No. 922985

THE SUPREME COURT OF WASHINGTON

Court of Appeals, Division III, Case Number: 32418-4

Spokane Country Superior Case Number: 14-2-00761-7

MARLO COYLE, on behalf of B.J.C.,

Petitioner/Appellant,

v.

NIMSHA ASIA GOINS,

Respondent.

RESPONDENT'S ANSWER TO PETITION FOR REVIEW

ROBERT R. COSSEY/WSBA #16481
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I. ARGUMENT

Ms. Coyle does not specifically cite any authority to support her request for review by this Court; however, her reference to public policy on page 10 of her brief appears to be a gesture toward RAP 13.4(b)(4), which states that a petition for review will be accepted by the Supreme Court only "[i]f the petition involves an issue of substantial public interest that should be determined by the Supreme Court." Review of a decision of the Court of Appeals is rarely accepted on this basis unless it has "sweeping implications" that affect members of the public beyond the litigants involved in the case. See, e.g., State v. Watson, 155 Wn.2d 574, 122 P.3d 903 (2005). Before proceeding to a discussion of the specific issues raised by Ms. Coyle in her petition, it is worth noting that the decision of the Court of Appeals for which Ms. Coyle seeks review is unpublished and has no precedential value that would affect judicial decisions that may follow; therefore, it is nearly impossible for this decision to involve an issue of significant public policy, because it does not affect any individuals beyond the parties themselves.

a. Pursuant to RAP 13.4(b), there is no basis to review the Court of Appeals' decision to affirm the trial court's exclusion of B.J.C.'s testimony.

Ms. Coyle argues that the Court of Appeals failed to allow the best evidence to be presented when it affirmed the trial court's exclusion of B.J.C.'s testimony, and that such an error is "antithetical" to the application and purposes of RCW 7.90 and constitutes an issue of significant public policy.

To that end, Ms. Coyle argues on pgs. 10-11 of her Petition for Review that:

> "[t]he policy behind RCW 7.90.005 et seq is to protect children from sexual activity directed at them by another person, and they cannot obtain a DV order because of not only who is alleged to have perpetrated these actions, but because they do not live with this particular Respondent."

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Ms. Coyle further argues that "[t]he public policy behind this act is to insure [sic] that victims have a proper day in court" and "the clear policy behind this overall statute is to give an alleged sexual assault victim a forum to air their facts of why they say they were sexually mistreated, not make your parents, or whoever happened to help you with the Petition the focal point of the hearing if doing so will absolutely distract the purpose of the proceeding." (Petition for Review, pgs. 11 & 12.) Ms. Coyle does not provide any authority for her assertions about the nature of the underlying purpose of this statute, however, and her comments on that subject should be disregarded by this Court; this Court need not address issues that a party neither raises appropriately nor discusses meaningfully with citation to authority. Saviano v. Westport Amusements, Inc., 144 Wn.App. 72, 84, 180 P.3d 874 (2008); citing RAP 10.3(a)(6); State v. Mills, 80 Wn.App. 231, 234, 907 P.2d 316 (1995); see also State v. Logan, 102 Wn.App. 907, 911, n.1, 10 P.3d 504, ("Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none.")(quoting DeHeer v. Seattle Post-Intelligencer, 60 Wn.2d 122, 126, 372 P.2d 193 (1962)).

Not only does Ms. Coyle fail to provide sufficient information about the underlying purpose of the statute, she fails to clearly argue why she believes her *petition* involves an issue of substantial public interest pursuant to RAP 13.4(b). She appears to argue that because RCW 7.90 addresses issues of substantial public interest and her petition references RCW 7.90, her petition, therefore, must necessarily involve an issue of substantial public interest; however, as previously noted, decisions of the Court of Appeals are generally only accepted for review by the Supreme Court on the basis of

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substantial public interest when they have "sweeping implications" that affect the public beyond the litigants involved in the case. See, e.g., State v. Watson, 155 Wn.2d 574, 122 P.3d 903 (2005). Ms. Coyle makes no clear argument that the issues raised in her petition (as opposed to those addressed in the governing statute) address any significant issue of public interest that requires review by this Court.

In this case, the Court of Appeals found that the trial court appointed Ms. Coyle to act as B.J.C.'s guardian ad litem, as authorized by RCW 7.90.040(4). (Unpublished Opinion, pg. 15.) In doing so, it noted that the law itself neither compels nor prevents a guardian ad litem from calling the minor she represents to testify; whether the trial court permits such testimony is therefore a matter of discretion pursuant to RCW 2.28.010. (Unpublished Opinion, pg. 15.) Ms. Coyle does not address or reference RCW 2.28.010 in her brief.

Further, as the Court of Appeals observed in its opinion, Ms. Coyle only ever argued that B.J.C. would confirm the allegations she made on his behalf if he were allowed to testify; she did not state that he would testify to additional allegations or further details beyond the allegations made in the petition. (Unpublished Opinion, pgs. 15-16.) This fact is important because it demonstrates two fatal flaws in Ms. Coyle's argument: (1) no prejudice results from excluding B.J.C.'s testimony, and (2) where the allegations did not support the petition even if they were assumed to be true, credibility is irrelevant and allowing B.J.C. to testify is not in the best interests of the child.

It is apparent that Ms. Coyle believes that the underlying case turns on an evidentiary issue regarding the evaluation of evidence. She appears to argue that the matter was determined pursuant to the Court's perception of her credibility rather than the child's

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credibility, which she believed should have been considered. This, however, is not accurate because the trial court held that Ms. Coyle's allegations, even when *presumed* to be true, fell short of the sexual touching required by statute. (Unpublished Opinion, pg. 13.) Her petition was denied because the allegations were insufficient as a matter of law, regardless of their truth. (RP 71-72; Unpublished Opinion, pg. 8.) Credibility was therefore not a factor in the trial court's dismissal of the petition, and Ms. Coyle's evidentiary arguments are without merit.

b. Pursuant to RAP 13.4(b), there is no basis to review the Court of Appeals' decision to affirm the trial court's consideration of Ms. Coyle's reputation as a vexatious litigant and its subsequent determination that she was, in fact, a vexatious litigant.

Ms. Coyle appears to argue that the trial court considered information that was prejudicial to her when it addressed Mr. Goins' requests for relief, and she assigns error to the Court of Appeals' failure to "comment about the effect of these 'reputation' pieces of evidence on her credibility." (Petition for Review, pg. 7.) She argues: "This needs to be addressed by the Supreme Court since it will have a chilling effect on parents who help their child file such Petitions." (Petition for Review, pg. 15.)

As discussed above, however, the trial court made no evaluation of witness credibility in its decision to dismiss the petition; therefore, her arguments are without merit. In addition to the fact that the Court of Appeals' unpublished ruling has no precedential value to bind courts with respect to future decisions, it is certainly not at all common that the Court is asked to consider information that a party in *any* proceeding had already been known to have filed twenty-one (21) obviously retaliatory petitions for sexual

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assault protection prior to the one at issue - certainly not common enough to rise to the level of an issue of significant public interest.

Finally, it is apparent from the record that the Court did not consider the twenty-one (21) petitions in its discussion of the *merits* of Ms. Coyle's petition; rather, it referenced that information in its review of Mr. Goins' request that Ms. Coyle be determined a vexatious litigant and that she be sanctioned which was an issue addressed after Ms. Coyle's petition as already found to be without merit.

II. CONCLUSION

Ms. Coyle makes no meaningful argument or reference to authority in her *Petition for Review* with respect to the factors contained in RAP 13.4(b) governing the acceptance of review by this Court; therefore, her petition should be denied. Further, while it is not necessary for this Court to consider the merits of her arguments regarding the underlying case pursuant to a *Petition for Review*, it is immediately apparent that those arguments are also without merit.

RESPECTFULLY SUBMITTED this 20 day of NOVEMBER, 2015.

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CERTIFICATE OF ATTORNEY

I certify that I arranged for hand-delivery of a copy of the foregoing RESPONDENT'S ANSWER TO PETITION FOR REVIEW to GARY STENZEL, at Stenzel Law Office, at 1304 W. College Ave. LL, Spokane Washington, 99201 on November 20, 2015.

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Please find attached the Answer to Petition for Review for the below case:

Marlo Coyle, on behalf of B.J.C. v. Nimsha Asia Goins
No. 922985

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