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Supreme Court No. 1042213
COA No. 39451-4-III

**Supreme Court
of the State of Washington**

In re the Marriage of:

Devin C. Kienow,

Petitioner,

and

Teresa A. Dittentholer,

Respondent.

Answer to Petition for Review

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1. Introduction

Devin Kienow's petition arises from an order of contempt entered against him on September 30, 2022, finding that he had failed to pay his proportional share of educational expenses. Kienow contends that he was not properly served with all documents prior to the hearing. The Court of Appeals correctly rejected his arguments and affirmed the contempt order.

The Court of Appeals correctly held that Kienow was properly served before the Sept. 30, 2022, hearing. Dittentholer accomplished personal service of process—the original contempt motion and order to show cause—on Aug. 30, 2022. When the contempt hearing was rescheduled to Sept. 30, 2022, Kienow received actual notice of the hearing with enough time to respond on the merits and be heard at the hearing. He chose to object only on procedural grounds, and his objections are without merit. The Court of Appeals

found Kienow's appeal frivolous and awarded attorney's fees to Dittentholer.

Kienow's petition fails to demonstrate that the case meets any of the criteria under RAP 13.4(b) for granting a petition for review. His arguments are without merit. This Court should deny the petition and award Dittentholer her reasonable attorney's fees for preparing this answer to the frivolous petition.

2. Statement of the Case

2.1 Kienow was ordered by the trial court to pay his proportional share of the children's educational expenses for private school.

The final Decree in Kienow and Dittentholer's divorce was entered on June 15, 2021. CP 217. The court found that Kienow engaged in abusive use of conflict. CP 236. He has engaged in a pattern of using court proceedings to harass Dittentholer and "find any little thing to make things complicated." CP 172, 236. Kienow had already been sanctioned by the trial court

for such intransigence. *See In re Marriage of Kienow*, 25 Wn. App. 2d 1064, 2023 WL 2487486 at *8 (2023).¹

The court ordered that the two children would attend St. Joseph Marquette Catholic School until they complete 8th grade. CP 244. In the Child Support Order, the parties were ordered to pay proportionate shares of the children's educational expenses. CP 232. Kienow challenged the private school requirement on appeal, but the Court of Appeals affirmed. *Kienow*, 2023 WL 2487486 at *12-13.

2.2 Kienow intentionally failed to pay his share of educational expenses.

The last time Kienow made any payment to St. Joseph was March 31, 2021, for the 2020-21 school year. CP 170, 174. Dittentholer paid \$11,637.95 to the school for the 2021-22 school year. CP 170. She

¹ The unpublished opinion in the prior appeal in this case is cited for factual background and to show issues that have already been resolved with finality.

expected total expenses for the 2022-23 school year to be \$12,112.00. CP 2-3. Those payments started to come due June 15, 2022. CP 180. Kienow did not pay, claiming he was simply unable to pay. RP 21-23. Although he had not stayed his obligation to pay while the first appeal was pending, he apparently chose not to pay, at least in part because he expected to prevail on appeal. RP 21-22; *See* CP 289. He did not prevail. He remains obligated to pay these legitimate educational expenses.

2.3 Dittentholer moved for contempt and personally served Kienow with the moving papers and order to show cause.

On August 17, 2022, Dittentholer filed a motion for contempt. CP 1. She sought enforcement of Kienow's obligation to pay his share of educational expenses. CP 2-3. She obtained an Order to Show Cause, setting a hearing for September 7, 2022. *See* CP 13-14.

On August 30, 2022, Erik Hildebrand pulled into the St. Joseph school parking lot right behind Kienow's vehicle. CP 11-12. Kienow "did not park and rather exited right away and drove north and then west away from the school." CP 12. Hildebrand parked and walked to the school, where he located Kienow parking in the school's other parking lot off N. 4th Street. CP 12. Hildebrand then personally served Kienow with the Order to Show Cause, the Motion for Contempt, and Dittentholer's supporting declaration. CP 11-12.

2.4 Kienow claimed improper service, requiring Dittentholer to make repeated attempts to correct the perceived defects until the trial court authorized service by email.

Kienow objected to receiving late notice of the Sept. 7 hearing and asked that it be stricken. CP 13-14. He admitted that he was personally served on Aug. 30. CP 16.

Anticipating Kienow's objection, Dittentholer obtained an amended show cause order on Aug. 30

setting a new hearing for Sept. 15. CP 33. She mailed the amended show cause order to Kienow, postmarked Sept. 1. CP 24-25. Kienow objected, arguing that the mailed notice was still late and that it was incomplete because he was not re-served with the original moving papers. CP 21-23.

Dittentholer returned to court, ex parte, on Sept. 15 with a motion to authorize service of a new show cause order by email, arguing that Kienow had been avoiding service and that email service would be as effective as service by mail. CP 41.

Kienow received notice of the ex parte hearing and filed a written response the same day. CP 35. The trial court entered a new show cause order, setting a hearing for Sept. 30, and an order allowing service of the show cause order by email. CP 43-46. Kienow received the new show cause order by email on Sept. 15. CP 76-77.

2.5 The trial court found that service was proper and found Kienow in contempt.

Kienow filed a written response to the motion for contempt, arguing that the court did not have authority to allow email service and that the court lacked jurisdiction because he had not been personally served. CP 72.

At the Sept. 30 hearing, the trial court held that it already had personal jurisdiction over Kienow from the original divorce petition. RP 11.2 The trial court noted that Kienow had actual notice of the coming hearing. RP 11. The trial court reasoned that, where the court had found that Kienow was evading service, and it was known that he had actual notice of the contempt motion and scheduled hearings, the order authorizing service of the latest show cause order by email was appropriate. RP 12.

The trial court found Kienow in contempt for failing to pay the educational expenses. RP 26; CP 87.

Kienow moved for revision. CP 88. The trial court denied the motion. CP 205. Kienow appealed.

2.6 The Court of Appeals held that service was proper and affirmed the trial court's contempt order.

The Court of Appeals rejected Kienow's argument that personal service of all motion documents was required each time Dittentholer rescheduled the hearing on her contempt motion. Opinion at 9-13.

The Court held that the trial court had continuing personal jurisdiction over Kienow to enforce the child support order, originating when he was personally served with the original petition for divorce. Opinion at 10 (citing *State v. Ralph Williams' N.W. Chrysler Plymouth, Inc.*, 87 Wn.2d 327, 331-32, 553 P.2d 442 (1976); RCW 26.18.040).

The Court further held that Kienow was properly served with the original show cause order and supporting documents. Opinion at 11. The Court rejected Kienow's argument that amended show cause

orders must also be personally served, and held that after proper service of the original “process,” any subsequent documents in the matter could be served by mail under CR 5(b)(2). Opinion at 11-12. The Court held that the trial court did not abuse its discretion in allowing email service as a substitute for mail service under CR 5(b)(2). Opinion at 12.

The Court of Appeals affirmed the contempt order on the merits, holding the trial court did not abuse its discretion in finding Kienow in contempt for failure to pay education expenses where Kienow had failed to show that he exercised due diligence to seek to comply with the child support order. Opinion at 13-14.

The Court of Appeals held that Kienow’s appeal was frivolous and granted Dittentholer’s request for an award of appellate attorney’s fees. Opinion at 20-21.

3. Argument

This Court should deny Kienow's petition for review. He has failed to demonstrate that the case meets any of the criteria under RAP 13.4(b). His arguments of error are without merit. This Court should award Dittentholer her reasonable attorney's fees for preparing this answer to the frivolous petition.

3.1 Kienow's petition fails to address or establish any of the criteria for accepting review under RAP 13.4(b).

A petition for review will only be accepted when the case meets the criteria provided in **RAP 13.4(b)**. Those criteria include that the Court of Appeals decision conflicts with a published decision of the Supreme Court or the Court of Appeals; that it involves a significant question of constitutional law; or that it involves an issue of substantial public interest that should be determined by the Supreme Court. **RAP 13.4(b)**.

Kienow's petition fails to do so much as acknowledge the existence of these criteria. His petition does not mention RAP 13.4(b), does not set forth the criteria, and does not provide any argument for how the case meets any of the criteria. For this failure alone, the petition should be denied.

The case does not meet any of the criteria. Kienow does not cite to any published opinion or other authority that is in conflict with the Court of Appeals decision in this case. He makes no constitutional arguments in his petition. And he does not show that the issues in the case are anything more than his own personal crusade to make Dittentholer's life more difficult. There are no conflicting precedents, no constitutional questions, and no issues of substantial public interest. This Court should deny the petition.

3.2 Kienow's claims of error are without merit.

Kienow's claims of error are without merit. He does not cite any authority to support his central argument that each amended show cause order was an entirely separate matter requiring new personal service of all documents. *See* Petition at 5-6. He does not cite any authority to support his argument that a court cannot order service by email as a substitute for service by mail under CR 5(b). *See* Petition at 10-12. He improperly asks this Court to re-weigh the trial court's finding—supported by substantial evidence—that he was evading service. *See* Petition at 7-9. He fails to show any error in the Court of Appeals' interpretation and application of the law and court rules in holding that he was properly served for the Sept. 30 hearing.

Kienow's argument that the trial court was required to allow him to present oral argument on the merits at the hearing is an entirely new legal theory,

argued for the first time in this petition. At the trial court, he argued that he *could not respond on the merits* because he was not properly served with the motion and declaration. At the Court of Appeals, he held to that legal theory and continued to argue that the lack of “proper service” prejudiced him because he allegedly could not respond on the merits because he did not receive the motion and declaration at the same time as everything else. Br. of App. 34-36. This new argument that he had a right to present oral argument was not raised in the trial court or at the court of appeals and should be disregarded under **RAP 2.5(a)**.

Even if there were some error in not allowing Kienow to provide oral argument on the merits at the hearing, any error was invited by Kienow’s own arguments. He made the strategic choice to argue about service only and pretend that he did not know what the issues on the merits were. But he had been personally served with the documents on the merits.

He knew what the issues were. He could have responded on the merits, but he chose to put all his eggs in the service basket. He cannot now complain about the results of his own strategic choice. *See Davis v. Globe Mach. Mfg. Co., Inc.*, 102 Wn.2d 68, 77, 684 P.2d 692 (1984) (“A party cannot properly seek review of an alleged error which the party invited.”).

3.3 This Court should award Dittentholer her reasonable attorney’s fees for preparing this answer to Kienow’s petition.

Kienow’s appeal was frivolous, and so is his petition for review. His briefs to the Court of Appeals failed to present any debatable issues. He now argues that at least some of the issues were theoretically debatable. But his briefing failed to establish any grounds for debate on the issues he raised. He fails again here.

Kienow failed to present any creditable argument that the trial court had misinterpreted or misapplied

the law and court rules or had abused its discretion in any way in entering the contempt order against him. Just because Kienow was able to concoct some arguments that made sense in his own mind does not mean that the issues were debatable. The Court of Appeals reasonably and correctly discerned that Kienow's arguments were entirely devoid of merit and had no possibility of reversal. *See* Opinion at 20-21 (citing RAP 18.9; *Advocs. for Responsible Dev. v. W. Wash. Growth Mgmt. Hr'gs Bd.*, 170 Wn.2d 577, 580, 245 P.3d 764 (2010)). The appeal was thus frivolous, and the Court of Appeals rightly awarded Dittentholer her reasonable appellate attorney's fees.

This Court should do the same. Kienow's petition is frivolous. It presents no debatable issues and has no possibility of success. Kienow entirely fails to address the criteria for this Court to accept review. He cites no authorities to contradict the Court of Appeals Opinion. His arguments on the merits are unsupported by

authority and fail to present debatable issues. Some are even in direct opposition to positions he took below and must be disregarded as invited error or improperly raised for the first time at this late stage. The petition is frivolous and should be sanctioned under **RAP 18.9**.

Alternatively, this Court should award Dittentholer's reasonable attorney's fees under **RCW 7.21.030(3)**, which authorizes the court to order a person found in contempt to pay "any costs incurred in connection with the contempt proceeding, including reasonable attorney's fees." Kienow was found in contempt, and this petition is an extension of those contempt proceedings. The Court should award Dittentholer her attorney's fees in preparing this answer to the petition.

4. Conclusion

Kienow has failed to establish that the Court of Appeals decision in this case meets any of the criteria

for this Court to accept review. His arguments are without merit. This Court should award Dittentholer's reasonable attorney's fees in preparing this answer, either under **RAP 18.9** or **RCW 7.21.030(3)**.

I certify that this document contains 2,446 words.

Submitted this 2nd day of July, 2025.

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Certificate of Service

I certify, under penalty of perjury under the laws of the State of Washington, that on July 2, 2025, I caused the foregoing document to be filed with the Court and served on the party listed below, by way of the Washington State Appellate Courts' Portal.

Devin Kienow
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SIGNED at Lacey, Washington, this 2nd day of July, 2025.

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