

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
8/26/2020 11:01 AM  
BY SUSAN L. CARLSON  
CLERK

SUPREME COURT  
OF THE STATE OF WASHINGTON

JENNIFER CORINNE  
ANDERSON [EMERY],

Respondent,

vs.

LOREN HEATH ANDERSON,

Appellant.

No. 98821-8

**RESPONDENT  
JENNIFER (ANDERSON)  
EMERY'S  
MOTION TO STRIKE  
PETITIONER  
HEATH ANDERSON'S  
UNAUTHORIZED REPLY**

**I. IDENTITY OF MOVING PARTY**

Respondent Jennifer Corrine (Anderson) Emery seeks the relief set out in Section II.

**II. STATEMENT OF RELIEF SOUGHT**

Under RAP 13.4(d), Jennifer Emery respectfully moves to strike Petitioner Heath Anderson's unauthorized Reply, except, as the court deems appropriate, the portion relating to Jennifer's request for attorney fees. Jennifer seeks attorney fees under RAP 10.7 and RAP 18.9 for having to file this motion.

**III. FACTS RELEVANT TO MOTION**

On August 7, 2020, Supreme Court Clerk Susan L. Carlson directed the parties to review "RAP 13.4(d) regarding the filing of any . . . reply to an answer," related to Respondent Heath Anderson's August 6, 2020 petition for review. Dkt. At 8/7/2020.

For his basis for review, Heath's Petition for Review cited only RAP 13.4(b)(1) (conflict with Supreme Court decision.) Petition at 1. He did not cite RAP 13.4(b)(2) (conflict with published decisions of the Court of Appeals) but cited some Court of Appeals authority. *Id.* at 8-9. Heath did not cite or discuss any other provision of RAP 13.4(b), but in one short paragraph, Heath briefly discussed a "fundamental liberty" interest in this case between parents. *Id.* at 10-11.

On August 14, 2020, Jennifer answered the petition. She did not seek review of any issues not raised in the petition for review. She addressed RAP 13.4(b)(1) and (2) because those were the provisions it appeared Heath used as the basis for his petition. Answer at 5-7. She also refuted Heath's claimed "fundamental liberty" issue. *Id.* at 8-9. Jennifer is seeking attorney fees under RAP 18.9. *Id.* at 9-11.

On August 25, 2020, Heath filed his reply. Heath *did not* claim that Jennifer sought review of any issues not raised in the petition for review. In his reply, Heath merely responded to Jennifer's Answer. Reply at 1-6. Heath raised issues not addressed in his petition for review, addressing for the first time RAP 13.4(b)(3) and (b)(4) to support his petition for review. Reply at 6. He cited 27 cases, compared to the 13 cases cited in his petition. *Id.* at iii.

#### **IV. GROUNDS FOR RELIEF AND ARGUMENT**

RAP 13.4(d) permits a party seeking review to “file a reply to an answer *only if* the answering party seeks review of issues not raised in the petition for review.” RAP 13.4(d) (emphasis added). Jennifer did not seek review of any “new issues.” RAP 13.4(d). Jennifer is not asking this Court to review any aspect of Division One’s Opinion, which was favorable to her. *See, e.g., In re Escarcega and Barrett*, 452 P.3d 1238, 1238 (2019).

Heath’s Reply should be stricken, except to the extent it addresses Jennifer’s request for attorney fees.

##### Attorney Fees

RAP 10.7 allows the court to impose sanctions against a party who submits an improper brief. RAP 18.9(a) allows for compensatory damages if one party fails to comply with the rules and the other party suffers damages as a result. In filing this Motion to Strike, Jennifer 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.

Heath failed to comply with RAP 13.4(d). Under RAP 18.9 and RAP 10.7, Jennifer asks that this Court award attorney fees to her in the amount of \$600 for filing this motion to strike, subject to RAP 18.1.

**V. CONCLUSION**

This Court should strike Heath's improper Reply, except perhaps the portion of Heath's Reply relating to Jennifer's request for attorney fees.

Respectfully submitted this 26<sup>th</sup> day of August 2020.

/s/ Susan Lynne Fullmer

Susan Lynne Fullmer

WSBA #43747

6523 California Ave. SW, #275

Seattle, WA 98136

(206) 567-2757

/s/ Jodie Levy

Jodie Levy, WSBA #23175

The Quirk Law Group, PLLC

P.O. Box 599

Kirkland, WA 98083

(425) 289-0293

Attorneys for Respondent Jennifer

Corinne [Anderson] Emery

**SUSAN L. FULLMER, ATTORNEY AT LAW**

**August 26, 2020 - 11:01 AM**

**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\_Motion\_20200826105926SC846218\_8972.pdf  
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