

*HONEY KESSLER AMADO
JAMES A. KARAGIANIDES



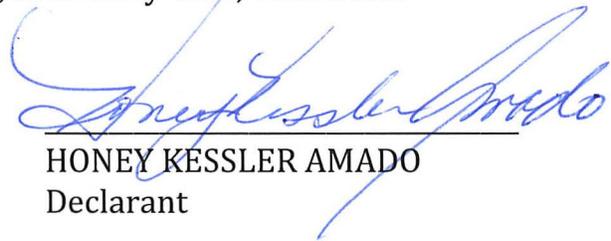
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By: HONEY KESSLER AMADO

CERTIFICATION OF WORD COUNT

I, appellate counsel for Respondent, Victoria A., certify that the word count for the text of this Sur-Reply in Opposition to Petition for Writ of Mandate, exclusive of Title pages, Table of Content, and this Certification page, is **2,652** words. The words were counted by the MS Word 365 Pro Plus program.

I declare under penalty of perjury that the foregoing is true and correct. Executed on March 2, 2018, at Beverly Hills, California.



HONEY KESSLER AMADO
Declarant