

STATE OF MAINE  
SUPREME JUDICIAL COURT  
SITTING AS THE LAW COURT

Law Court Docket No. SAG-16-100

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DENISE K. LYNCH

Plaintiff – Appellee

v.

DANIEL G. LYNCH

Defendant – Appellant

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ON APPEAL FROM  
THE MAINE DISTRICT COURT (WEST BATH)

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BRIEF OF APPELLEE

For Appellant, Daniel G. Lynch

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## STATEMENT OF FACTS AND PROCEDURE

Daniel Lynch (“Mr. Lynch” or “Appellant”) and Denise Lynch (“Ms. Lynch” or “Appellee”) were married on April 21, 1991 in Virginia. App. at 38. The parties had two children together, both of whom are now adults. App. at 38.

At the time of the marriage, Mr. Lynch had been a member of the United States Navy for more than 14 years. App. at 38. Throughout their marriage, the Lynches resided in numerous states and countries, including Maine, Virginia, Rhode Island, Tennessee, Belgium, and Sweden. App. at 38. The last four years of the marriage, from August of 2009 through the end of 2013, the Lynches resided exclusively in Sweden. App. at 39.

In Sweden, Mr. and Ms. Lynch maintained a residence together. App. at 38-40. Ms. Lynch worked in the U.S. Embassy in Sweden and, later, as the manager of an ice cream cafe in Stockholm. App. at 39. In September of 2012, Mr. Lynch retired from the United States Navy and accepted a teaching position at the Sweden National Defense College. App. at 39. Prior to that, both Daniel and Denise formally applied to Sweden with an “Intent to Settle” application. App. at 39 and 102.

In the fall of 2013, marital difficulties between the parties arose. App. at 39. In October of 2013, Ms. Lynch informed Mr. Lynch that she wanted to separate and permanently return to the United States. App. at 39. Mr. Lynch and the minor child maintained their residence in Sweden. App. at 39. Despite her physical relocation to Maine, Ms. Lynch maintained her Swedish resident and work visas, as well as a Swedish tax identity number. App. at 39. Furthermore, in the spring of 2014, the parties filed a joint United States income tax return and their Sweden individual tax returns, both with Ms. Lynch’s legal residence declared as Stockholm, Sweden.

On January 7, 2014, Mr. Lynch contacted a divorce lawyer in Sweden to initiate a divorce in the Stockholm City Court. App. at 39. On January 17, 2014, Mr. Lynch met with his attorney and signed the documents to commence the divorce. App. at 39-40. On January 21, 2014, the divorce was filed in the Stockholm City Court. App. at 40. The divorce papers were sent to Ms. Lynch at both her Sweden and the Maine addresses. Unfortunately, Ms. Lynch's mail to the United States was still being forwarded to her Swedish residence. Therefore, the Swedish divorce documents were forwarded to Ms. Lynch in Sweden. App. at 40.

After receiving notice that Mr. Lynch had undertaken efforts to commence a divorce in Sweden Ms. Lynch *attempted* to commence a divorce action in Maine by serving Mr. Lynch with a divorce complaint. App. at 20. The Complaint, signed under oath by Ms. Lynch on January 28, 2014, inaccurately declared that Ms. Lynch had resided in Maine for the prior six months. App. at 20-21. Thus, Mr. Lynch did not accept service and Ms. Lynch's Complaint was not filed in the Maine District Court. App. at 40. Ms. Lynch could not pursue the divorce in Maine because she did not meet Maine's statutory residential requirements for subject matter jurisdiction.

Accordingly, Ms. Lynch responded to Sweden pleadings on March 10, 2014. App. at 54. Although she did not retain Swedish counsel, with the aid of her Maine attorney, her Acknowledgment of Service requested a six-month "reconsideration" or waiting period, typically used when attempting reconciliation. App. at 53. Additionally, Ms. Lynch raised a defense based upon lack of personal jurisdiction. App. at 54. The Stockholm Court granted her the reconsideration period and scheduled the divorce to proceed in September of 2014. App. at 40.

Instead of reconciling, Ms. Lynch used the reconsideration period to establish the mandatory six-month residency in Maine. Thus, on May 28, 2014, more than five months after the Swedish divorce proceeding was commenced, Ms. Lynch filed a Complaint for Divorce in the

State of Maine. App. at 1. In June of 2014, Mr. Lynch was served with the Maine Summons and Complaint in Sweden via alternative service. App. at 40.

On July 8, 2014, Mr. Lynch filed a Motion to Dismiss based upon *forum non conveniens* on the grounds that he was a resident of Sweden and that Sweden had exclusive jurisdiction over the parties' divorce. App. at 26-28. The West Bath District Court denied the motion and allowed the two parallel transnational divorce actions to proceed simultaneously. App. at 68. On October 22, 2014, Mr. Lynch filed an interlocutory appeal to the Maine Law Court. On April 1, 2015, during the pendency of the Maine appeal, the Stockholm City Court entered a final Divorce Judgment dissolving the Lynches' marriage. App. at 83.

In a detailed decision, the Stockholm City Court acknowledged Ms. Lynch's objection to personal jurisdiction, but found that the facts and multiple personal connections with Sweden supported jurisdiction over her.<sup>1</sup> App. at 83. Thus, the Swedish Court ruled that it was "competent to adjudicate in the divorce case" because Mr. Lynch had been a Swedish resident for at least one year before he commenced the action and that the parties had resided in Sweden together. App. at 83-89. The Court also ruled "[w]hen Denise Lynch submitted a divorce application [in Maine] in May of 2014 a case for divorce was already pending here in Sweden." App. at 84. The Stockholm City Court denied Ms. Lynch's request to dismiss the divorce, entered a Divorce Judgment, and appointed a property executor.<sup>2</sup> App. at 83-89.

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<sup>1</sup> In total, Ms. Lynch filed 10 submissions to the Stockholm City Court stating to her objections to the Swedish divorce. App. 111-115. While Ms. Lynch was not represented and not present in Sweden, she had adequate opportunity to participate in the Stockholm proceeding.

<sup>2</sup> Since Ms. Lynch did not petition the Court for spousal support or "maintenance", the Stockholm City Court did not award spousal support. App. at 83-89.

Ms. Lynch appealed the entry of the final Divorce Judgment and the appointment of the property executor to the Stockholm Court of Appeals.<sup>3</sup> App. at 105. The Appellate Court affirmed the entry of the final Divorce Judgment, however, it granted Ms. Lynch's appeal as to the appointment of the property executor.<sup>4</sup> App. at 97-100. The Court remanded the property executor and issued a stay of the appointment of the property executor pending the Maine action. App. at 116. Mr. Lynch appealed the stay and requested that the property distribution proceed in Sweden. App. at 116-117.

In April of 2015, Mr. Lynch filed the Swedish Divorce Judgment with the United States Defense Finance and Accounting Service (DFAS), who recognized the Swedish Divorce Judgment as a valid, final judgment dissolving the Lynches' marriage. App. at 8. Ms. Lynch applied for and was granted a military identification card and health insurance benefits as a "former spouse." App. at 61.

Upon entry of the final Judgment in Sweden, Mr. Lynch notified the Law Court that the parties were no longer legally married and the Court dismissed the interlocutory appeal in the Maine Law Court. App. at 71. The case was remanded to the Maine District Court, where Mr. Lynch filed a Motion to Dismiss based upon the doctrine of comity, subject matter jurisdiction, mootness, *res judicata*, and *lis pendens*. App. at 75 and 76-82. In a written decision, the Maine District Court dismissed the Maine Divorce Complaint and ruled that the Swedish Divorce Judgment was a valid and binding divorce decree issued by a court of competent jurisdiction and entitled to recognition in Maine under the doctrine of comity. App. at 7. ("Swedish divorce proceeding was the first in time, the Swedish Court comported with the requirements of due

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<sup>3</sup> Ms. Lynch did not appeal any issues pertaining to the non-awarding of spousal support.

<sup>4</sup> Ms. Lynch filed an additional 12 submissions to the Swedish Appeals Court, including a detailed description of items to be considered when dividing their marital property. App. at 111-115.

process, and [Ms. Lynch] had a full and fair opportunity to present her contentions regarding spousal support and enforceability of an earlier settlement agreement in that forum.”) The Maine District Court further concluded that the Swedish court provided Ms. Lynch with an opportunity to participate in an impartial tribunal with procedures compatible with due process requirements. App. at 9.

Ms. Lynch is presently residing in Maine, where she took up residency after leaving Sweden at the end of 2013. App. at 49. The parties have not lived in Maine together since 2005, and had never been residents of Maine as they maintained their domicile in their resident state of New Hampshire. App. at 40. Mr. Lynch is a resident of Sweden, where he has resided consistently from 2009 to the present. Mr. Lynch is currently employed in Sweden, has a permanent teaching position at the Swedish National Defense College, which has renewed his employment contract. He has extended his resident and work visas. He has no imminent plans to return to the State of Maine. App. at 40-41.

Upon the conclusion of this case, Mr. Lynch will seek to lift the stay in Sweden to allow the Stockholm Court to finalize the property issues with the assistance of a property executor.

## STANDARD OF APPELLATE REVIEW

Appellant Denise Lynch fails to articulate the applicable standard of appellate review for the Law Court to apply. Throughout her arguments, Appellant proposes the Law Court review the actions of the trial court based upon clear error. In “clear error” review, a trial court’s fact finding will be affirmed if supported by some evidence in the record.

The decision of the Maine District Court in dismissing the Appellant’s Divorce Complaint could be viewed as a discretionary or procedural function. Judgments related to procedural rules are reviewed for an abuse of discretion. Bates v. Department of Behavioral and Developmental Services, et al., 2004 ME 154. Other jurisdictions considering the issues of international parallel proceedings in two competing jurisdictions have also applied an abuse of discretion standard on appeal. In Apenyo v. Apenyo, 202 Md. App. 401, 414-415 (2011), the Maryland Court of Special Appeals held,

[w]hen the comity issue before a court is the specific question of which of two jurisdictions should be permitted to go forward with the trial of a case—the jurisdiction in which the complaint was first filed and is pending or the jurisdiction in which a similar complaint was subsequently filed—there are invariably some factors pointing in each direction (at the very least, the convenience and self-evident preference of one of the parties). There are multiple considerations, some of only negligible weight but some of very heavy weight. The weighing of factors and the balancing of competing considerations is quintessentially a type of decision calling for the exercise of judicial discretion. It a decision to which appellate review traditionally extends great deference.

Thus, the Maine District Court’s decision should not be disturbed unless proven that the Court abused its discretion.

## ARGUMENT

### **I. THE MAINE DISTRICT COURT PROPERLY APPLIED THE DOCTRINE OF COMITY TO THE STOCKHOLM CITY COURT'S FINAL DIVORCE JUDGMENT.**

In the United States, the Full Faith and Credit Clause of the United States Constitution establishes a constitutional obligation to uphold judgments entered into by other states. Judgments entered by foreign courts, however, are enforced on the basis of comity. "Courts in the United States are generous in their recognition of foreign court orders, including divorce decrees, support orders, and child custody orders, when the orders have a jurisdictional basis that would be adequate under U.S. law and where the general requirement of due process were observed." Ann Laquer Estin, International Family Law Desk Book (2012) at 87.

The United States Supreme Court specifically held that foreign judgments should be given effect in the United States when it meets basic requirements of reliability and fairness:

When [a] . . . foreign judgment appears to have been rendered by a competent court having jurisdiction of the cause and of the parties, and upon due allegations and proofs, and opportunity to defend against them, and its proceeding are according to the course of a civilized jurisprudence, and are stated in a clear and formal record, the judgment is prima facie evidence, at least of the truth of the matter adjudged; and it should be held conclusive upon the merits tried in the foreign court, unless some special ground is shown for impeaching the judgment, as by showing that it was affected by fraud or prejudice, or that by the principles of international law, and by the comity of our own country, it should not be given full credit and effect."

Emphasis added. Id. at 88, citing, Hilton v. Guyot, 159 U.S. 113, 205-206 (1895). Furthermore, with regard to judgments affecting personal status, the Hilton Court held "[a] degree confirming or dissolving a marriage, is recognized as valid in every country unless contrary to the policy of its own law." Hilton at 167.

The common law principles of comity, as established in Hilton v. Guyot, served as the foundation to the Restatement of the Law, Third, Foreign Relations Law of the United States. Section 481 of the Restatement establishes the presumptive rule that “a final judgment of a court of a foreign state . . . establishing or confirming the status of a person, or determine interest in property, in conclusive between the parties, and is entitled to recognition in courts in the United States.” Section 482 defines two exceptions to this general rule: 1) foreign judgments “rendered under a judicial system that does not provide impartial tribunals or procedures compatible with due process of law;” and 2) if the foreign court that rendered the judgment did not have jurisdiction over the defendant in accordance with its own laws and with the Restatement Standards. See Restat (3d) of the Foreign Relations Law of the U.S.

Furthermore, the Restatement, §484, specifically recognizes that foreign divorces may be recognized by courts in the United States as a valid, effective divorce judgment under the law of the state where it was granted provided: (a) if the state was, at the time of divorce, the state of domicile or habitual residence of one party to the marriage; or (b) if the divorce was granted by a court having jurisdiction over both parties, and if at least one party appeared in person and the other party had notice of and opportunity to participate in the proceeding. See Restat (3d) of Foreign Relations Law of the U.S., §484 (emphasis added).

Many jurisdictions have consistently applied the principle of comity to uphold a divorce judgment issued by a foreign court of a competent jurisdiction. See Badawi v. Wael Mounir Alesawy, 135 A.D.3d 792, 793 (2016) (recognizing a foreign judgment issued in an Abu Dhabi court in New York based upon doctrine of comity, which “should be extended to uphold the validity of a foreign divorce decree absent a showing of fraud in its procurement or that recognition of the judgment would do violence to a strong public policy of New York”); Rabbani

v. Rabbani, 178 A.D.2d 637 (N.Y. Sup. 1991); DeGanay v. DeGanay, 261 A.D.2d 175 (N.Y. Sup. 1999); McCarthy v. McCarthy, 361 Mass. 359 (1980).

Although Maine has not affirmatively adopted the Restatement of the Law, Third, of Foreign Relations Law of the U.S., this Court has accepted the principle of comity to recognize foreign judgments issued by courts of competent jurisdiction in Roy v. Buckley, 1997 ME 155. The Maine District Court carefully applied the principles of Hilton v. Guyot and Roy v. Buckley to determine that the doctrine of comity appropriately applied to the Swedish Divorce Judgment. App. at 7-11.

In evaluating whether the Maine Court properly applied the facts and the law, the Maine Law Court must consider the record, the prior filings, and the Swedish Court decisions relied upon by the Maine District Court in rendering the decision to recognize the Swedish Divorce Judgment, including the following:<sup>5</sup>

- At the time of the first divorce complaint was filed in Sweden, Mr. Lynch was a resident of Stockholm, Sweden. The Lynches each resided in Sweden the four years prior to the Complaint and still maintained Swedish work permits, residence permits, and visas. Their daughter, then a minor, also maintained residence in Sweden and attended a Swedish school.<sup>6</sup> Thus, the Swedish Court properly found Ms. Lynch to be was subject to personal jurisdiction in Sweden.

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<sup>5</sup> Throughout these proceedings, neither party challenged the assertion that Sweden's judicial system is an impartial tribunal based upon traditional notions of fairness and due process.

<sup>6</sup> While Ms. Lynch argues that the Stockholm City Court did not have personal jurisdiction, at no time did Ms. Lynch file a motion to dismiss the Swedish complaint based upon a lack of personal jurisdiction. Both the Stockholm City Court and the Swedish Appeals Court acknowledged, but rejected, her defense that the Swedish courts did not have personal jurisdiction over her.

- Ms. Lynch was properly served with the Swedish Divorce Complaint by certified mail. She responded timely to the Complaint and objected to the Sweden court's exercise of personal jurisdiction over her.<sup>7</sup> Through her ten submissions to the court, as well supporting certificates filed by her family and friends filed in the Stockholm City Court, she disputed any intentions of permanently residing in Sweden. She requested a six-month "reconsideration" period, which the Stockholm Court granted her. Thus, Ms. Lynch had ample opportunity to present evidence to support her arguments.
- While Ms. Lynch did not have Swedish counsel, she retained counsel in Maine as of January 22, 2014. Ms. Lynch's initial response to Mr. Lynch's Sweden complaint was prepared by Maine counsel and filed in the Stockholm Court in Swedish. Thus, she had the access to legal representation since the onset of the first divorce and was able to prepare her objections in Swedish. Further, she availed herself of legal procedures applicable to her case, including the petition for reconsideration and, later, a successful appeal of the appointment of the property executor.
- On April 1, 2015, the Stockholm City Court entered a final Divorce Judgment and appointed a property executor to divide marital property. In its decision, the Stockholm City Court specifically acknowledged Ms. Lynch's arguments: that the Swedish court was not a competent jurisdiction; that the court did not have personal jurisdiction over her; and that the Maine divorce was also pending. Swedish Court specifically rejected each argument.

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<sup>7</sup> Ms. Lynch did not challenge service of process of the Swedish Divorce Complaint served via certified mail.

- Ms. Lynch then filed leave to appeal the Sweden Divorce Judgment to the Swedish Appeals Court. She was granted leave and proceeded with an appeal of the divorce decree and appointment of the property administrator. In the Swedish Appeal Court, Ms. Lynch she filed an additional 12 submissions stating her arguments in opposition to the entry of the Swedish Divorce Judgment. On May 13, 2015, the Swedish Appeals Court affirmed the trial court's entry of the Divorce Judgment. The Court, however, granted Ms. Lynch's appeal pertaining the issue of an appointment of an administrator for the division of marital property. Thus, the Swedish final Divorce Judgment became legally effective as of April 1, 2015, but the issue as the property administration remains unresolved.

As outlined above, the Maine District Court properly concluded that: the Swedish courts had personal jurisdiction over Ms. Lynch; the Swedish courts (both the trial court and appellate court) provided Ms. Lynch ample opportunity to defend her position and respond to Mr. Lynch's arguments; and that due process rights were afforded to Ms. Lynch. The Sweden Court concluded that it was the first court to preside over the divorce, the court of exclusive jurisdiction, and entered a final divorce judgment dissolving the Lynches' marriage. The Maine District Court properly accepted this conclusion.

**A. THE PROCEDURE TO DIVIDE MARITAL PROPERTY DOES NOT BAR THE DOCTRINE OF COMITY FROM RECOGNIZING THE FOREIGN DIVORCE JUDGMENT.**

Appellant argues that the Maine District Court erred in applying the principles of comity due to fact that Mr. Lynch's military pension is not divisible under a foreign divorce decree and foreign property judgment may not be enforceable in Maine. See 10 U.S.C. §1408(a)(1)(A) and 14 M.R.S. §8502(2). These factors are not relevant in evaluating the doctrine of comity.

Maine and Sweden civil procedures differ in divorce actions. In Maine, divorce proceedings consider all property issues prior to issuing a decree of divorce. In Sweden, a final divorce is granted and a property executor is appointed to divide marital property if the parties cannot agree on the division of property.

Both the Maine Court and the Swedish Court have each considered the impact of a property distribution in the two jurisdictions, as well as the unique facts that will need to be considered by either court in the Lynches' property distribution. The Maine Court noted that Swedish property executor's appointment is pending Ms. Lynch's appeal and that an equitable property distribution action could be necessary related to the property not divided by Stockholm City Court. The Stockholm City Court found that because Denise Lynch submitted a divorce application when a divorce was already pending in Sweden, "there are special reasons to consider the application for an administrator for the division of marital property notwithstanding the competing proceeding at an American Court." Additionally, the Stockholm Court left open the question of whether to apply Maine or Swedish law.<sup>8</sup>

While it is acknowledged that a Swedish court, or any other foreign court, cannot issue an order to divide a military pension, Maine Court does not have jurisdiction to divide the pension either. Under 10 U.S.C. §1408, an American court may not divide a military pension unless: (a)

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<sup>8</sup> In the Maine District Court's Order of Dismissal, dated March 2, 2016, the Court incorrectly found:

The Swedish court also noted; 'Furthermore a Swedish court lacks jurisdiction over American investments, the Parties home in the United States and their property at the home, and proceeding are already pending at an American court concerning the Parties' economic relationship. If a division of marital property takes place in Sweden, there is a risk that she will be denied what she is entitled to under American law as a result of she and Daniel Lynch having been married for 24 years and that she facilitated his career by moving with him several times and taking care of his family.'

It is important to note that this is not the holding of the Stockholm City Court, but rather a *summary of Denise Lynch's argument as recited by the Court*. App. at 83-89, ("Denise Lynch has basically stated the following . . ."). The Stockholm City Court did not adopt these facts as findings in its Reason For Judgment. App. at 89.

the court has jurisdiction over the member by reason of his residence (other than because of military assignment) in the territorial jurisdiction of the court; (b) his domicile in the territorial jurisdiction of the court; or (c) his consent to the jurisdiction of the court. See Wagner v. Wagner, 768 A.2d 1112, 564 Pa. 448 (Pa. 2001). Whereas Mr. Lynch does not reside in Maine, is not domiciled in Maine, and does not consent to the jurisdiction of a Maine court, a Maine court cannot divide the pension. Thus, the limited property in Maine to be considered by the Maine court is the real estate and personal property.

While Stockholm City Court cannot divide the pension, the property executor can consider the value of the parties' marital property, including the existence of Mr. Lynch's retirement and pension and real estate, to establish a fair property settlement.

Presently, neither jurisdiction has proceeded with the division of marital property. Stockholm has stayed the property executor pending this appeal. Maine cannot divide property if it does not have jurisdiction over the property. It is premature for either party to speculate as to the fairness of a property division that has not yet been accomplished. The issue before the Law Court presently is whether Maine must recognize the Swedish divorce decree as a final, valid divorce judgment. This is separate and apart from any property issues, which will proceed upon the recognition of the finality of the Divorce Judgment. The Maine Law Court must uphold the Maine District Court's dismissal of the Maine divorce and recognition of the foreign divorce judgment.

**B. THE DISTRICT COURT PROPERLY CONSIDERED THE DOCTRINE OF COMITY DESPITE THE TIMING OF THE SWEDISH DIVORCE.**

Appellant argues that the Maine District Court erred in applying the doctrine of comity due to Mr. Lynch's deliberate choice to pursue a Swedish divorce decree and suggests that Ms. Lynch

should (or would) have been able to obtain a divorce in Maine first. This is simply not accurate nor a recognized exception to the principle of comity.

The principles of comity establish a presumptive rule that a final judgment of a foreign court from a competent jurisdiction having jurisdiction over the parties and exercising notions of due process will be given effect. Both common law and the Restatement recognize exceptions to this doctrine in the case of fraud, *ex parte* decisions, violations of public policy, lack of jurisdiction, or prejudice. Mr. Lynch's selection of a forum in his country of residence or the pursuit of the Swedish divorce (rather than a Maine divorce) is not among the exceptions that would prevent the application of the doctrine of comity.

Moreover, a closer examination of the facts would suggest it is not *Mr. Lynch* who attempted to or alter the divorce proceedings in favor of Sweden. The Law Court should consider *Ms. Lynch's role* in filing a second divorce in Maine by signing a Maine divorce complaint, under oath, falsely attesting to the fact that she had resided in Maine for a period of six months prior to the divorce complaint. Ms. Lynch then availed herself of the opportunity to request a period of reconsideration to stay the Swedish divorce for a period of six months. Upon being properly served with the Stockholm City Court Divorce Complaint, Ms. Lynch filed a request for "reconsideration" in Sweden, or a six-month waiting period in the Stockholm Court suggesting that she contested the divorce. Ms. Lynch delayed the Swedish proceeding for six months in order to establish the requisite residency in Maine to proceed with a simultaneous divorce in Maine. In reality, Ms. Lynch did not contest a divorce; she contested Mr. Lynch's choice of forum.

Mr. Lynch filed a Divorce Complaint in the Stockholm City Court at a time in which Sweden was the only court with subject matter jurisdiction over the parties' divorce and during which Ms. Lynch did not meet the residential requirements to file a divorce in Maine.<sup>9</sup> Ms. Lynch's unilateral decision to leave Sweden, establish a new residence in the United States, and file a second, parallel divorce action was unfair and prejudicial to the Mr. Lynch.

Accordingly, the Maine District Court properly applied the doctrine of comity notwithstanding Mr. Lynch's rightful pursuit of the Sweden divorce.

## **II. THE MAINE DISTRICT COURT PROPERLY DISMISSED THIS ACTION BASED UPON LACK OF SUBJECT MATTER JURISDICTION.**

In addition to dismissing Ms. Lynch's Maine divorce action based upon the doctrine of comity, the Maine District Court also ruled that "[b]ecause the Swedish Court has issued a Final Judgment divorcing these parties, the parties are no longer married, and therefore this court is without jurisdiction to divorce them." App. at 10. Ms. Lynch's Notice of Appeal and Appellant's Brief does not appeal the dismissal based upon the lack of subject matter jurisdiction.

In order to pursue a divorce action, the parties must be legally married. Once divorced, the Maine District Court no longer has subject matter jurisdiction. The United States Government has recognized the Swedish divorce decree and changed Ms. Lynch's marital status to that of a "former spouse." Since the parties are no longer legally married and are divorced pursuant to the Swedish Decree of Divorce, dated April 1, 2015, Maine courts no longer have subject matter jurisdiction over the divorce proceeding.

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<sup>9</sup> In fact, if Ms. Lynch wanted to file a divorce proceeding at any time between October 2013 and May 25, 2014, she would have had to file the divorce in the Stockholm City Court.

**III. THE DISMISSAL OF THE MAINE DIVORCE COMPLAINT BASED UPON THE DOCTRINE OF COMITY SHOULD NOT BE EVALUATED IN RELATION TO DENISE LYNCH'S CLAIM FOR SPOUSAL SUPPORT.**

A court's application of the doctrine of comity to give effect to a foreign judgment does not include a comparison of the legal outcomes should a court choose to or not to recognize the foreign judgment as a valid and effective judgment. The Swedish Divorce Judgment was appropriately considered by the Maine Court in determining whether the Judgment was rendered by a court of competent jurisdiction, having jurisdiction over the parties who each were subject to the jurisdiction of the court, and having provided the parties with an opportunity to defend themselves. The Maine District Court need not evaluate how the outcome of the divorce judgment would have differed if rendered by Maine instead of Sweden.

The Appellant argues that the Maine District Court erred in applying the principle of comity to a divorce that did not dispose of all legal issues, including property, and therefore no claims or issues should be precluded in Maine. Thus, the Appellant argues that the Maine District Court erred in determining that the Swedish decree of divorce rendered Ms. Lynch's Maine Divorce Complaint moot and barred under the principles of *res judicata*. While Mr. Lynch's motion sought the dismissal based upon mootness and *res judicata*, the Maine District Court, however, did not dismiss the Maine Divorce Complaint specifically on these grounds. The Maine District Court's Order of dismissal was based solely upon the application of the principle of comity and the lack of subject matter jurisdiction.

Nonetheless, *in arguendo*, Daniel and Denise Lynch are legally divorced pursuant to a final Divorce Judgment entered into by the Stockholm City Court on April 1, 2015. This divorce has been recognized by the United States Government. During the Swedish divorce proceeding, in which both Denise Lynch and Daniel Lynch were parties, Ms. Lynch had the opportunity to

request or petition the Swedish Court for spousal support or “maintenance,” but did not do so. The Court has entered a final Divorce Judgment declaring the marriage to be terminated without an award of spousal support.<sup>10</sup> Therefore, the Maine District Court would have exercised appropriate discretion in dismissing Ms. Lynch’s divorce complaint, including her claim for spousal support, based upon the mootness and *res judicata*. See Braunstein v. Braunstein, 497 N.Y.S.2d 58 (1985) (recognizing a Swedish divorce judgment in an equitable action filed in New York but dismissing wife’s request to relitigate claims for spousal and child support in New York).

### CONCLUSION

At the time Mr. Lynch filed the divorce matter in January of 2014, the Stockholm Court was the only appropriate forum having personal and subject matter jurisdiction over both parties. The Judgment was entered after Ms. Lynch responded and was given a six-month period of time. Ms. Lynch then had the opportunity to submit more than 10 submissions to the Court stating her objection. She appealed the decision and submitted an additional 12 submissions related to her objection. Thus, she participated in the litigation with ample opportunity to defend herself. The Maine District Court properly considered these factors in applying the doctrine of comity to give legal effect to the Divorce Judgment.

Ms. Lynch is asking this Court to ignore the final Divorce Judgment of another court, which has been recognized by the United States Government, in order to proceed with a second divorce in Maine. Doing this, however, would require the Maine District Court to proceed without subject matter jurisdiction and in violation of the doctrine of comity.

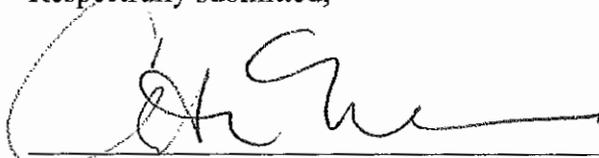
For these reasons, the Law Court must affirm the District Court’s Order, dated March 15, 2016, dismissing Ms. Lynch’s complaint.

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<sup>10</sup> Under Maine law, a party shall not be entitled to spousal support if not specifically ordered in the divorce judgment. 19-A M.R.S. §951-A (9).

Dated at Portland, Maine, this 16<sup>th</sup> day of May, 2016.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C. Miller', written over a horizontal line.

Catherine C. Miller, Esq.  
Attorney for Mr. Lynch/Appellant  
Bar Number: 8590

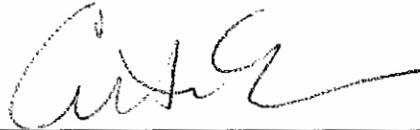
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CERTIFICATE OF SERVICE

I, Catherine C. Miller, Esq., hereby certify that I have caused two copies each of the Brief of Appellee by depositing conformed copies thereof in the U.S. Mail, first class, postage prepaid, to the following:

Matthew C. Garascia  
Law Office of Matthew C. Garascia, Esq.  
158 5<sup>th</sup> Street  
Auburn ME 04210

Dated at Portland, Maine, this 16<sup>th</sup> day of May, 2016.



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