No. 102371-5

SUPREME COURT
OF THE STATE OF WASHINGTON

MELODY L. PETLIG, an individual,

Respondent,

v.

THE ESTATE OF GARY WEBB, by and through its Administrator, Jessica Webb; and JESSICA WEBB, individually and in her marital community interest,

Petitioner.

ANSWER TO PETITION FOR REVIEW

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A. Introduction.

For 38 years, respondent Melody Petlig lived with her partner, Gary Webb, on property in Auburn, Washington. They had one child, the petitioner Jessica Webb.

As Gary's health declined, he promised Melody that she would be able to live on the property for the rest of her life. Although Gary transferred the property to Jessica in January 2017, the parties understood that the transfer did not affect their property interests and was meant to shield it from creditors.

Thus, the status quo continued for years after the transfer, and even after Gary died in March 2018—Melody managed the property, while Jessica did not contribute financially or demand rent.

In September 2019, Jessica forcibly removed Melody from the property so she could sell it, leaving Melody

homeless. Over the next year, the parties attempted to resolve their issues but ultimately failed.

In September 2020, Melody sued to recover her property interest. The trial court held that Gary's intent—that Melody would retain a life estate—could not "override" the deed, but it reimbursed Melody's property contributions due to her committed intimate relationship (CIR) with Gary.

The Court of Appeals reversed in an unpublished opinion. *Petlig v. Estate of Webb*, No. 84007-0-I, 2023 WL 5198290 (Aug. 14, 2023).[1] Division One held that the parties shared a mutual understanding that Gary intended for Melody to retain a life estate in the property after the transfer and that a constructive trust could override the deed to prevent unjust enrichment to Jessica. Division One also reversed Melody's CIR reimbursement award.

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[1] This answer cites to Division One's opinion as "Op. ___."

The Court should deny Jessica's petition for review. Jessica fails to identify any authority conflicting with Division One's opinion, which correctly holds that a constructive trust may override a deed to prevent unjust enrichment when the legal owner of property is not the sole intended beneficiary.

If the Court grants the petition, it should also take review of the CIR reimbursement issue.

Finally, Melody is still homeless. In the interests of justice, Melody respectfully requests that the Court deny Jessica's petition as soon as possible to ensure that Melody has a roof over her head before winter.

B. Restatement of the Case.

This Answer relies on the trial courts unchallenged findings of fact, which are verities on appeal. (Op. 1*, n.1); (CP 85-97).

1. Melody Petlig and Gary Webb lived on property in Auburn, Washington, with their daughter, Jessica Webb.

Melody Petlig and Gary Webb began dating in the 1980s and continued their committed intimate relationship (CIR) until Gary's death in 2018. (Op. *1) They had one child—the petitioner Jessica Webb, born May 1989. (Op. *1)

Melody and Gary lived in Auburn, Washington, on property owned by Gary's father, Jessie Webb. (Op. *1) The property includes both a mobile home and a large house, where Jessie lived. (Op. *1) When Jessie died in June 2011, he left the property to Gary in his will. (Op. *1) After Jessie's death, Gary, Melody, and Jessica lived in the house as a family unit. (Op. *1)

2. Melody was the breadwinner of the family, treating the family house as her own by paying for expenses and improvements.

Melody understood that the Auburn property was the family's house—"our house"—where she "was going to be able to stay . . . for the rest of [her] life." (RP 322) Gary likewise considered Melody as a co-owner of the property; a 2012 rental agreement identifies both Gary and Melody as the "owners." (Op. *2; Ex. 22 at 9)

"Melody was the main earner in the relationship" and the "breadwinner" for the family. (Op. *2) Melody treated the property as her own, "us[ing] a substantial portion of her earned income to cover [household] expenses," such as property taxes, improvements, insurance, medical expenses, and standard costs of living. (CP 88-89)

3. Gary transferred the property to Jessica to protect it from creditors, ensuring that both Jessica and Melody would be able to live there for the rest of their lives.

In 2012, Gary's health began to decline (RP 264), and he designated Melody as his attorney-in-fact. Gary's Power of Attorney states that "Melody and I have lived together, practically as man and wife, for over 30 years." (CP 92)

Gary regularly discussed his desire that the property would be "kept in the family" so that they could live there "for the rest of [their] lives." (RP 240-44) "Many people" witnessed these discussions, including Jessica, who "heard [Gary and Melody] talk many times" about Gary's intent for the property. (RP 241-42) Gary's friend, Anthony Ferrari, testified that Gary frequently mentioned his desire to leave the property to "his girls"—Melody and Jessica. (RP 236; Op. *2)

Due to their CIR, Gary and Melody were concerned that the property might be vulnerable to "his and Melody's

creditors" (CP 94), threatening Gary's desire to leave the property in the family. (RP 166; CP 92) Accordingly, in January 2017, Gary transferred the property to Jessica via quit claim deed. (CP 92) Melody facilitated the transfer by signing the deed as Gary's attorney-in-fact. (CP 92)

4. After the transfer, Melody continued to manage the property and pay for household expenses until Jessica forcibly removed her in September 2019.

After Gary transferred the property to Jessica in January 2017, Melody "continued [her] custodianship of the property" (Op. *6), treating it as her own—paying taxes, funding improvements, and collecting rent from tenants. (CP 90-92)

Jessica, meanwhile, never attempted to collect rent from Gary or Melody despite possessing valid legal title to the property, nor did she assume any financial responsibility for property expenses or reimburse Melody's contributions. (CP 89-90)

This status quo continued for nearly three years after the property transfer, even after Gary died in March 2018. (CP 92) In September 2019, Jessica forcibly removed Melody from the property—leaving Melody homeless—and began trying to sell it. (Op. *2; CP 92; RP 121, 200)

5. The trial court held that Gary's intent could not "override" the deed transferring ownership to Jessica.

In September 2020, Melody sued Jessica to recover her interest in the property under several theories, including property distribution following a CIR, quiet title, equitable lien, or constructive trust. (CP 1-11) "Melody's central goal . . . was to gain recognition of her right to reside in the property"—i.e., "for the court to recognize a 'life estate'" or to "receive equivalent compensation." (Op. *2)

On February 11, 2022, Judge Nicole Gaines Phelps (the trial court) issued findings of fact and conclusions of law after conducting a four-day bench trial in King County Superior Court. (CP 85-98)

The trial court found Melody credible—and Jessica not credible—on every issue, especially as to Melody's CIR with Gary and her substantial financial contributions to the household, stressing that "it is clear [that] Melody's income" "kept the family . . . financially stable." (CP 91; CP 87-91, FF 5-13)

The trial court emphasized that Melody's efforts benefited both the property and the family, "including Jessica's family," and that Jessica neither objected to Melody's contributions nor reimbursed her. (CP 89-90, FF 7, 9) The trial court recognized that Melody viewed taking care of the family and the property as her responsibility, finding that "[s]he did these things because she considered Gary's family her family." (CP 89)

The trial court further found that "without Melody's economic contributions, payment of the real estate property taxes and improvements to the Auburn property would not have occurred." (CP 90) Indeed, "after Jessica

removed her mother from the Auburn Property, the real estate property taxes fell into a state of arrears for lack of payment." (CP 91)

Although the trial court found that Gary "intended for Melody to live on the Auburn property as a life estate," it held that this intent could not "override" the deed as a matter of law:

> The court has considered but is not persuaded by Melody's argument that Gary intended to create an oral agreement which should override the Quit Claim Deed. This is not to say the court finds Melody's testimony lacks credibility, it does not. However the court is not persuaded that legally under the circumstances of this case, the intent behind the written document can be overridden by the implied intention of Gary: meaning he intended for Melody to live on the Auburn Property as a life estate. Gary's clear intention for the execution of the Quit Claim Deed, which unconditionally assigns all property rights to Jessica, was to avoid his and Melody's creditors. This assertion is uncontested.

(CP 94, CL 3)

The trial court further held that the property was Gary's separate property and thus Melody did not acquire an interest in it via the CIR. (CP 94-95) But the trial court held that Melody could be reimbursed for her financial contributions, awarding her $34,367. (CP 95-96)

6. The Court of Appeals reversed.

Melody appealed the trial court's final order and judgment and its findings of fact and conclusions of law. (CP 80-84) Jessica cross-appealed, seeking review of the trial court's CIR reimbursement award to Melody. (CP 242-43)

Division One reversed the trial court in an unpublished opinion, holding that the trial court's unchallenged findings established that the parties shared an understanding that Gary intended for Melody to retain a life estate in the property, and that the trial court erred as a matter of law in holding that this intent could not override the deed. (Op. *6) Division One also reversed the

CIR reimbursement award, holding the statute of limitations barred Melody's CIR reimbursement claim. (Op. *4)

Jessica petitions this Court for review.

C. Why Review Should be Denied.

Jessica argues that Division One's unpublished opinion requires this Court's review for two reasons.

First, Jessica asserts that Melody's claim seeking a constructive trust—filed in September 2020—was untimely because the three-year statute of limitations began to run when Gary transferred the property to Jessica in January 2017 and not when Jessica removed Melody from the property in September 2019. (*See* Pet. 3, 15-22; Op. *7)

Second, Jessica disputes Division One's conclusion that a constructive trust was justified here, claiming "there was zero evidence" that Jessica was a party to an agreement regarding the property (Pet. 24), and that Division One's

holding supersedes intestacy law by permitting courts to "write wills where there is not one." (Pet. 3)

But Division One correctly held that Melody's claim was timely and that the trial court erred as a matter of law in failing to impose a constructive trust. Because Jessica cannot show the opinion conflicts with any Washington authority or that it presents an issue of public concern, this Court should deny the petition. RAP 13.4(b)(1)-(2), (4).

1. Melody had no reason to sue—and the statute of limitations did not begin to run—until Jessica removed Melody from the property in September 2019.

Jessica argues that Melody's claim to recover her property interest accrued when Gary transferred the property to Jessica in January 2017, and thus the lawsuit—filed September 2020—was time-barred by the three-year statute of limitations. She contends that Division One's decision conflicts with authority providing that "the

discovery rule does not apply to unjust enrichment." (Pet. 3)

But this Court has held that a claim seeking imposition of a constructive trust to prevent unjust enrichment accrues not when the trustee—here, Jessica—obtains the property at issue, but "when the trustee repudiates the trust and notice of such repudiation is brought home to the beneficiary." *Arneman v. Arneman*, 43 Wn.2d 787, 797, 264 P.2d 256 (1953); *State, Dept. of Revenue v. Puget Sound Power & Light Co.*, 103 Wn.2d 501, 509, 694 P.2d 7 (1985); *See also* James Buchwalter, et. al., 90A C.J.S. § 777, *Statutes of limitations for constructive trusts* (Aug. 2023) ("An equitable claim for the imposition of a constructive trust begins to run at the time of the wrongful conduct or event giving rise to a duty of restitution[.]) Repudiation occurs "when the trustee by words or other conduct denies there is a trust[.]"; *Goodman v. Goodman*, 128 Wn.2d 366, 373, 907 P.2d 290 (1995).

In *Arneman*, two brothers purchased equal shares in a company, and the plaintiff brother transferred some shares to the defendant brother so the defendant could run the company. 43 Wn.2d at 791. After the plaintiff was fired, he sued to recover one-half interest in the company, arguing the parties shared an understanding that the defendant held the additional shares only to run the company, but that the plaintiff still retained an interest in the shares under a constructive trust. 43 Wn.2d at 796-97.

Like Jessica, the defendant argued the statute of limitations began to run when the shares were transferred. But the Court rejected this argument, holding that the statute of limitations began to run when the plaintiff learned the defendant had repudiated the alleged trust—when the plaintiff was fired. 43 Wn.2d at 797.

The same is true here. Gary transferred the property to Jessica to protect it from creditors, intending that he, Melody, and Jessica would all be able to live there for the

rest of their lives. The transfer did not impact either Gary's or Melody's equitable interest in the property. Indeed, the trial court's unchallenged findings confirm that the parties maintained the status quo from before the transfer—Melody managed the property while Jessica "managed nothing." (Pet. 27; CP 87-91)

Melody simply had no reason to sue after the transfer. The parties continued to live on the property as they had before, and no one acted inconsistently with their shared understanding that Gary intended that Melody would continue living there. Thus, Division One correctly held that the statute of limitations did not begin to run until Jessica violated Melody's equitable property interest by evicting her. (Op. *7)

2. Division One's decision does not conflict with other unjust enrichment cases because Melody had no right to apply for relief until Jessica violated Melody's equitable property interest by evicting her.

Jessica argues that Division One's opinion conflicts with authority providing that "the statute of limitations begins to run when a party has the right to apply to a court for relief." (Pet. 16; *see* Pet. 3, 19-22, citing *Gilbert Testamentary Credit Shelter Trust v. Estate of Miller*, 13 Wn. App. 2d 99, 462 P.3d 878 (2020); *Eckert v. Skagit Corp.*, 20 Wn. App. 849, 583 P.2d 1239 (1978); *Dougherty v. Pohlman*, No. 53746-0-II, 2021 WL 100237 (Jan. 12, 2021) (unpublished, cited per GR 14.1))

But Jessica wrongly assumes that Melody's claim accrued when Gary transferred the property to Jessica. To the contrary, for the same reasons discussed above, Melody had no "right to apply for relief" *before* Jessica removed her from the property.

An unjust enrichment claim does not accrue until the plaintiff can show that "the circumstances make it unjust for the defendant to retain the benefit without payment." *Young v. Young*, 164 Wn.2d 477, 484-85, 191 P.3d 1258 (2008). Melody enjoyed the full benefit her property interest until Jessica unjustly denied it by evicting her. (Op. *6-*7)

This is different than the plaintiff in *Eckert*, who allowed the defendant corporation to use his equipment without compensation for 18 years before filing his unjust enrichment action. *Eckert*, 20 Wn. App. at 850. The court explained that "[a]n action for unjust enrichment lies in a promise implied by law," and the action accrues when that promise is "broken," concluding that although "the record does not reflect the precise time of the 'breach,'" it was clear that "[m]ore than 3 years passed between the breach" and the lawsuit because the plaintiff did not seek compensation for 18 years. 20 Wn. App. at 851.

The decision here is consistent with *Eckert*. The implied promise underlying Melody's unjust enrichment claim is "the understanding . . . shared among the various parties" that Gary transferred the property to Jessica with the intent "to create a life estate" for Melody so she could continue living there. (Op. *6) That promise was "broken" when Melody could no longer live on the property—in other words, when Jessica evicted her.

While the court in *Eckert* could not identify "the precise time of the 'breach,'" 20 Wn. App. 851, the breach here is unambiguous. Indeed, had Melody sued before her eviction, Jessica could have argued—correctly—that she had acted consistently with the parties' shared understanding of Gary's intent and thus never violated Melody's property interest.

Dougherty is similarly distinguishable. *See* 2021 WL 100237. In *Dougherty*, the plaintiff built a house on property his ex-wife owned in 2008. In 2018, the plaintiff

sued the ex-wife's estate for unjust enrichment, claiming she agreed to give him a 50 percent interest in the property in exchange for building the house. Division Two held that the statute of limitations expired because the plaintiff "went uncompensated for several years after he became entitled to compensation." *Dougherty*, 2021 WL 100237 at *4.

Jessica's reliance on *Dougherty* ignores key differences between that plaintiff's claimed interest and Melody's equitable property interest. Melody did not seek to vindicate an analogous right to compensation like the plaintiff in either *Dougherty* or *Eckert*; she never expected to be transferred a 50 percent interest in the Auburn property. Melody only claimed to possess a life estate that allowed her to continue living there. Thus, while the unjust enrichment claim accrued in *Dougherty* when the husband was entitled to seek compensation, Melody's claim did not accrue—and the statute of limitations did not begin to

run—until her equitable property interest was denied when Jessica evicted her.

Miller is also distinguishable—it involved plaintiffs in a TEDRA action who had no right to apply for relief until they acquired "standing to file their petition" when the court "designated them as statutory heirs." *Miller*, 13 Wn. App. 2d at 108, ¶21. The case sheds no light on when an unjust enrichment claim accrues due to the "breach" of an implied promise. *See Eckert*, 20 Wn. App. at 851. Insofar as *Miller* holds that the statute of limitations "begins to run when a party has a right to apply to a court for relief," 13 Wn. App. 2d at 108, ¶21, it does not conflict with Division One's opinion here. As discussed, Melody had no "right to apply for relief" until Jessica evicted her.

Finally, Jessica mischaracterizes *1000 Virginia Ltd. P'ship v. Vertecs Corp.*, 158 Wn.2d 566, 146 P.3d 423 (2006), claiming the Court "explicitly held that . . . the discovery rule does not apply to unjust enrichment." (Pet.

16) But the case "explicitly" involves a breach of contract action and does not mention unjust enrichment *at all*. 158 Wn.2d at 590, ¶47.

Division One's opinion does not warrant this Court's review under RAP 13.4(b) because it does not conflict with any of the cases Jessica cites. To the contrary, Division One's holding comports with those cases because Melody could not seek relief before Jessica unjustly denied her property interest by removing her.

3. Division One correctly held that the trial court erred in failing to impose a constructive trust.

Jessica claims Division One's opinion "is not supported by substantial evidence and reflects an erroneous application of the law of constructive trusts to the facts of this case." (Pet. 14) But Division One correctly held that the parties had a shared understanding that Gary intended for Melody to retain a life estate and that a

constructive trust was justified to prevent unjust enrichment to Jessica.

A constructive trust is the proper remedy whenever "property is acquired under circumstances such that the holder of legal title would be unjustly enriched at the expense of another interested party." *Huber v. Coast Inv. Co. Inc.*, 30 Wn. App. 804, 810, 638 P.2d 609 (1981). Courts "have imposed constructive trusts when the evidence established the decedent's intent that the legal title holder was not the intended beneficiary." (Op. *5, quoting *Baker v. Leonard*, 120 Wn.2d 538, 548, 843 P.2d 1050 (1993))

For example, a constructive trust is justified where, as here, the title holder obtained ownership within the context of a confidential family relationship and the surrounding circumstances establish the title holder's use of the property contravenes the implied intent of the grantor to the detriment of other entitled beneficiaries. *See*

Mehelich v. Mehelich, 7 Wn. App. 545, 548-51, 500 P.2d 779 (1972).

a. Division One correctly reversed under *Mehelich*, recognizing it is "on all fours" with this case.

In *Mehelich*, the appellant bought a house for his parents, understanding they would be able to "live the rest of their lives" there. 7 Wn. App. at 548. But, like here, the parties "made no specific agreement regarding ownership," and thus "the details of either parties' intent . . . were never articulated." 7 Wn. App. at 548. Instead, the appellant retained sole ownership under the deed. 7 Wn. App. at 546.

Importantly, "[e]ven though the trial court was unable to determine . . . the precise nature of the interest which the respective parties" had, the court inferred from the surrounding circumstances that the parties' intended "to buy a home in which the parents could live until their deaths." 7 Wn. App. at 550-51. Specifically, the court noted that "the parents acted towards the property as if they

owned it," paying for improvements, taxes, and insurance premiums. 7 Wn. App. at 550. Meanwhile, the appellant never exercised his purported ownership by reimbursing the parents' contributions or "demand[ing] rent." 7 Wn. App. at 551. Thus, despite the lack of any agreement, the court held that the parties' conduct was "consistent with" an understanding the parents held a "fee interest rather than a leasehold interest" in the property. 7 Wn. App. at 551.

Accordingly, when the appellant attempted to remove the father from the property after the mother died, the court affirmed a constructive trust recognizing the father's life estate in the property irrespective of the deed, emphasizing that "to hold otherwise would be to allow the unjust enrichment of the appellants at the expense of the respondent." 7 Wn. App. at 551.

Division One correctly held that *Mehelich* is "on all fours" here. (Op. *5) The trial court's unchallenged

findings establish (1) that Gary intended for Melody to retain a life estate in the property (CP 94; RP 236-37, 240-44, 322),[2] (2) that Melody treated the property as if she owned it by paying for expenses and collecting rent from tenants (CP 87-91, FF 5-13) and (3) that Jessica—the ostensible "owner"—made no contributions to the property, never reimbursed Melody for her contributions, and did not seek rent from Gary or Melody for nearly three years after the transfer. (CP 89-90, FF 7, 9)

Yet the trial court wrongly held—and Jessica continues to argue—that these facts could not "override" the deed as a matter of law. (CP 94); (Pet. 27)

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[2] Jessica suggests that the trial court did not make a finding as to Gary's intent. (Pet. 12) But the third conclusion of law, read as a whole, establishes that the trial court found Melody credible regarding Gary's intent, and that Gary intended—or at least had an "implied" intent—"for Melody to live on the Auburn property as a life estate." (CP 94) Division One correctly upheld these (mislabeled) findings of fact. (Op. *6)

This is not the law. To the contrary, a constructive trust is the *precise remedy* to compel restoration of property rights when the legal title holder is not the sole intended beneficiary. *Baker*, 120 Wn.2d at 548. Relying on *Mehelich*, Division One correctly reversed the trial court because "[c]onstructive trusts, by their nature, exist at odds with written indications of property ownership. The doctrine would otherwise serve no purpose." (Op. 6)

b. An express agreement is unnecessary.

Jessica argues that Division One wrongly applied *Mehelich*, asserting that *Mehelich* involved "an actual agreement" while here there was no evidence "that *Jessica* was a party" to any agreement. (Pet. 24-25) But, like here, there was no "formalized agreement" regarding the parties' "ownership interests." *Mehelich,* 7 Wn. App. at 548.

Like Jessica, the son in *Mehelich* denied the existence of an agreement or "joint venture." 7 Wn. App. at 549. The

court rejected the son's denial, explaining that "the words 'joint venture' . . . are not used as a term of art but are intended to be descriptive only"—in other words, the court inferred a mutual understanding of the parties' intent from their conduct, not an express agreement. 7 Wn. App. at 550-51. As discussed, the unchallenged factual findings here establish the parties shared a similar understanding. (*See* Op. *6)[3]

Jessica argues that the decision conflicts with *Farwest Steel Corp v. Mainline Metal Works, Inc.*, 48 Wn. App. 719, 741 P.2d 58, *rev. denied*, 109 Wn.2d 1009 (1987). But *Farwest* is distinguishable.

In *Farwest*, a contractor contracted with Mainline to fabricate materials, and Mainline sub-contracted with Farwest to supply steel for the materials. 48 Wn. App. at

[3] The consensus in other jurisdictions is that courts may impose a constructive trust without any express agreement or promise of any kind. (App. Br. 28-41; Reply Br. 18-22)

721. Mainline went bankrupt before receiving payment from the contractor and before paying Farwest on the sub-contract, so Farwest sued the contractor for unjust enrichment. 48 Wn. App. at 721. The court held that enrichment was not "unjust" because the contractor "did not contribute in any fashion to Farwest's loss." 48 Wn. App. at 733.

But here, Jessica unquestionably "contributed" to Melody's loss when she removed Melody from the property, thereby erasing Melody's life estate, which Melody had enjoyed without incident for nearly three years after the property transfer.

Further, unlike the contractor—who "did not acquiesce" to Farwest's contract, 48 Wn. App. at 732-33—Jessica "tacit[ly]" approved the shared "understanding" that Melody would retain a life estate in the property by never seeking rent or reimbursing Melody's contributions. (Op. *6)

Most importantly, *Farwest* involved commercial actors dealing at arm's length, while this case involves family members in a confidential relationship. *See Mehelich*, 7 Wn. App. at 551 ("The confidential relationship that existed between the parties makes it unconscionable to deprive the respondent of a life estate in the property.").

Jessica claims that the confidential relationship in *Mehelich* differs from the one here because the son in *Mehelich* "managed everything" while Jessica "managed nothing." (Pet. 27-28) But this is a distinction without a difference—it is the family relationship that creates the confidential relationship of trust relevant to a constructive trust. *Mehelich*, 7 Wn. App. at 551-52. Gary and Melody trusted that their daughter would not contradict Gary's intent after transferring the property to her—and, for nearly three years, she didn't. That Jessica did not actively "manage" the property or the transfer is irrelevant.

Thus, Division One's decision here does not conflict with *Farwest* because that case does not apply—*Mehelich* does.

c. The decision does not affect the intestacy statute or present an issue of public interest.

Jessica argues that Division One's decision "supersede[s]" Washington's intestacy statute, RCW 11.04.015, by improperly "writ[ing] a will for" Gary. (Pet. 28) But after Gary transferred the property to Jessica, he had no formal property interest in it—he retained only an unrecorded equitable interest based on his trust that Jessica would not evict him. The property was not part of Gary's "estate" and the intestacy statute was irrelevant.

Division One's decision does not threaten the intestacy statute, nor does it present any other issue of substantial public interest warranting review under RAP 13.4(b)(4).

D. Conditional Cross-Petition.

Melody does not independently seek review of any issue. However, if the Court grants Jessica's petition, it should also grant review of Division One's decision to reverse the trial court's CIR reimbursement award to Melody.

Division One held that because the Auburn property "was not part of [Gary's] estate at the time of his death," it was not subject to distribution "based on a CIR theory," and thus the statute of limitations barred recovery under a CIR theory. (Op. 4)

But Melody's right to reimbursement for contributions to the property does not depend on whether the property was a *community* asset, as a court may reimburse community funds dedicated to *separate* property. *See Pollock v. Pollock*, 7 Wn. App. 394, 403, 499 P.2d 231 (1972). Further, once the trial court determines that a CIR existed, "the court may equitably divide the

property acquired during the relationship in a manner similar to marriage dissolution proceedings." *In re Amburgey and Volk*, 8 Wn. App. 2d 779, 787, ¶ 19, 440 P.3d 1069 (2019).

It is undisputed that Melody timely filed her CIR claim within three years after Gary died. Therefore, the trial court could award reimbursement to Melody to the extent her contributions benefited the community—even contributions to Gary's separate property—throughout the entirety of the relationship. *See Walsh v. Reynolds*, 183 Wn. App. 830, 843, ¶27, 335 P.3d 984 (2014) (in equitably distributing property after termination of a CIR, the court must consider the entire relationship), *rev. denied*, 182 Wn.2d 1017 (2015).

Division One's opinion to the contrary warrants this Court's review under RAP 13.4(b)(2).

E. The Court should set this matter for consideration as soon as possible under RAP 18.12.

Melody respectfully requests that the Court set Jessica's petition for consideration as soon as possible under RAP 18.12, which allows the Court to "set any review proceeding for accelerated disposition."

Melody is homeless. With the winter approaching, it is crucial to resolve this matter as soon as possible. Promptly setting Jessica's petition for consideration will "serve the ends of justice" RAP 1.2(c) and will not prejudice Jessica.

F. Conclusion.

The Court should deny Jessica's petition, which fails to identify any authority conflicting with Division One's decision and does not raise a significant issue of public interest. If the Court grants the petition, it should also review Division One's reversal of the CIR reimbursement award.

I certify that this brief is in 14-point Georgia font and contains 4,991 words, in compliance with the Rules of Appellate Procedure. RAP 18.17(b).

Dated this 13th day of October, 2023.

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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 October 13, 2023, I arranged for service of the foregoing Answer to Petition for Review, to the court and to the parties to this action as follows:

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DATED at Brooklyn, New York this 13th day of October, 2023.

/s/ Andrienne E. Pilapil
Andrienne E. Pilapil

SMITH GOODFRIEND, PS

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