No. 89472-8
Case No. 43125-4-II

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

In Re the Marriage of:

MATTHEW ANDERSON
Respondent

v.

TAMRA ANDERSON
Appellant.

RESPONSE TO PETITION FOR REVIEW

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TABLE OF AUTHORITIES

Statutes, Rules and other Authorities:

A. IDENTITY OF RESPONDING PARTY

Matthew Anderson, the appellant below, is the respondent in this petition for review of decision of the Court of Appeals Division II, terminating review after cross motions for reconsideration were filed, and denied.

B. COURT OF APPEALS DECISION

Court of Appeals, Division II, decision entered on September 4, 2013 and decision denying cross-motions for Reconsideration entered on October 2, 2013.

C. ISSUE PRESENTED FOR REVIEW

Whether this Court should deny Ms. Anderson's Petition for Review under RAP 13.4(d), when she fails to meet her burden of showing this matter meets any of the four bases for this Court to accept review.

D. STATEMENT OF FACTS

The parties entered into an agreement to resolve their dissolution, which resulted in a CR2a Agreement being signed by the parties and their attorneys on January 30, 2009 (it was dated 2008 inadvertently, which is not disputed). The issue of the amount of support was to be resolved by submitting the issue to arbitration, which the parties subsequently did.

As described by Ms. Anderson, child support was set by the arbitrator at $700 per month, beginning June 1, 2009. While it is agreed

that this ruling of the arbitrator was prior to the tables being extended to a combined net income of $7,000, it was common practice at that time to "extrapolate" the table upwards for combined incomes above $7,000. The arbitrator was certainly aware of this fact at the time his decision was made. Ms. Anderson is also correct in stating that at the time of the arbitrator's decision the parties had a combined monthly income of nearly $12,000, which was nearly *double* the $7,000 cap in the support guidelines at that time.

Ms. Anderson correctly states the basis for the downward deviation as being the additional time the children spend with their father, the obligor. That has not changed.

Ms. Anderson states "[w]hen final orders were entered dissolving the marriage, on September 10, 2010, after a year after arbitration, the trial court simply incorporated the arbitrated order of child support." While this is accurate, it does not convey any reason for the extreme delay between the arbitration ruling and the entry of the final documents. The decree of dissolution incorporated the arbitrator's ruling as to child support at $700/mo. While Matthew had been paying the arbitrated amount since June 1, 2009, it was not the final order of the court until it was incorporated in the Decree of Dissolution, which was filed on September 10, 2010. Ms. Anderson's Motion for Adjustment was filed

September 28, 2011, only 12 months after the final orders in the dissolution were entered. Mr. Anderson did submit a declaration in response to Ms. Anderson's Motion for Adjustment, not Petition for Modification, in which he intended to state he had been paying the $700 per month for over two years; NOT that it had been two years since the Order of Support had been filed. The record is clear, the Order of Support, which had the $700 transfer payment was not entered with the Court until September 10, 2010.

Ms. Anderson's Motion for Adjustment was heard and, contrary to statute, the Commissioner terminated Matthew's downward deviation, which was upheld by the trial court at revision. The matter was timely appealed and it was confirmed by the Court of Appeals that the court below improperly terminated Matthew's downward deviation for the additional time he spends with his children.

Ms. Anderson moved for reconsideration on this issue and Matthew moved for reconsideration on the issue of whether the Court below erred by not denying the Motion for Adjustment as 24 months had not passed from entry of the Order sought to be adjusted and filing the Motion for Adjustment, as required by the statute. Both motions were denied and Ms. Anderson timely filed the instant Petition for Review.

E. ARGUMENT

RAP 13.4(b) sets forth four conditions under which the Supreme Court may accept review of a decision of the Court of Appeals terminating review of the lower court's decision. Ms. Anderson fails to meet her burden to show that any of these bases have been met and, thus, her Petition for Review should be denied.

First, this court may accept review if the decision of the Court of Appeals is in conflict with a decision of the Supreme Court. Here, Ms. Anderson provides no argument, or support for this proposition, thus subsection (1) is not met. RAP 13.4(b)(1).

Second, this court may accept review if the decision is in conflict with another decision of the Court of Appeals. Here, there is no such conflict cited, as none exists. Thus, subsection (2) is not met. RAP 13.4(b)(2).

Third, this court may accept review if a significant question of law under the Constitution of the State of Washington, or of the United States is involved. Again, here, no such interest is implicated, which has not already been clearly addressed and defined. Thus, subsection (3) is not met. RAP 13.4(b)(3).

Finally, fourth, this court may accept review of a decision of the Court of Appeal if the issue involves an issue "of substantial public

interest that should be determined by the Supreme Court." We can only assume this is the basis for Ms. Anderson's petition for review. The plain language of RAP 13.4(b)(4) requires that the issue needs to be determined, which would mean that it has not heretofore been determined. That is simply not the case in this matter. Herein, I will discuss why subsection (4) is also not met by Ms. Anderson.

Ms. Anderson attempts to convince this court that the issue of re-calculation of a downward deviation is required any time the basic support amount is changed. Respectfully, she simply misses the point. There is already a method for such determination, which is clearly set forth in RCW 26.09.170(5)(a), which sets forth the right to Petition the Court for a Modification of the Order of Support. Ms. Anderson choose not to use the petition process clearly laid out in our statutory framework, instead choosing to avail herself of the much simpler method set forth in RCW 26.09.170(7)(a), which provides for a Motion for Adjustment.

In other words, if a party wishes to argue the availability of a deviation (or tax exemptions, or post-secondary support), there exists a framework to do so. It is the Petition for Modification. If one chooses to pursue a simple and quick change to the transfer payment based solely upon a change in incomes or a change to the economic table, then they may choose to pursue a Motion for Adjustment, which is exactly what Ms.

Anderson did here. To allow her to choose a process where the issue of whether a deviation will be taken away (or tax exemptions re-allocated, or post-secondary support ordered) is NOT at issue and then to "sandbag" Matthew in court, when the issue was argued by the mother without being properly plead, would be inherently unfair.

Ms. Anderson tries to describe a scene wherein the children are being disadvantaged by not following the well-established rules and procedures to seek a termination of a deviation. That simply is not the case. These parents both earn in the six figures and these children, by any standards, are well cared for. Ms. Anderson's tale of woe is misplaced and should not be a basis for this court to accept review of this matter.

Ms. Anderson then tries to sway this court by arguing "public policy" as to other children in Washington. She asserts that by not allowing a parent to terminate a deviation via a Motion for Adjustment will harm the children in Washington. That is clearly false, as all that is required to avoid this harm is to properly plead and serve a Petition for Modification rather than a Motion for Adjustment. Simply choosing to file a Petition for Modification properly puts the other party on notice that issues of magnitude are before the court for decision and redetermination. Not filing a Petition for Modification does not put a parent on notice that they may lose valuable rights and benefits contained in an Order of

Support. The legislature has provided both a method to modify an Order of Support and its basic terms, as well as a simple and clear method to merely conform a current Order of Support to a parent's changed income or a change in the economic table or standards, which is by the filing of a Motion for Adjustment.

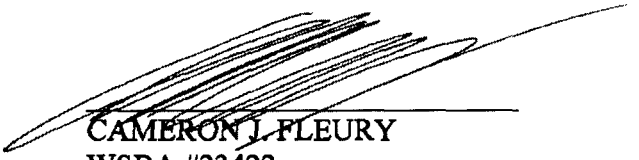
F. CONCLUSION

The burden is on Ms. Anderson to prove to this Court that her Petition for Review falls within the provisions of RAP 13.4(b) and has failed to do so. Her Petition for Review should be denied.

RCW 26.09.170 clearly already provides the relief sought by Ms. Anderson, had she merely chosen to properly plead and pursue her remedies.

Dated this 2nd day of December 2013.

RESPECTFULLY SUBMITTED,



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In re the Marriage of Anderson
Case No. 89472-8
Response to Petition for Review

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