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Supreme Court No.

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IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

In re Marriage of:

SHUKHRAT KHAKIMOV

Appellant,

v.

NIGORA KHAKIMOVA

Respondent.

RESPONDENT'S BRIEF

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1 COME NOW Respondent NIGORA KHAKIMOVA and via her attorney of record
2 submit her Respondent's Brief.

3 I. INTRODUCTION

4 Respondent Nigora Khakimova ("Nigora" or "Respondent") requests that the Court
5 affirm the decision of the trial court in this matter in its entirety.

6 II. STATEMENT OF THE CASE

7 Respondent filed for dissolution of her marriage with Appellant Shukhrat Khakimov
8 ("Shukhrat" or "Appellant") on May 24, 2011. The parties were married for 23 years and have
9 two adult children. The parties dissolved their marriage on June 5, 2012 after a trial before Judge
10 Joan Dubuque. CP Nos. 39A, 52.

11 At the onset of the trial, the court granted Nigora's motion in limine, excluding Shukhrat's
12 exhibits and witnesses for intentional failure to comply with KCLR 26, 4, and intentional failure
13 to comply with the pre-trial scheduling order of May 21, 2012. CP No. 23A.

14 After hearing the testimony of Nigora, Shukhrat and their two adult children, the court made
15 an award of two pieces of real property of the parties located in Uzbekistan, which are the only
16 significant assets of the parties, and other less significant personal property, which are not
17 subject of this Appeal. The court also made an award of attorney's fees to Nigora for Shukhrat's
18 intransigent behavior prior to and during the trial. CP No. 52.

19 III. ISSUES ON APPEAL BROUGHT BY APPELLANT

- 20 1. Alleged error of the court in granting Nigora's motion in limine
- 21 2. Alleged error in award of the real property in Uzbekistan (lack of substantial
22 evidence, error of law)
- 23
- 24

- 1 3. Alleged error in award of personal property such as china, silverware and
2 furniture.
- 3 4. Alleged error in award of liabilities to the husband for the household credit card
4 debt.
- 5 5. Alleged error of the court in finding of fact regarding the parties' date of
6 separation
- 7 6. Alleged error of the court in granting attorney's fees to Nigora for Shukhrat's
8 intransigent behavior.
- 9 7. Alleged non-consideration of the Motion for New Trial by the court
- 10 8. Alleged fraud of counsel and/or party

11 **IV. COUNTER-STATEMENT OF THE ISSUES**

- 12 1. Whether the trial court's findings and awards are supported by evidence
13 presented at trial and whether Appellant made a showing of abuse of
14 discretion.
- 15 2. Whether the appeal is frivolous and whether Nigora is entitled to an award of
16 attorney's fees incurred by her in this appeal.

17 **V. STANDARD OF REVIEW**

18 Appellant failed to state the standard of review on appeal. The courts will review trial court's
19 findings of facts for abuse of discretion. See In re Marriage of Horner, 93 P.3d 124, 151 Wn.2d
20 884 (Wash. 2004) An abuse of discretion occurs when a decision is manifestly unreasonable or
21 based on untenable grounds or untenable reasons. In re Marriage of Littlefield, 133 Wn.2d 39,
22 46-47, 940 P.2d 1362. (Wash. 1997). The trial court's findings of fact will be accepted as verities
23 by the reviewing court so long as they are supported by substantial evidence. Ferree v. Doric Co.,

1 62 Wash.2d 561, 568, 383 P.2d 900 (1963). Substantial evidence is that which is sufficient to
2 persuade a fair-minded person of the truth of the matter asserted. King County v. Cent. Puget
3 Sound Growth Mgmt. Hr'gs Bd., 142 Wash.2d 543, 561, 14 P.3d 133 (2000).

4 5 VI. ARGUMENT

6 A. THE TRIAL COURT'S FINDINGS AND AWARD WERE SUPPORTED BY 7 EVIDENCE PRESENTED AT TRIAL, AND APPELLANT FAILED TO SHOW 8 ABUSE OF DISCRETION

9 1. Motion in Limine.

10 The trial court does not abuse its discretion by excluding evidence as a sanction when there is a
11 showing of intentional or tactical nondisclosure, willful violation of a court order, or other
12 unconscionable condition. *Allied Financial Services, Inc. v. Magnum* 72 Wn.App. 164, 168
13 (1993). A violation of a court order without reasonable excuse will be deemed willful. *Allied*
14 *Financial Services, Inc. v. Magnum*, supra (citing *Lampard v. Roth*, 38 Wn. App. 198, 202, 684
15 P.2d 1353 (1984). "[T]rial judges and court commissioners routinely hear family law matters. In
16 our view, they are better equipped to make credibility determinations. [...] [I]ssues of credibility
17 are ordinarily better resolved in the "crucible of the courtroom, where a party or witness' fact
18 contentions are tested by cross-examination, and weighed by a court in light of its observations
19 of demeanor and related factors." In re Marriage of Rideout, 150 Wn.2d 337, 352, 77 P.3d 1174,
20 (2003)

21
22 The Motion in Limine was timely brought by Nigora, who sought to exclude Shukhrat's
23 exhibits and witnesses for non-disclosure. The motion was particular about the fact that despite
24 the King County local rules and the pre-trial order by the Court setting out deadlines for such
25

1 disclosure. Shukhrat failed to provide a timely disclosure regarding exhibits or witnesses.
2 Shukhrat in his Appellant's brief stated that he "did not planned [sic] to call witnesses, because
3 the issues of credit card and debt, common property on the United States known [sic] only to the
4 appellant and the respondent." Appellant's Brief 13:16-19. Thus, Shukhrat suffered no
5 prejudice. The trial court held a hearing on the motion, wherein the court considered evidence
6 and authority provided by both counsel and Shukhrat, found that Shukhrat's non-disclosure and
7 non-compliance with the court order was willful and granted the motion on the record prior to
8 the trial.

9
10 The e-mail correspondence between counsel and Shukhrat cited (with errors and
11 omissions) in his Appellate brief has no bearing on whether the trial court abused its discretion in
12 granting the motion. Shukhrat failed file a written response to the Motion in Limine and the e-
13 mail correspondence was not before the court. Furthermore, the correspondence only confirms
14 that counsel had no data from Shukhrat of any kind regarding his financial status and claims as
15 late as April 6, 2012, with less than three weeks remaining before the original trial date.

16
17 Thus, Shukhrat failed to present any evidence that the court abused its discretion in
18 granting Nigora's motion in limine.

19 20 **2. Real Property in Uzbekistan**

21 The parties had a single family residence and a condo in Uzbekistan. Both parties and their
22 adult children testified about ownership of, and the parties' claims regarding the real property.
23 The trial court made its credibility determination and awarded the single family home to
24 Shukhrat and the condo to Nigora under the authority of Marriage of Kowalewski, 163 Wn.2d

1 542; 182 P.3d 959 (2008). . In Kowalewski, the husband petitioned for dissolution of the
2 marriage in Washington, and the court in Pierce county adjudicated the parties' respective
3 interests in the real property located in Poland. The husband appealed claiming lack of
4 jurisdiction, the appeal was denied. The husband then appealed to the Supreme Court of
5 Washington, which affirmed the denial order. The Kowalewski court noted that there exists a
6 "distinction between jurisdiction to adjudicate personal interests in real property, which is a
7 transitory action, and jurisdiction to adjudicate legal title to real property, which is a local action
8 that must be brought in the situs state" Id., 547, 962. Further, the Court stated that "where the
9 action is aimed at the personal relations of parties in connection with property beyond the
10 jurisdiction, it is well recognized that courts may afford relief" Id., 549, 963, citing Rosenbaum
11 v. Evans, 63 Wash. 506, 508-09, 115 P. 1054 (1911.) The Supreme Court mentioned that even if
12 the trial court hadn't specified that it did not purport to directly affect title to the land, the
13 Supreme Court would still uphold the trial court's decree as a valid *in personam* decree because
14 "a decree that declares the parties' personal rights or equities in the property is a valid *in*
15 *personam* decree regardless of whether the parties are ordered to do anything with respect to the
16 property." Id., 552, 964. The Court concluded that "[a] trial court's personal jurisdiction over the
17 parties and subject matter jurisdiction over the marital dissolution encompass the power to divide
18 the parties' personal interests in real property located outside the state." Id, 553, 965.

19 Thus, the trial court had jurisdiction to award real property of the parties in the
20 dissolution proceedings.

21 Shukhrat failed to provide evidence of abuse of discretion of the award. Shukhrat argues
22 that the real property in Uzbekistan is his sole and separate property despite 23 years of
23 marriage. His testimony was found not credible by the court. Further, the court had authority to
24

1 award separate property as both community and separate property of the parties were before the
2 court in the marriage dissolution proceeding.

3
4 **3. Award of personal property such as china, silverware and furniture and the debts.**

5 Both parties and their adult children testified regarding the household items in possession of
6 the parties and the parties testified about their incomes and the community debt and the trial
7 court made its credibility determination and awarded to the parties the property already in their
8 respective possession. Shukhrat presents no evidence in his Appellate Brief that the trial court
9 abused its discretion in such awards. His Appellate brief consists of his previous arguments,
10 which were considered and rejected by the trial court as not credible.

11 Lastly, Shukhrat failed to submit to the trial court his objections regarding the final orders
12 drafted by counsel. Counsel submitted her draft and was under no obligation to, nor did she
13 promise to, present Shukhrat's objections to the trial court.

14 **4. Attorney's fees to Nigora**

15 The court granted the attorney's fee award to Nigora for Shukhrat's intransigent behavior
16 prior to and during the trial, and thus no financial declarations of the parties were necessitated.
17 Shukhrat failed to object to the amount of the fees requested by counsel and may not bring this
18 issue now on appeal.

19
20 **5. Alleged fraud of counsel and/or party**

21 The trial court dismissed allegations of fraud brought by Shukhrat as unsubstantiated.
22 Shukhrat's vexatious repeated argument fails to establish any fraud on behalf of either Nigora or
23 her counsel.

1 **B. THIS APPEAL IS FRIVOLOUS AND NIGORA REQUESTS THAT**
2 **ATTORNEY'S FEES INCURRED BY HER IN THIS APPEAL BE AWARDED TO HER.**

3 "RAP 18.9(a) provides an appellate court may order a party who "files a frivolous
4 appeal" to "pay terms or compensatory damages" to any party harmed by its actions. An appeal
5 is frivolous if there are no debatable issues upon which reasonable minds might differ and it is so
6 totally devoid of merit that there [is] no reasonable possibility of reversal." State ex rel. Quick-
7 Ruben v. Verharen, 136 Wn.2d 888, 905, 969 P.2d 64, (1998)

8 Here, the Appeal is entirely devoid of merit. Shukhrat merely tries to re-argue his
9 position, which was rejected by the trial court as not credible. The trial lasted over three days and
10 Shukhrat had ample opportunity to, and did, testify and cross-examine Nigora and the parties'
11 children. Although Shukhrat disagrees with the trial court's decision he has failed to establish
12 any abuse of discretion by the court.

13 **VII. CONCLUSION**

14 Based on the foregoing, Nigora respectfully requests that the decision of the trial court on
15 this matter be affirmed in its entirety and attorney's fees be awarded to her incurred in
16 defending this appeal.

17 June 14, 2013

18 LITCHEV LAW FIRM

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Email of person served: s_khakimov@hotmail.com

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct. Executed in Bellevue, WA on June 14, 2013.

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Dear Sir or Madam Clerk,

Attached please find the Respondent's Brief and Proof of Service. If you have any problems with the attachments, please let us know.

Thank you,
Guzal Khakimova

--

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