

FILED
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No. 100739-6
WA Court of Appeals, Div 3 Case No. 37532-3-III

SUPREME COURT
OF THE STATE OF WASHINGTON

STACY RUDDICK, APPELLANT

V.

RANDALL RUDDICK, III, RESPONDENT

ANSWER TO PETITION FOR REVIEW

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TABLE OF AUTHORITIES

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In re Marriage of Ruddick, No. 35516-4-III (Wn. App, Nov 1, 2018)

Pages: 3, 9, 12, 13, 14, 15

Statutes

RCW 26.19.075

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RCW 26.19.080

Pages: 12, 13

I. IDENTITY OF RESPONDENT

RANDALL RUDDICK, by and through his attorney, **JASON R. NELSON**, respectfully requests this court deny review of the February 8, 2022 unpublished opinion of the Court of Appeals in **Ruddick v. Ruddick**, Cause No. 37532-3-III.

II. ANSWER TO ISSUES PRESENTED FOR REVIEW

1. The decision of the Court of Appeals does not involve a substantial public interest issue or constitutional issue that should be determined by the Supreme Court.
2. The decision of the Court of Appeals is not inconsistent with the previous decision of the Court of Appeals in this same matter, nor is it in conflict with any statutes or previous decisions of other courts.

III. STATEMENT OF THE CASE

The parties have three children from their marriage, Olivia, Randall and Dennis. **CP 5** At the time of entry of the last Child Support Order, (May 23, 2017), the children were ages 12, 10 and 8, respectively. **CP 329** Ms. Ruddick has been the primary parent of the children. **CP 2**. All three of the children have been diagnosed with a genetic disorder known as Angelman Syndrome and

require substantial developmental treatment care and attention. **CP 2**

In February 2013, the parties concluded a trial on Ms. Ruddick's request to relocate with the minor children from the state of Washington to San Diego, California. The trial court determined that Mr. Ruddick was unable to overcome the presumption in favor of the relocation and, among other findings, the court found that although his reasons for objecting were also important they were not sufficient to balance against the relocation. **CP 2**

On February 15, 2013, the court entered a new parenting plan that took into account the geographical distance and the special needs of the children. **CP 5-11** Primarily the plan allowed Mr. Ruddick residential time during the last two weeks of August each year. **CP 7** The trial court found that given the distance and the cost of long-distance transportation a "standard" parenting plan would be impractical to follow. **CP 6** Regarding the costs of transportation, the trial judge found that both parties presented facts relating to travel costs and that there would no doubt be "expensive" travel costs for the father. **CP 3**

Regarding child support, the trial court ordered that because there was a pending support modification action, the current order of child support would remain in effect until modified and the modification commissioner was ordered to take into account transportation costs as a result of the relocation of the children. **CP 3-4** The trial court further ordered that Mr. Ruddick was to receive the tax

exemptions for 2012 and for all subsequent years unless Ms. Ruddick could demonstrate a benefit from the exemptions based on her income, subject to being addressed at the child support modification hearing. **CP 4**

On September 19, 2014, a hearing was held on the petitioner's motion to have the respondent held in contempt for missing his visit with the children during the summer of 2014. After reviewing the declarations of the parties and hearing the argument of counsel, the commissioner found that Mr. Ruddick could have exercised the summer visit and he was held in contempt for not doing so. **CP 138-144** Attorney's fees and respite costs for the petitioner were ordered with the amount to be determined at the time of the modification hearing. **CP 143** Mr. Ruddick was able to purge the finding of contempt by exercising his 2015 summer visit. **CP 142, 163** Mr. Ruddick subsequently purged the contempt. **CP 225-226**

On March 26, 2015, the Honorable Maryann Moreno, Superior Court Judge revised the decision of the commissioner as to the respite costs sought by the petitioner. The judge ordered that Mr. Ruddick could offset the respite costs by exercising additional time with the children in California by August 15, 2015. **CP 166** Mr. Ruddick exercised the additional residential time. **CP 225-226**

On February 3, 2016, in preparation for the support modification hearing, Mr. Ruddick submitted a declaration in which he stated that he had incurred visitation expenses in the summer of 2015 in the amount of \$7,161.42 and that he

did not believe visitation expenses would be significantly less in the summer of 2016. **CP 226** Mr. Ruddick stated in his declaration that the 2015 visit was for four weeks so he did expect the two-week visit in 2016 to be less in terms of food and necessities but because he had received an unexpectedly good deal on housing in 2015 he did not expect that expense to change in 2016. **CP 226** On the same date, Mr. Ruddick filed a proposed child support worksheet that included transportation and visitation expenses of \$500.00 per month. **CP 228**

A child support modification hearing was held on February 8, 2016 and a written ruling was submitted on April 22, 2016. **CP 262-266**

In her written ruling, the commissioner found that the both parties agreed that Ms. Ruddick's net income was \$5,141.00 per month. **CP 263**

Relying on Mr. Ruddick's most recent paystub, the commissioner found Mr. Ruddick's net monthly income to be \$3,804.00. **CP 263**

In addressing the costs associated with Mr. Ruddick's residential time, the commissioner found that given the special needs of the children, Mr. Ruddick would need to obtain a "condominium-like" setting for himself and the three children, pay for travel costs to and from California and provide for food and necessities in-home. **CP 263-264**

The commissioner found that Ms. Ruddick alleged that Mr. Ruddick's visitation expenses would not total more than \$1,680.00 per year. However, the

commissioner found her testimony to be inconsistent with her previous claim for respite care for two weeks, which she alleged would total \$4,000.00 for in-home care and \$9,000.00 for out-of-home care. **CP 263-264**

The commissioner found that Mr. Ruddick had provided an accounting of these expenses for his visit in 2013 and 2015, with receipts for the major expenses. **CP 264** The commissioner determined the average yearly costs for the visits was \$4,213.00. **CP 264** Given an expectation that travel costs would fluctuate, the court set the travel and visitation expenses at \$4,500.00 per year and allowed Mr. Ruddick a monthly credit of \$375.00 per month. **CP 264** Taking into account the net incomes and credit, the commissioner set Mr. Ruddick's child support obligation at \$777.00 per month. **CP 264**

On the same date that she issued her written ruling, the commissioner signed and entered a child support worksheet reflecting her ruling. **CP 258-261** The entry of the worksheet was referenced by the commissioner in her written ruling in which she stated, "I have filed a signed child support worksheet that reflects these numbers." **CP 264** The worksheet entered states that it is "signed by the Judicial/Reviewing Officer" and is not designated as a "proposed" worksheet. **CP 258** No revision hearing ever took place regarding the commissioner's order and worksheet of that date.

On July 15, 2018, a final Order for Child Support was entered reflecting

the figures as set forth in the commissioner's worksheet and addressing such issues as a credit for past transportation expenses and the allocation of income tax exemptions. **CP 275-281**

On July 25, 2016, Ms. Ruddick filed a new declaration as part of a motion for reconsideration. In her new declaration, she made new allegations regarding her income, asserted the existence of special expenses not covered by the regular transfer payment and provided testimony regarding what she believed were reasonable transportation and visitation expenses for Mr. Ruddick. Ms. Ruddick also requested additional relief not sought at the time of hearing. **CP 283-290**

Mr. Ruddick responded with his own declaration in which he challenged the timeliness of the motion, the attempt to submit new evidence post-hearing, the attempt to request relief not argued for at the time of hearing and the factual assertions of Ms. Ruddick. **CP 291-296.** Ms. Ruddick replied, claiming that some of the information she alleged was not available to her until after the modification hearing. **CP 297-301**

On September 29, 2016, the commissioner entered a written order denying the motions for reconsideration filed by Ms. Ruddick, with the exception of the request to reduce her income. The commissioner then recalculated child support based on the new income figures. **CP 306-309**

On May 23, 2017, the new final Order of Child Support was entered based on the commissioner's ruling of September 29, 2016. Because the commissioner

who conducted the hearing and made the subsequent decision on reconsideration was a commissioner pro tem who was no longer serving as such, the final order was signed by another commissioner. **CP 327-333** Thereafter, Ms. Ruddick filed an appeal with the Court of Appeals, Division III. **CP 334-345**

In a November 1, 2018 unpublished decision, the Division III Court of Appeals held that expenses such as rent, diapers, entertainment, car rental fees and food expenses did not qualify as “long distance transportation expenses” under RCW 26.19.080(3) but that such expenses could be apportioned between the parents as special child rearing expenses for visitation purposes. The court remanded the matter for a determination of whether the expenses claimed by Mr. Ruddick could be apportioned based on grounds other than “long distance transportation expenses.” Additionally, the court of appeals ruled that on remand, Ms. Ruddick could raise her arguments regarding whether the claimed expenses were excessive and whether she should also be reimbursed for similar expenses. This case is referred to below as Ruddick1. **In re Marriage of Ruddick**, No. 35516-4-III (Wn. App, Nov 1, 2018)

On remand, the commissioner reviewing the matter found that Mr. Ruddick had \$3,930.00 per year in special child rearing expenses based on the special medical and psychological needs of the children, in addition to long distance transportation expenses. Mr. Ruddick was then granted a deviation in child support of \$375.00 per month.

Ms. Ruddick's request for a deviation based on claims of special child rearing expenses was denied, with a finding by the commissioner that the appellate court's opinion did not direct the trial court to consider Ms. Ruddick's claims of additional expenses. Ms. Ruddick filed a timely appeal of the commissioner's decision on remand.

In an unpublished opinion dated February 28, 2022, the Division III Court of Appeals affirmed the commissioner's decision on remand except as to the award of fees granted Mr. Ruddick and as to the determination that the commissioner was not required to consider the special child rearing expenses claimed by Ms. Ruddick. The appellate court remanded the matter back to the commissioner for the limited purpose of reviewing Ms. Ruddick's claim for reimbursement for special child rearing expenses, with the evidence considered to be that which was filed prior to September 29, 2016. This case is referred to below as Ruddick2.

The remanded issue was subsequently ruled on by the commissioner and an order was entered.

IV. ARGUMENT

This case does not involve a substantive public policy issue or constitutional issue that should be resolved by the Supreme Court.

Contrary to the argument of Ms. Ruddick, the parents in this matter have been equally treated under the law. In the present case, the appellate court has

ruled in two separate decisions that the trial court should consider each party's claim of special child rearing expenses. In "Ruddick 2" the appellate court specifically ordered the trial court to consider Ms. Ruddick's claims regarding special child rearing expenses, just as the trial court had regarding Mr. Ruddick's claim of such expenses. There is no equal protection issue arising from the appellate court's decisions in this matter.

The record before the trial court and the appellate court does not support Ms. Ruddick's argument that the allocation of special child rearing expenses between the parties could potentially lead to an inability to properly care for the children and the involvement of CPS in this matter. Ms. Ruddick's argument in her petition for review is that the parents should be treated fairly in the application of the statute as to special child rearing expenses. The decisions of the court of appeals treats both parents fairly by directing the court to consider the claims of both parents. As such, contrary to the petition filed by Ms. Ruddick, the rulings by the Division III Court of appeals were appropriate under Washington law, consistent with the public policies behind those laws and pass any constitutional scrutiny. Both parents were treated equally in the application of the law.

With respect to the Ruddick's and their children, the statements within the petition that the disabilities of the Ruddick children makes review more necessary in this case are not supportable. Whether or not a child is disabled, the family law statutes, particularly regarding child support, should be consistently applied. That

is why, however, statutes such as **RCW 26.19.075** and **RCW 26.19.080** allow the courts to consider other types of expenses not normally incurred in a household and provides for how the courts may treat such expenses.

There is no valid equal protection argument or public policy issue that needs to be resolved by the Supreme Court.

There are no inconsistencies in the two decisions from the Court of Appeals in this matter.

Ms. Ruddick argues that the court should accept review “given the apparent inconsistencies in the application of this statute by Division III Court of Appeals.” The statute referred to by Ms. Ruddick is **RCW 26.19.075**.

In *Ruddick1*, the Division III Court of Appeals reviewed the decision of the trial court awarding Mr. Ruddick a deviation in his child support obligation based on long distance transportation expenses. The appellate court found that some of the expenses did not qualify as transportation expenses given a plain reading of the statute. The appellate court also found, however, that there could be a statutory basis to order the sharing of the non-transportation expenses and remanded the matter to the trial court for a determination on that issue. The appellate court also ordered that Ms. Ruddick could raise the issue of special child rearing expenses that she incurs at the remand hearing.

In *Ruddick2*, the trial court reviewed the remand decision of the commissioner. On remand, the commissioner found that the non-transportation

expenses documented by Mr. Ruddick were appropriate expenses to consider based on the special medical and psychological needs of the children and that **RCW 26.19.075(c)(iii) and (iv)** allows the court to deviate from the standard calculation for support in consideration of such expenses.

On appeal, the Court of Appeals reviewed the commissioner's decision that the expenses were appropriately considered and an appropriate basis for deviation. The appellate court agreed that **RCW 26.19.075** provided a nonexclusive list of bases for deviation from the standard calculation in child support and that **RCW 26.19.080** also allowed the court to consider the allocation of special child rearing expenses.

The appellate court found that the trial court's decision on remand was consistent with the directions of the appellate court in *Ruddick1*. In *Ruddick1*, the appellate court authorized the trial court to consider whether there was a statutory ground under which to consider the non-transportation expenses documented by Mr. Ruddick. That is in fact what the commissioner subsequently did. The appellate court's decision in *Ruddick2* to uphold the ruling of the commissioner on remand regarding the statutory bases was completely consistent with the ruling of the appellate court's decision in *Ruddick1*.

Further, the remand ordered by the appellate court in *Ruddick2*, was consistent with the decision in *Ruddick1*. In *Ruddick1*, the appellate court allowed Ms. Ruddick to request the court to consider her claims regarding child

rearing expenses as well. On remand, it was erroneously argued on the part of Mr. Ruddick that the issue was not before the trial court on remand and the commissioner agreed. In Ruddick2, the appellate court discussed the error and ordered a second remand, directing that the commissioner consider Ms. Ruddick's claims regarding such expenses. (The Ruddick2 court correctly limited the evidence to be considered to that filed prior to September 29, 2016.) That decision in Ruddick2 was entirely consistent with the appellate court's decision in Ruddick1.

The appellate court did not preclude Ms. Ruddick from asking the trial court to consider special child rearing expenses to the same extent that the trial court considered those expenses of Mr. Ruddick. In fact, in both Ruddick1 and Ruddick2, the trial court directed the expenses to be considered to the extent they were part of the record prior to September 29, 2016. Contrary to Ms. Ruddick's petition, the parties were not treated differently.

Ms. Ruddick's claims to the court in her petition that the resulting decision of the trial court leaves her financially unable to support the children is not supported by the record in this case, which includes findings regarding the income of Ms. Ruddick as well as the additional financial support Ms. Ruddick receives from other sources to offset the child rearing expenses she claims. As is also pointed out by the court of appeals in Ruddick2, Ms. Ruddick's claims regarding

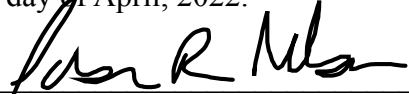
such expenses have been inconsistent. Regardless, in both Ruddick1 and Ruddick2, the appellate court directed the trial court to consider and evaluate such claims.

V. CONCLUSION

Mr. Ruddick requests that the Supreme Court deny the request for review. There are no constitutional issues to be clarified, no substantial public policy interests to be addressed and no inconsistencies in the application of the statutes by the Division III Court of Appeals.

I certify that there are 3,177 words in this response, including the title page and the following declaration of service.

Respectfully submitted this 25th day of April, 2022.



JASON R. NELSON WSBA NO. 25107
Attorney for Respondent

DECLARATION OF SERVICE

I, Jason R. Nelson, under penalty of perjury pursuant to the laws of the State of Washington, declare that on this 25th day of April, 2022 I sent via messenger service a copy of this brief to be delivered to attorney Gary Stenzel, 1325 West Mallon Ave, Spokane, Washington 99201.

Signed at Spokane, Washington on this 25th day of April, 2022.



JASON R. NELSON WSBA NO. 25107

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