

No. 37625-3-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON  
BY  DEPUTY

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In re the Marriage of:

ALISSA VICTORIA SATALICH,

Appellant,

and

CHRISTOPHER BARRON SATALICH,

Respondent.

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APPEAL FROM THE SUPERIOR COURT  
FOR CLARK COUNTY  
THE HONORABLE EDWIN POYFAIR

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BRIEF OF RESPONDENT

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EDWARDS, SIEH, SMITH  
& GOODFRIEND, P.S.

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## **I. INTRODUCTION**

The wife, age 40, leaves the parties' 34-month marriage with her total fees paid, a \$200,000 judgment against the husband, and maintenance with no termination date. One might expect that this appeal should be that of the husband. Instead, the wife, unsatisfied with her windfall award, appeals the trial court's order allowing the husband an "equitable reimbursement" for his separate contributions to a home purchased as his separate property in the early months of the marriage. The trial court did not abuse its discretion in granting the husband an equitable reimbursement for his separate property contributions to a home that should have been found to be his separate property. This court should affirm and award the husband his attorney fees in responding to this frivolous appeal.

## **II. RESTATEMENT OF THE CASE**

### **A. Restatement of Facts.**

Respondent Christopher Satalich and appellant Alissa Satalich married on November 22, 2002. (Finding of Fact (FF) 2.4, CP 12) They have one child together. (FF 2.16, CP 13) On September 3, 2005, the parties separated. (FF 2.5, CP 12)

Less than two months before the parties married, Alissa and her two young children from a prior marriage moved into a home owned by Christopher in Vancouver, Washington ("Vancouver" house). (RP 1, 4, 9) On April 15, 2003, less than five months after the parties married, Christopher purchased a home in Ridgefield, Washington ("Ridgefield" house). (RP 49; Exhibit 23) The Ridgefield house was titled in Christopher's name as "a married man as his separate estate." (RP 49; Exhibit 24) Although at trial she claimed it was not her intent, Alissa quit claimed her interest in the Ridgefield house to Christopher at closing. (RP 9)

Christopher purchased the Ridgefield house for \$515,047. (Exhibit 23) According to the settlement statement, approximately \$111,000 was used as a down payment on the house (Exhibit 23), including \$14,000 "earnest money," \$84,000 on deposit in escrow, and \$13,000 paid as cash at closing. (RP 12; Exhibit 23)

The loan for the remaining purchase price was in Christopher's name only, and was based solely on his income and assets. (See RP 6; Exhibit 50) According to the loan application, the source of the down payment for the Ridgefield house was "equity from current home." (Exhibit 50) Christopher's pre-marriage Vancouver home was listed on the loan application as

“pending sale,” with equity of approximately \$112,000. (Exhibit 50) Apparently, the Vancouver house was either already sold or the sale was closing shortly, as Alissa testified that they would have to be out of the Vancouver house within two weeks from the time of closing on the Ridgefield property. (See RP 7) The loan application also showed that Christopher had approximately \$70,000 in cash at Wells Fargo and a \$10,000 “cash deposit toward purchase held by earnest money.” (Exhibit 50) The loan documents showed that Christopher had a net worth of \$303,000. (Exhibit 50)

When Christopher purchased the Ridgefield house, Alissa was not employed and had debt of approximately \$40,000. (RP 6) There is no evidence that Alissa had any separate property of her own when the parties married, save for \$5,000 in personal property. (See CP 23)

At trial, the parties disputed the source of the down payment. According to Alissa, she “assumed” the \$13,000 cash payment and \$14,000 earnest money were from a community checking account, but she also admitted that she did not know. (RP 12-13) Alissa conceded she did not know the source of the remaining down payment of \$84,000. (RP 13) Alissa asserted that Christopher “brought home” about \$15,000 per month in income during the

marriage. (RP 13) But even assuming the parties had zero expenses, Christopher's monthly income of \$15,000 during the first five months of marriage would be insufficient to cover the \$111,000 down payment.

According to Christopher, the source of the down payment was proceeds from the sale of his pre-marital properties. (RP 51-55) Christopher explained that prior to his marriage to Alissa, he had owned a home in North Portland that he purchased in 1985 for \$36,000. (RP 51-52) He sold this home in either 1999 or 2001 for \$165,000. (RP 51, 53-54) Christopher used the proceeds from the North Portland home to purchase the Vancouver house where he and Alissa lived prior to and when they were first married. (RP 58-60) Shortly after the parties married, Christopher sold the Vancouver house and used the equity to purchase the Ridgefield house. (RP 58-60, 62; Exhibit 50) Christopher testified that he "never actually had the cash in my hand [from the sale of the Vancouver house]. (RP 59) The money was transferred through the mortgage system." (RP 59) Christopher testified that he had not used wage income for any of the down payment. (RP 62)

Christopher refinanced the Ridgefield house twice during the marriage. (See RP 14, 17; Exhibit 24) He used approximately

\$77,000 from the first refinance in June 2003 to build a shop (RP 16, 46), and approximately \$30,000 from the second refinance in November 2004 to finish the shop and pay debt related to a car accident involving the parties' daughter. (RP 17-19, 46) Throughout these refinances, the Ridgefield house remained titled in Christopher's name as a "married man as his separate estate." (See Exhibit 24)

**B. Procedural History.**

Alissa filed a petition to dissolve the parties' marriage on September 26, 2005, less than three years after the parties married. (CP 3) Clark County Superior Court Judge Edwin Poyfair tried the case on January 28-29, 2008.

The most significant asset before the court was the Ridgefield house, which the trial court found had equity of \$255,765. (RP 88) The parties disputed the character of the property. Alissa asserted the Ridgefield house was community property because it was purchased during the marriage, she helped decorate it, and it was considered the "family home." (RP 4, 9) Christopher asserted the Ridgefield house was his separate property because it was purchased with proceeds from his separate property Vancouver house, the loan was based on his separate

credit, the house was titled in his name, and Alissa had quit claimed her interest in the property. (See RP 49)

With minimal explanation, the trial court found that the Ridgefield house was community property (RP 88), and that the husband was entitled to an “equitable reimbursement” of \$95,000. (FF 2.9, CP 12; CP 21; RP 88) In support of its “equitable reimbursement,” the trial court acknowledged that the husband paid some if not all of the down payment on the home and found that the husband “owned a home prior to the marriage, sold that home and purchased another home. The father shall be awarded equitable reimbursement of equity in the family home in the amount of \$95,000.” (FF 2.9, CP 12; RP 88, 100)

The trial court rejected the wife’s request for a disproportionate division of the community property “based upon the length of the marriage (2 years, 10 months).” (FF 2.8, CP 12; RP 94-95) The trial court equally divided the community property and awarded the wife a judgment of \$198,331.50 as an equalizing payment. (CP 16) The trial court also ordered the husband to pay the wife’s attorney fees of \$20,000. (CP 20)

The parties had previously agreed and the trial court affirmed an award of monthly spousal maintenance to the wife of

\$2,150. (CP 19, 24) Pursuant to the parties' agreement, spousal maintenance commenced on March 1, 2007 and continued until "reviewed by the court." (CP 24) Either party could seek review of the maintenance award, but "not sooner than February 1, 2010." (CP 24)

The wife appeals. Her sole challenge on appeal is to the trial court's award of an "equitable reimbursement" to the husband.

### III. ARGUMENT

#### A. Standard of Review.

"[T]rial court decisions in a dissolution action will seldom be changed upon appeal. Such decisions are difficult at best. Appellate courts should not encourage appeals by tinkering with them. The emotional and financial interests affected by such decisions are best served by finality. The spouse who challenges such decisions bears the heavy burden of showing a manifest abuse of discretion on the part of the trial court. The trial court's decision will be affirmed unless no reasonable judge would have reached the same conclusion." ***Marriage of Landry***, 103 Wn.2d 807, 809-10, 699 P.2d 214 (1985) (*citations omitted*).

Here, the wife utterly fails to show any manifest abuse of discretion in the trial court's decision to allow the husband an

equitable reimbursement for his contributions to a home purchased in the very early part of a short-term marriage when there was no evidence of available community funds for the \$111,000 down payment and substantial evidence of the husband's available separate property. This court should affirm.

**B. The Trial Court Did Not Abuse Its Discretion In Granting The Husband An Equitable Lien For His Separate Contributions To A Home That Was Purchased Early In A Short-Term Marriage.**

The trial court did not find the Ridgefield house to be the husband's separate property. The trial court found the house to be community property – a characterization with which husband does not agree, but for purposes of this appeal concedes, as he did not file a cross-appeal.<sup>1</sup> Instead, the trial court found that the husband had a right to an “equitable reimbursement” based on its acknowledgment that the community did not have the funds for the \$111,000 down payment, but that the husband had separate property available.

The wife's appeal misses the point. The issue before this court is not whether the trial court erred by mischaracterizing the Ridgefield house, but whether it abused its discretion in allowing

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<sup>1</sup> Respondent's current appellate counsel was retained shortly before this brief was due.

the husband an “equitable reimbursement” for his separate property contributions to a home that the court characterized as community property.

The trial court is required to “do equity” in dividing the marital estate upon dissolution. ***Marriage of Miracle***, 101 Wn.2d 137, 139, 675 P.2d 1229 (1984) (citations omitted). “An equitable lien is a remedy intended to protect one party’s right to reimbursement.” ***Miracle***, 101 Wn.2d at 139. Whether a right to reimbursement exists is based upon “equitable considerations” and the facts surrounding the contribution:

The right to reimbursement is undoubtedly predicated upon equitable considerations. Thus, the facts surrounding the contribution must be evaluated to determine whether the equities lie and whether the right to reimbursement will arise.

Harry M. Cross, *The Community Property Law in Washington*, 61 Wash.L.Rev. 13, 68 (Revised 1985).

As the trial court acknowledged, the facts of this case compelled the trial court to “do equity” by awarding the husband an equitable reimbursement of \$95,000. When the parties married, the husband indisputably owned a separate property home in Vancouver that had equity of approximately \$112,000. (RP 4, 52-54; Exhibit 50) The loan application specifically states that the

source of the down payment was “equity from current home,” which was indisputably the husband’s separate property. (Exhibit 50) The husband also had a tax refund of \$24,678 for the tax year 2002; the parties had not married until November of that year. (RP 73) By granting the husband an equitable reimbursement, the trial court properly acknowledged that the down payment for the Ridgefield house originated from the husband’s separate property and not the community.

The wife asserted at trial that the husband’s community earnings *could have* been used for the down payment. In her opening brief, the wife claims that the husband received \$103,000 in income by the time the Ridgefield house was purchased. (App. Br. 11) However, her citation to the record does not support that claim. (See RP 62-63) Even if it did, to accept the wife’s claim, the trial court, and this court, would have to assume that the community had absolutely no expenses during the first five months of marriage. And, even if that were true, there would still be insufficient funds to have paid the entire down payment on the Ridgefield property.

The trial court simply did not believe the wife. Instead, it accepted the husband’s testimony regarding the separate source of

the down payment as more credible. The trial court properly rejected the wife's claim, and this court must defer to the trial court's credibility determination. **Marriage of Rideout**, 150 Wn.2d 337, 351, 77 P.3d 1174 (2003); see also. **Marriage of Burrill**, 113 Wn. App. 863, 868, 56 P.3d 993 (2002), *rev. denied*, 149 Wn.2d 1007 (2003) (credibility determinations are left to the trier of fact and are not subject to review).

It also was well within the trial court's discretion to award a slightly disproportionate percentage of the Ridgefield house to the husband because the origin of community property as one party's separate property may be considered as a reason for awarding all or a disparate share thereof to that party. **Marriage of Nuss**, 65 Wn. App. 334, 341, 828 P.2d 627 (1992). In **Nuss**, the husband had converted his separate property residence acquired before marriage to a community asset, by quit claiming his interest to the marital community. The Court of Appeals affirmed a disproportionate award of the equity in the residence to the husband, holding that its origin as his separate property could be considered in dividing the property. **Nuss**, 65 Wn. App. at 341. In particular, the **Nuss** court held that the unequal award was reasonable in light of the short duration of the marriage; the

younger age, health, and economic prospects of the wife, and the other property awarded to the wife. 65 Wn. App. at 340.

Likewise here, the wife, age 40, leaves this less than three-year marriage with a \$200,000 judgment, her trial attorney fees paid, and potentially life time maintenance. It was entirely within the trial court's discretion to "do equity" and grant the husband an equitable reimbursement for a portion of his separate property contributions to the Ridgefield house, especially when the court acknowledged that it could have found the entire equity was separate property and after a short-term marriage the wife will receive interminable maintenance.

**C. This Court Should Deny The Wife Attorney Fees And Award Attorney Fees To The Husband On Appeal.**

There is no basis to award attorney fees to the wife for this frivolous appeal. After a short-term marriage, the wife has received a windfall and has the ability to pay her own attorney fees. Meanwhile, the husband has the need for his attorney fees to be paid because he has been ordered to pay his wife nearly \$220,000, including her attorney fees in the trial court. RCW 26.09.140.

This court has discretion to award attorney fees after considering the relative resources of the parties and the merits of

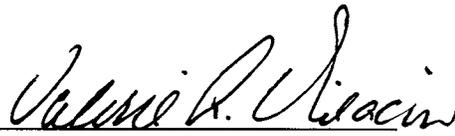
the appeal. RCW 26.09.140; **Leslie v. Verhey**, 90 Wn. App. 796, 807, 954 P.2d 330 (1998), *rev. denied*, 137 Wn.2d 1003 (1999). This court can also award attorney fees to the husband because the wife's appeal is frivolous. "An appeal is frivolous if no debatable issues are presented upon which reasonable minds might differ, and it is so devoid of merit that no reasonable possibility of reversal exists. **Chapman v. Perera**, 41 Wn. App. 444, 455-456, 704 P.2d 1224, *rev. denied*, 104 Wn.2d 1020 (1985).

#### IV. CONCLUSION

The trial court properly granted the husband an equitable reimbursement for those separate property funds he contributed to the purchase of home, which under any other circumstance should have been found entirely to be his separate property. This court should affirm.

Dated this 18th day of December, 2008.

EDWARDS, SIEH, SMITH  
& GOODFRIEND, P.S.

By:   
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**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 December 18th, 2008, I arranged for service of the foregoing Brief of Respondent, to the court and counsel for the the parties to this action as follows:

Office of Clerk Court of Appeals - Division II 950 Broadway, Suite 300 Tacoma, WA 98402	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail
Suzan L. Clark Attorney at Law 1101 Broadway St., Suite 250 Vancouver, WA 98660	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail

**DATED** at Seattle, Washington this 18th day of December, 2008.

  
\_\_\_\_\_  
Carrie O'Brien

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