

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
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CLERK

CAUSE No. 101058-3

SUPREME COURT  
OF THE STATE OF WASHINGTON

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AVI LEANNE TAYLOR, Appellant,

v.

MIRINA STONE, Respondent.

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**ANSWER TO MOTION FOR DISCRETIONARY  
REVIEW OF ORDER ON MOTION TO MODIFY**

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## I. INTRODUCTION

Respondent Mirina Stone (hereinafter Stone) respectfully requests that Appellant Avi Taylor's (hereinafter Taylor) Motion for Discretionary Review of the Court of Appeals July 28, 2022 Order Denying Motion to Modify the commissioner's May 23, 2022 ruling awarding costs to Stone under RAP 14.2 be denied. As the following argument and authorities establish, none of the issues raised by Taylor satisfy the requirements of RAP 13.4(b) to warrant the Supreme Court accepting discretionary review. The July 28, 2022 Order of the Court of Appeals in no way conflicts with any Supreme Court decision or any other Court of Appeals decision and does not involve any question of law under the Washington State Constitution or United States Constitution.

Moreover, the Court of Appeals July 28, 2022 Order Denying Motion to Modify the commissioner's May 23, 2022 ruling awarding costs to Stone under RAP 14.2 as the substantially prevailing party following Taylor's unsuccessful appeal of the trial court's civil judgment awarding her \$35,000 in general damages

arising from a minor car accident does not involve an issue of substantial public interest. This is a civil case, not a criminal case, and Taylor had her day in court that resulted in award of damages in her favor. There is no public interest in promoting a civil litigant's appeal of a monetary damages award, or in denying the non-appealing party the right to recoup some costs it incurs when they are the prevailing party in the appeal. The Court of Appeals directed the commissioner to award Stone the limited costs she was entitled to under RAP 14.3, and there is no basis, legal or otherwise, to overturn that decision based on Taylor's indigency status that waived the initial filing fee and allowed her to pursue an arguably meritless appeal in this civil action.

## II. ARGUMENT

### A. None of Taylor's Arguments Requesting Review Meet the Requirements of RAP 13.4(b).

To obtain this court's review, Taylor must show that the Court of Appeals Order Denying Motion to Modify the commissioner's May 23, 2022 ruling awarding costs to Stone

under RAP 14.2 conflicts with (1) a decision of the Supreme Court or (2) another Court of Appeals decision, or (3) that she is raising a significant constitutional question, or (4) there is an issue of substantial public interest. RAP 13.4(b)(1)-(4).

There is not a single Supreme Court case or Court of Appeals case which requires an appellate court to consider a party's indigency or ability to pay costs under RAP 14.2 in a civil case. Nor is there any constitutional issue with requiring an indigent party who loses an appeal to pay costs to the prevailing party. RAP 14.2 is unambiguous in its language that a party's indigency need only be considered in a criminal case.

RAP 14.2 states in pertinent part as follows:

A commissioner or clerk of the appellate court will award costs to the party that substantially prevails on review, unless the appellate court directs otherwise in its decision terminating review, or unless the commissioner or clerk determines an **adult offender** does not have the current or likely future ability to pay such costs. When the trial court has entered an order that **an offender** is indigent for purposes of appeal, that finding of indigency remains in effect, pursuant to RAP 15.2(f), unless the commissioner or clerk

determines by a preponderance of the evidence that **the offender's** financial circumstances have significantly improved since the last determination of indigency. (emphasis added).

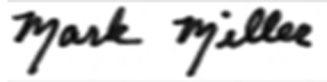
Pursuant to RAP 14.2, the commissioner or clerk will award costs to the substantially prevailing party in a civil case “unless the appellate court directs otherwise in its decision terminating review.” The Court of Appeals in this case did not “direct otherwise.” Rather, it directed Stone to make a request for costs from the commissioner pursuant to RAP 14.2. *See* May 2, 2022 Unpublished Opinion. The Commissioner did award Stone its costs which consisted of a \$200 statutory attorney fee and the cost of preparing the original and one copy of the report of proceedings in the amount of \$2,532, both of which are recoverable costs under RAP 14.3. *See Appendix C to Petition for Review.* As this case is not a criminal case and Taylor is not an “adult offender,” the Commissioner was not required, and had no authority, to consider Taylor’s ability to pay. The Court of Appeals may have the discretion to consider

factors of ability to pay and indigency, but it rejected Taylor's arguments by its Order Denying Motion to Modify. *See Appendix A to Petition for Review.*

Finally, there is no issue of substantial public interest raised by Taylor's Motion for Discretionary Review. Taylor's arguments for overturning the Court of Appeals' award of RAP 14.2 costs to Stone, the prevailing party in this civil action, is entirely based on articles discussing the imposition of fines, sanctions, and costs against indigent defendants in criminal matters. *See Motion for Discretionary Review.* Taylor is not a criminal defendant, however, and this is not a situation where the State of Washington is seeking to impose LFOs against a criminal defendant. It is simply a private citizen suing another private citizen, and it is not a fine or sanction, but rather partial reimbursement of costs that Stone was forced to incur due to Taylor's refusal to unreasonably accept the amount of the judgment in her favor.

The bottom line is Taylor was given free access to the Court of Appeals in this civil case when the trial court ruled Taylor was indigent in her Order on Motion for Order of Indigency dated October 19, 2021, and the Commissioner of the Court of Appeals ruled on June 16, 2022 that the filing fee for Taylor's appeal was waived. *See Appendix E to Petition for Review.* Taylor's appeal was unsuccessful, however, and Stone must be reimbursed for the allowable costs she was forced to incur in defending against what was arguably a frivolous appeal. There is no constitutional right to appeal a civil judgment free of costs, and no constitutional prohibition against requiring a losing party to pay costs incurred by the prevailing party. Taylor's Motion for Discretionary Review should be denied.

Respectfully Submitted,

A rectangular box containing a handwritten signature in black ink that reads "Mark Miller".

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This document contains 1658 words in compliance with RAP  
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**LAW OFFICES OF MARK M. MILLER**

**September 28, 2022 - 10:53 AM**

**Transmittal Information**

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