

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

In the Matter of the Marriage of

LALIDA SCHNURMAN,

Respondent,

and

SETH SCHNURMAN,

Petitioner.

No. 89861-8

MOTION TO STRIKE
CORRECTED REPLY AND
REPLY TO ANSWER FOR
PETITION FOR REVIEW

1. Identity of Moving Party and Statement of Relief Sought

Respondent, LALIDA SCHNURMAN, respectfully requests this Court strike Petitioner Seth Schnurman's Corrected Reply brief and Reply brief because the Rules of Appellate Procedure permit a reply to an answer *only* if the answering party seeks review of issues not raised in the petition for review and, in this case, the answering party sought review of no additional issues.

2. Facts Relevant

On December 30, 2013, the Washington Court of Appeals, Division One, issued a published opinion in *In re Marriage of Schnurman*,

2013 WL 6858134, 316 P.3d 514 (2013). On January 28, 2014, Seth Schnurman filed a Petition for Review by this Court. Lalida Schnurman timely filed an Answer to the Petition for Review on February 26, 2014.

Seth Schnurman raised five issues in his petition, relating to 1) whether the trial court had authority to award a standard calculation of child support to one parent where both parents share residential time equally, 2) whether the standard calculation was properly awarded to the parent who earns less, 3) whether the RCW 26.19.075 standard deviations apply, 4) whether there ought to be a different method applied if incomes are equal but childcare costs are disparate, and 5) what methodology should be applied to determine whether the legislative goals of chapter 26.19 RCW are met where parents share equal residential time. In her Answer, although Lalida Schnurman restated the issues, she raised no additional issues.

On March 14, 2014, Seth Schnurman filed a Reply, and on March 17, 2014, he filed a Corrected Reply to Answer for Petition for Review.

3. Grounds for Relief and Argument

a. No reply is permitted under the Rules of Appellate Procedure, and any Reply should be stricken.

RAP 13.4(d) states in relevant part: “A party may file a reply to an answer *only* if the answering party seeks review of issues not raised in the

petition.” (emphasis added). This Court has declined to consider replies filed in cases where the answer did not raise any new issues, stating that in such cases a reply is not authorized by the rules of appellate procedure. *See e.g. Oltman v. Holland America Line USA, Inc.*, 163 Wn.2d 236, 261 n.17, 178 P.3d 981 (2008) and *Chevron USA, Inc., v. Puget Sound Growth Management Hearings Bd.*, 156 Wn.2d 131, 139 n.6, 124 P.3d 640 (2005) (“A party may file a reply brief to the opposing party’s answer to a petition for review only if the answer has raised new issues not addressed in the original petition. RAP 13.4(d).”). In *Chevron USA, Inc.*, the only new issue was a request for attorney’s fees; this Court accepted the reply brief only to the extent it addressed the issue of attorney fees, striking the remaining portions of the reply. 156 Wn.2d at 139 n.6.

Here, Lalida Schnurman’s Answer raised no new issues. No reply is therefore authorized under the Rules of Appellate Procedure, and this Court should not consider and should strike Seth Schnurman’s Reply brief and Corrected Reply brief.

b. This Court Should Award Attorney Fees to Respondent for Having to Bring This Motion.

This Court on its own initiative or on motion of a party may order a party or counsel who fails to comply with the Rules of Appellate Procedure to pay terms or compensatory damages to any other party who


has been harmed by the failure to comply. RAP 18.9(a). Because Seth Schnurman and his counsel should have been aware that a reply brief is not permitted under the Rules of Appellate Procedure where an Answer to Petition for Review raises no new issues, the Respondent, Lalida Schnurman, should not have to bear the cost of bringing this motion. Accordingly, this Court should award reasonable attorney fees to Respondent for having to bring this motion.

4. Conclusion

Because Lalida Schnurman's Answer to Petition for Review raised no new issues, no reply is permitted under the Rules of Appellate procedure, Seth Schnurman's Reply and Corrected Reply should be stricken, and Respondent should be awarded reasonable attorney fees for having to bring this motion.

DATED this 3rd day of April, 2014.

Respectfully submitted,


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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the below written date, I caused delivery of a true copy of RESPONDENT'S MOTION TO STRIKE CORRECTED REPLY AND REPLY TO ANSWER FOR PETITION FOR REVIEW to the following individual via U.S. Mail to the following:

H. Michael Finesilver
207 E. Edgar St.
Seattle, WA 98102
Attorney for Seth Schnurman

DATED this 3rd day of April, 2014, at Edmonds, Washington.


Lindsey Matter
Paralegal

OFFICE RECEPTIONIST, CLERK

From: OFFICE RECEPTIONIST, CLERK
Sent: Thursday, April 03, 2014 2:24 PM
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Rec'd 4-3-14

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From: Lindsey M. Matter [mailto:Lindsey@WestWaLaw.com]
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Subject: Schnurman v. Schnurman; No. 89861-8

Please see attached for filing:

Motion to Strike Corrected Reply and Reply to Answer for Petition for Review; and
Notice of Withdrawal and Substitution of Counsel.

Please contact me should you have any questions or concerns.

Very truly yours,

Lindsey M. Matter
Paralegal

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