

90044-2

FILED
MAR 27 2014
CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

Court of Appeals Cause No
69031-1-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

SHELLEY GOLLARD MIDKIFF, Respondent

v.

STEVEN LINVEL MIDKIFF, Appellant

PETITION FOR REVIEW

Dan Evich
Post Office Box 1715
Edmonds WA 98020
WSBA 5615
425 712-8177 phone
425 712-0465 fax
evich23@earthlink.net

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2014 MAR 17 AM 10:11

TABLE OF CONTENTS

Identity of Petitioner	1
Citation to Court of Appeals Decision	1
Issues Presented for Review	1
Statement of the Case	2
Argument	4
Conclusion	11
Appendix.	
Court of Appeals Decision	A 1-A7
Order Denying Motion for Reconsideration	A 8

TABLE OF AUTHORITIES

Authority	Page Number
<u>Estate of Hickman</u> 41 Wn. 2d 519, 250 P.2d 524(1952)	5
<u>In re Marriage of Chumbley</u> 150 Wn. 2d. 1, 74 P.3d 129 (2003)	6
<u>In re Marriage of Dittmar</u> 42 Wn. App 380 (1985)771 P.2d 1078	4
<u>In re Marriage of Elam</u> , 97 Wn. 2d. 811, 650 P.2d 213 (1982)	7
<u>In re Marriage of Greene</u> 97 Wn. App.708, 986 P.2d 144(1999)	4
<u>In re Marriage of Midkiff</u> No 69031-1-I slip op. Jan. 21 2014	3,6,8
<u>In re Marriage of Miracle</u> , 101 Wn. 2d 137, 675 P.2d 1229 (1984)	4,7
<u>In re Marriage of Pearson–Maines</u> 70 Wn. App. 860, 855 P.2d 1210 (1993)	4,5,7
<u>In re Marriage of Skarbeck</u> 100 Wn. App. 444, 997 P.2d.950 (2000)	4,5
<u>In re the Marriage of Tower</u> 55 Wn. App. 697,780 P.2d 863 (1989)	10
<u>Lucker v. Lucker</u> 71 Wn 2d 165, (1967)	4

A. Identity of Petitioner.

Steven Linvel Midkiff, Appellant 9 Heretofore referred to as Steven asks this court to accept review of the decision of the Court of Appeals in the case of Shelley Golard Midkiff, Respondent (hereinafter referred to as Shelley) and Steven Linvel Midkiff, Appellant, which was filed on January 21, 2014 and denying the Appellant's Motion for Reconsideration filed on February 18, 2014.

B. Court of Appeals Decision.

Appellant seeks review of the court's division of property and the law and facts upon which it is based.

A copy of the decision is in the Appendix at page A1 through A 7, a copy of the order denying petitioner's motion for reconsideration is in the appendix at page A-8.

C. Issues Presented for Review.

1. Is a party to a dissolution of marriage entitled to the award of additional funds from the spouse's separate property to compensate that spouse for the loss of value in an investment of his or her separate property?

2. Is a spouse who is the owner of a separate property interest in an asset entitled to benefit from the increase in value of that asset from contributions made during the marriage but not subject to the risk the of loss of value in the asset when it is awarded to her in a dissolution.

3. Did the court err in awarding the property of the parties at the value established at the time of purchase as opposed to the value at the time of the separation or trial?

4. Did the court err in ignoring the contributions to the investment of the wife by the husband during the entirety of the marriage, subsequent to the separation and ordered to be paid prior to sale but after the entry of the decree in determining a fair and equitable division of the property of the parties?

5. Are the contributions of as much as \$276,200 by the Appellant Steven and the contributions of as little as \$47,800.00 by the Respondent a fair and equitable award of property or does the award constitute an abuse of discretion by the trial court?

6. Did the court err in ignoring the characterization of assets as separate or community and by ignoring the case law and statutes as to how they should be divided allow an inequitable and, unjust award and thereby abuse its discretion?

D. Statement of the Case.

Steven and Shelley Midkiff were married in June of 2008. The parties separated in March of 2011 and Shelley filed for dissolution of their marriage. Shortly after their marriage Shelley sold her home and the parties purchased a larger home. Shelley used \$195,000.00 from the sale of her home as a down payment for the new purchase. RP at 25 I. 1-9. Steven pledged his credit and income in order to qualify for the mortgage along with Shelley's credit, income and down payment. RP at 27, I. 7-9.

From the time the home was purchased until it was sold Steven made all of the mortgage payments. Those payments were made from June, 2008 to March, 2011, when the parties separated, and from March, 2011 to April, of 2012 when the decree of dissolution was entered. Steven was ordered to continue making payments on the mortgage as per the decree until the home was sold. The home was sold in September of 2012. RP at 45, I. 9-25 and RP at 47, I. 1-6, and I. 10-20. CP 21 and 22.

The home was purchased for \$650,000.00. At the time of trial the market value was \$560,000.00. RP at 26, I. 7-8 and RP at 64, I. 6-7. The home had therefore lost \$90,000.00 in value.

The parties agreed that the home should be sold and that Shelley should be awarded any and all equity realized from the sale. The court awarded the home to Shelley and ordered it immediately placed on the market for sale. Steven was ordered to continue making payments on the home and to cooperate in the sale. Shelley would receive the net equity from the sale of the home. CP 22. The proceeds were set at \$66,000.00 at the time of trial.

In addition Steven was ordered to pay \$81,200.00 to Shelley to reimburse her for the loss in value of her separate property investment and to equitably share in the parties loss in their joint investment property. The \$81,200 was to be paid from the separate property of Steven a home he was purchasing in Bothell CP 22

The appellate court found:

The parties apparently agreed to the characterization and allocation of all assets and liabilities. Steven conceded that Shelley should receive all of the proceeds from the sale of the parties' home. The only point of disagreement was whether Shelley should receive additional funds to compensate her for her investment of **separate** funds in the family home."

(Emphasis added.) In re Marriage of Midkiff, No.69031-1-I, slip. op. at 2 (Jan. 21, 2014).

The court also found:

The trial court's disposition of property reflects its intent to ensure that the parties equitably shared in the loss on their **joint** investment.

(Emphasis added.) Midkiff, slip op. at 6.

Steven remained in the home as ordered and made all payments thereon until it was sold in September, 2012. Allocation of all other assets and liabilities were awarded as per the agreement of the parties.

E. Argument Why Review Should Be Accepted.

This petition for review should be accepted as it deals with an issue which has not been addressed by the courts but only in a manner that deals with the valuation and award of an appreciating asset as opposed to an asset that decreases in value. In short, what some have characterized as the award of a negative equity. In that sense the issue is in conflict with numerous cases of the Court of Appeals and Supreme Court which provide for the award of an asset which has increased in value during marriage but not for assets that have decreased in value. These cases deal with the contribution of community funds to separate assets, separate funds to separate assets, separate funds to community assets and community funds to community assets. But all of them speak to assets which have increased in value as opposed to dealing with assets which have decreased in value. In re Marriage of Miracle, 101 Wn. 2d 137, 675 P.2d 1229 (1984); In re Marriage of Pearson–Maines 70 Wn. App. 860, 855 P.2d 1210 (1993); In re Marriage of Skarbeck 100 Wn. App. 444, 997 P.2d.950 (2000); In re Marriage of Dittmar 42 Wn. App 380 771 P.2d 1087; In re Marriage of Greene, 97 Wn. App.708, 986 P.2d 144.(1999)

One case, Lucker v. Lucker, 71 Wn 2d 165 (1967), deals with the value of a decreasing asset but only in that the court is dealing with a value at the time of separation or trial and not at the time of acquisition. For all intents and purposes

this case has awarded property at the value it had at the time of acquisition and has ordered Steven to reimburse Shelley for the decrease in value over the period of their marriage their separation and to even after the decree.

By presumption it would seem that all property separate or community will be evaluated and awarded at the time of the dissolution or separation. The case law deals with contributions and characterization and increases in value during and after the marriage and not at the time of acquisition. In re Marriage of Skarbeck, 100 Wn. App. 444, 997 P.2d.950 (2000); In re Marriage of Pearson–Maines, 70 Wn. App. 860, 855 P.2d 1210 (1993); Estate of Hickman, 41 Wn. 2d 519, 250 P.2d 524(1952)

In the case at bar the court has held that on the basis of fairness and equity and the use of the courts discretion all of the cases setting out the rules for characterization, establishment of value and the basis for awards of those valued assets should be ignored, even though the statutes and case law all are promulgated to provide for a fair and equitable division of property after dissolution of marriage and even though the cases seem to deal with only increases but should also apply to decreases in value.

The decision of the trial court and the Court of Appeals simply makes one spouse the insurer of losses against the separate investment of the other spouse. This simply doesn't happen under any other circumstances. Had the same scenario played out with any investment determined by tracing to be the separate investment of Shelley with Steven contributing both community and

separate funds to that investment would Steven have been obligated to reimburse Shelley for a depreciating investment?

Had Shelley invested in a luxury automobile, mobile home, yacht or had she invested in a mutual fund, the stock market or a vacation home which decreased in value would Steven be obligated to reimburse her or insure her against losses. If so would he be required to expend the sums he has paid and been ordered to pay based on fairness and equity? Is such an award within the discretion of the trial court? Or would the award simply be made at the value of the asset at the time of the dissolution. The inequity of the above scenarios is exacerbated by the fact that Steven has contributed to the purchase of the asset in question. The court erred in awarding the home to Shelley making that award based on the equity which existed at the time of the marriage as opposed to the value of the property at the time of trial. In re Marriage of Chumbley, 150 Wn. 2d 1, 74 P.3d 129 (2003).

In the case at bar, Shelley contributed \$195,000.00 from the sale of her separate property, a home owned prior to marriage, towards the purchase of a home with Steven after their marriage. In one portion of the ruling the trial court considered the \$195,000.00 was a separate property contribution, and in another indicated the home was intended to ensure an equitable shares loss on their joint investment. Midkiff, slip. op. at pp. 2 & 6.

It is established law that contributions by a spouse from community funds to the separate property of the other spouse are shared in the proportion the appreciation in the value of the asset has to the separate asset and not the

actual amount of the contributions themselves. When community payments are made they may establish an equitable marital lien. In re Pierson v. Maines, 70 Wn. App. 860, 855 P.2d 1210 (1993); In re Marriage of Elam, 97 Wn.2d 811, 650 P.2d 213 (1982)

The court may however set off the right of reimbursement against the benefit the spouse may have in living rent free. In re Marriage of Miracle, 101 Wn.2d 137 (1984). In the case at bar, instead of the asset increasing and the possibility, however small, that Steven could recoup some of his investment the asset decreased in value. Not only is Steven precluded from profiting from his contributions but he is also obligated to subsidize and reimburse Shelley for the decrease in value of her separate property investment. Pearson v. Maines, supra, indicates that only the increase in value should be considered as one spouse "could pay or improve the other spouse completely out of the separate property interest."

The ability to invest one, "out of one's interest" cited above is exactly what has happened in this case, but in reverse. Shelley has invested funds from which Steven can gain nothing. The ruling in this case however insures Shelley that she will also lose nothing, or at least much less than what she would lose from her separate investment. The reduction of any loss sits squarely on the shoulders of Steven, with no risk due to anything Shelley may do or any misfortune which may befall the investment.

Though Shelley has invested \$195,000 of her separate funds in the home be it either a separate investment or a joint investment, the loss in the value of

that asset was \$90,000 as the purchase price of the home was \$650,000 and the value at time of trial was \$560,000. Midkiff, slip op. at 2.

During the time of the marriage from June 2008 to March 2011 Steven paid \$3,100 per month or \$96,100. This was presumably a community contribution to a separate asset as it was made during marriage. From March 2011 to April 2012, the period of separation to the date of the decree, Steven made the same monthly payments which totaled \$43,400.00. These were contributions from his separate property as they were made after separation. From May 2012 to September 2012, the date of the decree until the home was sold, Steven was ordered to make the monthly payments until the home sold. Those payments totaled \$15,500 and again were separate property contributions. Actual payments made by Steven totaled \$155,000. \$58,900 came from his own separate funds.

Steven did not contest and in fact offered the award of the entire proceeds from the sale of the house to Shelley. Despite his stipulation and despite his contributions the trial court and Court of Appeals felt it was fair, equitable, and within their discretion to award Shelley not only the entire proceeds of the sale of the home at a figure of \$66,000 but also the sum of \$81,200 to be paid from the value of Steven's separate property, his Bothell home. The Court of Appeals found, "Steven provided no specific evidence as to the value of the home in 2008 when the parties married." Midkiff, slip op. at 3. The court however, determined that he had an equity value in his home of \$240,000 at time of trial. The trial court took it upon itself to completely ignore Steven's testimony of the fact that

the value of his Bothell home was in the high \$300,000 at the time of the marriage and the value of his separate property had declined as had Shelley's. Using Steven's testimony, which was all that the court had before it as no appraisal was done and no contradictory testimony was presented, it completely ignored the loss of between \$40,000 and \$60,000 in the value of Steven's much less valuable separate property in awarding the \$81,200 from that asset to Shelley. This devaluation occurred at the same time Shelley's home was losing value.

The award in the decree is based on what the court determined to be "[i]n equity and fairness" and therefore within the court's discretion to "split the equity in the remaining properties." CP 22 at 3.

The trial court has chosen to award assets on the basis of its own discretion as to what is a fair and equitable division and award of property. The court has chosen to ignore the statutes and case law promulgated to insure a fair and equitable division of property.

In ignoring the characterization of property as community or separate the courts have allowed Shelly to unduly benefit from contributions to a separate asset which decreased in value by awarding her sums to cover her separate losses. The contributions come from not only community contributions of Steven but also from separate property contributions to save Shelly's equity but also from depreciating separate assets of Steven. Justification is that it is fair and equitable and discretionary by the court. The appellate court has the ability to

overturn an unjustifiable disproportionate award. In re the Marriage of Tower, 55 Wn. App. 697,780 P.2d 863 (1989).

The actual sums which Steven has contributed or been deprived of, if the decision stands, are as follows: \$155,000 in actual payments on the mortgage for the home from both separate and community funds; \$81,200 from his separate asset, his home in Bothell. The court has not considered the loss in value of his separate asset of between \$40,000 and \$60,000. Using the lowest figure of \$40,000 of loss on his home, his total contributions have been \$276,200 during and after the marriage. Even assuming that one-half of the \$96,000 paid on the mortgage or \$48,000 was community funds he has still contributed \$228,200 to a depreciating separate asset of his wife.

Shelley has contributed \$195,000 as an initial down payment on her separate property. From that initial down payment she was awarded \$66,000 from the sale of the depreciating asset and an award of \$81,200.00 from Steven's separate property. Those awards lowered her contribution to \$47,800. Even adding \$48,000 of community mortgage payments her contributions are only \$95,800.00. The home lost \$90,000 in value. This is a disproportionate division of property which is unjustifiable. In re the Marriage of Tower, 55 Wn. App. 697,780 P.2d 863 (1989).

Since the mortgage was incurred as a community debt but the asset was a separate asset of Shelley, Steven was forced into a position where he could discontinue contributions to the depreciating asset by way of mortgage payments and force Shelley to make the payments to protect her Investment. They both

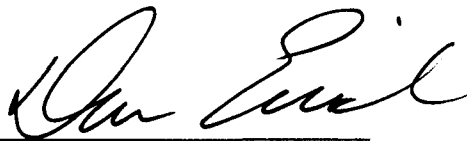
could then face the probability of foreclosure. The other alternative was for Steven to continue his payments and attempt to diminish the loss to Shelly's equity even though his contributions to her separate property would gain him nothing in equity. This would also insure that the community would continue to have the use and enjoyment of the home. Despite his choice to minimize the loss to Shelley the decision of the courts has forced him not only to minimize the losses Shelley sustained to her separate property but has allowed her to invade his separate property which is also decreasing in value. The extent to which this has occurred is not fair and equitable and not in the discretion of the trial court as being so.

F. CONCLUSION.

The Supreme Court should accept review for the reasons set out in Part E and remand the matter to the Superior Court and modify the decree as to the division of property indicating the trial court abused its discretion in its original award. The court should also award attorneys fees to appellants

DATED this 17th day of March, 2014.

Respectfully submitted,



Dan Evich
Attorney for Petitioner]
WSBA 5615

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of)	No. 69031-1-1
SHELLEY GOLARD MIDKIFF,)	DIVISION ONE
Respondent,)	UNPUBLISHED OPINION
and)	
STEVEN LINVEL MIDKIFF,)	
Appellant.)	FILED: January 21, 2014

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2014 JAN 21 AM 9:04

APPELWICK, J. — Steven appeals the trial court’s division of property when dissolving his marriage to Shelley. Steven challenges the manner in which the court divided the equity in the parties’ real estate assets. However, the record fails to demonstrate that the trial court abused its broad discretion. We affirm.

FACTS

Steven Midkiff and Shelley Midkiff married in June 2008. Less than three years later, in March 2011, the parties separated and Shelley filed a petition for dissolution.¹

At the time of the marriage, each party owned a residence. Shortly after they married, they decided to sell one residence in order to buy a larger one and to retain the other premarital home as an investment. Based on the parties’ assessment of the

¹ We refer to the parties by their first names to avoid confusion.

investment potential of the two properties, they decided to sell Shelley's Seattle house and keep Steven's Bothell house. Shelley used \$195,000 out of the \$201,000 she received in proceeds toward the \$650,000 purchase price of a new home.

During the marriage, Shelley was employed as a web specialist at the University of Washington. Steven was self-employed as an audio engineer and ran his own business. The house they purchased together had a large home office, which Steven used to operate his business, and a three car garage, which he also used as a workshop and storage space for equipment used in his business.

While married, the parties kept their finances separate and divided living expenses. Steven's responsibilities included the mortgage and utilities, and Shelley paid for other items, such as food, medical insurance, home maintenance, telephone, and cable. Steven rented his Bothell home to tenants and used the rental income to pay the mortgage and maintenance on that property.

After the couple separated, Steven remained in the marital home and continued to pay the mortgage. The parties agreed that the house should be sold, as neither party could afford to keep it. According to the evidence, at the time of the February 2012 trial, the home had a fair market value of \$560,000, and the anticipated proceeds from the sale, after deducting the mortgage and paying all associated costs, were approximately \$66,000.

The parties apparently agreed as to the characterization and allocation of all assets and liabilities. Steven conceded that Shelley should receive all of the proceeds from the sale of the parties' home. The only point of disagreement was whether Shelley should receive additional funds to compensate her for her investment of separate funds

in the family home. Shelley's position was that even if she were awarded 100 percent of the anticipated proceeds, she would still unfairly bear the burden of the parties' loss on their joint investment.

Steven testified that in 2006 or 2007, the value of his Bothell home was "in the high \$300,000's" and that it was appraised in 2010 for \$346,000. He estimated that the value at the time of trial was "about" \$340,000. The home had a mortgage of approximately \$95,000. Steven provided no specific evidence as to the value of the home in 2008 when the parties married.

The trial court considered the short duration of the marriage and the fact that each party entered the marriage with one significant premarital property asset. The trial court determined that a fair and equitable distribution of the property required equal division of the parties' net equity in their two remaining properties. The court observed that distributing only the equity in the marital home would leave the parties in disparate positions. In that scenario, Steven would retain approximately \$240,000 in equity on his premarital home. He would also have had use of the marital home for his business and personal purposes and would have "benefitted unduly from the parties' joint decision to sell Wife's home and keep Husband's home for the benefit of the community."

Accordingly, the court awarded to Shelley \$66,300, the anticipated proceeds from the sale of the home. The court also ordered Steven to make a transfer payment of \$81,200, secured by a lien on his separate real property. Thus, based on total net equity of approximately \$300,000 in the two properties, the court awarded Shelley a total of \$147,500.

DISCUSSION

Steven challenges the trial court's division of property. In a dissolution action, the trial court must order a "just and equitable" distribution of the parties' assets and liabilities, whether community or separate. RCW 26.09.080. All property is before the court for distribution. Farmer v. Farmer, 172 Wn.2d 616, 625, 259 P.3d 256 (2011). In reaching a just and equitable property division, the trial court must consider: (1) the nature and extent of the community property, (2) the nature and extent of the separate property, (3) the duration of the marriage, and (4) the economic circumstances of each spouse at the time the property division is to become effective. RCW 26.09.080; In re Marriage of Rockwell, 141 Wn. App. 235, 242-43, 170 P.3d 572 (2007). These factors are not exclusive. RCW 26.09.080.

We will seldom modify a trial court's division of property and assets on appeal, and the party who challenges such a decision bears a heavy burden to show a manifest abuse of discretion on the part of the trial court. In re Marriage of Muhammad, 153 Wn.2d 795, 808, 108 P.3d 779 (2005) (Sanders, J., dissenting). A trial court abuses its discretion if its decision is outside the range of acceptable choices or based on untenable grounds or untenable reasons. In re Marriage of Littlefield, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997).

A just and equitable division “does not require mathematical precision, but rather fairness, based upon a consideration of all the circumstances of the marriage, both past and present, and an evaluation of the future needs of parties.” In re Marriage of Crosetto, 82 Wn. App. 545, 556, 918 P.2d 954 (1996). A just and equitable distribution of property does not necessarily require an equal distribution and under appropriate circumstances, a court may award the separate property of one party to the other. In re Marriage of DewBerry, 115 Wn. App. 351, 366, 62 P.3d 525 (2003); In re Marriage of White, 105 Wn. App. 545, 549, 20 P.3d 481 (2001).

Steven contends that trial court’s decision to order a transfer payment, in addition to the equity in the marital home, renders the property division inequitable. However, we do not review the trial court’s distribution of specific assets in a vacuum. It is the overall division of property that must be just and equitable. And, here, the record before this court does not allow us to review the division of property in its entirety. An expert assessed the value of the parties’ joint residence. But, no experts evaluated other significant assets, such as Shelley’s pension benefit and Steven’s business.² Although the parties apparently submitted briefing at trial that presumably included proposed values for all assets, these documents do not appear in the record on appeal. In the absence of reliable evidence in the record as to the value of all the parties’ assets, we are unable to evaluate Steven’s claim that the trial court’s division of real property

² With respect to Shelley’s pension, there was evidence only of Shelley’s estimated monthly benefit amount if she retired in 2019, not its present value. With respect to Steven’s business, Steven estimated in discovery responses that the value was \$250,000 based on equipment owned by the business. Apparently, no appraisal was made.

rendered the overall distribution unjust and inequitable. As a result, Steven cannot carry his burden to show the trial court abused its discretion.

Except, as to this one question, the parties appear to assume that the allocation of other assets and liabilities places the parties in the relative financial positions they were in prior to marriage. Steven argues that Shelley is adequately compensated for her \$195,000 down payment by receiving the \$66,300 net proceeds from the sale of the house. However, this argument shifts all the loss from the purchase and sale of the community residence to her separate assets. His separate real estate equity would be untouched. This does not restore the parties to their respective premarriage positions. The court did not abuse its discretion in determining that a compensating transfer payment was appropriate nor in making that payment a lien on Steven's separate property. The trial court's disposition of property reflects its intent to ensure that the parties equitably shared in the loss on their joint investment.

With respect to the premarital conditions, the evidence clearly established that Shelley realized more than \$200,000 in net equity when she sold her Seattle home in 2008. Adding the equity lost to the costs of sale is a proper consideration, and increases that figure by 9 to 10 percent of the sale price. Although Steven's testimony suggested that he may have had more equity in his premarital home at that time, he presented no concrete evidence to establish the amount. The evidence of value of his equity ranged from \$240,000 to nearly \$300,000. Based on the limited evidence before the court, the nearly 50-50 division of the surviving equity interests is within the scope of the evidence presented and furthers the court's stated purpose of reinstating the premarital financial circumstances.

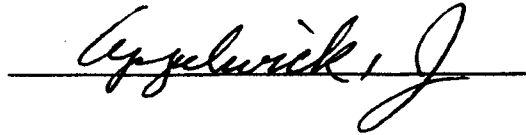
Based on the record before this court, the trial court's order reflects its consideration of all the parties' property, the duration of the marriage, and the economic circumstances. We find no abuse of discretion.

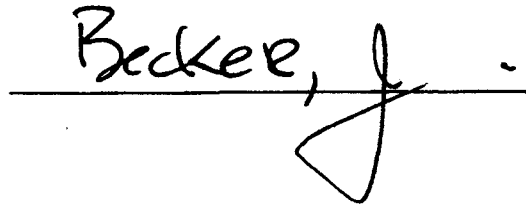
Citing RCW 26.09.140 and RAP 18.1, Shelley requests attorney fees on appeal. Having considered the merits of Steven's appeal and the financial resources of both parties, we exercise our discretion and decline to award attorney fees.

Affirmed.

WE CONCUR:

A handwritten signature in cursive script, appearing to read "Dyer, J.", written over a horizontal line.

A handwritten signature in cursive script, appearing to read "Updegraff, J.", written over a horizontal line.

A handwritten signature in cursive script, appearing to read "Becker, J.", written over a horizontal line.

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE**

In the Matter of the Marriage of)
SHELLEY GOLARD MIDKIFF,)
Respondent,)
and)
STEVEN LINVEL MIDKIFF,)
Appellant.)

No. 69031-1-I

**ORDER DENYING MOTION
FOR RECONSIDERATION**

The appellant, Steven Midkiff, having filed his motion for reconsideration herein, and a majority of the panel having determined that the motion should be denied;

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied.

DATED this 18th day of February, 2014.


Judge

FILED
COURT OF APPEALS DIV 1
STATE OF WASHINGTON
2014 FEB 18 AM 10:11