Supreme Court No. 104125-0

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

LARA B. SEEFELDT,

Respondent,

v.

Albert W Coburn

Appellant

APPEAL FROM KING COUNTY SUPERIOR COURT

THE HONORABLE JANET HELSON

No. 16-3-06380-6

APPELLANT'S ANSWER TO MOTION TO STRIKE REPLY ANSWER TO PETITION FOR REVIEW

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APPELLANT'S ANSWER TO MOTION TO STRIKE REPLY TO ANSWER TO PETITION FOR REVIEW

Appellant Albert Coburn respectfully opposes the Supreme Court Clerk's Motion to Strike his Reply to Respondent's *Answer to Petition for Review*, filed June 20, 2025. Deputy Clerk Reza J. Pazooki asserts that "*in this case, it does not appear that the answer seeks review of issues not raised in the petition for review*." However, this conclusion is both subjective and unsupported by any reference to the case record. The Clerk's own language—"*does not appear*"—acknowledges uncertainty as to whether RAP 13.4(d) has been properly applied, underscoring the impropriety of striking the Reply without judicial review or adversarial input.

I. The Clerk's Sua Sponte Motion to Strike Is Procedurally Improper

Under Washington appellate procedure, a motion to strike a reply is typically initiated by a party—not the Clerk—unless the reply is clearly unauthorized on its face. RAP 13.4(d) permits a reply to an answer "*only if the answering party seeks review of issues not raised in the petition for review."* Whether a reply addresses *new issues* is a fact-specific inquiry that depends on the content of the answer and full knowledge of arguments made to the trial court and appellate courts. In this case, Respondent did not move to strike the reply, and the Clerk's Sua Sponte action deprived Appellant of the opportunity to fully brief the issue in context.

Striking a reply based solely on the Clerk's subjective assessment—without adversarial briefing or reference to the case record—undermines procedural fairness and the adversarial process. As the U.S. Supreme Court has emphasized, *"[t]he fundamental requisite of due process of law is the opportunity to be heard*" (*Grannis v. Ordean*, 234 U.S. 385, 394 (1914)).

II. Respondent's Answer Introduced New Issues and Factual Assertions

Respondent's *Answer to the Petition for Review* raises multiple new issues and factual claims that were not raised in the trial court or addressed by the Court of Appeals. For example, Respondent asserts that "*Coburn had never sought to modify or adjust child support" and that his tuition obligation "remained at 70.2%*." (Answer, p. 7.) This is demonstrably false and contradicts Respondent's own statement to the trial court:

> *"THE COURT: I saw that there was a child support modification that was filed [by Coburn] at one point. It -- it didn't appear to me that it ever went forward." MS. PAPAHRONIS [Respondent]: The prior child support modification I believe was tied to a modification of the parenting plan and there was no adequate cause found. And so I don't believe any modification of child support ever moved forward."* (VRP, p. 11, lines 13–22.)

These contradictions are not mere rhetorical shifts—they are factual misstatements introduced for the first time at the appellate stage. Under RAP 2.5(a), issues not raised in the trial court are generally waived. Thus, when Respondent introduces new factual narratives that contradict the trial record, those assertions constitute "*new issues*" under RAP 13.4(d) and entitle Appellant to reply.

Washington courts have consistently recognized that factual disputes raised for the first time on appeal are improper. See *State v. Robinson*, 171 Wn.2d 292, 304, 253 P.3d 84 (2011) ("*Appellate courts will not consider issues raised for the first time on appeal unless they involve manifest constitutional error*."). By analogy, when a party introduces new factual assertions that were not previously litigated, they are functionally equivalent to *new issues* and must be treated as such under RAP 13.4(d).

III. RAP 13.4(d) Authorizes a Reply When New Issues Are Raised

The plain language of RAP 13.4(d) allows a reply "*only if the answering party seeks review of issues not raised in the petition for review."* The rule was amended in 2006 to clarify that a reply is permitted when the Answer itself seeks review of new issues—not merely when it raises new arguments. This amendment was intended to prevent petitioners from mischaracterizing rebuttal arguments as "new

issues," while still preserving the right to respond when the Answer substantively expands the scope of review.

As noted in *Coogan v. Genuine Parts Co.*, 197 Wn.2d 554, 564–65, 486 P.3d 240 (2021), the Supreme Court recognized that a reply is proper when the Answer conditionally raises new issues for review, even if the respondent opposes review overall. Similarly, in *Bayley Constr. v. Dep't of Labor & Indus.*, 195 Wn.2d 1004, 458 P.3d 788 (2020), the Court clarified that a reply is not permitted merely to reargue issues already raised—but that is not the case here. Appellant's Reply addressed factual misstatements and new legal theories introduced by Respondent, which were not part of the original Petition.

IV. Striking the Reply Would Undermine Fairness and Shift the Balance of Power

The purpose of RAP 13.4(d) is to ensure that each party has one opportunity to address each issue. If Respondent is permitted to misstate facts and make new arguments in her Answer without allowing Appellant to respond, the Court would be deprived of a complete and accurate record. This would violate principles of procedural fairness and frustrate the purpose of discretionary review.

Moreover, the Clerk's sua sponte action—taken without judicial directive and without adversarial briefing—effectively allows Respondent to misstate facts

without correction. This shifts the balance of proof in Respondent's favor and alters the trajectory of the case. As the Washington Supreme Court has emphasized, "*[t]he integrity of the appellate process depends on accurate representations of the record and a fair opportunity to respond to new claims*." (*See generally*, *State v. Korum*, 157 Wn.2d 614, 141 P.3d 13 (2006)).

Conclusion

For the foregoing reasons, Appellant respectfully requests that the sua sponte Motion to Strike be denied. The Reply to the Answer to Petition for Review was properly submitted under RAP 13.4(d), directly addressing new issues arising from factual misstatements introduced by Respondent. A sua sponte decision by the Clerk to strike the Reply—based solely on a subjective assessment and without reference to the case record—would impair the Court's ability to fully and accurately evaluate the petition and would prejudice Appellant's right to procedural fairness.

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Respectfully submitted (07/06/2025),

Albert W Coburn

ALBERT COBURN - FILING PRO SE

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