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.

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER & SUMMARY

Petitioner Carol Guettler, appellant below, asks this Court to accept review of the June 15, 2020, Court of Appeals decision ("Decision") terminating review designated in Part II. The Decision disregarded express provisions of the property division decree ("Decree"), provisions specifying and allocating the parties' responsibility for marital debts, thus modifying the Decree contrary to statute and long-settled law. The result, if not corrected, unjustly enriches Respondent James Guettler ("Husband") by excusing him from paying his share of the marital debts assigned him in the Decree, debts Petitioner ("Wife") has paid on his behalf.

Review is warranted because this result conflicts with settled law for application and enforcement of a dissolution decree, which precludes modification absent a basis to vacate the decree. It results in unjust enrichment of the Husband in the final property division, contrary to the statutes and case law which require the ultimate property division be fair just, and equitable to both parties. Requiring payment of marital debts for one party but not the other here conflicts with the law forbidding modification of decrees and is contrary to the Decree's express terms and intent for the lien and marital debt to be resolved together, and to principles of Equity.

II. COURT OF APPEALS DECISION

The decision ("Decision") was filed June 15, 2020. App. A-1 to 13. Reconsideration was denied July 24, 2020. App. A-14.

The appeal challenged trial court rulings requiring the Wife to sell the former marital home under what the Decree termed "Option A" to pay the Husband's equitable lien in the marital real property awarded to Wife in the 2006 Decree, without also requiring the Husband to pay the marital debts assigned to him in the Decree. The Husband could not pay those debts except by payment of the lien. The trial court failed to provide that his lien would be offset by those debts so that the property division could be completed.

The Decision affirmed that the Wife must pay the Husband's lien (which she did not contest), but reversed the determination the sale was pursuant to the provisions of "Option A", holding instead that the obligation to the Husband following disposition of the house was subject to the protocols of "Option B" of the Decree, which no longer applied. Relying on a 1933, non-marital decision not cited by either party, it essentially held that the Wife had to perfect her right to payment from the Husband for his share of marital debts, but then affirmed the order for the immediate sale of the former marital home without provision for addressing the marital debts the Decree ruled the Husband owed to the Wife at the time of payment of the lien. The net result is Wife must pay her debt to Husband for the marital real property award she received without an offset or set-off, while Husband is excused from paying via a set-off his substantial debt to the Wife of the various marital taxes, penalties, and loans she has already paid on his behalf.

III. ISSUES PRESENTED FOR REVIEW

1. Should this Court grant review where the Court of Appeals Decision effectively modified the property division Decree being enforced to relieve the Husband of his share of the marital debts, without meeting the limited criteria for modification, contrary to established case law? RAP 13.4(1), (2), and (4).

2. Should review be granted where the Court of Appeals' application of the Decree impermissibly modified and materially changed the property division by excusing Husband from all his marital debts under the Decree when enforcing his equitable lien, contrary to and frustrating the express provisions of the Decree and RCW 26.09.080, which requires a just and equitable division of the property, and unjustly enriching him? RAP 13.4(1), (2), and (4).

3. Should review be granted to insure the results of lower courts' decisions reflect their statements of the applicable legal principles, *i.e.*, that the substantive result of the ruling reflects and gives genuine effect to those principles? RAP 13.4(1), (2), and (4).

IV. STATEMENT OF THE CASE

The facts are set forth in Wife's merits briefs, to which the Court is respectfully directed.[1] These include the facts as to the underlying divorce and the litigation with Wife's parents over their loan to the young couple (OB at 4 – 7); the Decree's division of the

[1] The facts stated in the Decision must be viewed critically given its omissions and mistakes. As one example, it omits the material procedural fact that Wife sought and obtained a stay of the sale of the house by superseding the judgment with an implication in its text that she failed to take such a step. *See* Reconsideration Motion at pp. 1, 3 - 5 (filed 7/6/20) (challenging the Decision in Section B: "Carol Sought And Obtained Two Stays Of The Trial Court Rulings, The Second Of Which Is Still In Place").

parties' assets and liabilities (OB 7-9); Husband's efforts to avoid payment of the debts assigned to him (OB at 9-11); the trial court actions on Husband's effort to enforce his lien and Wife's effort to have the debts payable to her included in any net enforcement (OB at 11-16; RPY BR at 4-16, correcting facts asserted by Husband's brief in the context of arguments over the standard of review, preservation, and nature of review of a decree); and the order for sale of the former marital home and Wife's successful stay of that order by superseding the judgment (OB at 16-17).

The parties divorced in 2006, with Wife given primary responsibility for the four children. The Decree awarded Wife the family home and the marital apartment building while Husband (who was on disability and not earning money) was granted an equitable lien of $300,000 on the real property and responsibility for his share of certain marital debts. App. A-19-21, CP 18-20. Those expressly stated debts at App. A-19, CP 18, included joint taxes and penalties for non-payment or late payment during the marriage and 1/3 the debt of approximately $330,000 owed to Wife's parents who helped the couple start the real estate business they ran.

The trial court held that the lien right was exercised pursuant to ¶ III A. A. of Exhibit A to the Decree, called "Option A" (App. A-20, CP 19), which set out the protocol "if the wife decides not to sell the house and/or apartment building within the next twenty-four months, …" CP 19, App. A-20. The Decision held that was error,

that "Option B" applied, but that the debts Husband was ordered to pay under the Decree were not enforceable at this time.[2]

The Decree sets out the marital debts for which each party was responsible. App. A-16 to A-23, CP 15-20, CP 29-30.[3] The Decree set forth two anticipated scenarios for disposition of the proceeds of the marital real estate, an apartment complex and a West Seattle family home depending on either of two scenarios anticipated to occur within the next several years. But neither occurred in the next several years after entry of the Decree in 2006. Nor did they occur five, ten, or even thirteen years later in 2019, when Husband first decided to enforce his lien. What did occur was that as the parties' youngest child neared 18 years old (and thus is no longer a

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[2] The Court ruled that sale Option B applies to the facts of this case but 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 at 12 fn. 6, App. A-12.). It also declined to address the question of the amount of Wife's offsetting lien on the basis that the amounts claimed have not yet been reduced to "judgment", citing *Spokane Secure Financing Co. vs. Bevan*, 172 Wash. 418, 20 P. 2d 31 (1933) Decision at 11, fn. 5, App. A-11). This analysis is incorrect because those debts ***are already*** part of the Decree and thus part of the judgment under the law of decrees and judgments discussed *infra*, making *Bevan* (which is not a marital dissolution case) doubly inapplicable. Further, the result unnecessarily complicates final resolution of the property division by failing to require those parts of the judgment be considered together with Husband's lien. Those obligations stated in the Decree were always intended to be addressed together for the simple reason that Husband did not show any likelihood of being able to pay those debts until such time as his lien was paid – but allowing his lien to be exercised without setting those debts off first means that the debts Husband owes to Wife will never be voluntarily paid by him given his determination to not pay any of the debts related to Wife's parents' loans and his recent relocation to Florida.

[3] The "Judgment/Order Summaries" on the first page of the Decree (which is checked "Does not apply"), is only for the convenience of the clerk in noting an amount for the judgment rolls. It does not change or alter the nature of the judgment it summarizes as of the date of filing. As discussed *infra*, the entire judgment is what matters and given effect. *See also* RPY BR at 20-21, discussing that the judgment summary does not preclude giving effect to all the provisions of the Decree.

basis for Husband to pay child support), Husband brought an action to foreclose on his lien rights by selling the house or forcing a refinance, in which he resisted Wife's effort to have his marital debts set off against his lien rights. Huband's clearly stated effort was to take the lien money and not repay Wife for any of her payments on his behalf of the marital debts assigned to him. These included back taxes, IRS penalties, capital gains taxes paid on the apartments when sold in 2006, as well as 1/3 of Wife's repayment of the parents' loans. The Decision erroneously lets him do this.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

A. Review Should Be Granted Per RAP 13.4(b)(1), (2) & (4) Because the Decision Impermissibly Modified the Decree, Which is a Judgment, Contrary to Settled Washington Case and Statutory Law, Excusing the Husband From His Share of the Marital Debts While Requiring the Wife to Pay Hers.

A decree in a marital dissolution is required to dispose of the property and liabilities of the parties "as shall appear just and equitable after considering all relevant factors…" RCW 26.09.080. Per statute,[4] marital dissolution decrees are judgments deciding the rights of the parties:

> A decree of dissolution is a judgment, and in broad outline, the effect of a decree of dissolution is the same as the effect of a judgment in any other civil case. It determines the rights of the parties, it has res judicata and collateral estoppel

[4] RCW 26.09.010(5) states: "In this chapter, 'decree" includes "judgment".

> effects, it is entitled to full faith and credit in other jurisdictions, and so forth.

Scott Horenstein, 20 WASH.PRAC. FAMILY AND COMMUNITY PROPERTY LAW § 31:52 (2016) (footnotes omitted) (hereafter "Horenstein WASH.PRAC. §_").

A decree is final when entered, RCW 26.09.150, and a decree that, as here, was not appealed cannot be modified absent a proper basis for vacating a judgment per CR 60. RCW 26.09.170;[5] *Guardado v. Guardado*, 200 Wn.App. 237, 242-243, 402 P.3d 357 (2017) (quoting statute and reversing trial court as outside its authority for modifying dissolution decree in an action separate from the dissolution action). *See, e.g., Byrne v. Ackerlund*, 108 Wn.2d 445, 453, 739 P.2d 1138 (1987) ("A property settlement agreement incorporated into a dissolution decree that was not appealed cannot be later modified."). No such basis for modification was alleged below or exists.

The recognition of the validity of decrees as judgments under the full faith and credit clause of the United States Constitution,

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[5] RCW 26.09.170 prohibits modification of a dissolution decree absent circumstances permitting reopening of a judgement. The statute provides:

> The provisions as to property disposition may not be revoked or modified unless the court finds the existence of conditions that justify the reopening of a judgment under the laws of this state.

Accord, Horenstein, 20 WASH.PRAC. at § 32:40 ("The only remedies are to appeal the decree or to file a motion to vacate the decree pursuant to Civil Rule 60."). One example permitting the modification is for fraud. *See, e.g., Farmer v. Farmer*, 172 Wn.2d 616, 259 P.3d 256 (2011) (affirming trial court's vacation of marital property division decree where husband had fraudulently converted wife's share of stock options granted to her in the decree, then lying about it to the trial court).

which is essential given the highly mobile nature of individuals in contemporary society and includes giving credit to "property and debt determinations,"[6] serves to confirm the nature of marital decrees as binding judgments, all parts of which must be honored not just by foreign courts,[7] but also by later courts. However, that is precisely what was ***not*** done by the Decision or trial court here and why review should be granted.

In this case the trial court decision, and the affirmance by Division One, both failed to give "full faith and credit" to the portion of the Decree and judgment that required the Husband to pay his share of marital debts (back taxes, capital gains taxes, loans) which had been paid for him by the Wife, by not requiring an offset to the lien when enforced. This fundamentally changes and impermissibly modifies the Decree, creating an inequity never intended by the dissolution court that entered the Decree, thereby unjustly enriching the Husband, which is improper in the context of a property division. *See Gormley v. Robertson,* 120 Wn.App. 31, 40, 83 P.3d 1042 (2004) (trial court affirmed where its ruling "prevent[ed] unjust enrichment.").

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[6] *See* Horenstein, WASH.PRAC. §31.53 (citing U.S. Const. Art IV, §1: "Full Faith and Credit shall be given in each State to the public acts, Records, and judicial Proceedings of every other State.").

[7] *See In re Marriage of Verbin,* 92 Wn.2d 171, 176, 182-83, 595 P.2d 905 (1979) (refusing to enforce Maryland decree under the full faith and credit clause because the father had fraudulently obtained the Maryland decree by withholding facts from the Maryland court). *See also OneWest Bank FSB v. Erickson,* 185 Wn.2d 43, 367 P.3d 1063 (2016) (reversing Division III to give Idaho foreclosure order over real property full faith and credit where challenger could not show the Idaho court lacked jurisdiction).

Review should be granted because the effect – the ***result*** – of the decisions of the trial court and Court of Appeals is to fail to give the Decree's provisions requiring the Husband to pay his marital debts "full faith and credit" against his right stated in the Decree for payment of his lien. They created a one-way street that not only excised the portion of the Decree awarding the Wife reimbursement for the Husband's debts that she had been forced to pay on his behalf because he could not work, but also is completely at odds with the overall judgment awarded by the dissolution trial judge and the "fair, just, and equitable property division Judge Middough decreed, and which was not appealed. It cannot be modified at this late date without proper basis, which does not exist.

B. Review Should Granted Per RAP 13.4(b)(1), (2) & (4) Because the Decision Improperly Modified The Decree By Dissregarding Wife's Judgment Rights As to Husband's Debts And Thereby Failed To Construe And Give Effect To The Decree As A Whole.

The Decision's fundamental error is in disregarding material parts of the Decree and failing to read it as a whole in a common sense manner that gives effect to what the trial court sought to do in crafting an equitable property division under all the circumstances. Here that was to resolve Husband's equitable lien on the realty at the same time as his marital debts to Wife, since that is when he would have the ability to repay her.

This common sense, "read as a whole" application of decrees is what established law has long required. *See, e.g., Kern v. Kern*, 28 Wn.2d 617, 619, 183 P.2d 811 (1947) (citing 1 BLACK ON JUDGMENTS (2d ed.), § 329 and Washington Supreme Court cases to 1921). *Accord, In re Marriage of Thompson*, 97 Wn.App. 873, 877-78, 988 P.2d 499 (1999) (citing *Kern*); *In re Marriage of Lee and Kennard,* 176 Wn.App. 678, 688, 310 P.3d 845 (2013) (citing *Thompson*). *See esp.* the Opening Brief at 18, 20-23 and the Reply Brief at 9-11, discussing *Callan v. Callan*, 2 Wn.App. 446, 449, 468 P.2d 456 (1970) for the settled principles used when determining the trial court's intent where a decree is ambiguous.

Then-Judge Horowitz summarized for Division One in 1970 the settled law on interpreting judgments in the context of the dissolution decree then before it:

> These rules include the rule that the intention of the court is to be determined from all parts of the instrument, and that the judgment must be read in its entirety and must be construed as a whole so as to give effect to every word and part, if possible. 1 A. Freeman, LAW OF JUDGMENTS, s 76 (5th ed. 1925); H. Black, LAW OF JUDGMENTS, s 123 (2d ed. 1902); 3 W. Nelson, Divorce and Annulment, s 28.17 (2d ed. 1945); 49 C.J.S. Judgments s 436 (1947); 46 Am.Jur.2d JUDGMENTS s 73 (1969). The authorities above cited refer to two canons of construction, here particularly pertinent (1) that the court is not confined to ascertaining the meaning of a single word or phrase without regard to the entire judgment, and, if necessary, the judgment roll, and (2) that provisions in a judgment that are seemingly inconsistent will be harmonized if possible. It is not to be assumed that a court intended to

> enter a judgment with contradictory provisions and thus impair the legal operation and effect of so formal a document.

Callan v. Callan, 2 Wn.App. at 449. This law has not changed. Unfortunately, the Decision chose to ignore it, creating a direct conflict that warrants review. RAP 13.4(b)(1), (2).

Judge Middaugh assigned specific marital debts to Husband in the Decree (Ex. A, ¶ I. B. iv., App. A-19 hereto, CP 18), which are part of the overall judgment and, in effect, judgments in favor of Wife. Nothing in the remainder of the Decree indicates Judge Middaugh was anything other than intent to resolve both Husband's equitable lien and his marital debts owed to Wife at the same time. It makes no sense in the context of the Decree as a whole for Husband now to skate on those debts, which the Decision allows.

By effectively ignoring the specification of marital debts assigned Husband at Decree, Ex. A, ¶¶ I. B. iv. (App. A-19, CP 18), the Decision failed to apply the settled rule that dissolution decrees are read and applied as a whole and all parts given effect when it effectively cancelled the express allocation of marital debts to Husband. This necessarily ignored material parts of the Decree and thereby modified the property division without a proper reason such as fraud or another basis for re-opening the Decree. This conflicts with settled law, including *Kern, Thompson*, *Callen,* and *Lee and Kennard, supra.* Review should be granted.

C. Review Should Be Granted Per RAP 13.4(b)(1), (2), & (4) To Insure The Result In This Decision And Future Decisions Are Consistent With And Apply The Applicable Law For Enforcement of Dissolution Decrees, Thus Showing By Their Results What The Law Is.

The Decision's result does not do what the case law and statutes require in these circumstances: give full effect to the entire Decree, as a whole, so that the ultimate property division and the distributions are carried out as the marital court decided in the unmodified, unappealed Decree.

It is well established that the law is what the courts do in practice, rather than unfulfilled axioms. Justice Holmes noted it is far more important for litigants (and future courts and parties) to know what the law ***is***, than to have noble statements unaccompanied by implementing action, that the "law" is what courts in fact do:

> Take the fundamental question, What constitutes the law? … if we take the view of our friend the bad [actor] we shall find that he [/she] does not care two straws for the axioms or deductions, but … does want to know what the Massachusetts or English courts ***are likely to do in fact***. I am much of [the bad actor's] mind. ***The prophecies of what the courts do, in fact***, and nothing more pretentious, ***are what I mean by the law.***

O.W. Holmes, *The Path of the Law,* 10 HARV. L. REV. 457, 460-61 (1897) (emphasis added). Our courts agree. Members of this Court

and the Court of Appeals have cited unpublished decisions to show just that fact of what the courts had done.[8]

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. This leaves parties uncertain how to plan their affairs before there is litigation and, when litigation ensues, how to decide to proceed, or on what basis settlement is appropriate. Litigants in the realm of family law, thousands of Washington citizens daily, are no less deserving of having stable legal rules they can count on than other litigants are to have certainty as to deadlines.[9] Family law litigants are similarly entitled to enforcement of dissolution decrees in an "easy, clear, and consistent manner" that does not promote traps for the unwary, particularly where so many end up representing themselves.

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[8] *See e.g., State v. Arreola,* 176 Wn.2d 284, 296-97 & fn. 1, 290 P.3d 983 (2012) (citing three unpublished decisions "to show that, *in practice,* the *Ladsen* test [for pretextual police stops] has been applied by our courts to weed out pretextual stops" (emphasis added)); *State v. Evans,* 177 Wn.2d 186, 195-96 & fn. 1, 197 & fn. 2, 298 P.3d 724 (2013) (citing two unpublished decisions "not as precedent but only to show that, *in actual practice,* identity theft has been known to cause harm to corporations" and a third unpublished decision to show that, *"in actual fact,* the terms 'living' and 'dead' have been used regularly and reasonably to describe corporations" in affirming conviction for identity theft from a small corporation (emphasis added)). *Accord, Gamboa v. Clark,* 180 Wn. App. 256, 275 & fn. 6, 321 P.3d 1236 (Div. III, 2014), *aff'd,* 183 Wn.2d 38, 348 P.3d 1214 (2015) (citing two unpublished decisions "to show that, *in practice,* Division One has applied [the case under discussion] to prevent a shift to a presumption of adverse use if evidence supports an inference of neighborly accommodation).

[9] *See, e.g., Christensen v. Ellsworth,* 162 Wn.2d 365, 372, 173 P.3d 228 (2007) (unanimously holding that "As a general matter, time calculation rules should be applied in a clear, predictable manner. It is a well-accepted premise that *'[litigants and potential/litigants are entitled to know* that a matter as basic as time computation will be carried out in an easy, clear, and consistent manner, thereby eliminating traps for the unwary who seek to assert or defend their rights.'" (emphasis added)).

VI. CONCLUSION

Dissolution decrees are judgments disposing of all the rights and obligations of the parties. They are required to provide a fair, just, and equitable property distribution to them. When they are not appealed, as here, all their components must be followed for them to reflect the distribution specified by the trial judge. A later court cannot pick and choose which parts to enforce and leave out the property rights of one party, no matter how insistent the moving party is, if for no other reason than such an approach changes the property division and, thus, effectively modifies the decree without a proper reason. Here the Decree when read as a whole is clear that Husband's lien and Wife's right to payment of marital debts were designed to be resolved at the same time, because only then would Husband have the ability to pay back Wife for the payments she had made earlier on his behalf. The history of this case shows that if Husband gets his lien payment without an offset, he will not voluntarily pay these marital debts he has been fighting since 2006, particularly since he has now apparently relocated to Florida.

This should have been a simple case to complete the long-delayed property division as the dissolution court intended it, particularly since it was in equity and the Decree was not appealed. Husband's zeal to collect his lien while excising marital debts assigned to him he did not want to pay should not have distracted or misled the trial court, or the Court of Appeals, but it did. The

Decree had instructions for disposition of the real property proceeds depending on either of two scenarios anticipated to occur within the next several years. They did not occur in the next several years after entry of the Decree in 2006, nor five, ten, or thirteen years later in 2019, when Husband decided to enforce his lien. The parties and courts got enmeshed trying to apply them. But rather than continue to try and force a square peg into the round holes of Options A and B, or otherwise be over-technical, the Court of Appeals should have looked at all parts of the Decree as the full judgment it is that includes Husband's debts to Wife, and applied the lien and debt provisions together to finish the property division as the trial judge determined in the Decree. It did not.

The Decree states Husband is responsible for his specified share of certain marital debts, amounts not known at the time of the Decree; and Wife is responsible for payment of the equitable lien on disposition of the properties or by refinance. Since Husband was on disability at the time of the divorce with no known likelihood of returning to work, he was unable to pay his share of the marital debts until his lien right was paid. The stalemate was his refusal to pay to Wife the 1/3 portion of the marital debt she repaid to her parents. Yet Husband never appealed the Decree, giving up his right to challenge the assignment to him of that debt to Wife. Per the Decree, it is a debt from Husband to Wife, not from Husband to her parents. The Decree plainly called for them to be resolved together.

The Court of Appeals Decision is contrary to published decisions of this Court and the Court of Appeals and implicates the public interest by failing to follow the rules of marital decrees and judgments by ignoring the judgment awards to the Wife. Review should be granted because the law requires giving effect to the entire judgment, read as a whole and the settled law that marital decrees cannot be modified absent a proper basis to vacate a judgment.

Dated this 24th day of August, 2020.

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed attorney(s) of record by the method(s) noted:

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DATED this 24th day of August, 2020.

s/Deborah A. Groth
Deborah A. Groth, Legal Assistant

APPENDIX A

Page(s)

FILED
6/15/2020
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of: JAMES GUETTLER, Respondent, and CAROL GUETTLER, Appellant.	DIVISION ONE No. 80609-2-I UNPUBLISHED OPINION

DWYER, J. — This matter involves a dispute regarding the proper amount of a judgment lien awarded to James Guettler more than 10 years ago as part of the dissolution of his marriage to Carol Guettler.[1]

The parties herein focused primarily on the fact that the decree of dissolution sets forth two options for how Carol was supposed to pay James the judgment amount, which the parties identify as "Option A" and "Option B." When James sought to collect on his judgment, Carol filed a motion purporting to seek clarification as to which option applied, arguing that, if Option B applied, James's lien should be offset by certain debts James allegedly owed Carol. This motion was denied by both a court commissioner and a superior court judge ruling on a motion to revise the commissioner's decision. The superior court judge disagreed with Carol that Option B applied, instead concluding that the parties

[1] To avoid confusion, we will refer to the parties by their first names.

followed Option A and that James had, therefore, correctly calculated the amount of the judgment lien.

Thereafter, James successfully obtained an order compelling the sale of real property to satisfy his judgment lien. Carol now appeals from both the order denying her motion for clarification and the order compelling the sale of real property to satisfy James's lien.

We conclude that the superior court erred when it ruled that the parties followed Option A. 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.

I

James and Carol Guettler entered into a dissolution of their marriage in 2006. At the time, they owned two properties (a house and an apartment building) which they had purchased together, obtaining the necessary funds by way of a loan from Carol's parents. James and Carol failed to pay off their debt to Carol's parents before dissolving their marriage.

In their dissolution decree, entered in King County Superior Court on March 31, 2006, Carol was awarded both the house and the apartment and James was awarded a $300,000 judgment lien on both properties, with interest to

accrue at a rate of 6 percent per annum. Exhibit A to the dissolution decree specified that these awards were subject to the following conditions:

> A. If the wife decides not to sell the house and/or apartment building within the next twenty-four months, then
>
> a. For the next 8 years, or until the apartment building is sold to a neutral third party, whichever is earlier, the husband shall be allowed to remain in Apartment 4 or Apartment 10 if he choose[s] (when apartment 10 first becomes available; and husband must notify wife that he wishes to move to apartment 10 within 7 days of being notified it will be available), at no rent, though he must sign a standard lease and be bound by the terms of that lease like any other tenant; and
>
> b. Husband shall receive a lien on both properties for a total of $300,000 secured by Deeds of Trust on both properties and payable as follows:
>
> a. $75,000 to be paid as soon as possible; i.e. wife to start refinance, if necessary to obtain the money, of either property within 30 days to pay this amount and husband to cooperate with refinance
>
> b. remainder due $112,500 in 2008 and $112,500 in 2010 or when either the house or the apartment is sold, with interest at 6% starting April 2006.
>
> B. If, during the next twenty-four months, the wife decides to sell the apartment building or if the apartment building is foreclosed upon then
>
> a. if husband receives a cash payment of at least $275,000 and a release from any liability toward the wife's parents, then the wife's[2] judgment lien shall be satisfied in full;
>
> b. Otherwise, both properties shall be sold and the proceeds divided as follows:
>
> Sales price
>
> -mortgages at time of separation
>
> - costs of sale (agent fees, required repairs, unpaid taxes up to the amount owed at the time of separation, unpaid utilities up to the amount owed at the time of separation, and other required fees and costs)
>
> - estimate capitol [sic] gains taxes from the sale of the apartment building (if taxes are overpaid as shown by the wife's actual tax return then the husband shall be

[2] This appears to be an error, as the only judgment lien established by the decree is James's lien.

refunded 50% of the overpayment and if the taxes are underpaid then the husband shall pay the wife 50% of the deficit)
= community net sales proceeds

½ net comm.net proceeds to wife	½ net comm. net proceeds to husband
- 2/3 debt to wife's parents	- 1/3 debt to wife's parents
- 50% of any remaining community taxes owed	- 50% of any remaining community taxes owed
= wife final community net	= husband final community net

Any proceeds in excess of the community net is separate property of the wife and shall be her sole property.

Wife shall be in charge of the sale but if husband feels that he will not receive at least the amount of his lien plus interest because the wife is not selling either property for fair market value he may seek court assistance in setting a fair selling price for the properties so that his interest is protected.

C. Husband shall subordinate his lien if the wife wishes to refinance as long as no debt in addition to that already in existence is incurred or, if new debt is incurred, as long as there remains sufficient equity to secure the husband's remaining judgment plus 12% of the then value of the property.

Shortly following the entry of the decree, the superior court entered another order to make a correction to the judgment and decree, adding the following language to the end of Exhibit A:

> Husband shall receive a lien on the property in the amount and fashion as set forth above. However, $75,000 of the lien is to be paid as soon as possible, i.e. wife to start refinance of either property, if necessary, and pay the husband $75,000 within 30 days or as soon as a refinance can be completed and husband shall cooperate with the refinance. The $75,000 shall be credited against the amounts owed to the husband under either option A (wife does not sell either property within 24 months) or option B (wife sells either or both property within the next 24 months or a property is foreclosed upon).

Carol sold the apartment building later that year. Then, on December 14, 2006, Carol used some of the proceeds from the sale of the apartment to make a $75,000 payment on James's judgment lien. She did not make any further payments on the judgment lien, nor did she make any attempt to sell the house.

Approximately 10 years later, on January 8, 2016, James obtained an order extending his judgment lien another 10 years. However, this order set forth an incorrect judgment amount because it did not credit Carol for her $75,000 payment. On March 26, 2019, James obtained an amended order setting forth the correct remaining judgment amount.

Then, on May 7, 2019, James filed an application for a writ of execution in King County Superior Court's ex parte department, seeking to compel the sale of the house to pay off the remaining amount of his judgment lien. Carol was served with notice of the filing. She subsequently filed a response, requesting a continuance so that she could file a motion seeking clarification of the amount of the lien and of James's right to collect on his judgment under the decree. The court granted Carol's request for a continuance in order to allow her to file a motion in family court seeking clarification of the lien amount and James's right to collect on his judgment.

In Carol's subsequently filed motion for clarification, she sought "an order clarifying the amount of [James]'s judgment lien, and the sale or refinance provisions contained in the Decree." Carol argued (1) that James's calculation of the remaining judgment amount is incorrect and should instead be fixed utilizing

the sale provisions set forth in section III(B)(b) to Exhibit A of the decree (Option B), and (2) that the Decree required James to cease all efforts to collect on his judgment lien to allow Carol to seek refinancing of the house to obtain the funds to pay the lien amount. In support of her motion, Carol filed as an exhibit an unsigned application for a loan secured by the house. In response, James argued that (1) he correctly calculated the remaining judgment amount because the proper method of calculating the remaining judgment amount is to apply the provisions set forth in section III(A)(b)(b) of Exhibit A to the decree (Option A), and (2) although the decree requires James to allow Carol to obtain refinancing under certain conditions, Carol's unsigned loan application contains many false statements and does not support her contention that she is able to obtain a loan to pay the remaining judgment amount.

Following oral argument, a court commissioner denied the motion for clarification. In a June 20, 2019 order, the commissioner agreed with James that Option A applied and that the decree required James to subordinate his lien in certain circumstances to allow Carol to refinance the house so as to obtain funds to pay the judgment amount. However, the commissioner also concluded that the parties had failed to provide sufficient information to determine the correct amount of James's judgment lien or to establish that Carol could obtain the loan money necessary to pay off the judgment. Additionally, the commissioner also noted that the parties disclosed during oral argument that Carol's parents' judgment against James and Carol (arising from the loan default) had expired without renewal.

The commissioner delayed entry of her order "for 30 days after hearing of a motion for revision or reconsideration, if any, or if a notice of appeal is filed, if any, whichever is later." Carol then filed a motion seeking revision of the commissioner's order. This motion was denied.

In its August 27, 2019 order affirming the commissioner's ruling, the superior court judge explicitly noted that:

> 1. With respect to the Decree of Dissolution entered on March 31, 2006 (the "2006 Order"), under the provision therein entitled "Real Property", Respondent and Petitioner (the "Parties") operated under [Option A] of the 2006 Order and not [Option B] of the 2006 Order;
> 2. Under the provision of the 2006 Order therein entitled "Real Property", Section III.C shall not be invoked given that insufficient evidence exists of refinancing; and
> 3. The Petitioner's request for attorneys' fees is denied.

Carol then sought reconsideration of the superior court's order denying the motion for revision. Her motion for reconsideration was denied on September 12, 2019. Thereafter, Carol filed a notice of appeal on October 11, 2019, seeking review of the order denying revision and the order denying reconsideration. Carol did not seek a stay of any of the orders from which she appealed.

Less than a week later, James successfully sought an order to compel the sale of the house. This order did not specify the manner by which proceeds from the sale would be distributed between the parties. However, the order explicitly retained jurisdiction over the parties so that the court could resolve any disputes over the proper distribution of sale proceeds if the parties could not reach an agreement.

Carol then filed an amended notice of appeal to add the sale order to the list of orders from which she now appeals.

II

Carol contends that the remaining amount of the judgment lien must be calculated taking into account the sale proceeds distribution provisions set forth in Option B of Exhibit A to the decree and that because the sale order did not take into account those provisions, it must be reversed. In response, James asserts that the judgment lien amount was correctly calculated under Option A of Exhibit A to the decree and that, therefore, the sale order was proper. Neither party provides an entirely correct analysis.

The superior court reviews a motion to revise a commissioner's ruling de novo based on the record presented before the commissioner. In re Marriage of Williams, 156 Wn. App. 22, 27, 232 P.3d 573 (2010) (citing RCW 26.12.215; RCW 2.24.050; In re Marriage of Moody, 137 Wn.2d 979, 992-93, 976 P.2d 1240 (1999)). When, as is the case herein, "the superior court makes independent findings and conclusions, the order on revision supersedes the commissioner's ruling." In re Guardianship of Knutson, 160 Wn. App. 854, 863, 250 P.3d 1072 (2011). Thus, we review the superior court's ruling, not the commissioner's ruling. State v. Ramer, 151 Wn.2d 106, 113, 86 P.3d 132 (2004). "We review challenged findings of fact for substantial evidence and the conclusions of law de novo." Knutson, 160 Wn. App. at 863 (citing In re Marriage of Dodd, 120 Wn. App. 638, 643, 86 P.3d 801 (2004)).

The interpretation of a dissolution decree presents a legal question that we review de novo. In re Marriage of Thompson, 97 Wn. App. 873, 877, 988 P.2d 499 (1999). When a decree is unambiguous, there is nothing for us to interpret. But if it is ambiguous, we apply the general rules of construction applicable to statutes, contracts, and other writings to determine the intent of the court that entered the decree. Thompson, 97 Wn. App. at 878.

We review a superior court's order on a motion for reconsideration for a manifest abuse of discretion. Sligar v. Odell, 156 Wn. App. 720, 734, 233 P.3d 914 (2010) (citing Drake v. Smersh, 122 Wn. App. 147, 151, 89 P.3d 726 (2004)). A superior court abuses its discretion when "its decision is based on untenable grounds or is manifestly unreasonable or arbitrary." Weyerhaeuser Co. v. Commercial Union Ins. Co., 142 Wn.2d 654, 683, 15 P.3d 115 (2000).

Carol contends that the superior court erred when it concluded that Option A in Exhibit A to the decree, rather than Option B, was followed by the parties and that the judgment amount is correctly calculated utilizing the provisions in Option A. In response, James asserts that the judgment amount was properly calculated under Option A. Both parties are incorrect.

First, we note that Carol is correct that the conditions triggering the application of Option B, rather than those triggering the application of Option A, transpired herein. As the language added to the decree in the correction order specifies, Option B applies to a situation in which the "wife sells either or both property within the next 24 months or a property is foreclosed upon."[3] Because

[3] By contrast, Option A would have applied had Carol not sold either property within 24 months of the entry of the decree.

Carol sold the apartment within 24 months of the entry of the decree, Option B applied. The superior court's conclusion that Option A applied is therefore incorrect.

However, we conclude that this error was harmless insofar as it concerns the superior court's determination that James had correctly calculated the judgment amount. The judgment amount is plainly set forth on the first page of the decree of dissolution as $300,000, with interest to accrue at 6 percent per annum, and even a cursory reading of Option B reveals that it does not purport to modify that amount.[4] Instead, Option B purports to determine the proper distribution of the proceeds from the sale of the apartment and the house between James and Carol. It 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. Nowhere does any language set forth in Option B state that it has any effect on the judgment lien amount.

Indeed, a later provision contained in Option B makes it even plainer that its sale proceeds division provisions have no impact on the judgment lien amount when it states that "[a]ny proceeds in excess of the community net is separate property of the wife and shall be her sole property." Because Option B specifies that half of the community net proceeds from the sale is to be distributed to Carol and half is to be distributed to James, there could not possibly be any excess

[4] Of course, the remaining amount of the judgment was modified by Carol's $75,000 payment. But such modification was correctly noted in the amended order extending James's judgment.

amount unless (1) James's collection of the sale proceeds is limited to the amount of his judgment lien, and (2) the lien amount is not determined by calculation of the net proceeds from the sale of the house and apartment. In short, Option B's sale proceeds provisions have no impact on the amount of James's judgment lien.[5]

That the total amount of James's judgment lien is determined independent of whether Option A or Option B applies was further clarified by the court's subsequent correction order, which added the following language to the end of Exhibit A:

> Husband shall receive a lien on the property in the amount and fashion as set forth above. However, $75,000 of the lien is to be paid as soon as possible, i.e. wife to start refinance of either property, if necessary, and pay the husband $75,000 within 30 days or as soon as a refinance can be completed and husband shall cooperate with the refinance. The $75,000 shall be credited against the amounts owed to the husband under either option A (wife does not sell either property within 24 months) or option B (wife sells either or both property within the next 24 months or a property is foreclosed upon).

This language plainly explains that James receives a judgment lien, and that Carol must pay $75,000 of that amount within 30 days of the entry of the

[5] Furthermore, Carol's contention that she should be able to offset James's alleged debts against his judgment assumes that her claims that James has not paid his debts to her under the decree are equivalent to James's judgment against her. Carol does not cite to any authority to support such a presumption. While it is a longstanding principle of law that, in certain circumstances, judgments, once rendered, may be offset against other judgments, Spokane Sec. Fin. Co. v. Bevan, 172 Wash. 418, 421-22, 20 P.2d 31 (1933), no such similar principle permits a party to offset a mere claim against a judgment. If Carol wishes to offset James's unpaid debts against his judgment, she must first obtain a judgment against him, as "no right of set-off as to judgments can come into existence until both judgments have been rendered." Spokane Sec. Fin. Co., 172 Wash. at 421.

decree, regardless of whether Option A or Option B applies. Thus, the judgment amount is unaffected by the application of either option.[6]

Because we reject Carol's contention that the amount of James's judgment lien must be modified by the sale proceeds provisions set forth in Option B of Exhibit A to the decree, we similarly reject her contention that the order compelling the sale of the house must be reversed for its failure to so modify the lien amount.[7] We therefore reverse only the portion of the superior

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[6] Even if, arguendo, Option B's sale proceeds division provisions had any effect on the judgment amount, Carol still could not benefit therefrom here because she failed to sell the house as required for Option B's sale proceeds division provisions to apply.

Option B states that

> B. If, during the next twenty-four months, the wife decides to sell the apartment building or if the apartment building is foreclosed upon then
>
> a. if husband 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;
>
> b. Otherwise, **both properties shall be sold** and the proceeds divided as follows[.]

(Emphasis added.)

Here, it is undisputed that, when Carol sold the apartment, she did not provide James with a $275,000 cash payment and a release of liability from her parents, nor did she proceed to sell the house.

Because Option B's requirement that both properties be sold did not set forth any timelines or deadlines for when the sale was to occur, and such a term would be "essential to a determination" of the rights of the parties were the sale proceed provisions determinative of the judgment amount, it would be our role to supply "a term which is reasonable in the circumstances." RESTATEMENT (SECOND) OF CONTRACTS § 204 (AM. LAW INST. 1981). 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 the entry of the decree and the present day. Thus, Option B's sale proceeds division provisions never became applicable.

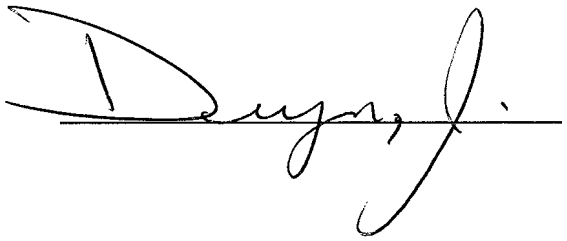
We further note that it would be inequitable for James to be forced to comply with the Option B sale proceeds provisions, and thus face a greater risk that he fail to recover his full lien amount, after Carol financially benefited from her failure to comply with Option B's requirement that the house be sold to satisfy the judgment lien.

Additionally, because we conclude that Option B's sale proceeds provisions do not affect the amount of James's judgment lien, we need not address any of James's other arguments pertaining to this issue.

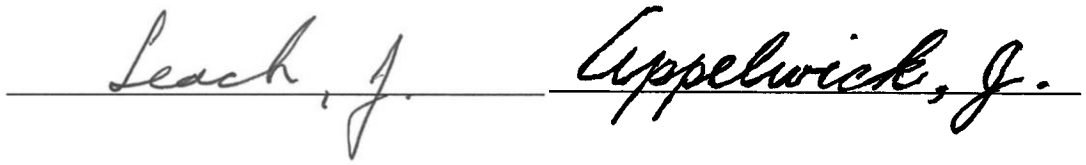
[7] Both parties request an award of attorney fees on appeal. We decline to award attorney fees to either party. Carol is not the prevailing party and is therefore not entitled to fees. In re Guardianship of Lamb, 173 Wn.2d 173, 197-98, 265 P.3d 876 (2011) (losing party not entitled to fees). James asserts that he should be awarded fees because he is unable to pay his own attorney fees. While it is true that "in a dissolution or postdissolution proceeding, a court asked to apportion attorney fees must consider the parties' relative need and ability to pay," In re Marriage of Shellenberger, 80 Wn. App. 71, 87, 906 P.2d 968 (1995), James does not establish

court's order on the motion for revision that concludes that the parties followed Option A of Exhibit A to the decree. We otherwise affirm that order and affirm the order compelling the sale of the house.

Affirmed in part, and reversed in part.



WE CONCUR:



that he will be unable to pay his own fees following the collection of the remaining amount of his judgment lien. He offers no other argument or legal authority to support his assertion that he is entitled to fees. Thus, we decline to grant him an award of attorney fees. Wilson Court Ltd. P'ship v. Tony Maroni's, Inc., 134 Wn.2d 692, 710 n.4, 952 P.2d 590 (1998) (declining to award fees when request does not provide argument and citation to authority that supports an award of fees).

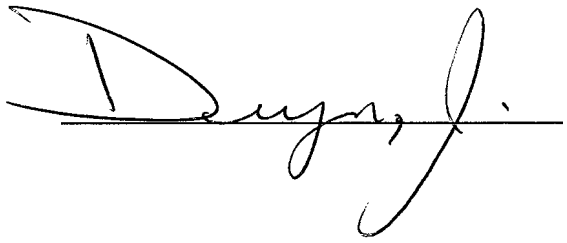
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of: JAMES GUETTLER, Respondent, and CAROL GUETTLER, Appellant.	DIVISION ONE No. 80609-2-I ORDER DENYING MOTION FOR RECONSIDERATION

The appellant having filed a 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 be, and the same is, hereby denied.

FOR THE COURT:



IV-D #1769368
SUPERIOR COURT OF WASHINGTON
COUNTY OF KING

In re the Marriage of: James D. Guettler Petitioner, and Carol Guettler Respondent.	**NO.** 03-3-10606-6 SEA [X] DECREE OF DISSOLUTION **(DCD)** [X] Clerk's action required See Judgment summaries; See §3.12 child support order at §3.20 cancels temporary support amts.– Notify DCS

I. JUDGMENT/ORDER SUMMARIES

1.1 RESTRAINING ORDER SUMMARY:
[X] Does not apply.

1.2 REAL PROPERTY JUDGMENT SUMMARY:
[X] Real Property Judgment Summary is set forth below:

Assessor's property tax parcel or account number: 711300002500 Apt. building account number; 432250013500 Family home account number

1.3 MONEY JUDGMENT SUMMARY:
[X] Does not apply.

A. Judgment creditor	James D. Guettler	
B. Judgment debtor	Carol Guettler	
C. Principal judgment amount		$ 300,000
D. Interest to date of judgment		$ -0-
E. Attorney's fees		$ -0-
F. Costs		$ -0-
G. Other recovery amount		$ -0-

H. Principal judgment shall bear interest at 6 % per annum
I. Attorney's fees, costs and other recovery amounts shall bear interest at __n/a_____ % per annum
J. Attorney for judgment creditor Matthew S. Webbeking
K. Attorney for judgment debtor Marie White
L. Other:

END OF SUMMARIES

II. BASIS

Findings of Fact and Conclusions of Law have been entered in this case.

III. DECREE

IT IS DECREED that:

3.1 STATUS OF THE MARRIAGE.

[X] The marriage of the parties is dissolved.

3.2 PROPERTY TO BE AWARDED THE HUSBAND.

[X] The husband is awarded as his separate property the property set forth in Exhibit A. This exhibit is attached or filed and incorporated by reference as part of this decree.

[X] Other: Unless otherwise specified, each party is awarded his/her respective: pre-marital and post-separation managed accounts/policies/investments/interests and personal property in his/her possession or control, as disclosed herein.

3.3 PROPERTY TO BE AWARDED TO THE WIFE.

[X] The wife is awarded as her separate property the property set forth in Exhibit A. This exhibit is attached or filed and incorporated by reference as part of this decree.

[X] Other: Unless otherwise specified, each party is awarded his/her respective: pre-marital and post-separation managed accounts/policies/investments/interests and personal property in his/her possession or control, as disclosed herein.

3.4 LIABILITIES TO BE PAID BY THE HUSBAND.

[X] The husband shall pay the community or separate liabilities set forth in Exhibit A. This exhibit is attached or filed and incorporated by reference as part of this decree.

[X] Other: Unless otherwise specified, each party is responsible for debts/liabilities associated with his/her property interests; credit cards and other debts/liabilities in his/her name.

Unless otherwise provided herein, the husband shall pay all liabilities incurred by him since the date of separation.

3.5 LIABILITIES TO BE PAID BY THE WIFE.

[X] The wife shall pay the community or separate liabilities set forth in Exhibit A. This exhibit is attached or filed and incorporated by reference as part of this decree.

[X] Other: Unless otherwise specified, each party is responsible for debts/liabilities associated with his/her property interests; credit cards and other debts/liabilities in his/her name.

Unless otherwise provided herein, the wife shall pay all liabilities incurred by her since the date of separation.

3.6 HOLD HARMLESS PROVISION.

[X] Each party shall hold the other party harmless from any collection action relating to separate or community liabilities set forth above, including reasonable attorney's fees and costs incurred in defending against any attempts to collect an obligation of the other party.

[X] Other: the parties warrant they have made full disclosure of the assets / property and debt / liabilities herein; the hold harmless clause applies to any such lack of disclosure.

3.7 SPOUSAL MAINTENANCE.

[X] Does not apply.

3.8 CONTINUING RESTRAINING ORDER.

[X] Does not apply.

3.9 PROTECTION ORDER.

[X] Does not apply.

3.10 JURISDICTION OVER THE CHILDREN.

[X] The court has jurisdiction over the children as set forth in the Findings of Fact and Conclusions of Law.

3.11 PARENTING PLAN.

[X] The parties shall comply with the Parenting Plan signed by the court on 3-24-06. The Parenting Plan signed by the court is approved and incorporated as part of this decree.

3.12 CHILD SUPPORT.

[X] Child support shall be paid in accordance with the order of child support signed by the court on today's date. This order is incorporated as part of this decree.

3.13 ATTORNEY'S FEES, OTHER PROFESSIONAL FEES AND COSTS.

[X] Does not apply.

3.14 NAME CHANGES.

[X] Does not apply.

3.15 OTHER.

Any allocation to James Guettler as part of this dissolution proceeding may be appropriate and as recommended by the trust attorney be deemed an allocation to a special needs trust established on

Mr. Guettler's behalf should such a trust be created by James Guettler's counsel for approval by the ex parte court as long as such an allocation does not change the award tow the wife contained herein.

The parties shall immediately cooperate to complete and file tax returns as necessary and to deal with the IRS as appropriate for all tax years in which the parties did not file joint returns. The wife shall be responsible for finding an accountant and the parties shall share equally in the expenses for that account. However, if the accountant is paid all or in part in Avon products, the husband is only responsible for the out-of-pocket expenses of the wife. Guettler has agreed and is ordered to cooperate with filing amended joint tax returns for tax years 2004 and 2005 if doing so will lessen the net tax obligation owed. The tax costs shall be shared equally and the parties shall share any refund in the proportion that their earned income beard to the total reported earned income.

Dated: 3-31-2006

JUDGE LAURA GENE MIDDAUGH

Exhibit A

I. To Husband: The husband is awarded the following property and ordered to pay the following debts:

A. Property Awarded to Husband:

i. His separate property (i.e. property acquired before the date of marriage or after the date of separation);
ii. The personal property in his possession;
iii. The 1973 Dodge truck
iv. Any bank accounts in his name, other than accounts in the name of both parties.
v. A judgment secured by the parties real property as more particularly set out below

B. Debts Husband to Pay:

i. His separate debts (i.e. those debts incurred since separation);
ii. The debt owed to Matthew Webbeking for defending the Christens lawsuit
iii. One-half of the taxes, assessments and penalties that may be due for those periods when the parties were married and before separation;
iv. 1/3 of the debt owed to the Christens under 04-2-30514-4 KNT. However, if the husbands actions in pursuing the appear result in a decrease of the debt owed to the Christens, then any such reduction shall be applied to his obligation before it is applied to the wife's.
v. Costs of Appeal if he wishes to proceed

II. To Wife: The wife is awarded the following property and ordered top pay the following debts:

A. Property Awarded to Wife:

i. The family residence and the Carol Ann apartment building, subject to the terms set out below
ii. 1998 Dodge ;
iii. Timeshare;
iv. McDonalds stock
v. Avon stock;
vi. Personal property in her possession
vii. Any bank accounts in her name and the names of the parties, except that she shall immediately close all joint accounts or have the husband name removed;
viii. The life insurance policy insuring the life of the husband
ix. Her Avon business.

B. Debts Wife is to Pay:

i. Her separate debts (i.e. those debts incurred since separation);
ii. All debts associated with the property awarded to her herein
iii. The Wells Fargo Line of Credit
iv. Home Depot Card

v. Shell Card
vi. One-half of the account cost to get the taxes file
vii. One-half of the taxes, assessments and penalties that may be due for those periods when the parties were married and before separation;
viii. 2/3 of the debt owed to the Christens

III. Real Property

A. The wife is awarded the house and the apartment building owned by the parties subject to the following:

A. If the wife decides not to sell the house and/or apartment building within the next twenty-four months, then

a. For the next 8 years, or until the apartment building is sold to a neutral third party, whichever is earlier, the husband shall be allowed to remain in Apartment 4 or Apartment 10 if he choose (when apartment 10 first becomes available; and husband must notify wife that he wishes to move to apartment 10 within 7 days of being notified it will be available), at no rent, though he must sign a standard lease and be bound by the terms of that lease like any other tenant; and

b. Husband shall receive a lien on both properties for a total of $300,000 secured by Deeds of Trust on both properties and payable as follows:

a. $75,000 to be paid as soon as possible; i.e. wife to start refinance, if necessary to obtain the money, of either property within 30 days to pay this amount and husband to cooperate with refinance

b. remainder due $112,500 in 2008 and $112,500 in 2010 or when either the house or the apartment is sold, with interest at 6% starting April 2006.

B. If, during the next twenty-four months, the wife decides to sell the apartment building or if the apartment building is foreclosed upon then

a. if husband 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;

b. Otherwise, both properties shall be sold and the proceeds divided as follows:

Sales price
-mortgages at time of separation
- costs of sale (agent fees, required repairs, unpaid taxes up to the amount owed at the time of separation, unpaid utilities up to the amount owed at the time of separation, and other required fees and costs)
- estimate capitol gains taxes from the sale of the apartment building (if taxes are overpaid as shown by the wife's actual tax return then the husband shall be refunded 50% of the overpayment and if the taxes are underpaid then the husband shall pay the wife 50% of the deficit)

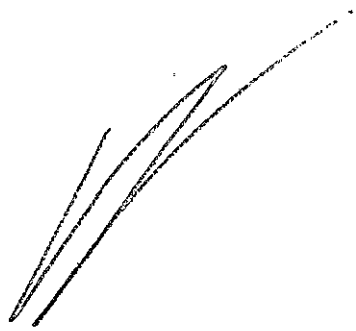
= community net sales proceeds

½ net comm.net proceeds to wife	½ net comm. net proceeds to husband
- 2/3 debt to wife's parents	- 1/3 debt to wife's parents
- 50% of any remaining	- 50% of any remaining
community taxes owed	community taxes owed
= wife final community net	= husband final community net

Any proceeds in excess of the community net is separate property of the wife and shall be her sole property.

Wife shall be in charge of the sale but if husband feels that he will not receive at least the amount of his lien plus interest because the wife is not selling either property for fair market value he may seek court assistance insetting a fair selling price for the properties so that his interest is protected.

C. Husband shall subordinate his lien if the wife wishes to refinance as long as no debt in addition to that already in existence is incurred or, if new debt is incurred, as long as there remains sufficient equity to secure the husband's remaining judgment plus 12% of the then value of the property.



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06 APR 14 PM 2:46
KING COUNTY
SUPERIOR COURT CLERK
KENT, WA

IN RE THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

In re the Marriage of: James D. Guettler Petitioner, And Carol Guettler Respondent.	NO. 03-3-10606-6 SEA Order re: CR 60(a) Correction to Judgment and Decree on Court's Motion ~~[X] Clerk's Action~~

THE COURT, having received a request for clarification of its 4-30-06 decision and having had a phone conference with counsel on 4-7-06, hereby moves to correct a clerical mistake arising from oversight or omission as the judgment does not accurately reflect the Court's intent; now therefore,

It is hereby ORDERED, ADJUDGED and DECREED,

That the ~~§III A(b)(a) provision of Exhibit A to the Decree shall in any event apply with the idea being that the husband needs those funds in part to pay for his ongoing appeal.~~ attached is added to the end of Exhibit A

Dated: 4-13-2006

The Hon. Judge Middaugh

Husband shall receive a lien on the property in the amount and fashion as set forth above. However, $75,000 of the lien is to be paid as soon as possible , i.e. wife to start refinance of either property, if necessary, and pay the husband $75,000 within 30 days or as soon as a refinance can be completed and husband shall cooperate with the refinance. The $75,000 shall be credited against the amounts owed to the husband under either option A (wife does not sell either property within 24 months) or option B (wife sells either or both property within the next 24 months or a property is foreclosed upon).

4/13/06

LAURA GENE MIDDAUGH

page 2 of 2

CARNEY BADLEY SPELLMAN

August 24, 2020 - 2:26 PM

Filing Petition for Review

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	Case Initiation
Appellate Court Case Title:	In Re the Marriage of: Carol C. Guettler, Appellant v. James D. Guettler, Respondent (806092)

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- PRV_Petition_for_Review_20200824142419SC155112_0328.pdf
  This File Contains:
  Petition for Review
  The Original File Name was Petition for Review.PDF

A copy of the uploaded files will be sent to:

- deirdre@dgllaw.net
- info@dgllaw.net
- johnhorourke@comcast.net
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Sender Name: Deborah Groth - Email: groth@carneylaw.com
Filing on Behalf of: Gregory Mann Miller - Email: miller@carneylaw.com (Alternate Email:)

Address:
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