WA Court of Appeals, Div 3 Case No. 375323

100739-6

SUPREME COURT
OF THE STATE OF WASHINGTON

STACY RUDDICK, APPELLANT

V.

RANDALL RUDDICK, RESPONDENT

PETITION FOR REVIEW TO THE SUPREME COURT (with authorized correction)

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I. Statement of Facts

The two parties in this matter are Stacy Ruddick and Randall Ruddick. They were married for a number of years before they divorced in Spokane county. The Ruddicks had three children of their marriage. All three of their children were adversely affected by a birth disability called Angelman Syndrome. Angelman Syndrome is a neurological birth defect that is genetically based, which affects children's ability to speak, control their impulses, and otherwise makes them handicapped for life[1]. The best way to describe this syndrome is that it leaves the children with a very happy and friendly disposition, normal beautiful appearance, however, ironically these children are almost too friendly, and too

[1] See e.g. https://www.angelman.org/what-is-as/ "Angelman syndrome (AS) is a rare neuro-genetic disorder that occurs in one in 15,000 live births or 500,000 people worldwide. It is caused by a loss of function of the UBE3A gene in the 15th chromosome derived from the mother. Angelman syndrome shares symptoms and characteristics with other disorders including autism, cerebral palsy and Prader-Willi syndrome. Due to the common characteristics, misdiagnosis occurs often. People with Angelman syndrome have developmental problems that become noticeable by the age of 6 – 12 months. Other common signs and symptoms usually appear in early childhood like walking and balance disorders, gastrointestinal issues, seizures and little to no speech. Despite these symptoms, people with Angelman syndrome have an overall happy and excitable demeanor. An individual with AS will light up a room with their smile and laughter.

active, but cannot articulate words. In some ways it leaves the child like an autistic child, but with an extremely sociable personality, along with delayed learning and escape problems for the care giver. Because of the severity of the developmental problems of this disease process, expenses for these children are high to maintain some sort of normalcy, and is difficult to diagnose. In addition, to its diagnostic difficulties, the mother in this case, the Petitioner, is a single mother, with total responsibility for the parties 3 Angelman syndrome children, and the father lives on the west side of Washington state, some 1,300 miles. CP's generally & *Ruddick*, No. 35416-4-III (Wash.Ct.App. Dec. 6, 2017), herein after *Ruddick1*.

While the children were with the mother in Spokane, in the fall of 2012, she filed a notice of intended relocation to San Diego and served the father, with a relocation notice. Id. After being served with the Relocation Notice, the father objected and on the date of there was a relocation trial, which the mother won and relocated. CP 1-4. The father only received 2 weeks a year in the summer, that he could exercise in California, or with proper measures for the children' safety, he could fly them up to the Seattle area and visit

with him in this state. CP 5-11. Besides the "relocation" parenting plan, the judge also reserved the final relocation child support issue until after the mother moved to San Diego, which occurred around 2013. CP 5-11.

After the mother's move to San Diego, a Petition was filed to have the child support issue addressed. CP 24-28. The child support "modification" hearing was set in front of a pro tem Commissioner, in 2016. CP 162, 262-266. After the hearing, and by letter ruling, the Commissioner gave Mr. Ruddick a child support "credit" for the entirety of all his costs to visit these children; i.e. air fare, rental car, nice condominium, his food and treats, and other vacation type costs; however, she did not give Ms. Ruddick the same credits for the same or similar costs she incurred when the children were in her care. Id. Ms. Ruddick filed a reconsideration motion, and asked for that same fairness in the orders. CP 283-290. The Commissioner denied her request in a letter ruling, but did not either draft, sign, or enter final child support orders to that affect. CP 306-309. To complicate things, the pro tem Commissioner also resigned from her duties as a part time judicial officer. The mother's counsel then had to set up a presentment with the Senior Commissioner, who had

to piece together what the pro tem ruled. CP 318-326. The orders from that presentment was on the date of April 23, 2017 (CP 327-333), and was timely appealed.

On the date of December 6th, 2017, Division III, of the Court of Appeals granted the appeal and remanded the matter back to the trial court for entry of orders consistent with their opinion. See *Ruddick1, supra.* The court provided instructions for the remand that if the court needed to see if these special expenses were appropriate for the father to reduce his child support from 2016 to date. Id.

On remand, the trial court Commissioner granted a deviation for all of the father's "visitation expenses", in a letter ruling. However, there was no mention by the commissioner of what to do with Ms. Ruddick's special needs expenses that she incurred the other 50 weeks of the year dealing with their children's special needs. Ms. Ruddick filed a motion for reconsideration (CR59), asking for her expenses to be shared in their child support percentages, or disallow such credits for Randall. Mr. Ruddick's counsel filed an objection to Ms. Ruddick's reconsideration request, stating that the issue of her receiving the same credits should not be allowed, since it was

specifically not allowed by Division III, and was a frivolous motion. CP 370. Because the Commissioner made her decision on the reconsideration "under advisement" in writing, no further argument was allowed on that issue. Id. Ms. Ruddick's request to receive the same credit as the father, was completely rejected by the Commissioner, and she also sanctioned Ms. Ruddick for an alleged duplicative motion. Id.

Ms. Ruddick appealed the Commissioner's remand child support order to Division III. CP 327-333. On the date of February 24th, 2022 Division III upheld the Commissioner's allowance of the father's "visitation costs", remanded the case back to the Commissioner to rule on Ms. Ruddick's request for an upward deviation consistent with Mr. Ruddick received his "visitation" costs. The court stated in that opinion,

> . . . . Contrary to the order proposed by Randall and entered by the court, Stacy did assign error to Commissioner Roth "treating the mother's request for rearing costs such as diapers, etc., for these disabled children, differently than the father's request for reimbursement of those expenses." Appellant's Opening Br. at 8, Ruddick, No. 35416-4-III (Wash.Ct.App. Dec. 6, 2017); and see id. at 17-18. Contrary to the order proposed by Randall and entered by the commissioner, this court did say, in its 2018 opinion:
>
> Stacy Ruddick next contends the trial court erred in denying her request for some reimbursement of rearing costs, such as diapers, when affording Randall partial reimbursement for the

same costs. We have reversed such costs. Stacy may raise this argument again during the remand hearing. Ruddick, slip op. at 15 (emphasis added).

For Stacy to renew the argument about her own expenses following remand was, no doubt, duplicative of an argument earlier made and rejected by Commissioner Roth. But her re-argument of the issue was explicitly authorized by this court. Stacy should not have been sanctioned for raising the argument and Randall should not be rewarded for misremembering what was raised and ruled in the earlier appeal. We reverse the $750 attorney fees imposed as a sanction. In re Marriage of Ruddick (Wash. App. 2022) Emphasis added.

Since receiving this latest remand order, referred to as *Ruddick2*, the Commissioner sent out a letter, consistent with the remand orders, telling the attorneys that she will take the remand order under advisement, and the parties now await her ruling. In the meantime, the Petitioner mother has filed this Petition for Review prior to the expiration of the 30 day appeal window, and asks this court to stay their ruling until the Superior Court makes their ruling on these expenses for the mother, pursuant to RAP 17.4(d).

II. Law & Argument

A. This case involves substantive public policy issues regarding the care and support of severely handicapped children in the care of a single parent's home, therefore, it fits the profile of cases ripe for the Supreme Court's input.

The Supreme Court requires that a party file a request for acceptance of their appeal by a Petition for Review based on one or

more of the factors in RAP 13.4. The legal basis for this appeal is that there are significant public policy/constitutional issues that need to be addressed in this case regarding parenting plans and the expenses for disabled children, both for visitation and similar, if not the same cost for their primary care taker.

Our courts have made it clear that parenting and child support issues, involve significant public policy issues. See e.g. *In re Welfare of Sumey*, 94 Wash.2d 757, 762, 621 P.2d 108 (1980); *In re Dependency of Schermer*, 169 P.3d 452, 161 Wn.2d 927 (Wash. 2007); *In re Welfare of Becker*, 87 Wash.2d 470, 477, 553 P.2d 1339 (1976); *Childers v. Childers*, 89 Wn.2d 592, 575 P.2d 201 (Wash. 1978).

The public policy issues would seem to be even more significant if there are disabled children involved, and may even be exacerbated if the trial court reduces the non-primary parent's child support for those children, by awarding the non-primary parent a reduction deviation in the support for every cent of the costs to visit these children, especially if the custodial parent has all of the same costs in her household. This is then may be magnified if the primary parent is a single parent of multiple handicapped children in her

household, and the father only visits their children only for 5% of the year. Such windfall child support deviation to the noncustodial parent treats the primary parent completely different than the since the custodial parent's rearing costs are doubly reduced since she not only receives less support, she has to pay for the same things in her home. She is not treated equally or appropriately.

With regard to the public policy and constitutional issues, and family law orders, they must pass constitutional scrutiny. See *Troxel et vir. v Granville*, 530 U.S. 57, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000). Domestic cases in general, and the proper application of family law statutes regarding all such matters, including child support, also reach constitutional issues. *Buecking v. Buecking*, 179 Wash.2d 438, 316 P.3d 999 (Wash. 2013). In addition, the application of domestic statutes can cross into equal protection issues as well. See e.g. *In re the Parentage of K.R.P. (dob: 09/05/95) And K.H.R.P. (dob: 05/17/98)*, 160 Wash.App. 215, 247 P.3d 491 (Wash. App. 2011). This seems even more true for disabled children.

Specifically with regard to disabled children and the importance of a proper amount of child support, our courts have

made it clear that the state may even intrude upon a parent's life who has a disabled child, but does not have the ability, financial or otherwise to pay for their care. See e.g. See, e.g., *In re Welfare of Feldman*, 94 Wash.2d 244, 615 P.2d 1290 (1980); *In re Dependency of Schermer,* 169 P.3d 452, 161 Wn.2d 927 (Wash. 2007). Therefore, if Ms. Ruddick is shorted support because of a reduction in the father's standard amount of support, for very things that she must provide for their children daily for over 95% of the year, this clearly becomes not only a public policy issue, it becomes a "fairness" issue and constitutional issue since she could find herself unable to properly care for the children and CPS, or DSHS could become involved. All in all, this clearly is a fairness issue, as well as a due process, equal treatment under the law, and constitutional issue.

B. The Court Commissioner provided Mr. Ruddick with a deviation under RCW 26.19.075(1)(c)(iii) & (iv), reducing the child support that the mother received from the father, but denied the mother's request for the same kind of deviation upward for these exact same costs, which does not seem to fit with the purposes of this statute.

The Court of Appeals in *Ruddick1* set the issue of a "credit" back to the trial court to see if there was any statutory basis for both Mr. and Ms. Ruddick's requested support for their "parenting time

expenses". See *Ruddick1 supra*. The father asked that all his costs such as a rental vehicle, his gas, all his food, and his vacation condo (shelter) be shared by the mother proportionally. Ostensibly, the father's request was to have her pay "her share" of all of his visitation vacation costs, which, if granted would set a substantially inappropriate reduction in support for these disabled children, and seemingly violate the intent of RCW 26.19.75 et seq. and Ms. Ruddick's Constitutional rights.

With the remand instructions in hand, Commissioner Ressa's 10/22/19 Order on remand, granted the father's request for this deviation downward, under RCW 26.19075, as follows:

> Findings of Fact...
> 6. Mr. Ruddick incurs extra expenses during his residential time due to the children's disabilities.
> 7. The parent's share the cost of these expenses because a deviation reduces the transfer payment to Ms. Ruddick each month.
> 8. The extra expenses incurred by Mr. Ruddick for his 2 weeks of residential time support a deviation from the standard calculation of child support.
> 9. This court will not disturb the original court's findings regarding the calculation of those expenses.
> 10. These special needs children have expenses that warrant a deviation from the child support standard calculation.
>
> Conclusions of Law
> 1. The court may deviate from the standard calculation after consideration of expenses for the special needs of disabled children and the special medical, educational, or

psychological needs of the children. RCW 26.19.075(c)(iii) and (iv).
2. The listed reasons for deviation under RCW 26.19.075 are not an exhaustive list.

Order

1. Of the $4500 per year in expenses on which Pro Tem Commissioner Roth based a child support credit for Mr. Ruddick, $570 per year shall be allocated as transportation expenses and the remaining $3,930 shall be an annual deviation based on the special medical and psychological needs of these disabled children.
2. The monthly deviation from the standard calculation of child support is $375 per the prior order
3. Mr. Ruddick's deviation will only be allowed if he exercises his 2 weeks of residential time in the same and similar manner in which he argued for these expenses. See appendix 1 attached herewith.

As can be seen, the Commissioner called this a shared "credit" against Mr. Ruddick's support a "deviation" under RCW 26.19.075(c), and allowed it, thereby reducing Ms. Ruddick's child support by $375 a month, an amount higher than many standard child support amounts themselves. The purpose behind the deviation statute used by Commissioner Ressa to justify this downward support amount, seems to have been violated. The legislation passed this statute seemingly to insure that parents of children are not put in a financially difficult position by a deviation. Division III clearly stated this in the case of *Sigler v. Sigler*, 932

P.2d 710, 85 Wn.App. 329 (Wash. App. 1997), when they made the following remarks regarding such deviations:

> "Finally, the classification must reasonably relate to the purpose of the legislation. The stated purpose behind RCW 26.19 is to (1) insure a child's basic needs are met, and (2) equitably apportion the child support obligations between the parents. RCW 26.19.001. The State has an interest in requiring parents, rather than the taxpayer, to financially support their children. The Legislature's purpose is to have parents fully financially support their children whenever possible."

The *Sigler* case was a case where the primary custodian was on State assistance; which is of course different than this case. However, the *Sigler* case also provided, that where the parents are in an "equal" financial situation (which seems to be the case here to a great degree), the constitution requires the courts to treat those parents equally in the application of the child support statutes. They said,

> "Washington's constitution provides: "No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations." Const. art. I, § 12. The federal constitution states: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV.

> The equal protection clauses of both the state and federal constitutions require that similarly situated individuals receive similar treatment under the law. State v. Smith, 117 Wash.2d 263, 276-77, 814 P.2d 652 (1991). Identical impact on persons similarly situated is not required. Campos v. Department of Labor & Indus., 75 Wash.App. 379, 385, 880 P.2d 543 (1994), review denied, 126 Wash.2d 1004, 891 P.2d 38 (1995). Since the privileges and immunities clause of the Washington State Constitution is substantially identical to the equal protection clause of the Fourteenth Amendment to the United States Constitution, challenges under both clauses may be dealt with simultaneously. American Network, Inc. v. Utilities & Transp. Comm'n, 113 Wash.2d 59, 77, 776 P.2d 950 (1989) statute is presumed constitutional; thus, the party challenging it bears the burden of establishing the constitutional violation. Campos, 75 Wash.App. at 384, 880 P.2d 543. Emphasis added.

In this case, Ms. Ruddick was not "equally treated" by the commissioner. The commissioner was wrong when she indicated in her finding no. 7 that "The parent's share the cost of these expenses because a deviation reduces the transfer payment to Ms. Ruddick each month." They do not share these expenses because Ms. Ruddick obviously has the exact same expenses for the children in her home, i.e. gas, transportation, recreation, a home, food, entertainment, etc. *See Ruddick1, supra generally and CP 37-41, 173-179, 283 -290, 346-351, and 361-366.*. It was therefore inappropriate for the court to treat Ms. Ruddick differently than Mr. Ruddick, especially since that treatment affects the children by

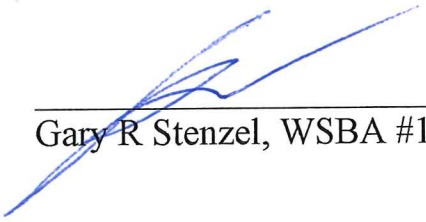
reducing their standard amount of support by over $375 a month, which in some cases is a good used car payment, or food budget.

III. Conclusion

The Petitioner asks this court to accept review of this case to clarify both the constitutional issues, but the proper application of this statute, given the apparent inconsistencies in the application of this statute by Division III of the Court of Appeals.

I Gary R Stenzel, certify that there are 3,569 words in this corrected Petition, and all words are 14 pica.

I make this statement under penalty of perjury under the laws of the State of Washington on this 14th day of March, 2022 at Spokane.



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STENZEL LAW OFFICE

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

In the Matter of the Marriage of STACY J. RUDDICK, Appellant, and RANDALL H. RUDDICK, III, Respondent.	)	No. 37532-3-III UNPUBLISHED OPINION

SIDDOWAY, A.C.J. — Stacy Ruddick appeals an order permitting her ex-husband to reduce his child support obligation in light of costs he incurs visiting the couple's children in Southern California, after Stacy[1] relocated there in 2013.

[1] Given the parties' common last name, we refer to them by their first names for ease of reading. We intend no disrespect.

We affirm the trial court's order of a conditional deviation downward from the standard child support calculation for Randall Ruddick. We reverse the sanction of attorney fees imposed on Stacy for filing a motion for reconsideration. We remand for a limited purpose: so that the trial court can consider whether, in calculating the parties' child support obligations, Stacy should receive credit or a deviation for any special expenses. The trial court may decide the remanded issue without a further hearing and should consider only evidence presented prior to the September 29, 2016 order that originally resolved the modification motion.

FACTS AND PROCEDURAL BACKGROUND

This is the second appeal by Stacy Ruddick of a seven-year-old child support modification matter. We begin by recapping the background and unpublished opinion in the first appeal, *In re Marriage of Ruddick*, No. 35416-4-III (Wash. Ct. App. Nov. 1, 2018).[2]

The prior appeal

Stacy and Randall Ruddick are the divorced parents of three children. The family lived in Spokane at the time of the divorce. The parenting plan, on dissolution, granted residential placement to Stacy.

[2] Available at https://www.courts.wa.gov/opinions/ pdf/354164_unp.pdf.

In February 2013, Stacy petitioned the court to allow her to relocate to San Diego, the principal reason being the needs of the children, who all suffer from Angelman Syndrome, a genetic disorder that affects the nervous system and causes cognitive and muscular limitations. Stacy argued that San Diego is a center for Angelman Syndrome research and she would be paid by the State of California to care for her children. The petition to relocate was granted over Randall's objection.

The modified parenting plan allowed Randall to visit the children in San Diego during the last two weeks of each August. It reserved for later determination a modification of child support to account for the relocation and directed that any modification of Randall's child support obligation reflect visitation transportation costs.

Randall petitioned for modified child support in April 2014. He filed a supplemental declaration in support of the petition in February 2016. In each case, he documented and requested credit for expenses that exceeded $5,000 per visit.

In Stacy's child support worksheets submitted in connection with the modification motion, she sought to have expenses of her own taken into consideration: a total of $710 per month for nursing care, incontinence supplies, special clothing, and education/tutoring. Stacy's worksheets revealed that in addition to what the State of California paid her for caregiving, her household received monthly supplemental security income (SSI) of $1,701.

The modification request was heard in 2016 by pro tem commissioner Gabrielle Roth. Commissioner Roth awarded Randall "transportation expenses" for his annual visit of $4,500, which was $1,500 less per year than he requested and $2,820 per year more than proposed by Stacy. *Id.* at 7. In a letter opinion explaining her decision, the commissioner observed that when Randall visited the children in California, it was undisputed that the couple's children

> are special needs, and require greater than average care when in the care of either party—staying in a regular hotel for a two week period, going out to eat for every meal does not appear to be an option for these kids. I believe both parties would agree that if Mr. Ruddick were to continue visiting in California, he needs to obtain a more condominium-like setting, with kitchen facilities and room for him and the three children given their special needs. If he ever [chooses] to bring them back to Spokane, he will have to carefully assess the transportation needs for getting them to/from his home.

Clerk's Papers (CP) at 263-64. Commissioner Roth ordered that the expense would be addressed by allotting Randall a monthly credit of $375 in the child support worksheet. *Ruddick*, slip op. at 6.

Stacy filed a motion for reconsideration. It was mostly denied, although Commissioner Roth made an adjustment to the sharing ratio to account for a reduction in Stacy's caregiving income from the State of California. Relevant to the issue raised in this appeal, Commissioner Roth denied Stacy's request that she be given credit for special expenses, explaining:

> My ruling did not include these costs for Ms. Ruddick because other than claiming this expense in her worksheet, there was no evidence of any kind

> submitted on her behalf about this issue—nothing in her declaration, no receipts, charts or anything to suggest a shared expense that should be attributed to Mr. Ruddick.

CP at 307.

Stacy appealed. This court's decision, filed on November 1, 2018, agreed with Stacy's argument that "long-distance transportation costs to and from the parents for visitation purposes," which RCW 26.19.080(3) provides shall be shared, has a meaning narrower than one might ascribe to "travel expenses." *Ruddick*, slip op. at 13-14. This court held that "a car rental bill, food, condominium rent, diapers, and entertainment," which were among the visitation expenses documented by Randall, do not qualify as "long-distance transportation costs to and from the parents for visitation purposes." *Id.* at 11 (internal quotation marks omitted).

This court nonetheless observed that RCW 26.19.080(3) provides for parental pro-rata sharing of "[d]ay care and *special child rearing expenses*, such as tuition and long-distance transportation costs . . . for visitation purposes." (Emphasis added.) It "remand[ed] to the trial court for further proceedings to determine if another ground or other grounds exist to order Stacy Ruddick to share in those additional expenses." Slip op. at 14.

This court rejected other assignments of error made by Stacy, but provided that two of her contentions, if applicable, could be raised again on remand: her arguments (1) that any nontransport expenses claimed by Randall were excessive, and (2) to the extent

that Randall was reimbursed for a particular child rearing cost, the court should have granted her request for the same cost.

Proceedings following remand

The mandate in the appeal issued on December 11, 2018. Commissioner Roth had resigned and the matter was assigned on remand to Commissioner Michelle Ressa, who had earlier signed a final order following Commissioner Roth's resignation. At Stacy's request, in April 2019, Commissioner Ressa conducted a hearing to provide direction on the evidence and argument she would entertain to address the remanded issue. Commissioner Ressa construed this court's opinion as allowing her

> *to hear the evidence . . . not in a new evidence way* really just an argument way, a legal argument now that you know what the Court of Appeals found as far as what other expenses could and could not be shared based on what you already presented. *So, there won't be new evidence* on this remand.

CP at 340 (emphasis added). Stacy's counsel responded, "Right." *Id.*

On August 1, 2019, Stacy filed a motion seeking changes to the 2016 child support order she contended should be made in light of this court's opinion. In a supporting declaration, she asked the court to deny Randall credit for any cost other than his own round trip airline tickets. Because Randall had been receiving the $375.00 per month credit ordered by Commissioner Roth for several years, Stacy claimed to be entitled to a payment from Randall of $24,060.10.

In an aside, Stacy argued that if the court did reimburse Randall for expenses such as diapers, necessities, and entertainment, she should be reimbursed for the same costs. That is not the relief she requested, however. Her request for relief was for an order retroactive to 2013 "that uses the airfare only as a credit." CP at 349.

At a September 2019 hearing on the now five-year-old modification request, Stacy's lawyer observed that Randall did not submit briefing, and surmised it was because he recognized that any special cost he asked to be reimbursed would be more than offset by Stacy's claim to the same cost. Randall's lawyer took the position that no response was needed, however, because Stacy's allegedly "same" costs had been taken into consideration either through $1,701 in SSI payments for the children's expenses or through the child support arrived at through the court's worksheet.[3] He argued it was only *Randall's* costs associated with those expenses that had not been taken into account before Commissioner Roth's 2016 order.

At the conclusion of argument, Commissioner Ressa reserved ruling but invited the parties to identify any materials before Commissioner Roth that they wished her to review, and directed each to present a proposed order.

[3] RCW 26.19.071(4) provides that SSI received by a parent is excluded in calculating a parent's gross income and shall not be the basis for a deviation; it does not address the relevance of SSI received by a child. *In re Marriage of Trichak*, 72 Wn. App. 21, 25, 863 P.2d 585 (1993).

Stacy's proposed order denied pro rata reimbursement for all costs requested by Randall. It did not ask that she be reimbursed for any of her own costs.

Rather than sign either party's proposed order, Commissioner Ressa prepared and entered her own. Her order began by cataloguing the parties' 29 submissions that were the "relevant procedural history from April 24, 2014 to September 13, 2019." Opening Br. of Appellant, App. 1, at 1-2 (boldface and some capitalization omitted). Her findings included the following:

> 6. Mr. Ruddick incurs extra expenses during his residential time due to the children's disabilities.
>
> 7. The parents share the cost of these expenses because a deviation reduces the transfer payment to Ms. Ruddick each month.
>
> 8. The extra expenses incurred by Mr. Ruddick for his 2 weeks of residential time support a deviation from the standard calculation of child support.
>
> 9. This court will not disturb the original court's findings regarding the calculation of those expenses.
>
> 10. These special needs children have expenses that warrant a deviation from the child support standard calculation.

Id. at 2-3. She entered the following conclusions of law:

> 1. The court may deviate from the standard calculation after consideration of expenses for the special needs of disabled children and the special medical, educational, or psychological needs of the children. RCW 26.l9.075(c)(iii) and (iv).
>
> 2. The listed reasons for deviation under RCW 26.19.075 are not an exhaustive list.

Id. at 3. Based on the findings and conclusions, she ordered that:

1. Of the $4500 per year in expenses on which Pro Tem Court Commissioner Roth based a child support "credit" for Mr. Ruddick, $570 per year shall be allocated as transportation expenses and the remaining $3930 shall be an annual deviation based on the special medical and psychological needs of these disabled children.
2. The monthly deviation from the standard calculation of child support is $375 per the prior order.
3. Mr. Ruddick's deviation will only be allowed if he exercises his 2 weeks of residential time in the same or similar manner in which he argued for these expenses.

Id.

Stacy moved for reconsideration. She characterized a deviation as "totally unexpected" and "a deviation just for [Randall] downward, is not fair without a deviation upward for me for the same things, times 25." CP at 362. She argued, but did not document, that she had over $2,800 of additional monthly expenses related to the children's medical condition—four times the amount she included in worksheets submitted in 2016.

Commissioner Ressa entertained oral argument of the motion for reconsideration. Randall's counsel argued that the Court of Appeals decision "only remanded for the issue of Mr. Ruddick should he get a credit or a reduction for the expenses that he had alleged . . . . And the appeal itself was only about this issue of the credit being given to Mr. Ruddick. It was not an appeal on the denial of what she's asking for as an extraordinary upward deviation or consideration of these other expenses." Report of Proceedings (RP) at 44. Randall's lawyer also argued, "I think these are issues she raised before, the same

exact issues on her reconsideration request. Denied. Not appealed. I don't think that that is properly before the court." RP at 45.

Stacy's counsel argued that this court's opinion *did* address her argument that a prorated expense for one party needs to be a prorated expense for both, but explained, "I couldn't find it in the short time that I had here." RP at 45.

At the conclusion of the hearing, Commissioner Ressa pointed out that her October 2018 decision called out the almost five-and-a half-year timeline of the modification matter because she "wanted to show any reviewing court the length of time and delay . . . every time there is a hearing in this case, and that is not helpful." RP at 50. She again reserved ruling and directed the parties to submit proposed orders.

Commissioner Ressa thereafter entered the order proposed by Randall, denying the reconsideration motion. The order stated that Stacy raised similar arguments about her own expenses in a motion for reconsideration filed on July 25, 2016, and as to that issue, the motion for reconsideration was denied and was not appealed. The order stated that this court's unpublished opinion did not say that Stacy's claim for additional expenses should be considered, as claimed by Stacy's counsel.

The order proposed by Randall awarded him $750 in attorney fees that the commissioner indicated in a handwritten notation were awarded "for bringing a duplicative motion." CP at 380.

Stacy appeals.

ANALYSIS

Stacy alleges seven errors, which we address as presenting the following issues: whether the trial court abided by this court's 2018 opinion when it (I)(A) determined that Randall was entitled to a deviation downward rather than determining whether he should receive a credit for special expenses, and (B) in Stacy's view, reinstated an order that this court reversed (assignments of error 1, 2 and 6); (II) whether the trial court improperly sanctioned Stacy for filing an alleged "duplicative motion" she contends was allowed by this court (assignment of error 5); and (III) whether the trial court erred in denying Stacy an offsetting deviation (assignments or error 3, 4, and 7). After an overview of the child support calculation process, we address the issues in the order stated.

Child Support Calculation

In 1988, the Washington Legislature established a statewide child support schedule based on periodically-reviewed economic data, with the objective of ensuring that child support orders are adequate, commensurate with the parents' resources, and equitably apportioned between the parents. LAWS OF 1988, ch. 275, §§ 1, 5. At the time of the original modification order entered here, child support worksheets in a form developed by the administrative office of the courts were required to be completed by parties under penalty of perjury and supported by recent tax returns, current paystubs, or other sufficient verification. RCW 26.19.035(3); former RCW 26.19.071(2) (2011). Using the parties' income information, a presumptive amount of child support, or

"standard calculation," would be determined from the state child support schedule before the court considered any reasons for deviation. RCW 26.19.011(9). The basic child support obligation would be allocated between the parents based on each parent's share of the combined monthly net income. RCW 26.19.080(1).

RCW 26.19.075 provides a nonexclusive list of reasons for deviating from the standard calculation. *See* RCW 26.19.075(1) ("[r]easons for deviation . . . include but are not limited to the following"). Among reasons identified by statute are high expenses attributable to the special needs of disabled children and special medical, educational, or psychological needs of the children. RCW 26.19.075(1)(c)(iii), (iv).

"A deviation from the standard support obligation is appropriate when it would be inequitable not to do so." *In re Marriage of Selley*, 189 Wn. App. 957, 960, 359 P.3d 891 (2015). When granting or denying a request to deviate from the standard calculation, the trial court "must provide 'specific reasons' for its decision . . . and those findings must be supported by substantial evidence." *State ex rel. J.V.G. v. Van Guilder*, 137 Wn. App. 417, 424, 154 P.3d 243 (2007) (internal quotation marks omitted); RCW 26.19.075(3). We review a trial court's ruling on deviation for abuse of discretion and for substantial evidence supporting the court's findings. *In re Marriage of Condie*, 15 Wn. App. 2d 449, 472-73, 475 P.3d 993 (2020). In determining whether substantial evidence exists to support a superior court's findings, we view the record in the light most favorable to the party in whose favor the findings were entered. *In re Marriage of Gillespie*, 89 Wn. App.

390, 404, 948 P.2d 1338 (1997). We will not substitute our judgment for trial court judgments if the record shows the court considered all relevant factors and the award is not unreasonable under the circumstances. *In re Parentage of O.A.J.*, 190 Wn. App. 826, 831, 363 P.3d 1 (2015).

In addition to the possibility of deviation, RCW 26.19.080(2) and (3) address certain child-specific costs, not included in the economic table, that shall be shared by the parents in the same proportion as the basic child support obligation. They include monthly health care costs, RCW 26.19.080(2), and day care and special child rearing expenses such as tuition and long-distance transportation costs for visitation purposes. RCW 26.19.080(3). The court may exercise its discretion to determine the necessity for and the reasonableness of these amounts ordered in excess of the basic child support obligation. RCW 26.19.080(4).

I. THE TRIAL COURT'S ORDER FINDING AND ORDERING A DEVIATION IS NOT INCONSISTENT WITH THIS COURT'S 2018 REMAND

The decision of an appellate court establishes the law of the case and must be followed on remand. *Lodis v. Corbis Holdings, Inc.*, 192 Wn. App. 30, 58, 366 P.3d 1246 (2015). A lower court is prohibited from relitigating issues that were previously decided by the higher court "whether explicitly or by reasonable implication." *Id.* at 56 (internal quotation marks omitted) (quoting *Ellis v. United States*, 313 F.3d 636, 646 (1st Cir. 2002)). The superior court may exercise discretion where an appellate court

directs it to "consider" an issue, although in so doing, it must adhere to the appellate court's instructions, if any. *State ex rel. Smith v. Superior Court for Cowlitz County*, 71 Wash. 354, 357, 128 P. 648 (1912); *In re Marriage of McCausland*, 129 Wn. App. 390, 399, 118 P.3d 944 (2005), *rev'd on other grounds*, 159 Wn.2d 607, 152 P.3d 1013 (2007).

Stacy argues unpersuasively that in ordering a deviation, the trial court failed to abide by this court's 2018 opinion.

A. The trial court was not foreclosed by law of the case from ordering a deviation and entered sufficient findings supported by substantial evidence

Stacy first argues that this court's 2018 opinion prohibited the trial court on remand from considering the expenses claimed by Randall as anything other than as expenses to be shared under RCW 26.19.080. Commissioner Roth had analyzed them as transportation expenses under that provision, and this court specifically recognized that they might qualify as expenses otherwise shareable under that section:

> We observe that, because of the unique needs of the Ruddick children, the food, lodging, car rental, diapers, and entertainment *might fulfill the definitions of the other terms such as day care and special child rearing expenses*.

Ruddick, slip op. at 14 (emphasis added).

Nevertheless, while recognizing that possibility, this court broadly authorized the trial court "to determine if another ground or grounds exist[ed] to order Stacy Ruddick to

share in those additional expenses." *Id.* This court did not say the expenses could only be considered as special expenses under RCW 26.19.080.

Stacy offers no legal authority that an expense that qualifies as a cost to be shared under RCW 26.19.080 and as a basis for deviation under RCW 26.19.075(1) must be claimed and considered as one, but not the other. To the contrary, in such a situation, statutory language authorizes and even directs courts to consider both. RCW 26.19.075(4) requires, without qualification, that "[w]hen reasons exist for deviation, the court *shall* exercise discretion in considering the extent to which the factors would affect the support obligation." (Emphasis added.) RCW 26.19.035(1) similarly provides that "[t]he provisions of this chapter for determining child support and reasons for deviation from the standard calculation shall be applied in the same manner by the court, presiding officers, and reviewing officers."

In *In re Marriage of Arvey*, the father, recognizing that the appellate court might remand for a recalculation of child support, asked preemptively that the appellate court direct the trial court not to consider deviation, since his ex-wife had not previously sought a deviation and he did not intend to seek one. 77 Wn. App. 817, 826-27, 894 P.2d 1346 (1995). The court did remand for a recalculation and refused to tie the trial court's hands. Recognizing that it was ordering the trial court to approach the child support calculation differently than it had before, the appellate court ruled that "[o]n remand, the trial court may reconsider whether any deviations apply." *Id.* at 827.

RCW 26.19.075(3) provides that the court shall enter findings that specify reasons for any deviation, and the court did so here, with the 6th through 10th findings, and the conclusions of law that statutory reasons for deviation, while nonexclusive, existed. Viewing the evidence in the light most favorable to Randall, as required, substantial evidence in the form of his declarations and documentation supports the findings. *See, e.g.*, CP at 129-30, 225-26, 293-94. Even some of Stacy's argument about the children's special needs provides support for Randall's argument that for him to provide the children with a safe, healthy, comfortable environment during his two week visitation, he needs adequate housing and the ability to prepare meals, take the children for excursions, clean, and do laundry. *See* CP at 363-65.

B. For the trial court to rely on Commissioner Roth's calculation of expenses does not conflict with this court's decision

Stacy also argues that Commissioner Ressa impliedly reinstated Commissioner Roth's order by leaving Randall in the same financial situation under different reasoning—something she argues violates this court's "law of the case" reversal of the order as to many expenses characterized as transportation expenses. But this court's opinion remanded for the trial court to determine if those expenses could be ordered shared on some other ground. There is no inconsistency.

We also point out that Commissioner Ressa's finding about not disturbing Commissioner Roth's ruling was that she would not disturb her findings "regarding the

calculation of those expenses." Opening Br. of Appellant, App. 1, at 3 (emphasis added). Stacy did not challenge the calculation of the expense amounts in her prior appeal. This court did not find any error in their calculation.

II. THIS COURT'S 2018 OPINION INVITED STACY TO ASSERT HER CLAIM FOR EXPENSES ON REMAND, SO WE REVERSE THE SANCTION IMPOSED FOR A DUPLICATIVE MOTION

Commissioner Ressa would have no reason to have reviewed the parties' briefing in the prior appeal. Contrary to the order proposed by Randall and entered by the court, Stacy did assign error to Commissioner Roth "treating the mother's request for rearing costs such as diapers, etc., for these disabled children, differently than the father's request for reimbursement of those expenses." Appellant's Opening Br. at 8, *Ruddick*, No. 35416-4-III (Wash. Ct. App. Dec. 6, 2017); *and see id.* at 17-18. Contrary to the order proposed by Randall and entered by the commissioner, this court did say, in its 2018 opinion:

> Stacy Ruddick next contends the trial court erred in denying her request for some reimbursement of rearing costs, such as diapers, when affording Randall partial reimbursement for the same costs. We have reversed such costs. *Stacy may raise this argument again during the remand hearing.*

Ruddick, slip op. at 15 (emphasis added).

For Stacy to renew the argument about her own expenses following remand was, no doubt, duplicative of an argument earlier made and rejected by Commissioner Roth. But her re-argument of the issue was explicitly authorized by this court. Stacy should not

have been sanctioned for raising the argument and Randall should not be rewarded for misremembering what was raised and ruled in the earlier appeal. We reverse the $750 attorney fees imposed as a sanction.

III. WE REMAND FOR THE LIMITED PURPOSE OF DECIDING AND ENTERING FINDINGS ON STACY'S REQUEST FOR REIMBURSEMENT OF HER OWN CHILD REARING COSTS

This court provided in the 2018 opinion that following remand, Stacy could renew her request for some reimbursement of rearing costs such as diapers. This court said nothing about the merit of that request. Randall argued the request should be rejected for the reason it was rejected by Commissioner Roth: Stacy's failure to provide evidence of reasonable and necessary special need expenses that were not adequately addressed by child support and financial assistance. Br. of Resp't at 20-22, *Ruddick*, No. 35416-4-III (Wash. Ct. App. Feb. 26, 2018).

We are mindful of the protracted history of the modification motion pointed out by Commissioner Ressa. Nonetheless, given the direction in this court's 2018 opinion, Stacy's request must be addressed. If her request is rejected, a finding providing the reason for the rejection must be entered.

We see no reason why any further hearing is needed unless the trial court chooses to conduct one. Given that this appeal concerns a modification motion that was decided in 2016, the evidence should be confined to Stacy's child support worksheets and any

supporting declarations or documentation she presented prior to the September 29, 2016 order denying reconsideration.

We affirm the trial court's order of a conditional deviation downward from the standard child support calculation for Randall. We reverse the sanction of attorney fees imposed on Stacy. We remand for the limited purpose of a decision and findings on Stacy's request for an award of child rearing costs.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Siddoway, A.C.J.

WE CONCUR:

Fearing, J.

Staab, J.

Tristen L. Worthen
Clerk/Administrator

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February 8, 2022

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CASE # 375323
In re Marriage of: Stacy J. Ruddick and Randall H. Ruddick III
SPOKANE COUNTY SUPERIOR COURT No. 103031411

Counsel:

Enclosed please find a copy of the opinion filed by the Court today.

A party need not file a motion for reconsideration as a prerequisite to discretionary review by the Supreme Court. RAP 13.3(b); 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration which merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of the opinion. Please see word count rule change at https://www.courts.wa.gov/wordcount, effective September 1, 2021. Please file the motion electronically through this court's e-filing portal or if in paper format, only the original motion need be filed. If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of this opinion. The motion for reconsideration and petition for review must be <u>received</u> (not mailed) on or before the dates they are due. RAP 18.5(c).

Sincerely,

Tristen Worthen
Clerk/Administrator

TLW:jab
Attachment

c: **E-mail**—Hon. Michelle Ressa