

FILED
SUPREME COURT
STATE OF WASHINGTON
1/31/2023 4:10 PM
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CLERK

No. 101359-1

SUPREME COURT
OF THE STATE OF WASHINGTON

In re the Marriage of:

SCOTT LEE GRIEBEN,
Respondent,

and

SHAWN SUZANNE
AUSTIN,
Petitioner.

ANSWER TO
STATEMENT OF
ADDITIONAL
AUTHORITY

Marriage of Elzinga, No. 83375-8-I, 2023 WL 353922 (unpublished, Jan. 23, 2023) cited by petitioner provides no support for her petition for review of Division I's unpublished decision in this case affirming the trial court's order denying petitioner's motion to modify

maintenance. Both *Elzinga* and the decision in this case are wholly consistent with published decisions from all three Divisions of the Court of Appeals, which hold that the “substantial change of circumstances” a petitioner must prove “refers to the financial ability of the obligor spouse to pay vis-à-vis the necessities of the other spouse.” *Marriage of Ochsner*, 47 Wn. App. 520, 736 P.2d 292 (Div. I), *rev. denied*, 108 Wn.2d 1027 (1987); *Spreen v. Spreen*, 107 Wn. App. 341, 346, 28 P.3d 769 (Div. II 2001); *Marriage of Coyle*, 61 Wn. App. 653, 658, 811 P.2d 244 (Div. III), *rev. denied*, 117 Wn.2d 1017 (1991).¹ And none of these decisions conflicts with this Court’s decision in *Washburn v. Washburn*, 101 Wn.2d 168, 677 P.2d 152 (1984), which

¹ The unpublished Division II decision that petitioner cites, *Marriage of Scholl*, No. 52756-1, 2020 WL 1930215, *2 (unpublished April 21, 2020)(Statement 2-3), likewise holds that “the phrase ‘change in circumstances’ refers to the financial ability of the obligor spouse to pay vis-à-vis the necessities of the other spouse.”

addressed an initial award of maintenance, not its modification.

“[W]hether there has been a substantial change in circumstances is a fact intensive inquiry and the outcome of any one case will not dictate the result in any other case.” *Elzinga*, 2023 WL 353922, *4. There is no merit to petitioner’s claim that these decisions allow the court to “turn a blind eye to substantial changes in the parties’ nonfinancial circumstances, especially the recipient spouse’s health, that were relevant to the original award.” (Statement 2) Nor do they present grounds for acceptance of review of this case under RAP 13.4.

I certify that this motion is in 14-point Georgia font and contains 315 words, in compliance with the Rules of Appellate Procedure. RAP 18.17(b).

Dated this 31st day of January, 2023.

SMITH GOODFRIEND, P.S.

By: /s/ Catherine W. Smith
Catherine W. Smith
WSBA No. 9542

1619 8th Avenue North
Seattle, WA 98109
(206) 624-0974

Attorneys for Respondent

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on January 31, 2023, I arranged for service of the foregoing Answer to Statement of Additional Authority, to the Court and to the parties to this action as follows:

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| Christina A. Meserve Connolly Tacon & Meserve 201 5th Ave SW, Ste 301 Olympia WA 98501-1063 meservebog@yahoo.com kcarter@olylaw.com | <input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail |
| Gary Manca Talmadge/Fitzpatrick 2775 Harbor Ave SW Third Floor, Suite C Seattle, WA 98126 gary@tal-fitzlaw.com | <input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail |

DATED at Everett, Washington this 31st day of
January, 2023.

/s/ Victoria K. Vigoren
Victoria K. Vigoren

SMITH GOODFRIEND, PS

January 31, 2023 - 4:10 PM

Transmittal Information

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Appellate Court Case Title: In the Matter of the Marriage of Scott Lee Grieben and Shawn Suzanne Austin
Superior Court Case Number: 13-3-01163-9

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