No. 97730-5

SUPREME COURT
OF THE STATE OF WASHINGTON

In re the Marriage of:

STUART SINSHEIMER,

Respondent,

v.

ELIZABETH KRUGER,

Petitioner.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

Contrary to Kruger's assertions, her petition is not about "protecting children" from their parents' disagreements. It is about whether a trial court has discretion to deny reimbursement of one parent by the other for postsecondary support. Here, Kruger enabled the parties' adult child, J.S.[1], to defy a precondition of receiving postsecondary support. She was denied reimbursement based on an unambiguous court order that she and J.S. chose to ignore. She now claims that denial of reimbursement is a cataclysmic violation of the norms and policies of Washington State.

An unpublished Court of Appeals decision enforcing a trial court order does not violate Washington law or policy. Denying one parent reimbursement of an adult child's postsecondary expenses does not endanger the well-being of children. This Court should deny review.

II. STATEMENT OF THE CASE

A. Kruger insisted that Sinsheimer pay whatever expenses she demanded without question, even though she had been altering paper records in an attempt to secure a windfall for herself.

Sinsheimer has never taken issue with paying his share of his children's college expenses. CP 277. What has been the wellspring of needless court involvement in this case has been Kruger's repeated demands for undocumented amounts over and above those expenses. *Id.*

When they divorced, the parties entered into a 2005 Property Settlement Agreement that delineated their respective obligations regarding

[1] Although both of the parties' children have reached the age of majority, out of respect for their privacy, initials will be used.

post-secondary support for their two children, N.S. and J.S. It stated:

> All post-secondary college expenses, including tuition, are to be split equally between the husband and wife for both [N.S.] and [J.S.]. It must be at a public state school but not necessarily in Washington state. In order to be entitled to the parental obligation, a child must make satisfactory progress towards a Baccalaureate degree and be in attendance on a full-time basis.

CP 32. The PSA also provided that once J.S. was the only remaining dependent, "the father shall claim the [federal income tax] exemption in even years and the mother in odd years." CP 34.

When J.S. enrolled at William & Mary, the parties had serious disagreements over the interpretation of their respective college education responsibilities. Sinsheimer did not trust Kruger or J.S. to provide accurate financial information, and believed that he was entitled to information on J.S.'s educational financial records as a condition of paying child support to Kruger and for J.S.'s tuition. *Marriage of Sinsheimer and Kruger*, 2 Wn. App. 2d 1005, 2018 WL 418892 at *4-5 (2018); Appendix A ("*Sinsheimer I*").[2]

Sinsheimer presented evidence that Kruger was not being forthright about J.S.'s school finances, asking him to pay more than what the school actually charged. CP 19. After several hearings, the trial court in 2015 ordered that Sinsheimer should have full access to J.S.'s educational

[2] The opinion in the prior appeal is unpublished, but it is cited herein only as a reference to the factual and procedural history of this case, not as binding authority. GR 14.1. However, to the extent that the prior ruling is the law of the case, the Court of Appeals may also consider it. *See* RAP 2.5(c).

records, so that he did not have to trust Kruger or J.S. to give him accurate information:

> Both parents shall have access to J.S.'s educational records as set forth in RCW 26.09.190 and as further defined in RCW 26.09.225 as a prerequisite to being entitled to the parental obligation.

CP 41. On June 22, 2016 the trial court clarified that future support was conditioned on Sinsheimer being provided direct *online access* to J.S.'s financial accounts as a "condition" of the post-secondary obligations:

> 4. Going forward, ***as a condition of his parents' post-secondary support obligations***, [J.S.] shall make available to each parent, and give each parent access to, [J.S.]'s financial account information at his college. Without limitation, this includes ***full online access*** to the financial account and all account statements (hard and electronic copies) showing all charges, credits, debits, and payments to the account.

CP 88 (emphasis added). Even after these orders, J.S. did not provide Sinsheimer access to his online financial accounts at the college. *Sinsheimer I*, 2018 WL 418892 at *2.

B. Kruger appealed from the 2016 trial court decision. She did not ask for a stay of the 2016 order. She paid J.S.'s expenses, allowing him to attend school despite non-compliance with the order. She lost the appeal.

Kruger appealed from the trial court's June 2016 order establishing that, going forward, online access to accounts was a precondition of postsecondary support payments. *Sinsheimer I*, 2018 WL 418892 at *3. Kruger did *not obtain a stay* of the trial court's order requiring mutual

access to information as a prerequisite of each parent's obligation. During the appeal, J.S. did not provide online access, it was not provided until after the Court of Appeals upheld the trial court's ruling. CP 98.

In April 2017, Sinsheimer learned that his 2016 tax return had been rejected by the Internal Revenue Service. CP 106. Kruger had claimed J.S. as a dependent for 2016, in violation of the PSA which allowed Sinsheimer to claim J.S. in even years. CP 21, 34.

The Court of Appeals affirmed the trial court's ruling that access to J.S.'s full, transparent information was a precondition of postsecondary support payments. *Sinsheimer I*, 2018 WL 418892 at *4-5; Appendix A. It respected the trial court's fair resolution of Sinsheimer's concerns that he had not been given accurate financial information in the past. *Id.* Notably, the Court of Appeals observed that the trial court, not the appellate court, is in the best position to fashion remedies and avoid further judicial entanglements. *Id.*

C. After Kruger lost at the Court of Appeals and Sinsheimer was finally granted online access to J.S.'s educational financial records, Sinsheimer tendered a check according to those records. Kruger went back to court insisting on another $11,298 in undocumented expenses.

After Sinsheimer ultimately prevailed on that issue before the Court of Appeals, J.S. finally provided Sinsheimer with online access to his accounts at the close of business on March 21, 2018. CP 98. That same day, Kruger's counsel mailed Sinsheimer's counsel a letter demanding $51,351.59. CP 284. The demand letter was not based on the information

reflected in the online accounts, but largely upon what appears to be Microsoft Word documents Kruger created. CP 285-88. They included such expenses as "425.00 Music," "Amazon school supply/book," and "Target school supplies." CP 285-88. No receipts were included. Kruger claimed that she had paid all of these expenses, that they were legitimate postsecondary expenses, and that Sinsheimer was obligated to reimburse her. *Id.*

Sinsheimer, based on his newly granted access to the online account history, learned the true accounting of J.S.'s postsecondary expenses. CP 128. He tendered a check to Kruger for $40,273.13, only $11,298 less than her full demand. *Id.* He explained to Kruger that from the $51,351.59 reimbursement she was demanding, he was deducting $3,106 she owed him for improperly claiming J.S. as a dependent in 2016, $8,246 that the school deducted from J.S.'s housing expenses because he was a Resident Assistant, and $981 for claimed charges lacking receipts or other documentation. CP 116.

Unsatisfied, Kruger continued to maintain that Sinsheimer was obligated to pay her the balance of her claimed expenses. CP 109.

Given Kruger's unrelenting demand for more, Sinsheimer moved to determine his support obligation. CP 18. He argued in the alternative, either: (1) he had no post-secondary support obligations after June 22, 2016 to March 21, 2018, because it was a precondition of such payments that J.S. grant him online access and J.S. had not done so, or (2) he had satisfied his obligations with the $40,273.13 check he had already sent. *Id.*

The next day, Kruger filed a cross-motion to enforce demanding the $11,298 difference between what she demanded in reimbursement and what Sinsheimer had paid. CP 109.

D. The order at issue here merely enforced the 2016 order and the 2018 appellate decision by denying Kruger reimbursement for postsecondary support that she had opted to pay.

Judge Allred, who had retained jurisdiction after resolving the contentious 2016 dispute, ruled in favor of Sinsheimer. CP 298-301; Appendix B. He noted that the substantial legal conflict and numerous court appearances in the case were largely about the "source and/or accuracy of alleged expenses." CP 298. He explained that his prior order was intended to forestall this conflict:

> Moreover, the Court entered the June 22, 2016 condition as a remedy to address the parties' ongoing, substantial, contentious conflict; to encourage the efficient payment of support without the need for court intervention; and as·a means for all involved to get timely, accurate, transparent information from the college, without the information being filtered through another person.

CP 299.

The trial court reaffirmed that the 2016 orders that made online access for both parents a "condition" and a "prerequisite" to support obligations. CP 299. He cited the Court of Appeals' ruling in Kruger's prior appeal, which noted that J.S. had the option of providing access, or "elect to withhold access and perhaps lose his financial support." CP 300, *quoting Sinsheimer I*, 2018 WL 418892 at *5.

The trial court concluded that because J.S. had not obeyed the 2016

order and provided online access, Sinsheimer was not obligated to reimburse Kruger for those expenses she incurred between July 1, 2016 and February 1, 2018.

Finally, the trial court ruled that the amounts that Kruger sought beyond room, board, tuition, and fees would not be awarded. He stated that Kruger failed to provide "competent, credible, decipherable evidence of these expenses…". CP 300.

E. Kruger filed the present appeal complaining that the trial court was obligated to order reimbursement despite J.S.'s undisputed violation the support precondition in the 2016 order.

Kruger then brought a second appeal. CP 302. She complained that despite her and J.S.'s refusal to comply with an order that was not stayed, and despite her choice instead to litigate to force Sinsheimer to pay more, the trial court was obligated to order Sinsheimer to reimburse her for postsecondary support she voluntarily paid.

In its second unpublished opinion in this matter, the Court of Appeals affirmed the trial court's discretionary decision not to order Sinsheimer to pay additional postsecondary costs that Kruger paid during the time J.S. and Kruger denied Sinsheimer access to the relevant educational records. *In re Marriage of Sinsheimer & Kruger*, No. 78697-1-I (Wn. Ct. App. July 29, 2019).

III. ARGUMENT WHY REVIEW SHOULD BE DENIED

Kruger argues that this Court's review of the Court of Appeals' unpublished decision is warranted, citing *all four criteria* established in RAP 13.4(b). Petition 8. She argues that the decision conflicts with

decisions of this Court and the Court of Appeals, even though she does not cite any decisions on point with the decision here. *Id.* She argued that she had no "notice or process" even though she has had no less than 5 trial court hearings and two appeals. She argues that enforcing the 2016 order – which was never stayed and ultimately upheld – "infringes on her constitutional right to appeal." *Id.* Finally, she argues that the decision undermines public policy of protecting children, even though J.S. has suffered no discernible ill effects from his mother's decision to finance his education and continue to file litigation rather than provide Sinsheimer with true financial information.

A. The Court of Appeals decision has nothing to do with termination of child support or constitutional due process. A trial court has discretion, based on the facts and circumstances, to decline to award reimbursement of postsecondary support.

Kruger argues that the trial court's refusal to order Sinsheimer to reimburse Kruger "contravenes all our state's norms on child support – whether statute, precedent, or policy." Petition 8-14. Her argument is couched in terms of "termination" of "child support," as if that is what the lower courts did here. *Id.* She cites an array of statutes and cases regarding child support and postsecondary support obligations, as if the two concepts are interchangeable. *Id.*

The issue the Court of Appeals resolved had nothing to do with "termination" of "child support."[3] J.S. was of majority age and in college

[3] Kruger even concedes that postsecondary support and child support are not interchangeable terms. She admits that "postsecondary support" is not statutorily mandated in Washington. Petition 8. "Child support" is mandatory. *Id.*

when this dispute arose, and he has graduated. There is not now, nor has there ever been, an issue involving "termination" of child support in this case.

The question here is about reimbursement: Should this Court review a trial court's discretionary decision to decline to order Sinsheimer to reimburse Kruger for some postsecondary expenses? Had Kruger focused her argument to this Court on the actual issue, she would have found plenty of statutory and precedential support for the trial court and Court of Appeals decisions.

There are ample Washington decisions affirming that a trial court has discretion in matters of reimbursement even of mandatory child support, let alone post-secondary support. *In re Marriage of Krieger & Walker*, 147 Wn.App. 952, 968, 199 P.3d 450, 459 (2008); *In re Marriage of Stern*, 68 Wn.App. 922, 932, 846 P.2d 1387 (1993); *State v. Base*, 131 Wn.App. 207, 218, 126 P.3d 79, 85 (2006).

Kruger complains that the trial court did not apply equitable principles in deciding the reimbursement question, as is often the case in these disputes. Petition 9.

However, Kruger ignores that the trial court did not need to resort to equity, because it had a legal reason to deny her reimbursement: J.S.'s failure to timely comply with the trial court's 2016 order that support was conditioned on access to information. Payment of postsecondary support may be conditioned on acts within the control of the adult child. *In re Marriage of Kelly*, 85 Wn. App. 785, 795, 934 P.2d 1218 (1997)).

Kruger argues that the decision here conflicts with *In re Marriage of Jess*, 136 Wn. App. 922, 151 P.3d 240 (2007) and *Kruger v. Kruger*, 37 Wn. App. 329, 679 P.2d 961 (1984). Petition 11. She argues that an adult child's noncompliance with conditions for postsecondary support does not terminate the parents' obligation. *Id.*

Jess and *Kruger* are inapposite. In *Jess*, the adult child met every precondition established in the support order, the problem was that the trial court took an erroneous legal view of what those preconditions were. *Jess*, 136 Wn. App. at 927-928. Here, Kruger does not dispute that between 2016 and 2018, J.S. failed to meet all preconditions of support.[4] In *Kruger*, the issue was whether *child support*, not postsecondary support, was owed. The decree stated that support would continue until each child was 21, "so long as" they were enrolled in higher educational programs. *Kruger*, 37 Wn. App. at 331. Each child was enrolled full time, but each missed several months (one due to injury and one due to lack of funds). The father, who had failed to pay the support, argued that his back support obligation was terminated at the moment each child was forced to miss school. This Court found that narrow interpretation unreasonable and contrary to the language of the decree. *Id.* Here, the precondition was clarified by the trial court in 2016, and J.S. voluntarily declined to comply. He was not forced by outside circumstances to decline Sinsheimer access to his online records.

[4] . Also, she ignores that unlike in *Jess*, where the father simply refused outright to pay for any postsecondary support, when Sinsheimer was ultimately granted belated access to the true financial information, he tendered a check to Kruger.

Here, J.S., an adult, refused Sinsheimer's access to his online educational financial records as a condition of obtaining Sinsheimer's support. Instead, J.S. chose to allow his mother to pay for his education. He did not comply with the 2016 order, which was never stayed during appeal, and that non-compliance excused Sinsheimer from the obligation to reimburse Kruger.

Here, the question does not even rise to the level of whether J.S. received the postsecondary support despite his noncompliance with the court order. He did. There is no public policy that a parent must be reimbursed for voluntarily paying an adult child's postsecondary expenses to enable consequence-free defiance of a court order.

There is no conflict of law or policy issue for this Court to review. Kruger lost her years-long legal campaign to block Sinsheimer from access to J.S.'s electronic educational financial records. Kruger did not want Sinsheimer to access the electronic records because she had been altering the paper records to deceive Sinsheimer. CP 19. Even after her first appeal when Sinsheimer tendered Kruger a check, she demanded more undocumented expenses. Given all of these circumstances the trial court was well within its discretion to deny Kruger reimbursement.

Kruger's policy arguments also fail, because Washington does not have a public policy mandating reimbursement for postsecondary support. "It is not the policy of this State to require divorced parents to provide adult children with a college education in all circumstances." *Childers v. Childers*, 89 Wn.2d 592, 601, 575 P.2d 201 (1978). There is also no public

policy mandating reimbursement of postsecondary support to one parent when an adult child has voluntarily refused to comply with a precondition of support.

Kruger's complaint that the Court of Appeals decision interferes with "the assertion of the child's rights on appeal" is unfounded. First, reimbursement for postsecondary expenses does not implicate the rights of the child, but of the parent seeking reimbursement. *State v. Base*, 131 Wn. App. 207, 217, 126 P.3d 79, 85 (2006), citing *Hartman v. Smith*, 100 Wn. 2d 766, 768, 674 P.2d 176, 178 (1984). Second, to the extent that Kruger tries to couch this appeal as vindicating J.S.'s "right to privacy" in his online academic records the Court of Appeals rejected that argument in the first appeal, from which Kruger declined to petition. *Sinsheimer I*, 2018 WL 418892 at *5. Third, Kruger declined to stay the trial court order during her first appeal. The order was in effect, and she assumed the risk of failing to comply with it. She cannot complain that enforcement of that order somehow violates her right to appeal.

In short, Kruger presents no issue of conflict, constitution, or public policy implicated by the Court of Appeals' unpublished decision. This Court should decline review.

B. Enforcing an agreement that sets preconditions for a postsecondary support obligation does not violate any norms, nor does it "modify" or "void" the dissolution decree.

Kruger argues that the trial court had no available "mechanism" for declining to order reimbursement. She does not cite a ground for review under RAP 13.4(b) in this section of her argument. However, this appears

to be a continuation of her argument that the trial court lacked discretion to decline to award her reimbursement, and therefore the Court of Appeals was obligated to reverse the trial court.

Kruger first argues that the trial court's discretionary order declining reimbursement to Kruger is a "modification" of the parties' postsecondary support agreement. Petition 15. She cites *In re Marriage of Christel & Blanchard*, 101 Wn.App. 13, 1 P.3d 600 (2000) and *Schafer v. Schafer*, 95 Wn.2d 78, 621 P.2d 721 (1980). She claims the order declining reimbursement "retroactively" imposes a deadline for compliance with the 2016 order. *Id.*

The order declining reimbursement does not "modify" the support agreement. It enforces the unambiguous terms of the 2016 trial court order and the 2018 Court of Appeals' decision upholding it. Both are the law of the case in this matter, and Kruger cannot now belatedly claim that they "modified" the support agreement.

Nor can Kruger credibly claim that this purported "modification" is "retroactive." The 2016 trial court order made the granting of online access a "precondition" of support. CP 87. This "precondition" of the 2016 order was never stayed. Thus, the "deadline" of which Kruger complains was imposed in *2016*, not in 2018. Kruger was on notice since 2016 that if this precondition was not met, her request for reimbursement could be denied. The trial court order here did not impose any retroactive conditions.

Christel and *Shafer* are inapposite. In *Christel*, the trial court, in the guise of "clarification," imposed new rights and obligations that modified

the existing parenting plan. *Christel*, 101 Wn.App. at 23-24. No modification proceeding was brought. The Court of Appeals held that the order was an abuse of discretion because "on its face" imposed new limits on the parents' rights, and constituted a permanent change that would apply in the future. *Id.* In *Shafer*, the trial court in a modification action reduced the back child support payments a father owed because the child had lived with him for longer periods of time than the parenting plan contemplated. *Shafer*, 95 Wn.2d at 79-80. Thus, he had made many more direct payments to support to the child in his home than expected under the support order. *Id.* The Court of Appeals, and then this Court, concluded that such credits might be appropriate in certain circumstances. *Id.* at 80, 82.

Kruger next argues that the trial court's equitable discretion to deny her reimbursement was not "unfettered." Petition 16. She also claims that the trial court's contempt powers cannot be "exercised against the child."[5] *Id.*

However, Kruger then concedes that the trial court exercised neither its equitable nor contempt powers here. This Court need not expend its time and resources on matters that are not at issue.

Finally, Kruger states that child support is guided by statute and should be mechanical. Petition 17. She states that the Court of Appeals' decision violates a "bright line" rule about child support.

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[5] Kruger's continued insistence that the trial court and Court of Appeals somehow harmed J.S. in this matter is unfounded, and appears designed to invoke this Court's passion instead of its reason. Kruger is seeking payment to herself. She is not acting on J.S.'s behalf. He is not a party to this action, nor has he suffered any consequence from Kruger's insistence on continued litigation.

Again, Kruger conflates child support with postsecondary support, and also ignores that the "bright line rule" she seeks was laid out in the 2016 order stating that online access to information was a precondition to support. She cannot now complain that she did not understand the clear language of that order, for which she did not even bother to seek a stay.

Also, Kruger ignores the chaos that would ensue if parents who are already inclined to be litigious can simply defy court orders for years, belatedly comply after they lose their repeated motions and appeals, and still recover mandatory reimbursement for their voluntary expenses.

IV. CONCLUSION

Kruger's attempt to elevate this rather pedestrian reimbursement matter into a decision worthy of this Court's review is quixotic. She has, for years, tried to turn her own deceptive attempts at modifying financial records into a noble cause. Her petition cites no real basis for review under RAP 13.4(b). This Court should decline review.

Respectfully submitted this 12th day of November, 2019.

CARNEY BADLEY SPELLMAN, P.S.

By 

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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 an employee at Carney Badley Spellman, P.S., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed attorney(s) of record by the method(s) noted:

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November 12, 2019 - 3:11 PM

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