Supreme Court No. 98937-1

SUPREME COURT
OF THE STATE OF WASHINGTON

No. 80609-2-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

JAMES GUETTLER

Respondent

v.

CAROL GUETTLER

Petitioner

ANSWER TO PETITION FOR REVIEW

Deirdre Glynn Levin, WSBA No. 24226
DGL LAW, PLLC
3417 Evanston Ave. N., # 523
Seattle, WA 98103
Tel (206) 422-6378
Attorney for Respondent James Guettler

TABLE OF CONTENTS

APPENDIX A

TABLE OF AUTHORITIES

Cases

Unpublished Opinions

State Statutes and Court Rules

I. INTRODUCTION

Respondent James Guettler ("James") respectfully asks this Court to DENY Carol Guettler's Petition for Review, and impose SANCTIONS under RAP 18.9 and fees under RCW 26.09.140. Review is not warranted under RAP 13.4(b).

The King County Superior Court ("Superior Court") interpreted the parties' March 31, 2006 Decree of Dissolution and its April 14, 2006 Order re CR 60(a) Correction to Decree (together, the "Decree"). In the Decree, the Superior Court entered judgment in favor of James against Carol Guettler ("Carol") in the amount of $300,000 (the "Judgment"). In June 2019, the Superior Court clarified the amount of the Judgment, and ordered the sale of a rental property (the "Sale Order") at 7711 45th Ave. SW, Seattle, WA (the "Property") (formerly the family home and no longer Carol's residence) which secures the Judgment.[1]

Carol sought review in the Court of Appeals, Division I. She posted a $40,000 supersedeas cash bond, in addition to using the Property as alternate security, to stay execution of the Judgment.

Contrary to Carol's arguments, she is not legally or equitably entitled to any offset to the Judgment, and James owes no debt to Carol.

The Court of Appeals reversed on the reasoning (in so far as it concluded that the parties followed Option A of the Decree) but affirmed in all other respects,

[1] As of September 10, 2020, the amount of the Judgment was $423,302.34.

including the amount of the Judgment and the Sale Order. Unpublished Opinion, entered June 15, 2020 (the "Opinion"). The Court of Appeals also ordered Carol to pay James' costs which Carol has not done, to date. The Court of Appeals summarily denied Carol's Motion for Reconsideration on July 24, 2020. Carol's Petition for Review ensued.

Carol cannot meet any of the RAP 13.4(b) considerations governing acceptance for review. She asks this Court to ignore the plain language of the Decree and the case law interpreting it. Carol advances no sound or supported legal theory.

Carol filed the Petition for a singular, wrongful purpose – to delay James' execution of the Judgment. Sanctions are appropriate under RAP 18.9 and James seeks an award of attorney fees.

II. ISSUES PRESENTED FOR REVIEW

A. Whether there is any basis under RAP 13.4(b) to review the Court of Appeals' Opinion which properly interpreted the Decree, considering the document as a whole;

B. Whether there is any basis under RAP 13.4(b) to review the Court of Appeals' Order Denying Reconsideration,[2] and

[2] RAP 2.4(f).

C. Whether sanctions should be ordered against Carol and her attorney under RAP 18.9(a), and fees awarded to James under RCW 26.09.140.

III. STATEMENT OF THE CASE

The Petition focuses on the issue of whether the Court of Appeals properly interpreted the Decree, including the proper amount of the Judgment lien, considering the entire document. The answer is yes.

The recitation of facts in the Opinion is fair and accurate. A short statement of facts is highlighted here for needed context.[3]

The Decree expressly directed how Carol was required to pay the Judgment. It prescribed the sale of two properties in a staged process, and directed certain steps to happen in 24 months (that is, March 31, 2008) from the date of the Decree. Under Option B of the Decree, if the apartment building were sold or foreclosed by March 31, 2008, and if James "receives a cash payment of at least $275,000 and a release from any liability toward the wife's parents, then the wife's judgment lien shall be satisfied in full". James received neither the cash payment of $275,000, nor a release

[3] The Petition (at 5-6) contains a factually **incorrect** historical narrative of the parties' children and child support income, well-being of various parties, unrelated litigation and appeals, and claims of non-parties, none of which are relevant to this Petition. Carol does not reference to the record. RAP 13.4(c)(6). These facts were not in the record before the Superior Court and cannot be considered by this Court. *In re Marriage of Moody*, 137 Wash.2d 979, 995-6, 976 P.2d 1240 (1999) (review limited to existing record).

or lien satisfaction. Petitioner's Appendix A 15-21. Carol sold the apartment building in December 2006. Carol did not sell the Property by March 31, 2008. The Court of Appeals concluded that conditions triggering the application of Option B in the Decree applied (not Option A as the Superior Court had held) but neither Option A nor B were determinative in quantifying the Judgment lien:

> However, the choice between Option A and Option B **has no impact on the amount of James's judgment lien,** which was plainly set forth in the decree of dissolution independent of the payment option selected by the parties. Therefore, we reverse the superior court's order resolving the motion for clarification of the decree insofar as it concluded that the parties followed Option A. **In all other respects, we affirm that order.** We also **affirm the order compelling the sale** of real property to satisfy James's lien. (emphasis added)

Opinion at 2. The Decree "literally states that 'both properties shall be sold and the proceeds divided as follows', **prior to listing the amounts that Carol now asserts should be deducted** from the judgment lien amount." Opinion at 10.

This is straightforward. For the reasons set forth below, respectfully, review should be denied.

IV. ARGUMENT WHY PETITION FOR REVIEW SHOULD BE DENIED

A. None of the RAP 13.4(b) Criteria for Review are Met

RAP 13.4(b) governs what type of cases will be accepted for review by this Court. Carol seeks review under RAP 13.4(b) (1), (2) and (4): "(1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; ….or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court. Carol's arguments under these three subsections are lazily lumped together, and not segregated, underscoring their weakness, and making this Court's review that much more difficult.

Nowhere in her Petition has Carol argued that there is any direct conflict with a specific Supreme Court decision. RAP 13.4(b)(1); *e.g*. *Hoflin v. City of Ocean Shores*, 121 Wn 2d 113 (1993). She cites generally to case law interpreting property settlement agreements, but she identifies no split of authority. Neither does she articulate any conflict between the Opinion and a published Court of Appeals decision (subsection 2). RAP 13.4(b)(1) and (2) are easily eliminated.

Turning to RAP 13.4(b)(4), that the petition involves "an issue of substantial public interest", Carol has not even alluded to any public interest. *eg*. *see State v. Tingdale*, 117 Wn 2d 595 (1991)(substantial public interest demonstrated where issues involve the jury selection process). How is the public interest even remotely impacted by the issues arising from this Petition? Only two people are interested

in this petition – the parties, who are private individuals. It involves one Judgment, and one asset, a single family home, which only the parties are interested in. This Decree is unique, with unique terms applicable only to these parties and their assets on the date of dissolution. No substantial public interest is affected. RAP 13.4(b)(4) is clearly not met.

Carol fails to establish the criteria under RAP 13.4(b) (1), (2) or (4) justifying this Court's review. The Petition should be denied.

B. The Decree was Properly Interpreted and was Not Modified

Introduction. The crux of the Petition is restated in variations on the same theme in Sections V.A and B of the Petition (pages 6-11). Section V.C is mere filler, consisting of general principals of family law. Addressing these sections of the Petition:

Sections V.A and V.B of the Petition. Carol argues the Opinion either modified the property division of the Decree or did not consider the entire document. She is incorrect. The Court of Appeals reviewed the *entire* Decree, comprehensively, analyzing all of the parties' rights and obligations as to property division and debt. It did not modify the sale proceeds division term, but did clarify it, which is exactly what Carol sought in her Motion for Clarification heard in the Superior Court on June 20, 2019 (Opinion at 5-7). In *In re Marriage of Christel and Blanchard,* 101 Wn. App. 13, 22, 1 P.3d 600 (Div. 1. 2000), the Court differentiated between a clarification and modification of a dissolution decree:

> A clarification of a dissolution decree is "merely a definition of the rights which have already been given and those rights may be completely spelled out if necessary." *Rivard v. Rivard,* 75 Wash.2d 415, 418, 451 P.2d 677 (1969). A modification, on the other hand, occurs when a party's rights are either extended beyond or reduced from those originally intended in the [1 P.3d 606] decree. *Rivard,* 75 Wash.2d at 418, 451 P.2d 677. A court may clarify a decree by defining the parties' respective rights and obligations, if the parties cannot agree on the meaning of a particular provision. (*citation deleted*).

Neither party has a right to modification, and neither asked for one or received one. Carol's argument fails.

Section V.C of the Petition Section V.C of the Petition (pages 12-13) is merely boilerplate language which can be ignored. In this section, Carol does not even discuss RAP 13.4(b) standards, the parties or the Opinion. This is basically filler – containing quotes from 1897, and statements expressing general discontent about policy, e.g., "review should be granted because the disconnect between the legal principles and what the courts do in fact is far too common in family law cases". Petition at 13.

C. The Opinion is Consistent with Law Applicable to Interpretation of the Decree

Carol's argument that she is entitled to receive a set off against the Judgment lacks any legal authority. She has not challenged the controlling authority, cited in the Opinion at page 11, n.5. *Spokane Sec. Fin. Co. v. Bevan*, 172 Wash 418, 421-

22, 20 P.2d 31 (1933). No principle permits a party to offset a mere claim against a judgment. *Id*.

Carol has also not challenged the Court of Appeals' conclusion that Option B's sale proceeds division *never became applicable*.[4] The Court of Appeals held, "Even if, arguendo, Option B's sale proceeds division provisions had any effect on the judgment amount, **Carol still could not benefit therefrom because she failed to sell the house as required for Option B's sale proceeds division to apply**." Opinion, Page 12 n.6 (emphasis added).

Carol's argument boils down to "I still don't like how the Decree is interpreted because this result seems unfair *to me*". But her complaint rings hollow. In fact, Carol has it completely backwards. "We further note that it would be inequitable for James to be forced to comply with the Option B sales proceeds provision, and thus face a greater risk that he fail to recover to his full lien amount, **after Carol financially benefitted from her failure to comply** with Option B's requirement that the house be sold to satisfy the lien." Opinion, Page 12, n. 6 (emphasis added). It is *Carol's* interpretation which would be unfair and inequitable to James. Carol has only herself to blame: it is because of her non-compliance with the Decree that she is in this legal situation, looking to courts at

[4] Carol sought <u>again</u> to enforce her rights by filing a motion on August 17, 2020 in Superior Court citing the Opinion in support. After hearing on September 21, 2020, that Court concluded it lacked jurisdiction, and sanctioned Carol. Appendix A.

every level in this State for relief. She now looks to the highest court in this State to bail her out from her own failure.

D. The Petition is Frivolous and was Filed for the Purpose of Delay, Warranting Sanctions under RAP 18.9 and Attorneys' Fees under RCW 26.09.140

RAP 18.9(a). The Petition is frivolous and Carol filed it for only one purpose - to delay James' execution of the Judgment. This Court is respectfully asked to consider ordering sanctions against Carol and/or her counsel under RAP 18.9(a) which provides in part:

> **Sanctions.** The appellate court on its own initiative or on motion of a party may order a **party or counsel,** or a court reporter or authorized transcriptionist preparing a verbatim report of proceedings, **who uses these rules for the purpose of delay, files a frivolous appeal, or fails to comply with these rules to pay terms or compensatory damages to any other party who has been harmed by the delay or the failure to comply or to pay sanctions to the court.** The appellate court may condition a party's right to participate further in the review on compliance with terms of an order or ruling including payment of an award which is ordered paid by the party. (emphasis added)

Green River Community College, Dist. No. 10 v. Higher Educ. Personnel Bd., 107 Wn.2d 427, 442-43, 730 P.2d 653 (1986) outlined five considerations for a frivolous appeal:

> In determining whether an appeal is frivolous and was, therefore, brought for the purpose of delay, justifying the imposition of terms and compensatory damages, we are guided by the following considerations: (1) A civil appellant has a right to appeal under RAP 2.2; (2) all doubts as to whether the appeal is frivolous should be resolved in favor of the appellant; (3) the record should be considered as a whole; (4) an appeal that is affirmed simply because

> the arguments are rejected is not frivolous; (5) an appeal is frivolous if there are no debatable issues upon which reasonable minds might differ, and it is so totally devoid of merit that there was no reasonable possibility of reversal.

Considering the five *Green River* elements, the Court can conclude the Petition is frivolous. It lacks a bona fide ground for review and is devoid of merit. The RAP 13.4 criteria were not addressed and instead, only given the most superficial treatment. *Rhinehart v. Seattle Times,* 59 Wn.App. 332, 340, 798 P.2d 1155 (1990) ("A frivolous action is one that cannot be supported by any rational argument on the law or facts"); *Namiki v. ICT Law and Technology Group, PLLC,* 421 P.3d 460 (Wash. 2018) (ordering sanctions against Petitioners for filing a frivolous petition for review). The fifth consideration is met: there are no debatable issues upon which reasonable minds might differ.

As to the third consideration, the record as a whole, Carol's non-compliance with the Decree since 2006,[5] and the history of the litigation since June 2019, demonstrates her track record of using the courts of the State of Washington to avoid payment of the Judgment and block sale of the Property. This chart may be helpful to show the procedural history:

Nature of Motion	**Order**
Carol's Motion for Clarification	Order Denying Motion for Clarification; June 20, 2019 (Family Court Commissioner Nancy Bradburn-Johnson)

[5] Carol failed to comply with the Decree in that she did not pay James any part of the $225,000 remainder over a period of over 14 years. She is in contempt.

Carol's Motion for Revision of the Order	Order Denying Respondent's Motion for Revision; August 27, 2019 (Hon. Sandra Widlan)
Carol's Motion for Reconsideration of Denial of Motion for Revision	Order Denying Respondent's Motion for Reconsideration; September 12, 2019 (Hon. Sandra Widlan)
James's Motion to Direct Sale of Real Property	Order Directing Sale of Real Property (the "Sale Order"); October 17, 2019 (Hon. Patrick Oishi)
Carol's Motion for Reconsideration of the Sale Order	Order Denying Reconsideration; November 7, 2019 (Hon. Patrick Oishi)
Carol's Motion for Use of Property as Alternate Security	Order Denying in Part and Granting in Part Respondent's Motion for Alternate Security and Setting amount of Supersedeas Bond; November 15, 2019 (Hon. Douglass North)
Carol's Appeal to Court of Appeals, Division I	Opinion; June 15, 2020 (Dwyer, J., Appelwick, J. and Leach, J., concurring)
Carol's Motion for Reconsideration to Court of Appeals, Division I	Order Denying Motion for Reconsideration; July 24, 2020 (Dwyer, J.)
Carol's Motion to Enforce Decree (see Appendix A)	Order Denying Motion to Enforce Decree; Sept. 21, 2020 (King County Superior Court Family Comm. Nicole Wagner)

Carol's pattern of litigation for the purpose of delaying James' execution of his Judgment is evident. This Petition showcases how Carol pushes ahead, ignoring the legal standards, with her *modus operandi* of using this Court to block James' exercise of his rights. *Seattle Iron & Metals Corp. v. Xie* (Division I, July 30, 2012 unpublished)(ordering fees against appellant for frivolous appeal under RAP 18.9).[6] Delay in judgment execution while the Petition is pending is harmful to James. "Spouses are entitled to receive their share of the community property within a

[6] Cited pursuant to GR 14.1(a).

reasonable time." *In re Marriage of Foley*, 84 Wn. App. 839, 844, 930 P.2d 929 (1997) citing *In re Marriage of Sedlock*, 69 Wash. App. 484, 503, 849 P.2d 1243, review denied, 122 Wash.2d 1014, 863 P.2d 73 (1993). The Court of Appeals found that "reasonable time" had expired in this case. Opinion at 12, n.6. ("While we need not decide that which would constitute such a reasonable time to resolve the issues presented herein, it is apparent that it would be shorter than the over 10 years that have passed between entry of the decree and the present day."

In *Fred Hutchinson Cancer Research Center v. Holman*, 107 Wn. 2d 693, 732 P.2d 974 (Div I. 1987), the Court of Appeals ordered attorneys' fees for answering an appeal under RCW 4.84.185. It held that appellant's "case appears frivolous… the bank's theory seems credible that Holman is using the appeal process to delay execution on the judgments against him." *Id*. 107 Wn. 2d at 718. The same analysis applies here.

And the delay in judgment execution is, correspondingly, financially *advantageous* to Carol. The Property is the only available asset available to satisfy the Judgment. It is alternate security for the supersedeas bond. By filing this Petition, Carol gets to hold on to the Property for several more months (at least), and financially benefitting her by receiving the income she generates from its rental.

The irony is that Carol did not raise the Sale Order in her issues presented for review. However, just by filing this Petition, the sale of the Property has already been delayed more than three months since entry of the Opinion.

Again, this was a deliberate strategy by Carol. It should not be tolerated.

James requests that sanctions be awarded in the amount of the reasonable attorney fees and expenses incurred in filing his answer to the petition for review, pursuant to RAP 18.9(a).

RCW 26.09.140. James asks this court to apply RCW 26.09.140, and consider his lack of financial resources, balancing his financial need against Carol's ability to pay. RAP 18.1(j).

The statute provides:

> The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorneys' fees or other professional fees in connection therewith, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or enforcement or modification proceedings after entry of judgment. **Upon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorneys' fees in addition to statutory costs.** The court may order that the attorneys' fees be paid directly to the attorney who may enforce the order in his or her name. (emphasis added)

RCW 26.09.140 gives this Court discretion to order a party to pay for the cost to the other party of maintaining the appeal and attorneys' fees in addition to statutory costs. *In re Marriage of Kim*, 179 Wn.App. 232, 256, 317 P.3d 555 (Div. 3 2014), citing *In re Marriage of C.M.C.*, 87 Wn.App. 84, 89, 940 P.2d 669 (1997)(court

considers the arguable merit of the issues on appeal and the parties' financial resources).

The parties' relative financial means are evident from this record. As Carol correctly notes, James is on disability. Petition at 4. Besides the advantage to Carol to delay the sale of the Property, and detriment to James, the weight and cost of litigation is a huge drain on James' very limited financial resources, as well as this Court's valuable time and resources.

This past year and a half of intensive litigation (approximately) has had the effect of depleting James of his tiny cash resources even to pay his legal costs, let alone his legal fees (which have been deferred).[7] Carol posted a $40,000 supersedeas cash bond (in addition the Property as alternate security) to stay execution of the Judgment. She has the Property and earns rental income from the Property. Apparently, she has a hidden war chest of funds to hire two attorneys to fight her legal battles against James in three courts. The Court should recognize Carol's improper litigation tactics, specifically this Petition, which are calculated to wear James down, hoping he gives up pursuing his legal rights and entitlement.

For these reasons, fees should be awarded to James under RCW 26.09.140.

[7] The Court of Appeals surmised, without evidence, that James would be able to pay his legal fees following the collection of the remaining amount of his Judgment lien (Opinion Page 12-13, n. 7), however, it did not anticipate the additional time and resources required to answer this Petition.

V. CONCLUSION

Review is not merited. RAP 13.4(b). Sanctions are warranted under RAP 18.9. An award of attorney fees to James is proper under RCW 26.09.140.

Respectfully submitted this 23rd day of September 2020.

DGL LAW, PLLC

Deirdre Glynn Levin, WSBA #24226

APPENDIX A

SUPERIOR Court of Washington For KING COUNTY	No. 03-3-10606-6SEA
JAMES D. GUETTLER Petitioner vs. CAROL C. GUETTLER Respondent	MOTION TO ENFORCE DECREE REDUCE LIABILITY TO JUDGMENT

I. RELIEF REQUESTED

Respondent requests that the court enter judgment in her favor and against Petitioner for debts allocated to him in the Decree, consistent with the opinion of Division One, Court of Appeals in this matter dated June 15, 2020.

II. STATEMENT OF FACTS

This matter comes back before the Family Court following review by the Court of Appeals of Respondent's May, 2019 Motion to Clarify. Based on the decision, attached hereto as Ex. 1, Respondent requests a judgment against Petitioner for Petitioner's debts to her under Exhibit A, § I(B) and § III(B) to the Decree.

Petitioner and Respondent were divorced in March 2006. Respondent was awarded their community real property consisting of an apartment building and a house

Law Office of John H. O'Rourke
2101 Fourth Avenue, Suite 2200
Seattle, WA 98102
206-824-2802

in West Seattle, subject to a judgment lien to be determined in favor of Petitioner. Exhibit A to the Decree (Ex. 2) contains three sections, Sections I and II setting forth the allocation of assets and liabilities to Petitioner and Respondent, respectively, and Section III, the provisions for sale of the community real property.

Section III to Exhibit A to the Decree contemplated two different scenarios regarding determination of the amount of Petitioner' lien, either a sale of one or both assets within 24 months of dissolution, or no sale. The no sale option automatically set the amount of Petitioner's lien at $300,000, required immediate payment of $75,000, a balance due of $225,000 in 2 payments, together with 6% interest. (Exhibit A to Ex. 2, § (III)(A)).

In the Option B scenario, the property was to be sold and Respondent was to receive credit for the mortgage ($166,000) and costs of sale. In addition, Respondent was to receive credit for Petitioner's debts to her (also listed in Exhibit A to Ex. 2, § (I)(B)), including 1/3 the amount of the debt owed to Respondent parents for the money they loaned the parties to buy the house, as well as back taxes, to arrive at the final lien amount. (Exhibit A, § (III)(B)).

Respondent sold the apartment building and paid Petitioner $75,000 in December 2006. Respondent paid 100% of the capital gain tax on the sale. She has also repaid half the loan from her parents which was used to purchase the family home. Respondent has also paid back income taxes owing from the 1999 tax year.

Thirteen years later, in June 2019 Petitioner sought a Writ of Attachment in ex parte for the sum of $404,000, which is the Option A amount from the Decree including

Law Office of John H. O'Rourke
2101 Fourth Avenue, Suite 2200
Seattle, WA 98102
206-824-2802

interest, minus the $75,000 payment, without accounting for any of his debt to Respondent.

In response to the Writ, Respondent sought clarification from the Family Court arguing that the Option B sale provisions of the Decree should be applied because the apartment building had been sold within 24 months. Respondent requested that the Court fix the amount of the lien, deducting Petitioner's debt in arriving at the final lien amount.

The Commissioner denied Respondent's motion, ruling that Option A applied, not Option B (Order attached to this motion as Ex. 2). The effect of the ruling was to leave the $404,000 judgment in place, without any offset. Respondent's motion to revise was also denied (Ex. 3).

Respondent appealed to the Court of Appeals, which partially reversed. The Court ruled that in fact, sale Option B applies to the facts of this case. However, the Court declined to apply Option B's sale provisions for calculating the amount of Petitioner's lien, ruling that Option B was no longer applicable due to the passage of time. (Decision, Ex. 1, page 12, footnote 6).

The Court also declined to address the question of the amount of Respondent's offsetting lien, because the amounts claimed have not yet been reduced to judgment. Spokane Secure Financing Co. vs. Bevan, 172 Wash 418, 20 P. 2d 31 (1933)(Ex. 1, page 11, footnote 5).

In Bevan, Defendant had obtained a $472 judgment against Plaintiff. Plaintiff had obtained a $628.26 judgment against Defendant. In affirming the lower court's offset, the Court in Bevan commented:

Law Office of John H. O'Rourke
2101 Fourth Avenue, Suite 2200
Seattle, WA 98102
206-824-2802

As to the general right of offset, it is of course true that no right of set-off as to judgments can come into existence until both judgments have been rendered. 34 C.J., title, Judgments, page 712; which text is also authority for the proposition that, in certain cases, an assignment of a demand made before the entry of judgment thereon may confer upon the assignee an equity superior to that of the party claiming the right to set off a judgment previously recovered against the assignor. The determination of the matter of the set-off of one judgment against another pertains to a court of equity, and in deciding the matter the chancellor exercises a sound discretion in view of all of the facts in the case. Gauche v. Milbrath, 105 Wis. 355, 81 N.W. 487.

Spokane Secure Financing Co. vs. Bevan, 172 Wash 418, 421-22, 20 P. 2d 31 (1933)

Consistent with Decision I's decision and the Court's equitable powers, Respondent now moves for an offsetting judgment against Petitioner in the amount of $309,970.

III. LEGAL AUTHORITY

1. The Court should grant Respondent an offsetting judgment for taxes and other debts paid on Petitioner's behalf, as set forth in the Decree.

The Court has broad equitable powers in family law matters. In re Marriage of Morris, 176 Wn. App 893, 309 P.3d 767 (2013), Gormley v. Robertson, 120 Wn. App. 31, 83 P. 3d 1042 (2004). In Gormley v. Robertson, the parties borrowed $20,000 from Gormley's father, the balance at separation was $7,188. The trial court granted Gormley a credit of $3,594, or half the remaining debt. Division III of the Court of Appeals upheld the trial court, holding that "...They incurred the debt together; Dr. Robertson benefited from the proceeds. Accordingly, the court acted within its equitable powers in determining both should share the debt." Id. at 40-41.

The trial Court also awarded Gormley 30% of the net equity of the home and 30% of the community's equitable lien for improvements to the property during the relationship. Id. at 35. In upholding the trial court, the Court held that "'Equity will create a lien where there is no valid lien at law and [one] is needed to prevent an injustice.'"

Law Office of John H. O'Rourke
2101 Fourth Avenue, Suite 2200
Seattle, WA 98102
206-824-2802

(citing In re Marriage of Sievers, 78 Wn. App. 287, 313, 897 P.2d 388 (1995)). The Court further held that the trial court "exercised sound discretion in preventing unjust enrichment" (citing Connell v. Francisco, 127 Wn.2d 339, 346, 898 P.2d 831 (1995)).

In the present case, it would be inequitable to allow Petitioner to retain the entirety of the judgment proceeds, and he would be unjustly enriched, if he were not required to reimburse Respondent for his share of the community debt. The Court should use its equitable powers to prevent an injustice here and carry out the fair and equitable property division contained in the Decree, and avoid a lopsided division, which is not what the Court intended.

The statutory framework for divorce promotes a just, equitable, and fair allocation of property between the parties, and directs the dissolution court to ensure a fair distribution. RCW 26.09.050-080, Grant vs. Grant, 199 Wn. App 119, 397 P.3d 912 (2017). The trial court need not resolve all issues before it at the time of entry of the decree. In re Marriage of Hermsen, 27 Wn. App 318, 617 P. 2d 462 (1980).

Respondent seeks to enforce the Decree and obtain reimbursement for payment of community debts including taxes and a loan from her parents, which was used to purchase community real property. Petitioner expects to be paid the full amount of his judgment against Respondent with interest, correspondingly, Respondent expects Petitioner to pay the debts he was ordered to pay in the Decree. Therefore, it is up to the Court to determine the amount of the offsetting lien under § I(B) of the Decree.

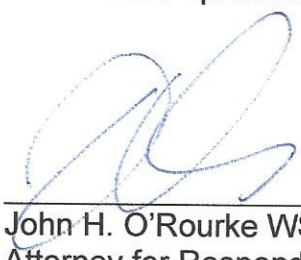
The Exhibit 3 spreadsheet sets forth the offsets, including 1/3 of the total debt to Respondent's parents, one half the capital gains tax on the apartments, and other tax liability, for a total offset of $301,806..

Law Office of John H. O'Rourke
2101 Fourth Avenue, Suite 2200
Seattle, WA 98102
206-824-2802

Respondent is entitled to a fair apportionment of the liabilities stated in the Decree. She has never received payment from Petitioner for any of the debt she paid on his behalf. (Declaration of Carol Guettler). The Decree allocates these debts to Petitioner, and the Court has the authority to enter judgments. The Decree, including the property and debt division, was never appealed or modified after entry, so Petitioner owes those sums to Respondent as surely as Respondent owes Petitioner for the judgment.

In sum, Petitioner has a judgment against Respondent of $419,538 , (Ex. 3) but he still owes Respondent $301,806 representing his share of community debt paid on his behalf by Respondent. (Declaration of Carol Guettler in support of Motion to Reduce and spreadsheet, Ex.3). In order to give effect to the property division stated in the Decree, the Court should credit Respondent $301,806 and award an offsetting judgment lien to her against Petitioner, as set forth in the Exhibit 3 spreadsheet.

Dated this _17th___day of August, 2020.



John H. O'Rourke WSBA 21615
Attorney for Respondent

Law Office of John H. O'Rourke
2101 Fourth Avenue, Suite 2200
Seattle, WA 98102
206-824-2802

Family Court Commissioner
Hearing Date: September 21, 2020
Hearing Time: 1:30 p.m.

FAM 01

IN THE KING COUNTY SUPERIOR COURT
FOR THE STATE OF WASHINGTON

IN RE THE MARRIAGE OF JAMES D. GUETTLER, PETITIONER, AND CAROL C. GUETTLER, RESPONDENT.	No. 03-3-10606-6 SEA **ORDER ON RESPONDENT'S MOTION TO ENFORCE DECREE**

This matter, having come on for hearing on September 21, 2020 the Respondent's Motion to Enforce Decree, filed August 17, 2020, by and through her counsel of record, attorney John O'Rourke of Law Office of John O'Rouke, and Gregory Miller of Carney Badley, PLLC Mr. James Guettler, represented by Deirdre Glynn Levin and DGL Law, PLLC; the Court, hearing the arguments of Counsel, and considering the Motion, and supporting Declaration of Carol Guettler; and Petitioner's Response, and the supporting Declaration of James Guettler and

Declaration of Deirdre Glynn Levin sworn September 20, 2020 in support, and any Reply, the Court hereby ORDERS as follows:

1. Ms. Guettler's Motion is denied as this Court lacks jurisdiction to hear the Motion because there is a pending Petition for Review on the same issues before the Supreme Court of Washington, Case No 98937-1 (In the Marriage of James Guettler and Carol Guettler) and the mandate has not yet issued; and
2. The court finds that even if the court were to consider the alternative to enter a judgement that would not be viable until the mandate has been issued, the court did not receive the requisite sealed financial source documents to support the request to enter a judgement without parties following LFLR 10. Financial information is required for any motion, trial, or settlement conference. In this case, there is a request to enforce a Decree of Dissolution and enter a judgement that would include a request for an off-set. The court is unwilling to enter such an order without following LFLR 10, even if the Respondent did not object to the summary proffered by Petitioner. It is still the court's responsibility to enforce the rules and to have the evidence that supports the Respondent's request for the amounts requested as an off-set to any judgments that may or may not be ordered.

3. Court is awarding $2,000.00 in attorney fees to Ms. Glen-Levin which shall be paid by Monday 10/5/2020.

Dated this 21st day of September 2020.

Judge/Family Court Commissioner
Nicole Wagner

DGL LAW, PLLC

September 23, 2020 - 1:28 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	98937-1
Appellate Court Case Title:	In the Marriage of: James Guettler and Carol Guettler

The following documents have been uploaded:

- 989371_Answer_Reply_20200923132415SC731721_8917.pdf
  This File Contains:
  Answer/Reply - Answer to Petition for Review
  The Original File Name was Respondent's Answer.092320 signed.pdf
- 989371_Other_20200923132415SC731721_5033.pdf
  This File Contains:
  Other - Appendix
  The Original File Name was Appendix A with pagination.pdf

A copy of the uploaded files will be sent to:

- johnhorourke@comcast.net
- johnhorourke@gmail.com
- johnson@carneylaw.com
- miller@carneylaw.com

Comments:

Sender Name: Deirdre Glynn Levin - Email: deirdre@dgllaw.net
Address:
3417 EVANSTON AVE N STE 523
SEATTLE, WA, 98103-8972
Phone: 206-422-6378

Note: The Filing Id is 20200923132415SC731721

DGL LAW, PLLC

September 23, 2020 - 1:28 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	98937-1
Appellate Court Case Title:	In the Marriage of: James Guettler and Carol Guettler

The following documents have been uploaded:

- 989371_Answer_Reply_20200923132415SC731721_8917.pdf
  This File Contains:
  Answer/Reply - Answer to Petition for Review
  The Original File Name was Respondent's Answer.092320 signed.pdf
- 989371_Other_20200923132415SC731721_5033.pdf
  This File Contains:
  Other - Appendix
  The Original File Name was Appendix A with pagination.pdf

A copy of the uploaded files will be sent to:

- johnhorourke@comcast.net
- johnhorourke@gmail.com
- johnson@carneylaw.com
- miller@carneylaw.com

Comments:

Sender Name: Deirdre Glynn Levin - Email: deirdre@dgllaw.net
Address:
3417 EVANSTON AVE N STE 523
SEATTLE, WA, 98103-8972
Phone: 206-422-6378

Note: The Filing Id is 20200923132415SC731721