No. 99651-2

Court of Appeals No. 50009-4-II (consolidated with No. 52959-9-II)

IN THE SUPREME COURT FOR
THE STATE OF WASHINGTON

Marriage of:

TATYANA MASON,

Petitioner,

v.

JOHN MASON,

Respondent.

ANSWER TO PETITION FOR REVIEW

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IDENTITY OF RESPONDENT, RELIEF REQUESTED & INTRODUCTION

Respondent John Mason asks this Court to deny Tatyana's[1] Petition for Review. She never cites or argues any RAP 13.4(b) ground for review. She never directly challenges any of the appellate court's actual holdings. She argues issues that were resolved against her in prior appeals or that she should have raised in those prior appeals, all of which are barred by RAP 2.5 and/or *res judicata*. No law supports any of her arguments.

This is just one of many actions and appeals Tatyana has brought since the trial and appellate courts affirmed CPS's "founded" finding regarding her children's allegations that she abused them. While she always calls John an "abuser" because she successfully sought a protection order against him in 2007 – retaliating for his dissolution petition – she never mentions the trial court's subsequent finding that John presents no risk of abuse to her or to his children. While she always calls John and his counsel liars, she never substantiates her vague allegations with any evidence.

Judge Wickham's 2016 rulings were *vacated* long ago. There is no basis for review here. This Court should deny review.

[1] We use first names solely for clarity and convenience.

FACTS RELEVANT TO ANSWER

The facts are correctly stated in the Court of Appeals' *three* opinions rejecting Tatyana's repetitious claims. *See* Appx. A (2015); B (2018); & C (2021); *see also* BR 2-16 (facts & procedure cited). They need not be restated here, but in summary outline (*id*.):

- 1999-2006: Tatyana immigrated to the U.S. on a "fiancée visa." John and Tatyana married. They had two children.
- 2007: John filed for dissolution of their marriage. Tatyana obtained a retaliatory DV order.
- 2008: The court entered a dissolution decree, parenting plan, and Child Support Order. No RCW 26.09.191 restrictions were imposed against John. Tatyana did not appeal any of these orders.
- 2011: The children reported Tatyana's abuse, so John moved to modify the parenting plan. CPS determined the children's allegations were "founded."
- 2013: John's modification action went to trial, with *both parties represented by counsel*. Finding that Tatyana abused the children, Judge Hirsch modified the parenting plan to give John custody of the children. The court had no further concerns about DV by John. It ordered Tatyana to pursue therapeutic visitation, but she never has. Tatyana appealed.
- July 2015: The Court of Appeals affirmed Judge Hirsch. Tatyana did not petition for review.
- September 2015: Tatyana sought to "dismiss" the 2013 Child Support Order, to which she had agreed, and from which she never appealed. A commissioner rejected her motion and Tatyana did not appeal.
- October 2015: Tatyana twice sought to "revise" the 2013 Parenting Plan. She also again sought to set aside the Child Support Order. A commissioner reduced support to the statutory minimum. No one appealed.

- November 2016: Judge Christopher Wickham held a three-day trial on Tatyana's motions to modify the parenting plan and to vacate the 2013 child support order. He vacated the 2013 child support order and granted CR 11 sanctions against John, but failed to enter findings supporting them. John superseded the judgment and timely appealed.
- December 2016: Judge Wickham retired.
- January 2017: Tatyana filed another CR 60 motion to vacate the 2013 and 2008 Parenting Plans. She reraised issues decided in prior proceedings, including challenging credibility determinations made against her.
- Later in 2017: Tatyana sought release of the supersedeas bond and additional monies from John. CP 785; RP (Jan 25, 2017). Judge Hirsch rejected her challenges to the 2016 trial that was on appeal, directing supersedeas issues to the Court of Appeals. Tatyana instead appealed.
- July 2018: The Court of Appeals granted John's appeal, reversing Judge Wickham's 2016 order vacating the 2013 child support order, and vacating his CR 11 sanctions, but remanding for either dismissal of the sanctions or findings supporting them. Tatyana petitioned for review in this Court and in the United States Supreme Court.
- December 2018: While her petitions were still pending, Tatyana sought to have a different superior court judge enter findings based on oral statements Judge Wickham made during the trial. The trial court denied the motion because the second appeal was still pending and because it had no authority to enter findings. Tatyana again appealed.
- Both this Court and SCOTUS denied review of the 2018 Court of Appeals decision in John's favor, rendering it final.
- The Court of Appeals consolidated two of Tatyana's appeals. She also has another appeal pending in Division II.

In this matter, the appellate court issued its decision on Tatyana's consolidated appeals on March 9, 2021. App. C. The appellate court held (App. C at 2-3):

> (1) Tatyana's argument that the trial court erred when it did not release funds in the supersedeas bond is moot because we vacated those fees in a prior appeal;
>
> (2) the trial court did not abuse its discretion when it denied Tatyana's 2017 motion to vacate the 2013 parenting plan under CR 60;
>
> (3) Tatyana's argument regarding her constitutional right to raise children is barred by RAP 2.5;
>
> (4) Tatyana's argument on federal immigration regulations is barred by res judicata [claim preclusion];
>
> (5) Tatyana's argument that the trial court failed to consider financial circumstances is barred by res judicata [claim preclusion];
>
> (6) the trial court did not err when it denied her 2018 motion to enter findings on an issue then pending on appeal;
>
> (7) although a retired trial court judge is authorized to sit as a judge pro tempore by statute, we have no authority to order him to come out of retirement to preside over a case.

The appellate court therefore affirmed. *Id*.

It is difficult to determine whether Tatyana challenges any of these holdings. She presents *nine* issues, none of which expressly addresses the appellate court's actual holdings, and some of which even challenge alleged *2016* "findings" *vacated* long ago. PFR 4-5.

For the reasons stated *infra*, no errors occurred, and no significant issues are presented. Review is unwarranted here.

REASONS THIS COURT SHOULD DENY REVIEW

A. Tatyana fails to state any recognized ground for review.

Tatyana does not cite RAP 13.4, nor does she argue any proper ground for review. *See* PFR. And indeed, she fails to straightforwardly challenge any of the appellate court's express holdings, virtually any of which would be a sufficient ground on which to affirm. This Court should deny review.

John does not seek review of any issue, so no Reply to this Answer is permitted. RAP 13.4(d) ("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") (emphasis added).

B. The Court of Appeals did not weigh any evidence, which is not a basis for granting review in any event.

Tatyana appears to argue that the appellate court improperly weighed the evidence presented to Judge Wickham in 2016. PFR 11-13. It did not weigh any evidence. *See* App. C. Moreover, in *2018* the appellate court had *vacated* Judge Wickham's rulings specifically because *he failed to make any findings* supporting them. *See* App. B. His prior decision is thus irrelevant here.

It is unclear what Tatyana means by, "It is tacitly conceded that **neither** of [*sic*] the 2016 USCIS order and [*sic*] the 2016 trial finding of extraordinary circumstances [*sic*] mentioned above are

barred by res-judicata [*sic*]." PFR 12. No concession, tacit or otherwise, has been made. Nor is there a "2016 finding of extraordinary circumstances." *Id*. On the contrary, the 2018 appellate decision *vacated* Judge Wickham's 2016 rulings. *See* App. B.

There is no basis on which to grant review.

C. Supersedeas is moot.

The appellate court held that "Tatyana's argument that the trial court erred when it did not release funds in the supersedeas bond is moot because we vacated those fees in a prior appeal." App. C at 2, 10-11. Tatyana does not address mootness. PFR 13-15. She instead argues that the appellate court "made long-false-ridicules [*sic*] case analysis- [*sic*] which are not matching with [*sic*] Tatyana's request, denied Tatyana's motion [*sic*] via fabricated holding [*sic*] in the opinion." PFR 13. She appears to be challenging Judge Hirsch's refusal to *increase* the bond amount. PFR 14-15. But since those fees were *vacated* in a prior opinion, that issue is also moot.

Review is unnecessary.

D. The trial court did not err in refusing to enter findings purportedly made by a different judge.

The appellate court held that "the trial court did not err when it denied [Tatyana's] 2018 motion to enter findings on an issue then pending appeal." App. C at 2-3. Specifically, the "trial court correctly

denied Tatyana's motion because the issue was pending appeal and had not been mandated at the time of the motion." App. C at 21, 23-25 (citing, *inter alia* RAP 7.2(e); ***State v. Friedlund***, 182 Wn.2d 388, 395-96, 341 P.3d 280 (2015)). Tatyana fails to challenge this correct holding, which is an independently sufficient reason to deny review.

Moreover, the successor judge "had no authority to enter findings for a trial heard by a predecessor judge." App. C at 21-23, 28-29 (citing, *inter alia*, ***Tacoma Recycling Inc. v. Capital Mat. Hand. Co.***, 42 Wn. App. 439, 441-42, 711 P.2d 388 (1985) (successor judge generally may not enter findings of fact based on testimony heard by predecessor judge); ***Marriage of Crosetto***, 101 Wn. App. 89, 95, 1 P.3d 1180 (2000) (same); ***State v. Bryant***, 65 Wn. App. 547, 549, 829 P.2d 209 (1992) (same; rule applies even where the prior judge entered an oral decision); RCW 2.28.030 (judge "shall not act . . . [w]hen he or she was not present and sitting as a member of the court at the hearing of a matter submitted for its decision")).

Tatyana does not challenge any of this controlling authority, instead relying solely on ***State v. Portomene***, 79 Wn. App. 863, 905 P.2d 1234 (1995). PFR 15-16. But there, while the State failed to present findings until two months after the defendant filed his opening brief, ultimately *the same judge who heard the trial entered the findings*.

Portomene, 79 Wn. App. at 864-65. That is not true here, so ***Portomene*** is inapposite.

There is no basis upon which to grant review.

E. An appellate court may not order a trial judge to come out of retirement.

The appellate court held that although a retired judge *may* sit as a judge *pro tempore* by statute, Tatyana cited no authority that an appellate court may *order* one to come out of retirement to hear a matter. App. C at 29-30. This is correct. *See* Tatyana's BA 47-50. Certainly, RCW 2.08.180 says no such thing. The appellate court did not make any "fake holdings." PFR 16.

Review is unwarranted.

F. The appellate court did not "falsely" state that no constitutional rights are at issue.

The appellate court held (a) that Tatyana's argument regarding her constitutional right to raise children is barred by RAP 2.5 (she never raised it in the trial court); and (b) that her arguments based on federal immigration regs and financial issues are barred by *res judicata* (claim preclusion). App. C. at 17-20. Again, Tatyana fails to challenge these correct holdings. PFR 18-20.

No grounds for review exist.

For the first time here, Tatyana appears to claim that her right to due process was violated by the presentation of false evidence in her *2016* trial. Obviously, that issue too is barred by RAP 2.5, and by *res judicata*, as she could have raised it in a cross-appeal when John successfully appealed and vacated those rulings years ago. In any event, her arguments are again based on unsupported credibility claims that she lost long go, lacking any legal support. PFR 18-20.

Review is unwanted.

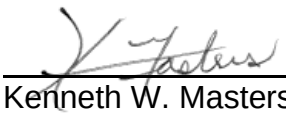
CONCLUSION

This Court should deny review.

No reply to this Answer is permitted. RAP 13.4(d) ("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") (emphasis added). John does not seek review of any issue.

RESPECTFULLY SUBMITTED this 13th day of July 2021.

MASTERS LAW GROUP, P.L.L.C.



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CERTIFICATE OF SERVICE

I certify that I caused to be filed and served a copy of the foregoing **ANSWER TO PETITION FOR REVIEW** on the 13th day of July 2021 as follows:

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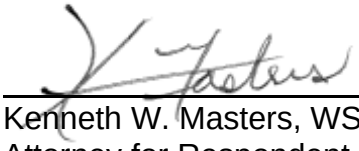

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