

No. 102146-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

NO. 83963-2  
COURT OF APPEALS  
DIVISION 1  
OF THE STATE OF WASHINGTON

SOUSAN OVIESI,  
Petitioner and Respondent Below

v.

JAMAL HAKIMI,  
Respondent and Appellant Below

PETITION FOR REVIEW

Jamal Hakimi

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## I. INTRODUCTION

The underlying action is a dissolution of marriage between Sousan Oveisi and Jamal Hakimi. The issues at trial included a property and debt distribution.

The issues on appeal relate to the characterization of the real property on which the parties resided (hereinafter referred to as the Tukwila Property), as either separate or community property. The answer to this question is based on long settled legal principals as to how to characterize the property as community or separate and the quantum of evidence necessary to change that characterization from separate to community. The Tukwila property was Mr Hakimi's separate Home and only under Mr. Hakimi name. The trial court found that the Tukwila Property is community property. The Court of Appeals upheld this finding. In doing so both the trial court and the Court of Appeals ignored well settled law, both at the Court of Appeals level and the Supreme Court level, as to the proper

characterization of real property. It is this finding which Mr. Hakimi appeals to.

## II. IDENTITY OF PETITIONER

Petitioner to this Court is Jamal Hakimi. Mr. Hakimi was the Appellant in the Court of Appeals.

## III. ISSUES PRESENTED FOR REVIEW

Did the Court of Appeals ignore settled case law as to whether real property acquired during the marriage is always community property unless it was acquired by a party through inheritance or gift?

Was there clear and convincing evidence that community funds were used to pay off the mortgage on the Tukwila Property?

- Quote from Ms. Oviesi (Trial Brief page 3 of 13, CP 30-42) Hakimi owned three properties there. He sold them in 2000 for a total of 60,000,000. Iranian Toman ( 20,000,000, + 22,000,000. + 18,000,000. Iranian toman ), which equaled \$73,800.00 US dollars at that time because the 2000 exchange

Price was: \$1 US = 813 Iranian Toman.

The Court should set aside a property division which was based on a mischaracterization of the nature of real property as community vs separate?

#### STATEMENT OF THE CASE.

##### History of the Marriage:

The parties were married on August 23, 1998. RP 25/10-11. They have 2 Adult daughters Mr. Hakimi has resided in the home since 1999, when he purchased the home with separate funds. RF 25/8-9. And Ms. Oveisi could not get a visa to enter the usa until February, 2001. RP 25/21-23 and. The parties were married in Tehran.

#### Mr. Hakimi Purchases the Tukwila Property

Mr. Hakimi owned real property in Seattle prior to the marriage and sold a parcel of property on June 27, 1997, approximately 13 months prior to marriage, for \$90,000, gross sales price (EX 211) and carried a mortgage

of \$80,000, paid at the rate of \$772.84/month with a payoff in full in 2 years, June, 1999, (Ex 210) which is just 5 months prior to the purchase of the Tukwila property. Mr. Hakimi testified that he sold his Seattle property and collected the monthly payments. He further testified that in June, 1999, the contract was paid off, he signed a reconveyance, received the payoff amount of \$77,226.81 and he deposited that money into his Washington Mutual account. RP 201, lines 6-17.

Next, approximately 1 month later Mr. Hakimi withdrew\_ over \$51,000 from the Washington Mutual account. EX 213. It was this money which was used to pay the down payment for the Tukwila property. Mr. Hakimi signed a purchase and sale agreement for the Tukwila property on 9/16/1999 for \$116,000. The seller was Richard Geehan. EX 218. Mr. Hakimi made payments on the balance through WestStar Loan Servicing Company. Ex 216, 217. The balance on the contract as of 2/28/00 was approximately \$59,851.00. The Real Estate Excise Tax Affidavit (REETA) reflects the sales price of \$112,000 (EX 24). The payoff on the contract with Mr. Geehan was approximately \$53,500 as of 2/28/02. Ex 215.

The title to the Tukwila property is in Mr. Hakimi's name only, and the deed of conveyance acknowledges the fact that Mr. Hakimi was married at the time he purchased the property. EX 24.

### The Quit Claim Deed.

Ms. Oveisi signed a Quit Claim Deed on November 7, 1999, conveying any interest she had in the property to Mr. Hakimi. EX 204 and 205. She signed the deed at the request of the title company. Ex 204 is a copy of the letter from the title company to Ms. Oveisi dated November 2, 1999, asking her to sign the Quit Claim Deed, explaining that she is entitled to have an attorney review the document and the effect of that document, with her.

Ms. Oveisi signed the letter on December 3, 1999, indicating with her own handwriting she would send the original by DHL. The Quit Claim Deed was executed by her on November 7, 1999. Contemporaneously Ms. Oveisi signed a REETA which



indicated the purpose of doing so was to establish the fact that the Tukwila property was Mr. Hakimi's separate property. EX 206.

Only placing Mr. Hakimi's name on title is consistent with his testimony. Further, it is consistent with the documents demonstrating where the money for the down payment came from. In fact, Ms. Oveisi admits that Mr. Hakimi paid the down payment for the home with his own separate property. RP 42. There really is no question the Tukwila home is Mr. Hakimi's separate property.

Ms. Oveisi's testimony regarding the purchase of the Tukwila home is unclear at best. She begins her testimony on this point by first claiming that the funds to purchase the home were derived from two sources. The first source was from the sale of a home Mr. Hakimi owned in Iran. He sold the Iran home and placed the funds into a joint account. The second source was funds she deposited to the same joint account. RP 41, lines 2-5. She then corrected herself and claimed that Mr. Hakimi purchased the home a few months before that. After purchasing the Tukwila property Mr. Hakimi went to Iran and sold his building. RP 41, lines 6-8.

She then testified that Mr. Hakimi paid for the down payment with money he had here (presumably she means the money he had in the US). RP 41, lines 11-12. Ms. Oveisi then contradicted herself and testified Mr. Hakimi bought the Tukwila property by using money in a joint account in Iran. RP 41, lines 18-20.

We know Mr. Hakimi didn't buy the Tukwila property in 1999 with funds from the sale of a home he had in Iran because Ms. Oveisi testified he sold his Iran property in 2000 and the Tukwila Property was purchased in 1999. She reiterated that Mr. Hakimi purchased the Tukwila home a few months before that:

Q: Okay. And so when you bought the house in Tukwila, um, it is your testimony that part of the money for that was from the account that – the joint account that you had in Tehran?

A: For down payment, no. . . .

When discussing how the mortgage was paid off she testified that Mr. Hakimi sold his property in Iran, transferred his money here (the US) and he paid for the 'rest of the things'. RP 42, lines 1-6.

Q: Okay. And he – but you had already bought the Tukwila house by then?

Quote from Ms. Oviesi. RP 42, lines 1-6.

A: Yes – no. he bought the Tukwila house a few – a few months before that. He paid what the money that he had here. But when he sold the property in Iran, he transferred his money here, and he paid for the rest of the things.

The Court of Appeals ruled that the trial court was correct in finding that the Tukwila Property is community property, based on the fact that the Tukwila Property was acquired during the marriage and the statutory definition of separate property, set forth in RCW 26.16.010, defines separate property as property acquired prior to marriage or during marriage via inheritance or gift. App. A., 5-6. The Court of Appeals further stated the Tukwila Property was community because there wasn't clear and convincing evidence that the source of funds to pay off the contract were *inherited* funds. App. A., 6.

- ARGUMENT – WHY REVIEW SHOULD BE GRANTED.
  - Settled Case law Provides An Asset Acquired During Marriage With Separate Property Remains Separate Property Through Tracing

This court should accept this review because the Court of Appeals ignored settled case law regarding the proper characterization of assets as separate or community, at the time of acquisition of the asset and the Court of Appeals ignored settled case law as to the necessary proof to demonstrate a change in the characterization of property as community or separate thereafter.

There is clear case law going back decades which holds that property acquired during marriage with separate funds retains its characterization as separate property. See e.g. Harry M. Cross, *The Community Property Law in Washington (Revised 1985)*, 61 Wash. L.Rev. 13, 27-28 (1986); *In re Marriage of Skarbeck*, 100 Wn. App. 444, 449, 997 P.2d 447 (2000); *Dean v. Lehman*, 143 Wn.2d 12, 19-20, 18 P.3d 523 (2001); *In re Marriage of Chumbley*, 150 Wn.2d 1, 5, 74 P.3d 129 (2003); *In re Marriage of Schwarz*, 192 Wn. App. 180, 188, 368 P.3d 173 (2016). These cases deal with tracing the separate property into the property acquired during marriage and require clear and convincing evidence of the tracing.

**ARGUMENT – THE COURT OF APPEALS FAILED TO APPLY SETTLED CASE LAW**

## AS TO CHARACTERIZATION OF PROPERTY AS COMMUNITY OR SEPARATE OR A COMBINATION OF BOTH

B. An Asset is Characterized as Community or Separate at the Time of Acquisition and Once Established, it Retains this Characterization Until Clear and Convincing Proof Demonstrates a Change in the Characterization of the Asset.

Property is characterized as community or separate based on the date of its acquisition. In re Marriage of Skarbek, 100 Wn. App. 444, 997 P.2d 447 (2000). Property acquired during the marriage takes on the character of the funds used to purchase the property. In re Marriage of Chumbley, 150 Wn.2d 1, 6, 74 P.3d 129 (2003). Separate property will continue to remain separate property as long as it can be traced and identified. *Ibid*, at 448. The burden is on the spouse asserting that separate property has been transmuted to community property and the proof of such change in ownership must be proved by clear and convincing evidence. Skarbek, at 450; In re Marriage of Shannon, 55 Wn.App 137, 140, 777 P.3d 8 (1989).

C. The Court of Appeals Ignored Issues of Tracing Separate Property To Acquire the Tukwila Property and Limited Its Review to Whether Mr. Hakimi Acquired the Tukwila Property through Gift or Inheritance.

The Court of Appeals, in its decision, recognized the principals of tracing separate property as a way to overcome the presumption that property acquired during a marriage is community property.

To overcome the presumption, a party must offer clear and convincing evidence that a property was obtained with separate funds, and those funds can be traced “ ‘with some degree of particularity.’ ” Schwarz v. Schwarz, 192 Wn. App. 180, 189, 368 P. 3d 173 ( 2016 ) (quoting Berol v. Berol, 37 Wn. 2d 380, 382, 223 P. 2d 1055 ( 1950)).

However, the Court of Appeals then discussed RCW 26.16.010, which defines separate property as property acquired prior to marriage or during marriage by gift or inheritance. App. A. pg 5. The Court of Appeals then ignored the issue of tracing property and only considered whether Mr. Hakimi demonstrated that he acquired the Tukwila Property through inheritance or gift:

Hakimi is correct that the evidence in the record does not support the trial court’s finding that “commingled assets” from a joint account were used to pay the down payment. But even so, the trial court did not err in concluding that the “Tukwila property is and has always been community property.” See Skagit County Pub. Hosp. Dist. No. 1 v. Dep’t of Revenue, 158 Wn. App. 426, 449, 242 P.3d 909 (2010) (“an erroneous finding of fact not materially affecting the conclusions of law is not prejudicial and does not warrant reversal.”). The trial court correctly characterized the Tukwila property as a community asset because it was acquired after the marriage, and nothing in the record suggests that Hakimi obtained the funds used for the down payment through a gift or inheritance.

## Quote from The Court of Appeals UNPUBLISHED OPINION

App A. pg 4,5

### Characterization of Property

Hakimi contends that the trial court erred when it characterized the Tukwila home as community property. In performing its obligation to equitably distribute all property, community and separate, under RCW 26.09.080, the trial court must characterize the property as either community or separate. *In re Marriage of Kile*, 186 Wn. App. 864, 875, 347 P.3d 894 (2015).

Washington courts presume property acquired during marriage is community property. *Kile*, 186 Wn. App. at 876. To overcome the presumption, a party must offer clear and convincing evidence that a property was obtained with separate funds, and those funds can be traced “ ‘with some degree of particularity.’ ” *Schwarz v. Schwarz*, 192 Wn. App. 180, 189, 368 P.3d 173 (2016) (quoting *Berol v. Berol*, 37 Wn.2d 380, 382, 223 P.2d 1055 (1950)). Separate property is statutorily defined as property acquired before marriage or acquired afterward by a gift or inheritance. RCW 26.16.010.

App. A, page 5-6. Footnote omitted, emphasis added.

Thus, the Court of Appeals stated that the record doesn't support the

trial court's finding that the Tukwila Property was purchased with community funds instead of Mr. Hakimi's separate property. Nevertheless, the Court of Appeals simply concluded the Tukwila Property was community property because Mr. Hakimi didn't demonstrate he acquired it through gift or inheritance, thus ignoring that he purchased it with separate property.

In the case at bar there is no dispute as to the source of funds to purchase the Tukwila Property. Ms. Oveisi admitted the source of funds to purchase the Tukwila Property initially came from the sale of Mr. Hakimi's separate property in Seattle. The mortgage on the property was in Mr. Hakimi's name only. Ex 215. This evidence rebuts the presumption that the Tukwila Property was community property because it was purchased during the marriage. Consequently, because separate property was used to purchase the Tukwila Property, it was Mr. Hakimi's separate property notwithstanding the fact it was acquired during the marriage.

The Court of Appeals Incorrectly Shifted the Burden on Ms. Oveisi to Demonstrate the Tukwila Property Changed from Mr. Hakimi's Separate Property to Community Property.



Separate property remains separate property as long as it can be traced and identified. *In re Marriage of Skarbek*, 100 Wn.App 444, 997 P.2d 447 (2000). The burden is on the spouse asserting that separate property has been transmuted to community property and the proof of such change in ownership must be proved by clear and convincing evidence. Skarbek, at 450; In re Marriage of Shannon, 55 Wn.App 137, 140, 777 P.3d 8 (1989).

Consequently, the burden was on Ms. Oveisi to demonstrate that community funds were used to pay off the mortgage and the evidence must be clear and convincing.

To address this issue the Court of Appeals once again relied on the statutory definition of separate property to resolve whether the mortgage was paid with Mr. Hakimi's inherited or gifted or funds.

Quote from Ms. Oviesi (Trial Brief page 3 of 13, CP 30-42) Hakimi owned three properties there. He sold them in 2000 for a total of 60,000,000 Iranian Toman ( 20,000,000, + 22000,000. + 18,000,000. Iranian toman ), which equaled \$73,800.00 US dollars at that time because the 2000 exchange

Price was: \$1 US = 813 Iranian Toman.

App. 5, pg 6, emphasis added.

Separate property remains separate property as long as it can be traced and identified. *In re Marriage of Skarbek*, 100 Wn.App 444, 997 P.2d 447

(2000). The Tukwila home is separate property and remains so until clear and convincing evidence demonstrates a transmutation of the separate property to community property.

Ms. Oveisi's claim that the Tukwila home is community property rests entirely on the claim that Mr. Hakimi's Iranian home sale proceeds were placed into a joint account in Iran and Ms. Oveisi did not have any evidence or bank statement to show Mr. Hakimi withdraw from the joint account.

an account in which she testified she put money into while she was in Iran.

Ms. Oveisi needs to demonstrate that the funds came from a source other than her with evidence because she admitted at trial that she didn't have much money and

The burden is on the spouse asserting that separate property has been transmuted to community property and the proof of such change in ownership must be proved by clear and convincing evidence. Skarbek, at 450; In re Marriage of Shannon, 55 Wn.App 137, 140, 777 P.3d 8 (1989).

Placing separate property money into a joint account **may** transmute the property into community funds but not necessarily so. Thus, the mere

deposit of separate property funds into a joint account does not change the character of the funds from separate to community. This point of law was made clear in *Skarbek*.

The parties agree that Mr. Hakimi sold a separate property asset, his home in Iran, and some of those funds were used to payoff the balance on the Tukwila home. Ms. Oveisi claims that by doing so, the funds in the account were so commingled Ms. Oveisi did not have any evidence or bank statement to show Mr. Hakimi withdraw from the joint account. Her argument fails because she doesn't have clear and convincing proof that there were sufficient community funds in the account which would trigger a commingling issue.

While she says she had money in the joint account in Iran, she doesn't state how much was in there. In fact, she had no idea how much she put into that account:

And whatever I had in back home, I put in that joint account, too. I don't exactly know what much – how much money did I have.

RP 41, lines 3-4.

Q: Okay. And he – but you had already bought the Tukwila house by then?

## Quote from Ms. Oviesi. RP 42, lines 1-6.

A: Yes – no. he bought the Tukwila house a few – a few months before that. He paid what the money that he had here. But when he sold the property in Iran, he transferred his money here, and he paid for the rest of the things.

- Ms. Oveisi did not have any evidence or a bank statement to show Mr. Hakimi withdraw from the joint account.

Ms. Oveisi can not prove by clear and convincing evidence that the funds deposited into the joint account in Iran were used . She hasn't provided any documentation which demonstrates how much she deposited in the joint account after Mr. Hakimi deposited those funds. The parties agree that Mr. Hakimi used his net sale of separate proceeds to pay off the Tukwila property. Consequently, there is not substantial evidence to support the trial court's finding " The Tukwila property is community property, not Respondent's separate property."

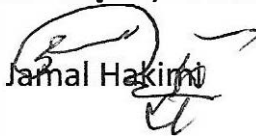
- CONCLUSION

The Court of Appeals decision is in conflict with well settled law as to

characterization of property as separate or community. In failing to properly characterize the Tukwila Property as community which was Mr Hakimi separate property from the date of its acquisition, Mr. Hakimi was left with no home and the loss of his separate property interest therein he is 73 years old has health problems with pulmonary fibrosis incurable lung disease and he has no income and no health care at all. To correct this injustice the Supreme Court should reverse the Court of Appeals, remand the case back to the trial court with instructions to find that the Tukwila Property is separate property and redetermine a fair and equitable property division.

I certify that this memorandum contains 3696 words, in compliance with RAP 18.17.

Respectfully submitted this 30 day of June, 2023

  
Jamal Hakimi

**JAMAL HAKIMI**

**June 30, 2023 - 3:12 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division I  
**Appellate Court Case Number:** 83963-2  
**Appellate Court Case Title:** In re the Marriage of Sousan Oveisi, Respondent v. Jamal Hakimi, Appellant

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