FILED
SUPREME COURT
STATE OF WASHINGTON
12/6/2023 4:18 PM
BY ERIN L. LENNON
CLERK

No. 1024487

SUPREME COURT OF THE STATE OF WASHINGTON

In re visits with K.D.B.,

TED D. FUKUZAWA, TRACY M. PIEPEL, and
DAVID J. PIEPEL,

Respondents,

v.

BRYCE BITTERMAN,

Petitioner.

**RESPONDENTS' ANSWER TO
PETITION FOR REVIEW**

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I. INTRODUCTION

Equity does not permit a party who flouts a trial court's jurisdiction by affirmatively frustrating enforcement of its orders to then invoke the appellate court's jurisdiction to challenge those same orders. That is precisely what happened here.

After a nonparental visitation petition was filed relating to petitioner Bryce Bitterman's minor child, K.B., Bitterman never notified the parties or court of any intent to move from the Wenatchee area before or at the hearing on that petition. Instead, he disclosed he had left Washington only after the trial court ruled that the grandparents would be granted visitation (as will be discussed below, the exact date he left Washington is immaterial). Thereafter, he never sought to modify visitation based on changed circumstances; he refused to comply with visitation; and he refused to disclose his and K.B.'s location when ordered to so, so that visitation could be enforced. Bitterman has been found repeatedly in contempt for refusing to

comply with in-person or even FaceTime visitation, and for refusing to disclose the location of K.B., who the trial court found is at risk of serious harm from the absence of visitation.

The Court of Appeals required Bitterman to comply with only a portion of the trial court's orders—10 minute FaceTime calls and disclosing K.B.'s physical address—warning him that failure to do so would lead to dismissal. That eventual dismissal was consistent with precedent and the Court's inherent authority.

Bitterman's petition for review falls far short of RAP 13.4(b)'s criteria. He fails to show the decision conflicts with precedent. He raises a purported constitutional issue that relates only to the *underlying trial court*'s decision—not the dismissal decision presented for review. The case does not involve an issue of substantial public interest, and review should be denied.

II. RESTATEMENT OF ISSUES

Did the Court of Appeals abuse its discretion in dismissing Bitterman's appeal where he refuses to comply with the trial court's visitation orders—which he has never tried to stay or supersede—in repeated contempt, and has secreted himself and K.B., refusing to disclose their location in contempt of trial court and appellate court orders to do so, thereby preventing enforcement of visitation and harming minor child K.B.?

III. RESTATEMENT OF FACTS

A. After K.B.'s Young Mother Tragically Dies in an Accident, Bitterman Cuts K.B. Off from His Grandparents

Five-year-old K.B. tragically lost his young mother, Taylor Fukuzawa, back in January 2022 when she was struck

and killed in a road accident. App. 225.[1] Taylor never married K.B.'s father, Bitterman, and was planning to marry another man before her untimely death. *See* App. 66–77, 187. Prior to Taylor's death, K.B. had close and loving relationships with Taylor's father, Ted Fukuzawa, and also with her mother and stepfather, Tracy and David Piepel. *See* App. 183. Indeed, K.B. and his mother had lived with the Piepels in their East Wenatchee home, with Fukuzawa often included. App. 183. Fukuzawa is Japanese, and his mother—K.B.'s great grandmother—wanted the whole family, including the Piepels

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[1] Because the appeal was dismissed on a motion, prior to the merits briefing stage, it was supported by a declaration and an extensive appendix including trial court filings, which were not all designated as clerk's papers. To aid this Court's review and simplify record citations, the motions papers and evidence before the Court of Appeals are included in an appendix filed in conjunction with this answer, in addition to several trial court filings that post-date the motion to dismiss, are relevant to Bitterman's positions now, and can be judicially noticed under ER 201. Appendix pages 1–11 are attached to Bitterman's Petition, and pages 12-596 are filed herewith.

and K.B., to travel to Japan to celebrate their Japanese heritage, which K.B. shares in. App. 121.

The grandparents' warm relationship grew out of decisions they made decades earlier in forming a blended family. *See* App. 119–121. After Ted and Tracy divorced, and Tracy married Dave Piepel, the Piepels and Fukuzawa cooperatively parented their children, vacationing together and putting the interests and stability of their children first. App. 120–122.

After Taylor died, K.B.'s grandparents hoped to draw Bitterman into their tradition of functioning as a cooperative, supportive blended family for the benefit of involved children—now, K.B. App. 120, 183, 186, 189–190. Unfortunately, that did not happen. *See* App. 120.

Shortly after Taylor's death, Bitterman refused to allow the grandparents to see K.B. App. 66, 79, 186. Their imploring text messages to Bitterman went unanswered, their attempts at contact and professional mediation were rebuffed. App. 120,

186, 189. Left with no other options to see their beloved grandson, they were forced to turn to the courts. *See* App. 252.

B. K.B.'s Grandparents Petition for Visits

Fukuzawa and the Piepels separately petitioned for visitation with K.B. pursuant to chapter 26.11 RCW. App. 61–87, 179–215. Their petitions described their desire to foster and support K.B.'s relationship with his father while also maintaining K.B.'s ties with his mother's family. App. 70, 189.

K.B.'s daycare teacher of two years testified that he was very close to his grandmother and frequently talked about her. App. 219 ("That boy loves his Nani. His face lights up when he talks about her. Whenever he sees her or is going to see her it's the first thing he tells me."). K.B. told his teacher that "he wants his Nani back and that he misses her so much." App. 219. Bitterman instructed her to stop allowing K.B. to look at photographs of his grandmother at daycare. App. 131, 219. By March 2022, Bitterman removed pictures of K.B.'s grandmother from his daycare album, telling the teacher he no

longer wanted "[K.B.] to have anything to do with Tracy [Piepel]." App. 131, 79. Bitterman's animus impacted K.B. to the point that K.B. was shaking. App. 131.

Taylor's best friend testified that K.B. was very close to his mother's family. App. 217. Other witnesses reflected that K.B., his mother, and Ted Fukuzawa were close and went on family vacations, with K.B. spiritedly calling his grandpa "Ojisan," a play on the Japanese meaning for "older or old man." App. 90, 221–222, 224.

As one witness explained: "Taylor [Fukuzawa] put her parents (including Ted) in the direct presence of [K.B.] because . . . . [she] knew that this was how she wanted to raise her son." App. 224. A clinical and forensic psychologist testified that separation from family members increases the risk of emotional problems in children who have lost a parent. *See* App. 570–596.

C. Bitterman Opposes the Visitation Petitions

The trial court ruled that the grandparents had met their threshold burden under RCW 26.11.030(8), finding that K.B. would be likely to suffer harm or a substantial risk of harm if visitation were denied, and that a hearing should be held. App. 248. The hearing was set for November 1, 2022. *See* App. 255. Bitterman failed to attend this hearing; according to his lawyer, he had an "important . . . appointment." RP 26.

The trial court continued the hearing to November 9, 2022. RP 22–23. The trial court also entered a temporary order requiring visitation for the upcoming weekend. RP 27; App. 255. Bitterman obeyed that order, and K.B. enjoyed seeing and playing with his grandparents and extended family. App. 256–59, 273–76. Unbeknownst to his grandparents, that weekend would be the last time they saw K.B. in person. *See* App. 51.

D. The Court Orders Visitation to Avoid Harm to K.B.

Despite having requested the continuance, Bitterman did not attend the November 9th hearing. RP 32, 76. The trial court

orally ordered visitation one weekend and one evening per month after considering the factors in RCW 26.11.040(4)(a)–(l) and finding that the grandparents had overcome the presumption that denying visitation was in K.B.'s best interest. RP 77, 80–96.

E. Bitterman Flees with K.B.

Not until after the November 9th hearing did Bitterman's lawyer first inform the parties that Bitterman left one day before the November 9th hearing, purportedly to look for job opportunities outside Washington. App. 283–84. On November 22, 2022, Bitterman's counsel stated that his client had relocated to New Mexico. App. 284. At the presentation hearing relating to the visitation orders, the trial court emphasized that K.B. was at risk of harm without visitation:

> This is a very, very unordinary case. . . . I don't think I've ever found by clear and convincing evidence that denying visitation to the grandparents . . . is likely to cause harm to a child. That finding has been made in this case.

RP 101; *see* App. 285. The trial court entered final orders on visitation, with the grandparents sharing visits. App. 137–44, 287–94. Until the next scheduled hearing, the judge ordered 10 minute FaceTime calls. RP 117; App. 145–46, 295–96.[2] Bitterman never sought to modify visitation based on K.B.'s new residence under RCW 26.11.060.

Bitterman appealed the visitation orders, CP 420–21, and the cases were consolidated on appeal.

F. Bitterman Refuses to Disclose His and K.B.'s Location and Disobeys the Trial Court's Orders

Bitterman refused to comply with the trial court's visitation orders or to disclose his and K.B.'s location. At a contempt hearing held over Zoom on January 10, 2023, Bitterman refused to disclose his address or to identify his employer, even after being ordered to do so. RP 212–16, 226,

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[2] The grandparents also objected to Bitterman's relocation, but ultimately dismissed their petition. CP 686–87. Therefore, that issue is not before this Court.

234. The trial court found Bitterman in contempt and ordered twice weekly FaceTime visits. RP 221–24.

G. Bitterman Persists in Contempt

Bitterman denied even FaceTime visits, contending he was "scared for [his] life." App. 303. He provided no basis for his concerns, other than wild and unsubstantiated speculation the grandparents might track him down, cause bodily harm, and steal K.B. forever. App. 303. The grandparents have no criminal histories, have never threatened Bitterman, and have served their communities in ministry, on the school board, and through work with charitable organizations. App. 121, 151–52, 221–22, 307–08.

At a hearing on February 7, 2023, Bitterman's attorney confirmed Bitterman "refused to" comply with the order to disclose his and K.B.'s address. RP 226, 234. The trial court issued an enforcement order, requiring makeup visitation and finding Bitterman in contempt for refusing to disclose his

address and employment and for failing to comply with visitation. App. 153–54, 157–60, 311–19.

Bitterman was again found in contempt on February 10, 2023. RP 271; App. 161–65, 168–72, 323–27, 328–32. At that hearing, Bitterman's second attorney confirmed that "[a]t this point, [Bitterman is] not intending to comply" with make-up visitation, but that she wanted "to have a longer conversation with him" with the hopes of arriving at "some kind of resolution." RP 296. Later that same day, Bitterman's attorney filed a notice of intent to withdraw. App. 166–67.

On March 28, 2023, Bitterman appeared via Zoom at yet another contempt hearing, represented by new counsel—his third attorney in under six months. *See* App. 280; RP 7, 98. The trial court declined to continue the hearing as Bitterman requested because its orders had not been stayed or superseded. App. 348–49 (observing Bitterman's request "flies in the face of the supersedeas procedure that is available at the appellate court level"). The trial court expressed deep concern that K.B.

would suffer harm as a result of missed visitation. App. 354–55 ("I'm more concerned about the child that this Court has found is harmed by what Mr. Bitterman's doing or not doing.").

Bitterman was once again found in contempt of the court's visitation order and ordered to provide make-up visits, which would purge the contempt. App. 174–178, 333–37. Bitterman never complied with these March 28th orders, nor did he appeal them.

H. The Grandparents Move to Dismiss Bitterman's Appeal

After the above-described contempt findings were made, the grandparents moved to dismiss Bitterman's appeal under the disentitlement doctrine. They argued he did more than merely disobey the trial court's orders: he was concealing his location and that of K.B. (in contempt of court orders to disclose their whereabouts), thereby preventing visitation from being enforced and harming K.B. *See* App. 26–34. The grandparents asked that Bitterman be warned his failure to

promptly comply with the trial court's orders—which Bitterman never sought to stay or supersede—would result in dismissal. App. 34–46.

I. The Commissioner Requires Bitterman to Provide FaceTime Visits and His Address; He Declines and His Appeal Is Dismissed

The Commissioner ruled that Bitterman's appeal would be dismissed unless, within 10 days, he complied with a small portion of the trial court's orders—twice weekly 10-minute FaceTime (not in-person) visits and providing K.B.'s current address to the courts and to the grandparents. App. 3, *see* App. 309–10, 321–22. Bitterman notified the Court of Appeals that he would not comply with these basic conditions, App. 421, and his appeal was thereafter dismissed, App. 424. Bitterman then moved to modify the Commissioner's ruling. App. 425–58. The Court of Appeals denied his motion. App. 1–2. His petition for review followed.

IV. ARGUMENT WHY REVIEW SHOULD BE DENIED

Bitterman fails to establish a basis for review under RAP 13.4(b). Dismissal of his appeal was within the Court of Appeals' sound discretion and heavily favored by the law and equities. This Court should deny review.

A. The Dismissal of Bitterman's Appeal Does Not Conflict with Washington Cases

Bitterman does not dispute that he persists in contempt; that he refuses to comply with the trial court's orders that he never sought to supersede; or that he is evading enforcement by having secreted himself and K.B. outside Washington and concealing their location, in violation of court orders. Yet he continues his efforts to invoke appellate jurisdiction for the purpose of appealing the trial court's visitation orders whose enforcement he has deliberately obstructed. Notably absent

from his petition is any indication he will ever comply with court orders, including if they were to be affirmed on appeal.[3]

This equity does not tolerate. Under the disentitlement doctrine, Bitterman cannot pursue an appeal of an order that he continues to disobey and obstruct. The Court of Appeals correctly concluded that dismissal was warranted under the unique circumstances here.

1. One who affirmatively evades enforcement of trial court orders is disentitled from appealing.

An appellate court has the inherent power to dismiss the appeal of parties who obstruct enforcement during the pendency of their appeal. *See*, *e.g.*, *State v. Johnson*, 105 Wn.2d 92, 97, 711 P.2d 1017 (1986) ("[I]f the appealing defendant flees the jurisdiction of the court pending an appeal, the defendant

[3] Following dismissal, Bitterman has been thrice found in contempt. App. 546–569. He was ordered to report to jail in August, App. 550. 556, but never appeared. As his location is unknown, he cannot be arrested on a bench warrant.

waives the right to prosecute the appeal."); *City of Seattle v. Klein*, 161 Wn.2d 554, 559, 565, 166 P.3d 1149 (2007) ("Washington courts have dismissed appeals where the criminal appellant fled the jurisdiction, escaped from jail, or violated the conditions of release pending appeal."). The doctrine's underlying rationale is explained in *Johnson*:

> If legal questions brought by a litigant are to remain [in an appeals court], the litigant must stay with them. When he withdraws himself from the power of the Court to enforce its judgment, he also withdraws the questions which he had submitted to the Court's adjudication.

105 Wn.2d at 97 (citation omitted).

The doctrine encourages enforcement of court orders; discourages the unfair and asymmetrical use of judicial resources only when the court rules in the fugitive's favor; avoids prejudice to the non-fugitive party; discourages flights from justice; and "promotes the efficient, dignified operation of the courts." *See Degen v. United States*, 517 U.S. 820, 824–25,

116 S. Ct. 1777, 135 L. Ed. 2d 102 (1996) (internal quotation marks and citation omitted). As one court explained:

> The fugitive disentitlement doctrine is essentially the legal equivalent of the aphorism that "you can't have your cake and eat it too." As a relative to the "clean hands doctrine," the fugitive disentitlement doctrine holds that a person is not entitled to seek the court's assistance in the same cause from which he or she is a fugitive.

Peppin v. Lewis, 752 N.Y.S.2d 807, 811, 2002 N.Y. Slip op. 22733 (2002) (citations omitted) (barring mother who absconded with child from seeking affirmative relief). The Ninth Circuit deployed similar reasoning in declining to review a deportation order when the petitioner failed to report his change of address to his attorney:

> Because no one has any clue where [the petitioner] is, his petition has the same "heads I win, tails you'll never find me" quality that justifies disentitlement in other contexts. Those who invoke our appellate jurisdiction must take the bitter with the sweet: They cannot ask us to overturn adverse judgments while insulating themselves from the consequences of an unfavorable result.

Antonio-Martinez v. I.N.S., 317 F.3d 1089, 1093 (9th Cir. 2003).

Although disentitlement is more common in direct criminal appeals, Washington courts have applied the doctrine where the fugitive was a civil litigant who continued to ignore and disobey trial court orders. And this Court has dismissed appeals of child custody orders where appellants were in contempt of the orders they sought to reverse on appeal. *See*, *e.g.*, *Pike v. Pike*, 24 Wn.2d 735, 740–43, 167 P.2d 401 (1946); *Helard v. Helard*, 22 Wn.2d 950, 950, 155 P.2d 499 (1945) (dismissing mother's appeal of a custody order where she absconded with the parties' children and failed to return the children to Kitsap County after being warned her appeal would be dismissed).

Similarly to *Pike* and *Helard*, courts across the country have (i) dismissed appeals brought by a parent secreting a child or (ii) ordered appeals dismissed for failure to comply with a custody order within a specified time period. *See*, *e.g.*, *Knoob*

v. Knoob, 192 Cal. 95, 97, 218 P. 568 (1923); *Michael v. Michael*, 253 N.E.2d 261, 262 (Ind. 1969); *Henderson v. Henderson*, 329 Mass. 257, 107 N.E.2d 773, 773 (1952); *D.C. v. D.C.*, 988 So.2d 359, 361 (Miss. 2008); *Weaver v. Parks*, 947 So.2d 1009, 1012–14 (Miss. Ct. App. 2006); *Johnson v. Johnson*, 812 N.W.2d 455, 459–60 (N.D. 2012); *In re Morrell*, 174 Ohio St. 427, 189 N.E.2d 873, 874 (1963).

2. The Court of Appeals' ruling does not rest on factual error or conflict with precedent.

Bitterman rests much of his petition on an immaterial factual dispute over the date he left Washington. He claims the Commissioner "ma[de] a factual determination" regarding the precise date he left Washington, and that her ruling therefore conflicts with precedent under RAP 13.4(b)(1)–(2). Pet. 12. Bitterman claims that if he left on November 8th—the day before the trial court orally ordered visitation on November 9th—his appeal cannot be dismissed.

Bitterman's argument is deeply flawed. While it is true that the precise date Bitterman left Washington is disputed,[4] and the precise date he settled elsewhere (he claims New Mexico) is not reflected in the record, the Commissioner did not engage in fact-finding. Regardless, her ruling is not clear error, and these facts are in any event immaterial.

First, Commissioner Landrus did not engage in fact-finding as Bitterman contends. This is clear from her order, which nowhere suggests she made "findings." App. 3. Thus, this case does not conflict with the two cases Bitterman cites for

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[4] What is undisputed is that when the trial court continued the November 1st hearing to November 9th, a visit that weekend was ordered. App. 255. That visit occurred on November 4th–6th, App. 213–16, and Bitterman signed a declaration in Wenatchee on November 7th, CP 660; *see* App. 158, showing he was in the region as of then. None of Bitterman's voluminous filings before the November 9th hearing mention relocation; his attorney did not state at that hearing that he had left; and the grandparents first learned he had left after that hearing, when his attorneys told theirs he had left to look for jobs on November 8th. RP 31–97; App. 283–84.

the proposition that appellate courts do not generally engage in fact-finding: *Garcia v. Henley*, 190 Wn.2d 539, 415 P.3d 241 (2018), and *Doyle v. Lee*, 166 Wn. App. 397, 272 P.3d 256 (2012). Regardless, he cites no authority for the proposition that an appellate court cannot find facts relating to motions before it, such as for sanctions, fees, or injunctions.

Second, Bitterman also misrepresents the Commissioner's ruling. He claims the Commissioner erroneously indicated he left the state after the November 9th ruling. Pet. 12, 13. In fact, the Commissioner stated only that Bitterman "relocated with the child to New Mexico after the court granted Respondents' petitions for in-person visitation[.]" App. 3. Bitterman's own testimony supports this ruling. Following the Commissioner's ruling, Bitterman filed a declaration in the trial court purporting to show he left Washington on November 8th, staying in Baker City, Oregon, on November 8th–9th, and in Price, Utah, on November 9th–10th, App. 539–45. This Court can judicially notice this admission.

ER 201. According to Bitterman's own declaration, he was *not* yet in New Mexico on November 10th when he left his hotel in Price, Utah. App. 539. Thus, even crediting Bitterman's misguided claim that the Commissioner made a "finding," such "finding" is not clear error when Bitterman's own declaration showed he did not "relocate to" New Mexico until after the November 9th hearing, which is fully consistent with Bitterman's testimony.

It is *also* clear that Bitterman's complaint that the trial court should have taken evidence on this issue, Pet. 14, 28, is absurd: Bitterman has repeatedly been held in contempt for refusing to disclose his location or employer so visitation could be enforced. App. 154, 258, 562, 565. Thus, directing the trial court to take evidence under RAP 9.11 regarding his whereabouts and timing would be futile.

Most importantly, whether Bitterman left before or after November 9th is immaterial. Bitterman's argument that "it was not [him] leaving the State that made execution impossible

because his departure predates the order," Pet. 12–13, misses the mark. The trial court did not order Bitterman to remain in Washington, so merely leaving the state violated no order and did not, of itself, render execution impossible.[5]

Instead, what rendered execution of the judgment impossible was Bitterman's secreting himself and K.B., failing to comply with court orders, and refusing to disclose his location when ordered to. Those actions *did* postdate the Court's November 9th order. It is *these* affirmative actions to obstruct enforcement of visitation orders that warrant disentitlement. It was not Bitterman's move, but rather his persistence in contempt and obstructing enforcement of valid court orders, even after having been warned disentitlement would follow, that justifies dismissal.

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[5] Bitterman rails against the grandparents' objection to his relocation. Pet. 16–18. Because the grandparents dismissed their relocation petition before it was decided, the issue is moot, as are the cited pages from the December 19th hearing.

3. Dismissal was warranted because Bitterman persists in contempt and obstructs enforcement.

Given the purported timing of his move, Bitterman insists that his case more closely resembles the California case of *Vosburg v. Vosburg*, 131 Cal. 628, 63 P. 1009 (1901), than *Pike*, 24 Wn.2d 735. But in *Vosburg*, the trial court's visitation order *could* be enforced because the father's location in New York appears to have been known—indeed, the mother initiated a habeas corpus proceeding against him there, but the New York court awarded custody to the father. 131 Cal. at 629. Therefore, judicial enforcement was not rendered impossible in *Vosburg*, though it has been here.

Bitterman claims that in "cases justifying dismissal," the appellant must "*affirmatively* violate[] the court's order *with knowledge* of the same, *after* the order was made." Pet. 22 (emphasis in original). But that is precisely what Bitterman has done—he refuses to comply with visitation and conceals his

whereabouts to frustrate enforcement, in contempt of orders to disclose his location.

As in *Pike*, Bitterman's refusal to disclose his and K.B.'s residence renders enforcement impossible. Were his location known, visitation could be enforced in New Mexico or elsewhere under the Uniform Child Custody Jurisdiction and Enforcement Act—a point Bitterman has not contested. *See also* N.M. Stat. Ann. § 40-10A-101–403; *Roberts v. Staples*, 442 P.2d 788, 790 (N.M. 1968) (habeas corpus available when custody issues involved). But here, the trial court's orders cannot be enforced because Bitterman refuses to disclose his location, even to his own attorney, when ordered to do so. RP 214, 234.

Finally, Bitterman's reliance on *State ex rel. Hunter v. Ronald*, 106 Wn. 413, 180 P. 125 (1919), is also misplaced. Even if, as Bitterman contends, *Hunter* stands for the proposition that a court may decline to hear a party who took "affirmative action" after a decision, Pet. 21, here it is

uncontested that Bitterman's refusal to comply with visitation or to disclose his new location so visitation could be enforced all happened *after* the visitation orders were entered.

Under these circumstances, it would be inequitable to allow Bitterman to use the resources of the courts only if the outcome is of benefit to him while he refuses to disclose his location so that the trial court's rulings can be enforced. As in *Pike* and *Helard*, the Court of Appeals justly precluded Bitterman from reaping the benefits of a judicial system whose orders he continues to flout and frustrate after being warned that dismissal would follow. There is no conflict between the dismissal here and this Court's decisions or published decisions of the Court of Appeals. Bitterman's petition should be denied.

B. Dismissal of Bitterman's Appeal Does Not Involve a Constitutional Question

Bitterman untenably claims that the trial court's orders constitute "an unlawful infringement upon his and his child's right to travel to, settle and abide in New Mexico." Pet. 25–26.

This argument fundamentally fails because Bitterman's petition seeks review of the appellate court's order dismissing his appeal—the merits of the trial court's underlying visitation orders are not before this Court.

Regardless, the visitation orders do not infringe upon Bitterman's "right to travel from one State to another," as he complains. *Id*. at 25. To the contrary, the visitation orders did not enjoin or otherwise prevent Bitterman from relocating, but simply mandated his compliance with visitation after the grandparents repeatedly represented they would travel at their own expense to Bitterman to facilitate scheduled visitation. App. 403, 483–84. Instead of seeking to modify the visitation orders to take into account his move under RCW 26.11.060(1), Bitterman refused to comply, has since refused to share his and K.B.'s current address, and has thus rendered enforcement impossible. There has been no "infringement" upon his purported constitutional right to travel.

Bitterman's citation to the enforcement order, issued the same day as orders finding him in contempt, did *not* require him to "return [K.B.] to Washington" for all time, as he misleadingly suggests. Pet. 25–26 (citing CP 669–70). Instead, this order related to returning K.B. for three days of *makeup* visitation after the grandparents' offer to fly to wherever K.B. was located for visits was not accepted. CP 669–70; App. 311–12; RP 239–40, 259.

In sum, this case does not involve a "significant question" of constitutional law—or even a trivial question of constitutional law—under RAP 13.4(b)(3). Review should be denied.

C. The Petition Does Not Involve an Issue of Substantial Public Interest

Finally, Bitterman contends that this case involves an "issue of substantial public interest" under RAP 13.4(b)(4) because "(1) the reason for dismissal involved a disputed fact

not developed below" and "(2) the appeal presented meritorious questions." Pet. 27. This argument fails too.

As discussed above, the appeal was not dismissed due to a "disputed fact not developed below." *See supra* Part IV.A.2. Bitterman's appeal was dismissed because he persists in contempt, has refused to comply with the trial court's visitation rulings for over a year, and has secreted himself and K.B. outside the state so that the trial court's orders cannot be enforced.

Further, Bitterman's opinions about the merits of his dismissed appeal do not warrant review under RAP 13.4(b)(4). Even if the underlying appeal could have presented meritorious issues as Bitterman claims, that would not give him carte blanche to disobey trial court orders he never even attempted to supersede or stay and obstruct enforcement, risking serious harm to K.B.

While Bitterman's purported "meritorious" issues might have been relevant to staying or superseding trial court orders,

RAP 8.1, he never pursued that option, despite having had very experienced appellate counsel before the Court of Appeals and despite responding to arguments faulting him for not doing so. Instead, he elected bald contempt and frustration of enforcement. Nor does this case present, as Bitterman argues, an opportunity to resolve a distinction between sanctions for disobedience versus affirmative acts. Pet. 27. Bitterman did not merely disobey a visitation order. He obstructed enforcement of visitation by secreting K.B. and contemptuously refusing to disclose their location.

The Court should not countenance Bitterman's "heads I win, tails you'll never find me" attitude, which merits disentitlement. *See Antonio-Martinez*, 317 F.3d at 1093. In short, Bitterman has failed to demonstrate an issue of substantial public interest.

V. CONCLUSION

This Court should deny review. Bitterman fails to show a conflict with governing precedent and does not show this case

presents a constitutional question or issue of substantial public interest. In light of his failure to stay or supersede the trial court's visitation orders, all the while frustrating enforcement of them through contempt and risking harm to K.B., the grandparents respectfully request the Court deny his petition.

I certify that this answer contains 4,988 words, excepting those portions exempted from the word count, in compliance with RAP 18.17.

RESPECTFULLY SUBMITTED this 6th day of December, 2023.

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DECLARATION OF SERVICE

On December 6, 2023, I caused to be served a true and correct copy of the foregoing document to be served on counsel of record stated below, via the Washington Courts E-Portal:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 6th day of December, 2023, at Seattle, Washington.

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December 06, 2023 - 4:18 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	102,448-7
Appellate Court Case Title:	In the Matter of Visits with K.D.B. Ted Fukuzawa v. Bryce Bitterman
Superior Court Case Number:	22-3-00048-2

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Comments:

Respondents' Answer to Petition for Review; Appendix; and Document to be filed under seal

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