

FILED
SUPREME COURT
STATE OF WASHINGTON
9/9/2020 3:37 PM
BY SUSAN L. CARLSON
CLERK

No. 98821-8

SUPREME COURT OF THE STATE OF WASHINGTON

Court of Appeals No. 78512-5-I

COURT OF APPEALS OF THE STATE OF WASHINGTON,
DIVISION I

In re the Marriage of

JENNIFER CORINNE ANDERSON,

Respondent,

v.

LOREN HEATH ANDERSON,

Appellant.

LOREN HEATH ANDERSON'S ANSWER TO RESPONDENT
JENNIFER (ANDERSON) EMERY'S MOTION TO STRIKE
PETITIONER LOREN HEATH ANDERSON'S REPLY

Corey Evan Parker
WSBA No. 40006
Attorney for Appellant
300 Lenora St., Ste. 900
Seattle, Washington 98121
Ph: (877) 412-4786
Email: corey@mltalaw.com

TABLE OF CONTENTS

I.	IDENTITY OF RESPONDING PARTY.....	1
II.	RESTATEMENT OF RELIEF SOUGHT	1
III.	FACTS RELEVANT TO MOTION	1
IV.	ARGUMENT.....	2
	A. This Honorable Court should not strike Appellant’s Reply	2
	B. This Honorable Court should not grant attorney’s fees for this motion	5
V.	CONCLUSION	6

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Chevron U.S.A., Inc. v. Puget Sound Growth Mgmt. Hearings Bd.</i> , 156 Wn.2d 131, 124 P.3d 640 (2005)	6
<i>In re M.K.M.R.</i> , 148 Wn. App. 383, 199 P.3d 1038 (2009)	6
<i>Marriage of Escarcega & Barrett</i> , 194 Wn.2d 1010, 452 P.3d 1238 (2019) (2019).....	4
<i>State v. Miller</i> , 156 Wn.2d 23, fn 6, 123 P.3d 827 (2005).....	5
Rules	
RAP 13.4(b)(4)	1
WA R RPC 3.1.....	3
WA R RPC 3.3(a)(1).....	3

I. IDENTITY OF ANSWERING PARTY

Appellant Loren Heath Anderson is the Appellant in the case of Loren Heath Anderson v. Jennifer Corrinne Anderson, Supreme Court of the State of Washington case number 98821-8.

II. RESTATEMENT OF RELIEF SOUGHT

Jennifer (Anderson) Emery moves to strike Appellant's Reply claiming that portions of the Reply were unauthorized.

III. FACTS RELEVANT TO MOTION

The instant motion stems from a dissolution of marriage case between Jennifer (Anderson) Emery and Loren Heath Anderson. On August 6, 2020, Mr. Anderson filed a Petition for Review to this Honorable Court, alleging that the Court of Appeals, Division I, made errors relating to the parties' final parenting plan. Less than one week later, on August 14, 2020, Ms. Emery filed an Answer to Petition for Review. In her answer, Ms. Emery alleged that Mr. Anderson "fails to meet the criteria in RAP 13.4(1) and (2)" and "fails to meet the criteria in RAP 13.4(b)(4) because there is no constitutional fundamental

liberty interest in a parenting dispute between parents”. She also requested attorneys’ fees and costs “due to intransigence”. *Id.* Mr. Anderson timely filed a Reply to Ms. Emery’s Answer on August 25, 2020. One day later, on August 26, 2020, Ms. Emery filed the instant motion. Mr. Anderson, therefore, files this timely Answer, pursuant to the instructions provided by Supreme Court Clerk Susan L. Carlson on August 27, 2020. Appendix 1.

IV. ARGUMENT

A. This Honorable Court should not strike Appellant’s Reply

Wash. RAP 13.4(d) states “a party may file a reply to an answer only if the answering party seeks review of issues not raised in the petition for review. A reply to an answer should be limited to addressing only the new issues raised in the answer.” Respondent claims that Appellant’s Reply should be stricken because she “did not seek review of any issues not raised in the petition for review”. Respondent’s Motion p. 2.

However, this contention is patently untrue because, among other things, Respondent cited to rules that do not exist

“RAP 13.4(1)” and “RAP 13.4(2)”; Respondent’s Answer p. i, 1, 5; as well as incorrectly cited “RAP 13.4(b)(4) as the section of the rule addressing “constitutional fundamental liberty interest”; Respondent’s Answer p. i, 1, 8; when the proper section of the rule is RAP 13.4(b)(3). RAP 13.4(b)(4) addresses “if the petition involves an issue of substantial public interest that should be determined by the Supreme Court.”

Because the Respondent affirmatively misstated the applicable Rules, Appellant was obligated, under the Rules of Professional Conduct, to address and correct the misstatements of the law. *See* WA R Preamble (“In all professional functions a lawyer should be *competent*, prompt and *diligent*.” emphasis added); *see also*, WA R RPC 3.1 (“a lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous...”; *see also*, WA R RPC 3.3(a)(1) (“A lawyer shall not knowingly... make a false statement of fact or law to a tribunal *or fail to correct a false statement of material fact or law*...” emphasis added).

Additionally, Respondent seems preoccupied with the number of authorities cited by Appellant, claiming that Appellant cited 27 cases, compared to 13 cases cited in the petition. Respondent's Motion, p 2. However, Respondent fails to mention that, of those 27 cases, 17 of them were cited to address Respondent's request for attorney's fees and costs and to defend undersigned against an inappropriate reference by Respondent's counsel to an unrelated case handled by undersigned. Reply Brief p. 6-9. Appellant should not be penalized because counsel takes his obligations for diligence under the Rules of Professional Conduct seriously.

In contrast, except for citing to the Rule itself, in the instant motion, Respondent cites to only one case: *Marriage of Escarcega & Barrett*, 194 Wn.2d 1010, 452 P.3d 1238 (2019). However, that case is distinguishable because it was a *clerk's motion*, not a Respondent's motion. *Id.* Respondent does not cite to any authority for the proposition that *Respondent* is entitled to file a motion to strike Appellant's Reply.

Because the Respondent sought attorneys' fees and costs in this matter, Mr. Anderson was entitled to file a Reply under

RAP 13.4(d). *See, e.g., State v. Miller*, 156 Wn.2d 23, fn 6, 123 P.3d 827 (2005). The bottom line is this: had Respondent not misstated the law and quoted the wrong subsections of the Rules, Appellant's attorney would not have been obligated to Reply to anything but the request for attorney's fees and costs.

B. This Honorable Court should not grant attorney's fees for this motion

Respondent next requests sanctions and attorney's fees for her filing this motion. Respondent cites to Rule 10.7 for the proposition that the appellate court may impose sanctions for a counsel or party who files a brief that fails to comply with the requirements of Title 10. RAP 10.7. However, Respondent does not allege, let alone prove, that Appellant's reply brief failed to comply with the requirements of *Title 10*. Rather, Respondent alleges that Appellant fails to comply with Title 13.

Additionally, the appellate rule governing imposition of sanctions for failure to comply with appellate rules regarding briefs is not mandatory. *In re M.K.M.R.*, 148 Wn. App. 383, 389, 199 P.3d 1038 (2009). Even if the court were to determine that portions of Appellant's Reply should be stricken, Appellant is

still entitled to file a Reply on the issue of attorney's fees, costs, and sanctions. Therefore, Respondent would not be entitled to attorney's fees, costs, and sanctions for filing this motion. *See, e.g., Chevron U.S.A., Inc. v. Puget Sound Growth Mgmt. Hearings Bd.*, 156 Wn.2d 131, 139-40, 124 P.3d 640 (2005).

Finally, Respondent claims that "in filing this Motion to Strike, [Ms. Emery] incurred 1.5 hours of attorney fees, for a total of \$450, with an anticipated additional 30 minutes (\$150) to file her reply to this motion." Respondent's Motion p. 3. Appellant has no reply, save to note that Appellant has expended 3 hours for having to file an answer to this ill-conceived motion.

V. CONCLUSION

For the reasons stated herein, Mr. Anderson respectfully asks the Court to deny Respondent's motion to strike and to deny Respondent's request for additional attorney fees.

Respectfully submitted this 9th day of September, 2020.

THE APPELLATE LAW FIRM

Corey Evan Parker

Corey Evan Parker, WSBA No.40006
Attorney for Loren Heath Anderson

Appendix 1

SUSAN L. CARLSON
SUPREME COURT CLERK

ERIN L. LENNON
DEPUTY CLERK/
CHIEF STAFF ATTORNEY

THE SUPREME COURT
STATE OF WASHINGTON



TEMPLE OF JUSTICE
P.O. BOX 40929
OLYMPIA, WA 98504-0929

(360) 357-2077
e-mail: supreme@courts.wa.gov
www.courts.wa.gov

August 27, 2020

LETTER SENT BY E-MAIL ONLY

Corey Evan Parker
The Appellate Law Firm
300 Lenora Street, Suite 900
Seattle, WA 98121

Susan Lynne Fullmer
Susan L. Fullmer, Attorney At Law
5608 17th Ave. NW, #599
Seattle, WA 98107

Jodie Miriam Levy
Attorney at Law
520 Kirkland Way, Suite 202
Kirkland, WA 98033-6256

Re: Supreme Court No. 98821-8 - In the Matter of the Marriage of: Jennifer Corinne
Anderson and Loren Heath Anderson
Court of Appeals No. 79612-7-I

Counsel:

On August 26, 2020, this Court received and filed "RESPONDENT JENNIFER (ANDERSON) EMERY'S MOTION TO STRIKE PETITIONER HEATH ANDERSON'S UNAUTHORIZED REPLY" in the above referenced matter.

Counsel for Petitioner may serve and file an answer to the motion to strike by September 11, 2020. Any reply to any answer should be served and filed by September 21, 2020.

The motion to strike will be set for consideration without oral argument at the same time as the Court considers the pending petition for review.

Sincerely,

Susan L. Carlson
Supreme Court Clerk

SLC:bw

CERTIFICATE OF SERVICE

I, Dave Evanson, certify under penalty of perjury under the laws of the United States and of the State of Washington that on September 9th, 2020, I caused to be served the document to which this is attached to the parties listed below in the manner shown below:

Susan Lynne Fullmer
sfullmer7@gmail.com
susan@fullmerlaw.info

- By Electronic Mail
- By Fax
- By Fed Express
- By Hand Delivery
- By Messenger

Jodie Miriam Levy
jodie@divorceforgrownups.net

/s/ Dave Evanson
Dave Evanson

Appellate Administrator
The Appellate Law Firm
300 Lenora St., Ste. 900
Seattle, WA 98121
(877) 412-4786
dave@mltalaw.com

THE APPELLATE LAW FIRM

September 09, 2020 - 3:37 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 98821-8
Appellate Court Case Title: In the Matter of the Marriage of: Jennifer Corinne Anderson and Loren Heath Anderson

The following documents have been uploaded:

- 988218_Answer_Reply_20200909153158SC085128_6294.pdf
This File Contains:
Answer/Reply - Answer to Motion
The Original File Name was BRF 20 09 09 Answer to Motion to Strike Reply.pdf

A copy of the uploaded files will be sent to:

- bear@mltalaw.com
- joanna@mltalaw.com
- jodie@LevyDivorceLaw.com
- sfullmer7@gmail.com
- susan@fullmerlaw.info

Comments:

LOREN HEATH ANDERSON'S ANSWER TO RESPONDENT JENNIFER (ANDERSON) EMERY'S MOTION TO STRIKE PETITIONER LOREN HEATH ANDERSON'S REPLY

Sender Name: Corey Parker - Email: corey@mltalaw.com
Address:
300 LENORA ST.
STE. 900
SEATTLE, WA, 98121
Phone: 877-412-4786

Note: The Filing Id is 20200909153158SC085128