

FILED
SUPREME COURT
STATE OF WASHINGTON
10/2/2020 12:41 PM
BY SUSAN L. CARLSON
CLERK

No. 98911-7

SUPREME COURT
OF THE STATE OF WASHINGTON

In re the Marriage of:
MADALYN MILLER,
Respondent,
and
ZACHARY MILLER,
Appellant.

ANSWER TO PETITION FOR REVIEW

PORT GARDNER LAW GROUP, INC., P.S.
James D. Shipman, WSBA No. 28342
Attorney for Respondent
2918 Colby Avenue, Suite 201
Everett, WA 98201
(425) 259-5100

TABLE OF CONTENTS

I. IDENTITY OF RESPONDING PARTY1

II. COURT OF APPEALS DECISION1

III. ISSUES PRESENTED FOR REVIEW1

IV. STATEMENT OF THE CASE1

V. ARGUMENT2

 A. Zachary has not presented any legitimate issues for review, and the Court of Appeals’ analysis of the issues in this case is accurate.....2

 B. Zachary’s petition for review does not conform to the rules for briefs established in RAP 13.4, RAP 10.3, and RAP 10.4 and was not submitted timely.....2

 C. Zachary’s petition for review contains documents and facts not contained in the record.....4

 D. Review should be denied because none of the considerations in RAP 13.4(b) have been met.....4

 1. The decision of the Court of Appeals is not in conflict with a decision of the Supreme Court.....5

 2. The decision of the Court of Appeals is not in conflict with a published decision of the Court of Appeals.....5

 3. A significant question of law under the Constitution of the State of Washington or the United States is not involved.....6

4.	The petition does not involve an issue of substantial public interest.....	6
E.	This court should award Madalyn attorneys' fees for answering this frivolous petition.....	6
VI.	CONCLUSION.....	7

TABLE OF AUTHORITIES

RULES AND REGULATIONS

RAP 9.1.....	4
RAP 10.3.....	2
RAP 10.4.....	2, 3
RAP 13.4.....	2, 3, 4, 5, 8
RAP 18.9.....	7

I. IDENTITY OF RESPONDING PARTY

Respondent Madalyn Miller by and through her attorney, James D. Shipman, asks this court to deny review of the Court of Appeals decision designated in part II of this answer.

II. COURT OF APPEALS DECISION

The Court of Appeals issued its opinion in the present case, *In re Marriage of Miller*, COA No. 79625-9-1, on June 1, 2020. The Court of Appeals issued an order denying a motion for reconsideration on July 10, 2020.

III. ISSUES PRESENTED FOR REVIEW

Appellant Zachary Miller has incorrectly alleged that the trial court manifestly abused its discretion in its final distribution of the assets in this case. Zachary has not made any specific assignments of error against the Court of Appeals' decision, only against the trial court's exercise of discretion.

IV. STATEMENT OF THE CASE

The opinion of the Court of Appeals has correctly stated the facts of the case.

V. ARGUMENT

A. Zachary has not presented any legitimate issues for discretionary review, and the Court of Appeals' analysis of the issues in this case is accurate.

Zachary's petition for review has not properly raised any issues for discretionary review, and therefore review should be denied. Zachary's petition has simply repeated the argument from his initial appellate brief: that the trial court manifestly abused its discretion when it distributed the assets in this case. The Court of Appeals reviewed this argument and correctly determined that the trial court had not abused its discretion. The Court of Appeals also determined that "the record here allows no reasonable basis on which to reverse the trial court," and, "Zachary filed a frivolous appeal." In re Marriage of Miller, unpublished opinion, at 8. The arguments contained in Zachary's petition have already been correctly analyzed and rejected by the Court of Appeals, and Zachary has not properly raised any issues for the Supreme Court to review.

B. Zachary's petition for review does not conform to the rules for petitions established by RAP 13.4, RAP 10.3, and RAP 10.4 and was not submitted timely.

Zachary's petition for review does not conform to the rules for petitions contained in RAP 13.4, RAP 10.3, or RAP 10.4, so review should be denied. RAP 13.4(c) specifies the content and style of petitions for review to the Supreme Court. Zachary's petition does not conform to

any of the provisions contained in this rule. Zachary's petition does not contain a cover page, a table of contents, or any of the required contents, such as the identity of the petitioner, a citation to the Court of Appeals decision, the issues presented for review, a statement of the case, and argument. The petition has also not been properly formatted in accordance with RAP 10.4(a). For these reasons the petition should be rejected and review should be denied.

Zachary's petition for review was submitted to the court after the deadline established by RAP 13.4(a). Although Zachary subsequently filed a motion for extension of time to file his petition and this motion was granted, the extension of time was granted on the grounds that Zachary had previously attempted to file his petition for review by the deadline and he was therefore granted a one-day extension. In fact, the Court of Appeals' order denying Zachary's motion for reconsideration was filed on July 10, 2020, which meant the deadline for filing a petition for review was August 10, 2020. Zachary did not attempt to file his petition until August 12, 2020, and did not successfully file his petition until August 13, 2020. Zachary's motion for extension of time should not have been granted, as Zachary did not attempt to file his petition for review until two days after the deadline, rather than by the deadline, as the court erroneously believed.

C. Zachary's petition for review contains documents and facts not contained in the record.

Zachary has impermissibly submitted 76 pages of documentation that were not before the trial court or the Court of Appeals and therefore are not properly contained in the record on review. Zachary's petition for review similarly contains numerous assertions of fact that are not contained in the record on review. RAP 9.1(a) states that the record on review is limited to clerk's papers, a report of proceedings, and exhibits. RAP 13.4(c)(6) states that statements of facts and procedures must contain "appropriate references to the record."

Zachary's petition for review to is composed entirely of arguments that should have been made to the trial court. Zachary has attempted to introduce evidence of the separate character of his businesses in his petition for review, believing that the Supreme Court will reverse the trial court's decision based on this new evidence. Zachary has fundamentally misunderstood the purpose of the Court of Appeals and the Supreme Court. Litigating trial court matters and distributing assets in a divorce based on new evidence is not the role of the Supreme Court, and the proper time to introduce this evidence was before trial. Zachary's petition is frivolous and review of this case should be denied.

D. Review should be denied because none of the considerations in RAP 13.4(b) have been met.

RAP 13.4(b) describes four considerations governing the Supreme Court's acceptance of review and states that the Supreme Court will only accept a petition for review if one of these four considerations has been met. Zachary has failed to argue that any of these considerations have been met. The four considerations governing acceptance of review have not been met in this case, so the Supreme Court has no grounds on which to review the Court of Appeals' decision; therefore, review should be denied.

1. The decision of the Court of Appeals is not in conflict with a decision of the Supreme Court.

Zachary has argued that the trial court manifestly abused its discretion, citing various Supreme Court cases to back up this assertion. However, the decision of the Court of Appeals is not in conflict with any of the Supreme Court decisions Zachary has cited; rather, the Court of Appeals has correctly interpreted the relevant case law in its analysis of the issues in this case. The Court of Appeals' decision is not in conflict with any decisions of the Supreme Court, so review cannot be granted under this consideration.

2. The decision of the Court of Appeals is not in conflict with a published decision of the Court of Appeals.

Zachary has cited some Court of Appeals cases to support his contention that the trial court manifestly abused its discretion, but the

Court of Appeals' decision is not in conflict with these decisions. The Court of Appeals applied the correct analysis of the relevant case law which led it to reach the proper conclusion based on established precedent. The Court of Appeals' decision is not in conflict with any decisions of the Court of Appeals, so review cannot be granted under this consideration.

3. A significant question of law under the Constitution of the State of Washington or the United States is not involved in this case.

Zachary's petition has not raised any significant questions of law under the Constitution of the State of Washington or the United States. This case involves a standard division of property incidental to a divorce proceeding, and there were no significant constitutional questions at issues. As there have not been any significant constitutional questions raised, review cannot be granted under this consideration.

4. Zachary's petition does not involve an issue of substantial public interest.

Zachary's petition has not asserted that this case involves an issue of substantial public interest. As a fairly standard divorce proceeding, the issues in this case do not hold any substantial public interest, and review cannot be granted under this consideration.

E. This court should award Madalyn attorney's fees for having to respond to this frivolous petition.

This court should award Madalyn the attorney fees she has been forced to incur due to Zachary's frivolous petition for review. Zachary's petition is completely devoid of merit and has not raised any reasonable issues for review. Zachary has not identified issues for review, has supplied information and documentation not contained in the record for review, has not conformed his petition to the content and style dictated by the Rules of Appellate Procedure, and has not identified a reasonable theory of consideration for Supreme Court review. Furthermore, Zachary's petition was submitted three days after the deadline had passed, and his motion for extension of time was granted in error. The Court of Appeals determined that Zachary's appeal was completely devoid of merit and provided no reasonable basis on which to reverse the trial court. Zachary's petition for review is similarly frivolous and he should be sanctioned in accordance with RAP 18.9(a).

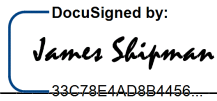
VI. CONCLUSION

Zachary's petition consists entirely of arguments that should have been made to the trial court and were not contained in the record on review. The Court of Appeals assessed these arguments and rightfully determined that the trial court had not abused its discretion in its final distribution of the assets of this case. The Court of Appeals then denied

Zachary's motion for reconsideration, and Zachary proceeded to file a frivolous petition for review three days after the deadline set out in RAP 13.4(a). In this petition, Zachary has not followed the Rules of Appellate Procedure, has not properly identified issues for review, and has not argued under which consideration contained in RAP 13.4(b) the Supreme Court has authority to review the decision of the Court of Appeals. The court has a strong interest in the finality of dissolution proceedings, and Zachary's meritless court filings have dragged this case on for more than two full years past when it should have ended. Accepting Zachary's petition for review would be honoring his attempt to get a fifth bite at the same apple and would constitute a gross miscarriage of justice. Madalyn respectfully asks this court to deny review, assess sanctions against Zachary in the amount of the attorney fees she has had to incur responding to this frivolous petition, and provide closure for her once and for all.

Dated this 1st day of October, 2020.

PORT GARDNER LAW GROUP, INC, P.S.

By:  _____
James D. Shipman, WSBA No. 28342
Attorney for Respondent

PORT GARDNER LAW GROUP

October 02, 2020 - 12:41 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 98911-7
Appellate Court Case Title: In the Matter of the Marriage of Madalyn M. Miller and Zachary Miller
Superior Court Case Number: 18-3-00109-1

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Address:
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Everett, WA, 98201
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