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SUPREME COURT
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State Supreme Court No. 96563-3

Appellate Court No. 354989-III

**SUPREME COURT OF
THE STATE OF WASHINGTON**

PAUL CARDWELL,

Respondent

v.

REGAN CARDWELL,

Appellant

Appeal from the Washington Superior Court
County of Grant
Case No. 10-3-00479-3
Commissioner Harry E. Ries

**ANSWER TO PETITION
FOR DISCRETIONARY REVIEW**

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IDENTIFICATION OF THE PARTIES

The Petitioner, Regan Cardwell, is the mother of the children and filed her Petition for Discretionary Review on November 26, 2018.

The Respondent, Paul Cardwell, is the father and primary custodian of the children pursuant to the Final Parenting Plan entered in Grant County Superior Court on March 15, 2013 under Cause #10-3-00479-3.

BACKGROUND

This matter comes before the court on Regan Cardwell's Petition for Discretionary Review of the order entered on September 13, 2017 by Grant County Commissioner Harry Ries vacating his February 3, 2017 finding of adequate cause to modify a Final Parenting Plan. In vacating the finding of adequate cause and dismissing the mother's petition, Commissioner Ries' decision was very clear that his initial finding of adequate cause was based solely on an Idaho Judgment and Sentence indicating his belief that Mr. Cardwell could be incarcerated and the mother's clear insistence that this action was not only possible, but that it was *imminent*. She went so far as to bring her motion on an ex parte/emergency basis requesting immediate transfer of the children. The commissioner's decision was supported by the provision in his findings

that he included indicating that no changes would be made to the parenting plan on a temporary basis, as it was Mr. Cardwell's position that his incarceration was not a possibility due to the fact of the disposition and resolution of that case, but that in the event that Mr. Cardwell was actually incarcerated, the issue of primary care of the children would be brought back before the court pending trial. Mr. Cardwell was not, in fact, incarcerated and no changes were made to the parenting plan.

At the Appellate level, Ms. Cardwell attempted to resurrect all of the many myriad allegations she had raised at the initial hearing on adequate cause, and included some new ones, asking the court to place itself in the mind of the Superior Court Commissioner to overturn him and find that he erred first in making the finding of adequate cause only on that narrow issue of Mr. Cardwell's "will he or won't he" be incarcerated, and then later in vacating the initial finding of adequate cause when he realized that the Idaho Judgment on Mr. Cardwell did NOT require his incarceration and there was no supporting basis for the mother's petition or the court's finding of adequate cause. The Court of Appeals upheld the decision of the commissioner and affirmed his decision, while identifying several inadequacies of the Petitioner/Mother's appeal and her case in general on appeal.

STANDARD OF REVIEW

RAP 13.4(b) provides the standard of review for the Supreme Court's review of a decision terminating review by the Court of Appeals. The Supreme Court's review of Court of Appeals' decisions terminating review are accepted only:

“(1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or

(2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or

(3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or

(4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.”

None of these provisions apply to this case.

ARGUMENT

Rather than appealing under any of the four (4) bases above for Supreme Court review, Ms. Cardwell is asking this court to find that the Court of Appeals erred in not finding an abuse of discretion by Grant County Commissioner Harry Ries in limiting the finding of adequate cause to proceed with the Petition for Modification of Parenting Plan to the sole issue of the Commissioner's belief - based upon mother's allegation - that Mr. Cardwell's incarceration was in fact imminent.

Ms. Cardwell argues that it was an abuse of discretion for Commissioner Ries not to find adequate cause based on what she describes as Mr. Cardwell's "significant criminal history" (including such things as fishing without a license and the court's consideration of a declaration of an old girlfriend after a domestic dispute, none of which were committed while the children were present and none of which affected his availability and/or ability to appropriately parent the children) or based on her additional and unsupported allegation that Mr. Cardwell was relinquishing his parenting responsibilities to his parents, in whose home he and the children reside.

This case does not meet any of the four (4) requirements for review by the Supreme Court. The decision by the Court of Appeals is not in conflict with any prior decision by either the Supreme Court or a published opinion of the Court of Appeals, nor does Ms. Cardwell allege any conflict with a prior decision.

Ms. Cardwell does not identify a significant or even any specific violation of any law of the Constitution of the State of Washington or of the United States, but simply argues that "[T]he 10/23/18 decision [of the Court of Appeals affirming the trial court] conflicts with all known legal

authority.” Clearly, if the decision conflicts with all known law, Ms. Cardwell must specifically identify the conflict, and yet does not.

Finally, Ms. Cardwell alleges the Superior Court Commissioner’s denial of a finding of adequate based upon the allegations set forth in Ms. Cardwell’s petition was a legal error and “by definition an abuse of discretion”, which should have been reviewed by the Court of Appeals *de novo*. Ms. Cardwell goes on to argue that if the Court of Appeals reviewed the finding of adequate cause using an abuse of discretion standard, the incorrect standard was applied and, if they reviewed it *de novo* and reached the same conclusion reached by the trial court, then the standard needs to be clarified, making it an issue of substantial public interest that should be determined by the Supreme Court. We disagree. In an area of law which cases differ wildly by the facts of each one, the trial court is given the responsibility to filter the supporting information for a petition to modify a parenting plan, and rule accordingly and dismiss it, finding no adequate cause to proceed if that petition is unsupported. That is what Commissioner Ries clearly did.

The trial court and the Court of Appeals properly found that none of the allegations set forth in Ms. Cardwell’s Petition, except for the possibility of Mr. Cardwell’s incarceration, might affect his ability or

availability to appropriately parent the children and did not provide a basis for modification of the final Parenting Plan. It also pointed out many deficiencies in the Petitioner/Mother's appeal on both content and procedure. Petitioner/Mother has never had a decision in this matter which she did not move for reconsideration, revision and then appeal.

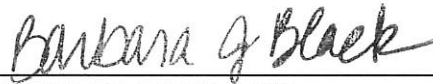
Once the imminent possibility of incarceration was proven to be a non-issue, the commissioner recognized that any adequate cause for modification no longer existed. Ms. Cardwell's disagreement with the court's reasoning and her far-reaching efforts to vilify the father and his parenting abilities on unrelated issues does not rise to an issue of substantial public interest that should be determined on review by the Supreme Court.

CONCLUSION

For the foregoing reasons, Ms. Cardwell's Petition for Discretionary Review should be denied and the court should award Mr. Cardwell his costs and fees for having to defend this appeal.

Respectfully submitted this 22nd day of January, 2019.

Attorney for Respondent
Paul Cardwell

Handwritten signature of Barbara J. Black in cursive script.

BARBARA J. BLACK
WSBA #23686

LAW OFFICE OF BARBARA J. BLACK

January 22, 2019 - 9:16 AM

Transmittal Information

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Appellate Court Case Number: 96563-3
Appellate Court Case Title: In the Matter of the Marriage of Paul A. Cardwell and Regan R. Cardwell
Superior Court Case Number: 10-3-00479-3

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