No. 95590-5

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

In re the Marriage of

WILLIAM LAIDLAW
Appellant

and

DANAE ZOELLIN fka DANAE LAIDLAW
Respondent

ANSWER TO PETITION FOR REVIEW

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TABLE OF AUTHORITIES

TABLE OF AUTHORITIES

Washington Cases

Statutes

Regulations & Rules

A. IDENTITY OF RESPONDENT

The respondent is Danae Zoellin, f/k/a Danae Laidlaw, who was the respondent in the Superior Court and the respondent in the Court of Appeals.

B. RESTATEMENT OF ISSUES ON WHICH REVIEW IS SOUGHT

1. The trial court exercised its discretion to permit the mother to move from one side of Lake Washington to the other, made adjustments to the parenting plan to account for the logistical implications of this move (i.e,. traffic), and awarded modest attorney fees. The father's appeal from these decisions lacks merit, let alone meriting discretionary review by this Court.

2. If the appellate court erred, it did so by denying the mother's request for attorney fees based on the father's litigiousness in the appellate court, which easily quadrupled the cost of review, consistent with his longstanding pattern of abusive conduct.

C. RESTATEMENT OF THE CASE

The parties divorced in 2013, when their child was four years old, after nearly two contentious years of litigation. Laidlaw's residential time was restricted based on findings of domestic violence and abusive use of conflict. CP 1-2, 72-82. The court limited Laidlaw's decision-making and required visitation be supervised until he completed counseling, after

which the parenting plan provided Laidlaw with substantial residential time. CP 4. The court also awarded $30,000 in fees based on Laidlaw's intransigence. CP 83. However, Laidlaw declared bankruptcy shortly thereafter and avoided paying Zoellin.

At the time of separation both parties were living in Issaquah, Zoellin was working in Bellevue, and the child was in daycare in Bellevue. Following separation, as Laidlaw stalked and harassed Zoellin, she moved to several different locations (mostly on the east side of Lake Washington) out of concern for her safety. When the final dissoluton orders were entered, she was living temporarily in Seattle and commuting to Bellevue for work. Shortly after, she moved back to Issaquah where the child was starting kindergarten. RP 138-39.

The following year, Zoellin started a new job in Seattle (South Lake Union), which complicated her commute and increased the child's time in after school care. RP 139. After a year and half of trying to manage this schedule, Zoellin and her now husband decided to move to Seattle to mitigate the commute and daycare issues. RP 139. She gave notice of an intent to relocate from Issaquah to the Queen Anne neighborhood in Seattle, where she and her husband eventually purchased a home.

Laidlaw objected and the parties went to trial. The court granted the relocation, finding Laidlaw failed to rebut the presumption that the benefit to Zoellin and the child of her moving from Issaquah to Queen Anne outweighed any detriment. CP 755. The court made changes to the residential schedule finding "the changes are in the children's best interests considering the move." CP 755. In particular the court reconfigured the schedule to decrease the amount of time the child spent in the car commuting between the parties' residences during the school week (eliminated father's midweek overnights during school weeks but increased time over the summer and gave father additional time during school in-service days and early dismissal days). The court also gave the father weekly Wednesday afternoons with the child. CP 761.

The court also awarded attorney fees to Zoellin based on the parties' relative financial circumstances. The court gave Laidlaw 90 days to pay. If the judgment remained unpaid after 90 days, the court ordered Child Support Enforcement to collect on the judgment. CP 777.

Laidlaw appealed these orders. Just days before the 90 day period on the judgment was set to expire he filed an emergency motion to stay the judgment in the Court of Appeals, insisting he did not have to comply with RAP 8.1(b)(1)'s requirement that he post security to stay a money judgment. After Zoellin was forced to bring several motions in the trial

court and in the court of appeals to compel him to comply with this requirement, he finally posted the bond, rendering moot his challenge to the trial court's child support enforcement mechanism, the "debatable issue" he identified in support of his motion to stay. (In other words, Laidlaw spent months challenging a mechanism designed simply to make him pay a judgment that, by law, he already was required to pay.)

Laidlaw's challenge to the trial court's discretionary rulings relies on mischaracterizations of the facts, here as in the Court of Appeals, which are addressed here summarily but more completely in Zoellin's respondent's brief.

For example, Laidlaw characterizes Zoellin's relocation as one that "simply sought to return the parties to where they were when the parenting plan was entered in 2013," meaning, apparently, that Zoellin was living on one side of the lake while working on the other and for her to return to that relative position now should not affect the parenting plan. Petition, at 7. Not true but also not relevant. In 2013, Zoellin temporarily lived in Seattle while working in Bellevue IN ORDER TO escape Laidlaw's stalking and harassment. CP 75-82 Then she moved back to the eastside, where she worked. She sought relocation after taking a new job in Seattle, a decision benefitting her and the child.

Despite these verifiable facts, Laidlaw insists otherwise, claiming, for example, that "there was ***no change in parental location from the permanent parenting plan when it was entered***." Petition at 5 (emphasis in original)). Again, Zoellin has consistently sought to live near where she works. She was temporarily living in Seattle at the time the final orders were entered (after trial had been continued) because Laidlaw's frightening behavior. In any case, it does not matter. Laidlaw did not challenge the court's order permitting Zoellin's relocation, so where people lived when is beside the point. In short, his attempts at historical revision waste his time as well as the reader's.

Laidlaw also misrepresents how much residential time the court changed, but cannot even agree with himself about this (lost 32 overnights, lost 34 overnights). Petition at 1, 3, 10. While the total reduction varies because of the potential for extra midweek time depending on the school calendar, the maximum reduction in overnights is 22 (from 133 to 111), or approximately 17 percent. Though the midweek overnights are eliminated, except where the school calendar allows, he has more time during the summer. Laidlaw also has an additional 35 midweek afternoon visits during the school year, where before he had none. CP 761-62. If this sounds like a concession to the Seattle metropolitan area's traffic, it is: see Br. Respondent, at 6-7. Though Laidlaw argues on

appeal that the trial court should have made specific findings about the reason for residential schedule changes, it was no mystery. Indeed, at trial, Laidlaw used traffic as the reason to oppose relocation, complaining it would increase his commute time. Br. Respondent, at 6-7; RP 22, 38-39, 18. The court agreed, but also correctly applied the Child Relocation Act to permit the mother to take the better job and then move to be near to it. Then the court made sensible adjustments to the residential schedule.

Further facts are developed more completely and record citations provided in Zoellin's brief in the Court of Appeals.

D. ARGUMENT WHY REVIEW SHOULD NOT BE GRANTED.

Laidlaw fails to establish any basis for review of the Court of Appeals' decision, which affirmed a parenting plan (with relatively minor residential time adjustments entered pursuant to an intra-county relocation) and a modest award of attorney fees. RAP 13.2(b). There is nothing remarkable about this case except what it reveals about Laidlaw's ongoing litigiousness.

1. THE STATUTE AUTHORIZES TRIAL COURTS TO MODIFY PARENTING PLANS WHEN A PARENT HAS RELOCATED, GOVERNED, AS ALWAYS, BY THE CHILD'S BEST INTERESTS.

Laidlaw asserts that this Court must accept review "to determine what substantive legal standard applies to a trial court's modification of a parenting plan after granting a petition to relocate." Petition, at 1. But the

standard is clear to everyone but Laidlaw. *See* RCW 26.09.260(6) (permitting court to modify residential schedule where relocation granted); RCW 26.09.002 (best interests govern decisions about parenting); CP 776 (court declaring changes to residential schedule serve best interests of the child). See Br. Respondent, at 12-23. There is no reason for this Court to alter that standard, let alone to replace it with the substantive standard for modifications in non-Child Relocation Act (CRA) cases, as Laidlaw urges. Petition, at 7. Nor should this Court insert into the CRA procedure a requirement that the trial court must specify reasons for the residential schedule changes apart from the relocation itself (Petition, at 7), since the statute explicitly (and sensibly) makes relocation a basis for changes to the residential schedule.

The Court of Appeals correctly concluded the Child Relocation Act (CRA) and RCW 26.09.260(6) authorized the trial court to change the residential schedule following Zoellin's relocation.[1] Division One rightly rejected Laidlaw's argument that such changes required an additional finding that the present residential schedule is harmful to the child (as with the modification standard under RCW 26.09.260(2)). *In re Marriage of Laidlaw*, - Wn. App. - , 409 P.3d. 1184, 1189 (2018). The court noted the

[1] The statute provides that the court, having permitted relocation, must then "determine what modification pursuant to relocation should be made, if any, to the parenting plan."

statute imposes no such requirement. *Id.* Rather, the relocation is the basis for modifying a parenting plan. *Id.,* at 1188, 1189. And the statute anticipates the parent's relocation will likely necessitate changes to the residential schedule, what Division One aptly described as a "necessary byproduct" of the relocation. *Id.,* at 1190. The statute does not require an additional showing that the now impracticable residential schedule is harmful.[2]

Laidlaw tries to breathe some life into his argument by relying on a recent unpublished decision from Division Three, *In Re Marriage of Monoskie,* 2017 WL 5905764 (Nov. 30, 2017).[3] Division One rightly disagreed *Monoskie* has any relevance here.

Here, we have one child and two parents living in the same metropolitan area sharing residential time roughly 65/35 (not counting

[2] The pertinent subsection provides:

> (6) The court may order adjustments to the residential aspects of a parenting plan pursuant to a proceeding to permit or restrain a relocation of the child. The person objecting to the relocation of the child or the relocating person's proposed revised residential schedule may file a petition to modify the parenting plan, including a change of the residence in which the child resides the majority of the time, without a showing of adequate cause other than the proposed relocation itself. A hearing to determine adequate cause for modification shall not be required so long as the request for relocation of the child is being pursued. In making a determination of a modification pursuant to relocation of the child, the court shall first determine whether to permit or restrain the relocation of the child using the procedures and standards provided in RCW 26.09.405 through 26.09.560. Following that determination, the court shall determine what modification pursuant to relocation should be made, if any, to the parenting plan or custody order or visitation order.

[3] This case is pending review in this Court, scheduled for the court's petition calendar of June 5, 2018.

Wednesday afternoons). Pretty straightforward, unlike *Monoskie*, where the parents lived in different states and split residential among their five children (two children primarily resided with mother and two with father and the parents split the youngest child's residential time 50/50). Both parents sought to relocate to different states. Each parent opposed the other's relocation and each sought to have all five of the children placed in one home, his or hers. The trial court approved both relocations, retaining the existing primary residences for the four older children and placing the youngest with the mother. The mother appealed claiming the trial court based its decision on a perceived lack of authority to change the primary residences of the children (e.g., from father to mother, as mother requested). (The parenting plan permitted modification for the youngest child upon reaching a certain age, which had happened by the time this case was tried.) In other words, the trial court felt bound by the CRA to confer on each relocating parent a presumption in favor of custodial continuity and preserve their primary residential placements.

Division Three affirmed the trial court's application of the CRA, contrasting it with non-CRA modification procedures, but noting how both serve the interest in continuity of primary residential placements. Division Three rejected the mother's argument that she was entitled to a separate trial on her non-CRA-based claim, finding an additional trial pointless. *Id.,* at 3. But for the complexity of the family configuration, is nothing but a routine application of the Child Relocation Act by both the trial and

appellate courts. Division One understandably did not find it pertinent here, where none of the complexities exist. *Laidlaw*, 409 P.3d 1189 n.8.[4]

Here, the trial court never contemplated changing the child's primary residence and Laidlaw claimed no basis for doing so. Laidlaw's objection to Zoellin's relocation included a petition for a change in the residential schedule, essentially to 50/50, but cited no statutory basis, such as claimed by the mother in , i.e., detriment. CP 25, 31. He did not appeal the denial of this "modification" petition. simply bears no resemblance to this case. Laidlaw did not even make the same arguments -- at trial and or on appeal – as did the mother in . His effort to ride 's coattails makes no sense whatsoever.

Here, Division One affirmed the trial court's discretionary decisions to permit the primary residential parent to relocate across Lake Washington, and to make sensible changes to the parenting plan to reflect the geographic (and traffic) realities. That's all. The statute contemplates relocation as a reason to make changes to the parenting plan and authorizes the court to makes those changes. RCW 26.06.260(6).

Consistent with that analysis, Division One likewise rejected Laidlaw's argument that the trial court was required "to articulate with

[4] As Division One noted, the CRA analysis in many respects duplicates "the general predicates to modification of a parenting plan," such as the detriment standard. 409 P.2d at 1190.

express findings that any changes are necessary to maintain the best interests of the child." Petition, at 2. The statute does not require this step; rather, it contemplates "[a]lterations to the residential schedule are a necessary byproduct of the trial court's order permitting relocation," which is why they "are expressly authorized by statute." 409 P.3d at 1190.

2. IF THE COURT GRANTS REVIEW, IT SHOULD ALSO GRANT REVIEW OF THE COURT OF APPEALS DECISION NOT TO AWARD ATTORNEY FEES ON THE BASIS OF INTRANSIGENCE.

If this Court accepts review, Zoellin asks the court also to review Division One's denial of her request for attorney fees based on intransigence. As set forth in detail in the briefing below and made manifest by the voluminous correspondence file, the clear pattern in this litigation is Laidlaw's abuse of the process, endlessly litigating, needlessly driving up costs to Zoellin, and resisting efforts to make him pay for those costs when so ordered. Here, Laidlaw fought tooth and nail to avoid paying Zoellin the modest fees awarded her, dragging everyone over a tortured path to the straightforward destination identified in RAP 8.1 (i.e., supersedeas). Yet the appellate court made Zoellin pay her own costs for these unnecessary trips back and forth to court. While this might be understandable if Laidlaw's conduct was isolated, it is not. In 2013, the court detailed Laidlaw's frightening and threatening conduct (see, e.g., CP

82: Laidlaw's "stalking and harassing behavior … caused [Zoellin] to be in reasonable fear of her personal safety"). However, the court optimistically viewed Laidlaw's conduct as incidental to the upheaval of the divorce and, after taking precautions for the child's sake, provided for the "robust engagement" of both parents in the child's life. Five years after the divorce, Laidlaw continues his abusive use of conflict, this time with litigation as the mechanism. Laidlaw objected to the mother's relocation across Lake Washington, then appealed the court's decision permitting it. While within his rights to do both of these things, he has exercised these rights so as to inflict the greatest economic damage on Zoellin. His petition for review is more of the same, but Division One did not award Zoellin fees so she cannot request them for the cost of answering Laidlaw's petition and clarifying what this case actually is about. RAP 18.1(j).

In Washington, an award of attorney fees is justified where the conduct of one of the parties causes the other "to incur unnecessary and significant attorney fees." *Burrill v. Burrill,* 113 Wn. App. 863, 873, 56 P.3d 993, 998 (2002). It is not hard to foresee the kind of future for these parties as described by Justice Chambers, concurring in *In re Marriage of Katare,* 175 Wn.2d 23, 43, 283 P.3d 546 (2012) (Chambers, J., concurring), as "something out of a Charles Dickens, novel," dragging on

for years. There, Justice Chambers found *Katare* had "crossed the line to intransigence." *Id.* Laidlaw, too, has crossed that line, with the potential for more of the same. The parties' child is only nine, and Laidlaw's enthusiasm for conflict remains unabated. The cost to the mother is bad enough. The cost to the child is worse. The cost to Laidlaw should increase as a deterrent to future abuse.

E. CONCLUSION

For the foregoing reasons, Danae Zoellin respectfully asks this Court to deny review of John Laidlaw's petition. If the court grants review, she asks the court also to consider the denial of fees by the court below.

Dated this 6th day of April 2018.

RESPECTFULLY SUBMITTED,
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