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IN THE SUPREME COURT OF  
THE STATE OF WASHINGTON

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NO. 3963-2

COURT OF APPEALS  
DIVISION I  
OF THE STATE OF WASHINGTON

In re the Marriage of:

SOUSAN OVEISI,  
Petitioner/Appellee,

and

JAMAL HAKIMI,  
Respondent/Appellant.

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RESPONSE TO PETITION FOR REVIEW

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## **I. INTRODUCTION**

Appellee Sousan Oveisi petitioned for divorce from Appellant Jamal Hakimi on November 20, 2020.<sup>1</sup> Jamal responded to the petition on November 30, 2020. The parties appeared for trial before The Honorable Judith H. Ramseyer on March 16 and 17, 2022. The only issues before the court for decision were division of the parties' assets and Jamal's request for spousal support. Judge Ramseyer entered the Findings and Conclusions about a Marriage and Final Divorce Order on March 21, 2022. Jamal moved for reconsideration on March 31, 2022. Judge Ramseyer denied this motion on April 21, 2022. This appeal followed. The facts relevant to this appeal are detailed below in the Statement of the Case.

## **II. RESPONSE TO CONSIDERATIONS GOVERNING ACCEPTANCE OF REVIEW**

1. The Court of Appeals decision is not in conflict with a decision of the Supreme Court.
2. The Court of Appeals decision is not in conflict with a published decision of the Court of Appeals.
3. The Court of Appeals decision does not present a significant question of law under the Constitution of the State of Washington or the United States.

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<sup>1</sup>For ease of reference, the Appellant will be referred to as Jamal and the Appellee as Sousan. No disrespect is intended.

4. The Court of Appeals decision does not involve an issue of substantial public interest that should be determined by the Supreme Court.

### **III. RESPONSE TO ISSUES PRESENTED FOR REVIEW**

1. Did the trial court correctly characterize the Tukwila property as community property?
2. If the trial court did not correctly characterize the Tukwila property as community property, can its decision be upheld on another basis?
3. Did the court correctly find that Jamal sequestered large amounts of cash and failed to account for it at trial?

### **IV. STATEMENT OF THE CASE**

#### **1. Procedural background.**

Appellee Sousan Oveisi petitioned for divorce from Appellant Jamal Hakimi on November 20, 2020. CP 1-4. Jamal responded to the petition on November 30, 2020. CP 5-7. The parties appeared for trial before The Honorable Judith H. Ramseyer on March 16 and 17, 2022. RP 1 and 164. The only issues before the court for decision were division of the parties' assets and Jamal's request for spousal support. CP 62-66. Judge Ramseyer entered the Findings and Conclusions about a Marriage and Final Divorce Order on March 21, 2022. CP 62-66 and CP 55-61. Jamal moved for reconsideration on March 31, 2022. CP 67-77. Judge Ramseyer denied this motion on April 21, 2022. CP 78-79. This appeal followed.

## **2. Facts of the case.**

The parties married on August 23, 1998 in Tehran, Iran. RP 25. Jamal had earlier immigrated to the United States from Iran and obtained his U.S. citizenship. After the marriage, he returned to the U.S. The parties' oldest daughter Neusha was born in Iran. Sousan and Neusha immigrated to the U.S. on January 27, 2001 under Jamal's sponsorship. RP 31-37. The parties' youngest daughter Niki was born in the U.S. The parties' marital community ended on September 10, 2020, the date they mutually agreed to divorce. RP 61-62. Sousan petitioned for divorce on November 20, 2020. Jamal responded on November 30, 2020. CP 1-7.

At the time of trial, Sousan was age 61 and Jamal was age 72. RP 24, 29 and 35. Both of their daughters were adults and not subject to the court's jurisdiction. RP 30-31, CP 65. The parties and both of their adult children continued to share their Tukwila home through entry of the final divorce orders. RP 80.

Sousan earned a master's degree in nursing in Iran in 1984. She began her nursing career there in 1983. RP 25. She lived with her parents and because they paid for her living expenses, she was able to save all of her earnings. Once the parties married, they opened a joint bank account in Tehran and Sousan deposited all of her accumulated earnings into that joint

account. RP 32, 40-42. Jamal also deposited into this joint account the proceeds from the sale of property he owned in Iran. RP 40-42.

Jamal quit working in 1998 and paid nothing toward Sousan's or their children's living expenses, either while she and Neusha lived in Tehran, or after they moved to the U.S. RP 59, 68, 236-236, 256-257. Sousan immediately began working within a couple of months of coming to the U.S., as a certified nursing assistant. Once the State of Washington granted her a registered nursing license, she began working as an RN. She has worked in this profession continuously since then, and for most of that time she has worked two jobs. Jamal did not support the family financially after that, and instead took up pigeon keeping for a hobby. He also did not provide any services to the family in the home. Both of their daughters were in paid daycare while Sousan worked, and she was entirely responsible for all household duties, including shopping, preparing meals, and laundry. Sousan also paid for all of the children's private elementary and high school expenses, as well as their University of Washington college expenses, from her earnings. She also worked extra shifts to pay the cost of her trips back to Iran with the children to visit their families. RP 25-31, 235-240.

The parties acquired their Tukwila residence in 1999, after they married on August 23, 1998 but before Sousan and Neusha arrived in the



U.S. in 2001. Jamal directed Sousan to sign a quit-claim deed so that he could complete the purchase. He sent the deed to her via overnight delivery and she went to the Canadian embassy in Tehran to sign it. He told her that unless she signed the document, they could not buy this property. He did not explain to her that it was his intention to claim it as his separate property and for her to have no ownership interest in it. At that time, she could not read English well enough to understand its possible legal consequences. She was not given time to read it or have it translated to her. RP 37-42. The purchase price of the property was \$116,000. The parties put \$55,000 down and financed the balance. RP 42. Jamal signed the purchase and sale agreement, admitted at trial as exhibit 218. RP 197. Because Jamal quit working after the parties married, all of the funds to pay the remaining balance owed on the property came from Sousan's earnings. Jamal's Social Security wage record, trial exhibit 14, reflects that he earned a total of \$19,004 between 1998 and 2014. RP 59. He admitted at trial that once Sousan came to the U.S., he quit working and did not contribute financially to the family for 20 years. RP 200. By contrast, Sousan documented in her trial exhibit 26 that she contributed net income totaling \$1,785,000 over the same period by working two full-time nursing jobs for the past 22 years. RP 27-30, 109.

The parties also built an entirely new 4,800-square-foot home on the property over approximately six or seven years after Sousan moved to the U.S. All of the work on this new home was paid for with Sousan's earnings. The original structure is derelict and uninhabitable as shown in the photos provided as Sousan's trial exhibit 2 and trial exhibit 3. The parties did much of the work themselves and they hired contractors for some of it as well. RP 43-46, 223-224. The parties agreed that the value of this property at the time of trial was \$710,000. RP 217.

In August of 2001, the parties bought a commercial property in Tacoma. They agree that it is community property. Sousan valued it at \$500,000 in her trial exhibit 1. RP 42-43. Jamal valued it at \$450,000. RP 218. On December 12, 2008, the parties bought a vacant lot in Snoqualmie at a tax auction. They agree that it is a community property asset. Sousan valued it at \$100,000 on her trial exhibit 1 spreadsheet. RP 82. Jamal valued it at \$93,000. RP 217.

In 2003, the parties bought land in Andisheh Tehran in partnership with Sousan's brother Behzad Oveisi. RP 183-191, 234-235. This property was intended to be accommodation for the parties when they visited family. Jamal wanted to partner with Behzad because he lives in Tehran and would build a house on the property. Whenever Behzad asked for money to buy

materials or pay for labor, without even knowing the price, Jamal would argue that he was overcharging. Even after the construction, Jamal refused to pay the parties' share of the property costs. It was never completed and remained vacant at the time of trial. In the 20 years since buying the property, Behzad paid all of the property taxes, maintenance and utilities because Jamal refused to contribute to any of these expenses. RP 183-191. Sousan produced multiple comparable valuations for similar properties in the area, though they were all in much better condition. This house is not painted, has no cabinets or appliances and is in poor condition. It has never been occupied in the 22 years since it was built. Based on the comparable listings, Sousan testified that the property's total value is \$80,500. RP 88-94. Jamal agreed with this value. RP 220. Half of that value, \$40,250 belongs to the parties. Sousan testified that she wanted to have this property awarded to her. RP 94.

Sousan's Fidelity 403(b) account was valued at \$268,783 at the time of separation as documented by trial exhibit 6. She testified that she wanted it to be awarded to her. RP 84. Jamal did not testify about this asset.

Both parties testified extensively about the amount of money Jamal held in cash and failed to account for. Sousan testified that approximately seven or eight years prior, she was cleaning Jamal's room and found a large

box of cash there. When she confronted him about it, he claimed to be holding it in case of a bank failure. But he never accounted to her for where the funds came from and thereafter he locked her out of his room. Sousan then testified to entering Jamal's room on July 7, 2021 during a time he was absent from the house. She found a small box of cash which she brought to her attorney. She testified that she accounted for these funds to Jamal's then-attorney and included them on her trial exhibit 1 spreadsheet, in the total amount of \$37,700. RP 71-75. Sousan also testified that she reviewed all of the parties' bank statements between 2001 and the date of separation. She provided at her trial exhibit 8 a detailed spreadsheet explaining the withdrawals each party took from their joint accounts around the time they separated, between January and November 2021. She also provided with this exhibit copies of the checks documenting funds Jamal removed from their bank accounts that he did not account for between 2001 and 2021. She testified to a total of \$292,060 of funds Jamal removed that she could not trace. She testified that Jamal had control of all of their accounts and finances and that she was not even allowed to go to the bank by herself. RP 60-75. Whenever she needed money for her trips to Iran he took her to the bank and withdrew the money, sometimes having her sign for it. Then he would give her some of it and keep the rest for himself. RP 97-99, 236-239.

For a long time Jamal didn't allow Sousan to have a checkbook and she was only allowed to use a credit card. Whenever she needed a check, he would dole out one from the checkbook and hand it to her. RP 239-240.

Jamal gave testimony and provided off-the-record documentation tracing of \$194,117 of the funds removed from the parties' joint accounts that Sousan could not trace. That left a balance of \$97,943 in unaccounted for withdrawals. RP 150-160, 169-172. Jamal did not account for these remaining withdrawals during his testimony other than to generally deny having the money.

## **V. ARGUMENT**

### **1. Standard of Review – Abuse of Discretion.**

"A property division made during the dissolution of a marriage will be reversed on appeal only if there is a manifest abuse of discretion." Marriage of Muhammad, 153 Wash.2d 795, 803, 108 P.3d 779 (2005). "A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons." Marriage of Larson, 178 Wash. App. 133, 138, 313 P.3d 1228 (2013). "If the decree results in a patent disparity in the parties' economic circumstances, a manifest abuse of discretion has occurred." Marriage of Rockwell, 141 Wash. App. at 243, 170 P.3d 572 (2007).

**2. The trial court did not abuse its discretion in dividing the property between the parties as it did.**

Appellate courts apply the substantial evidence standard of review to findings of fact made by the trial judge. See Washington Family Law Deskbook, 2nd Ed. § 65.4(1) at 65-9. As long as the findings of fact are supported by substantial evidence, they will not be disturbed on appeal. Thorndike v. Hesperian Orchards, Inc., 54 Wash.2d 570, 575, 343 P.2d 183 (1959). "Substantial evidence exists if the record contains evidence of a sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise." In re Marriage of Griswold, 112 Wash.App. 333, 339, 48 P.3d 1018 (2002). Where the trial court has weighed the evidence, the reviewing court's role is to simply determine whether substantial evidence supports the findings of fact, and if so, whether the findings in turn support the trial court's conclusions of law. In re Marriage of Greene, 97 Wash.App. 708, 986 P.2d 144 (1999). A court should "not substitute [its] judgment for the trial court's, weigh the evidence, or adjudge witness credibility." Id. at 714, 986 P.2d 144 (citing In re Marriage of Rich, 80 Wash.App. 252, 259, 907 P.2d 1234 (1996)). In re Marriage of Rockwell, 170 P.3d 572, 141 Wn. App. 235 (Wash. App. 2007).

**A. The court correctly found that the Tukwila property was community property.**

In the case at bar, the court found: “Respondent asked that the property on which the family has resided, located in Tukwila, WA, be awarded to him as Petitioner signed a quit claim deed to him when they were married. At that time, not long after their marriage, Petitioner was still living in Tehran, Iran, and did not speak or read English. She understood her signature was needed to complete the purchase of a home here, where the couple intended to live. Down payment and subsequent payment of the balance owed on the family home was made with commingled assets deposited into one account from Respondent’s sale of property in Iran and Petitioner’s earnings before and after marriage. Once purchased, Petitioner’s earnings were used for utilities, maintenance, and in 2008, construction of a new home on the property. The original home remains on the property, but it is derelict and not currently habitable. The Court finds that the Tukwila property is and always has been community property, not Respondent’s separate property.”

This finding of fact is supported by substantial evidence. Sousan testified about and provided proof of the parties’ joint bank account in Iran, opened after they married. Both parties testified to depositing funds into this

account before the Tukwila property purchase. The petitioner testified to depositing her entire life savings into it and both parties testified that the respondent deposited into this account the funds from the sale of his real property in Iran. Both parties also testified that immediately after the marriage in 1998, Jamal quit working. Sousan testified to obtaining her first job in the U.S. within months of arrival and of working two jobs during most of the marriage. She also testified and provided documentary evidence that she contributed over \$1.7 million in net income to the family. Both parties also testified to the construction of a new 4,800-square-foot home on the property. Sousan testified to being the sole source of funds to pay off the original \$57,000 mortgage, fund all of the construction expenses for the new home, and pay all of the expenses related to the property. This is substantial evidence of the community-property character of this asset, valued at \$710,000 at the time of trial.

**B. The court correctly found that Jamal possessed \$97,943 in cash.**

The court found, “Petitioner testified that Respondent has withdrawn and retains large amounts of cash from their joint accounts. Petitioner further testified that she inadvertently found a large amount of cash kept by Respondent in his room, and since that time she has been



locked out of Respondent's room. During trial, the parties conferred and accounted for a majority of the assets petitioner was unable to trace and therefore attributed [to] Respondent. The amount of cash allocated to Respondent was not otherwise identified or explained at trial, and is documented as having been withdrawn by Respondent. The Court finds Petitioner's testimony, and the parties' efforts to explain Respondent's withdrawals of cash from their bank accounts, to be credible. Consequently, the unexplained withdrawals are credited to Respondent."

This finding of fact is supported by substantial evidence. Sousan testified that approximately seven or eight years prior, she was cleaning Jamal's room and found a large box of cash there. When she confronted him about it, he claimed to be holding it in case of a bank failure. But he never accounted to her for where the funds came from and thereafter he locked her out of his room. Sousan then testified to entering Jamal's room on July 7, 2021 and finding a small box of cash which she brought to her attorney. She testified that she accounted for these funds to Jamal's then-attorney and at trial, in the total amount of \$37,700. Sousan also provided detailed testimony of her review of all of the parties' bank statements between 2001 and the date of separation. Her detailed accounting accurately traced to Jamal a significant number of withdrawals that he had never explained. She

testified to a total of \$292,060 of funds Jamal removed that he did not account for. She testified that Jamal had control of all of their accounts and finances and that she was not even allowed to go to the bank by herself, testimony that Jamal did not dispute. He did dispute her testimony that they went to the bank together to withdraw cash for her trips back to Iran to visit family and that Jamal took large withdrawals and gave her only a small portion of the withdrawn funds. However, the court did not abuse its discretion in finding Sousan's testimony on these events to be more credible. Jamal gave testimony and provided off-the-record documentation tracing of \$194,117 of the funds removed from the parties' joint accounts that Sousan could not account for. At trial, she accepted his accounting for these funds and the court made a finding that they had been accounted for. That left a balance of \$97,943 in unaccounted for withdrawals. Jamal did not account for these remaining withdrawals during his testimony other than to generally deny having the money. The court did not abuse its discretion in finding this testimony to be less credible than the testimony and documentary evidence provided by Sousan.

**C. The court's decision is just and equitable because it leaves the parties in approximately equal positions.**

The trial court's distribution of property in a dissolution action is guided by statute, which requires it to consider multiple factors in reaching an equitable conclusion. These factors include (1) the nature and extent of the community property, (2) the nature and extent of the separate property, (3) the duration of the marriage, and (4) the economic circumstances of each spouse at the time the division of the property is to become effective. RCW 26.09.080. In weighing these factors, the court must make a "just and equitable" distribution of the marital property. RCW 26.09.080. In doing so, the trial court has broad discretion in distributing the marital property, and its decision will be reversed only if there is a manifest abuse of discretion. In re Griswold, 112 Wash. App. at 339, 48 P.3d 1018 (citing In re Marriage of Kraft, 119 Wash.2d 438, 450, 832 P.2d 871 (1992)). A manifest abuse of discretion occurs when the discretion was exercised on untenable grounds. In re Marriage of Muhammad, 153 Wash.2d 795, 803, 108 P.3d 779 (2005). If the decree results in a patent disparity in the parties' economic circumstances, a manifest abuse of discretion has occurred. In re Marriage of Pea, 17 Wash. App. 728, 731, 566 P.2d 212 (1977). In re Marriage of Rockwell, 170 P.3d 572, 141 Wn. App. 235 (Wash. App. 2007).

The parties in this case married on August 23, 1998. They separated on September 10, 2020, a period of 22 years. The court found, “(a) This is a long-term marriage. Petitioner is 61 years old and works as a nurse. She wants to continue working, but she would like to reduce her hours from the overtime schedule she has worked much of her career. She has work-related medical conditions and recently had back surgery. Respondent is 72 years old. He essentially stopped working when the parties married. He has idiopathic fibrosis, resulting in simple chronic bronchitis. During the marriage health insurance has been provided through Petitioner’s employer. (b) The parties have no community debt. They are fortunate they have sufficient assets to share on an approximately 50-50 basis to be financially secure going forward.” The court’s division of the marital assets in the Final Divorce Order is approximately equal as detailed in the spreadsheet below. This approximately equal property division is a just and equitable distribution of the marital property. The trial court properly exercised its broad discretion in distributing the marital property, and its decision should not be reversed because it is not a manifest abuse of discretion.

COMMUNITY ASSETS AND DEBTS	GROSS VALUE	LIENS & PMTS	NET VALUE	CP VALUE	CP TO HUSBAND	CP TO WIFE
<b>Real Estate</b>						
14251 Moadam Rd. S., Tukwila, WA - Bought 11/7/1999	710,000		710,000	710,000		710,000
39202 SE Snoqualmie-N.B. Road - Bought 1/29/09	100,000		100,000	100,000	100,000	
3144 Marine View Dr., Tacoma, WA - Bought 8/24/01	500,000		500,000	500,000	500,000	
Tehran, Andisheh, part 7, Shahnar # 215 _1553 1/2 Interest - Bought 7/27/2003	40,250		40,250	40,250		40,250
<b>Retirement Accounts</b>						
Fidelity 403(b) - Sousan	268,783		268,783	268,783		268,783
<b>Financial Institution Accounts</b>						
Cash in Custody of Sousan's Attorney	37,700		37,700	37,700		37,700
Cash in Possession of Jamal	97,943		97,943	97,943	97,943	
Key Bank Savings 4324 - Jamal	336,473		336,473	336,473	336,473	
Wells Fargo Checking 9724 - Jamal	6,553		6,553	6,553	6,553	
Bank of America Savings 1102 - Sousan	127,762		127,762	127,762		127,762
Bank of America Checking 1092 - Sousan	13,373		13,373	13,373		13,373
<b>Vehicles</b>						
2004 Ford Taurus	2,654		2,654	2,654		2,654
2004 BMW X3	4,088		4,088	4,088	4,088	
1991 GMC Truck	1,000		1,000	1,000	1,000	
2003 Jaguar - Transfer to Neusha						
2005 Ford Taurus - Transfer to Niki						
<b>TOTAL ALL COLUMNS</b>	<b>2,246,579</b>		<b>2,246,579</b>	<b>2,246,579</b>	<b>1,046,057</b>	<b>1,200,522</b>
<b>Allocation of Community Property</b>						
Net Community Property	2,246,579					
HUSBAND 50%	1,123,290					
WIFE 50%	1,123,290					

**D. The trial court's decision may be upheld on any basis supported by the record and RCW 26.09.080 permits upholding the court's property distribution.**

On appeal, an order may be sustained on any basis supported by the record. Burnet v. Spokane Ambulance, 131 Wn.2d 484, 493, 933 P.2d (1997). "Under appropriate circumstances," the trial court "need not divide community property equally, it need not award separate property to its owner." White v. White, 105 Wash. App. 545, 549, 20 P.3d 481 (2001). The

court need only "make such disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors." White, 105 Wash. App. at 549, 20 P.3d 481; RCW 26.09.080. In re Kaplan, 421 P.3d 1046 (Wash. App. 2018).

RCW 26.09.080 provides:

In a proceeding for dissolution of the marriage . . . the court shall, without regard to misconduct, make such disposition of the property . . . of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors including, but not limited to:

(1) The nature and extent of the community property;

(2) The nature and extent of the separate property;

(3) The duration of the marriage or domestic partnership; and

(4) The economic circumstances of each spouse or domestic partner at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to a spouse or domestic partner with whom the children reside the majority of the time.

These parties have been married for 22 years. Virtually all of their accumulated wealth has been possible only thanks to Sousan's labors. She worked two jobs and substantial overtime during most of the marriage,

ultimately contributing over \$1.7 million to the community. All of the assets and living expenses of the parties have been financed by Sousan for this entire marriage because Jamal quit working immediately upon marrying her. She paid for the private schooling and college educations of the parties' two adult daughters. She funded every other endeavor of this family, including the purchase of a commercial property in Tacoma, a vacant lot in Snoqualmie and a residence in Tehran, Iran. Even were the court to agree that Jamal used \$55,000 of his separate-property funds to buy the Tukwila home, RCW 26.09.080 and the cases interpreting it require that this, the parties' most valuable asset, purchased during the marriage for \$112,000 and now worth \$710,000, be shared equally by the parties. This is particularly true given that after the parties bought the property, they built a new, 4,800-square-foot home on it entirely at Sousan's expense.

## **VI. CONCLUSION**

The Supreme Court should decline to accept for review the decision of the Court of Appeals in this case because it is not in conflict with a decision of the Supreme Court, it is not in conflict with a published decision of the Court of Appeals, it does not present a significant question of law under the Constitution of the State of Washington or the United States, and

it does not involve an issue of substantial public interest that should be determined by the Supreme Court.

This document contains 4585 words, excluding the parts of the document exempted from the word count by RAP 18.17. Respectfully submitted July 28, 2023.

A handwritten signature in black ink that reads "Marie White". The signature is written in a cursive style with a horizontal line underneath it.

MARIE WHITE, Attorney at Law  
WSBA #21198  
Attorney for Petitioner/Appellee



**MARIE WHITE ATTORNEY AT LAW**

**July 28, 2023 - 4:55 PM**

**Transmittal Information**

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