

FILED
SUPREME COURT
STATE OF WASHINGTON
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No. 102169-1

SUPREME COURT
OF THE STATE OF WASHINGTON

In re the Marriage of:

ALEXANDRA L. CARTWRIGHT,

Respondent,

and

PATRICK R. FLYNN,

Petitioner.

ANSWER TO PETITION FOR REVIEW

SMITH GOODFRIEND, P.S.

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A. Why This Court Should Deny Review.

Petitioner seeks review of a Court of Appeals' unpublished opinion affirming an order holding him in contempt for failing to comply with the provisions of a parenting plan and providing a means to purge his contempt and reestablish a relationship with his daughter. The Court of Appeals accurately recited the relevant facts in its opinion in this case, which was considered after remand from *Marriage of Cartwright*, No. 82231-4-1, 2022 WL 1763679 (unpublished, May 31, 2022).

In his first appeal, petitioner appealed the denial of his motion to vacate the provisions of the parenting plan requiring him to comply with any treatment as recommended after an evaluation for anger management. As the Court of Appeals noted in its previous opinion, many of petitioner's challenges, which are resurrected in this second appeal after remand, were not properly preserved. 2022 WL 1763679, *6, n.7.

The Court of Appeals in its previous opinion also rejected petitioner’s primary substantive argument, repeated after remand and in his petition for review, that he could not be ordered to comply with evaluation and treatment requirements that contain the words “domestic,” or “violence.” 2022 WL 1763679, *6, n.6.

Petitioner did not seek review of the Court of Appeals’ previous opinion rejecting his challenges to the parenting plan, and he cannot raise these issues again now. *Estate of Langeland v. Drown*, 195 Wn. App. 74, 82, ¶16, 380 P.3d 573 (2016) (“the law of the case doctrine to preclude successive reviews of issues that a party raised, or could have raised, in an earlier appeal in the same case”), *rev. denied*, 187 Wn.2d 1010 (2017). Just as a motion to vacate is not a substitute for appeal, *State ex rel. Green v. Superior Court for King Cnty.*, 58 Wn.2d 162, 164, 361 P.2d 643 (1961), this second appeal from a finding of contempt does not bring up the merits of the underlying

order. *Griffin v. Draper*, 32 Wn. App. 611, 614, 649 P.2d 123, *rev. denied*, 98 Wn.2d 1004 (1982).

Even if petitioner had challenged the trial court's authority to impose restrictions and conditions in the original parenting plan, his argument would still fail. A parent's "right to parental autonomy" is not infringed when a court imposes restrictions on a parent "to protect the child from physical, mental, or emotional harm." *Marriage of Chandola*, 180 Wn.2d 632, 647-48, ¶¶ 27, 30, 327 P.3d 644 (2014).

Further, petitioner's due process rights were not violated. He had been put on notice that he could lose residential time under the parenting plan if he failed to comply with the treatment recommendations when the parenting plan was first entered, and as the Court of Appeals' concluded, on remand petitioner was provided with all the procedural protections required before the trial court entered findings, supported by substantial evidence

and credibility determinations, justifying an order of contempt.

B. Conclusion and Request for Fees.

Petitioner has utterly failed to meet the criteria justifying acceptance of review in RAP 13.4(b). The Court of Appeals' unpublished opinion conflicts with no precedent governing enforcement of parenting plans in an order of contempt, and petitioner's largely unpreserved challenges to the parenting plan warrant no further consideration. This Court should deny review and award respondent her fees for having to respond to this petition under the contempt statute, RCW 26.09.160. *Marriage of Eklund*, 143 Wn. App. 207, 219, ¶ 29, 177 P.3d 189 (2008), citing *Marriage of Rideout*, 150 Wn.2d 337, 359, 77 P.3d 1174 (2003).

*I certify that this answer is in 14-point Georgia font
and contains 582 words, in compliance with the Rules of
Appellate Procedure. RAP 18.17(b).*

Dated this 31st day of July, 2023.

SMITH GOODFRIEND, P.S.

By: /s/ Catherine W. Smith
Catherine W. Smith
WSBA No. 9542

Attorneys for Respondent

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on July 31, 2023, I arranged for service of the foregoing Answer to Petition for Review, to the court and to the parties to this action as follows:

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DATED at Seattle, Washington this 31st day of July,
2023.

/s/ Victoria K. Vigoren
Victoria K. Vigoren

SMITH GOODFRIEND, PS

July 31, 2023 - 11:18 AM

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