

FILED
SUPREME COURT
STATE OF WASHINGTON
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SUPREME COURT
OF THE STATE OF WASHINGTON

In re the Marriage of:	No. 101359-1
SCOTT LEE GRIEBEN,	STATEMENT OF
	ADDITIONAL
Respondent,	AUTHORITY UNDER
	RAP 10.8
v.	
SHAWN SUZANNE AUSTIN,	
Petitioner.	

Division I’s new opinion in *In re Marriage of Elzinga*, No. 83375-8-I, 2023 WL 353922 (Wash. Ct. App. Jan. 23, 2023) underscores why this Court should grant review here.

Division I repeated the same misinterpretation of RCW 26.09.090 and .170 that it committed here. The court held that the only relevant “circumstances” under RCW 26.09.170 for determining whether a “substantial change” has occurred are the recipient’s financial need and the payor’s financial capacity. *Elzinga*, 2023 WL 353922, at *3. Division I rejected the argument presented in Austin’s petition. *See id.* at *4-5. Austin’s

Statement of
Additional Authority - 1

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petition asks whether, on a motion to modify spousal maintenance, the superior court must use *all* the circumstances that were relevant to the original maintenance award, *see* RCW 26.09.090, as the measuring stick for determining whether a “substantial change in circumstances” has occurred. Austin contends that the superior court must not 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. *See* RCW 26.09.090(1)(a)-(f) But *Elzinga*, like the Court of Appeals here, disagreed. 2023 WL 353922, at *4-5.

Elzinga shows that Division I still relies on the same unsound precedents, *Fox v. Fox*, 87 Wn. App. 782, 942 P.2d 1084 (1997) and *In re Marriage of Ochsner*, 47 Wn. App. 520, 736 P.2d 292 (1987). As Austin’s petition explains, *Fox* and *Ochsner* ignore and conflict with *Washburn v. Washburn*, 101 Wn.2d 168, 677 P.2d 152 (1984) and with the Legislature’s reform of spousal maintenance. All these Division I cases also conflict with Division II’s conclusion that “[t]o modify a

maintenance obligation, the court considers the same nonexclusive factors in RCW 26.09.090(1)(a)-(f) that apply to the determination of an initial maintenance obligation.” *In re Marriage of Scholl*, 13 Wn. App. 2d 1027, 2020 WL 1930215, at *4 (2020) (unpublished). Review is warranted under RAP 13.4(b)(1) and (b)(2).

Elzinga also underscores the public interest in this Court interpreting RCW 26.09.170 to align it with the liberalization of spousal maintenance as a “flexible tool” for equalizing the parties’ standards of living. *Washburn*, 101 Wn.2d at 179.

This document contains 350 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 30th day of January 2023.

Respectfully submitted,

/s/ Gary W. Manca

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DECLARATION OF SERVICE

On said day below I electronically served a true and accurate copy of the *Statement of Additional Authority* in Supreme Court Cause No. 101359-1 to the following:

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Original E-filed with:
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I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: January 30, 2023 at Seattle, Washington.

/s/ Brad Roberts
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TALMADGE/FITZPATRICK

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Transmittal Information

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Statement of Additional Authority

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