No. _____

Court of Appeals No. 85511-5

SUPREME COURT
OF STATE OF WASHINGTON

In re Marriage of

Erin McCarthy,

Respondent,

v.

Alan Adams,

Petitioner.

PETITION FOR REVIEW

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INTRODUCTION

The parties' prenuptial agreement provides that Petitioner/Appellant Alan Adams' "wishes to create joint ownership interest … in this business with Wife *after* marriage." Ex 1 at 17 (emphasis added). For every other asset in the Agreement, the parties used a formula to address character: "wishes to create joint ownership of this property with [other] *upon their marriage*," or "wishes to retain separate ownership of this property." Ex 1 at 14-18 (emphasis added). Navazon is plainly different. Indeed, the appellate court correctly acknowledge that "upon" and "after" mean different things, the difference being temporal. Yet it held that they have the same temporal condition precedent – the happening of the marriage.

This creates numerous conflicts with controlling precedent. RAP 13.4(b)(1)&(2). This Court should grant review.

ISSUES PRESENTED FOR REVIEW

Adams' appeal principally involved the meaning of the parties' prenuptial agreement and the characterization of assets affected by the trial court's incorrect interpretation of that Agreement. BA 5-6. The only other issue was how to distribute assets under the Agreement in the event the appellate court affirm regarding interpretation. *Id*. This Petition asks three questions:

In failing to apply the presumption that separate property remains separate, and/or in implying that the presumption was rebutted, does the appellate decision conflict with decisions from this Court and the appellate courts? RAP 13.4(b)(1)&(2).

In holding that the phrases "wishes to create joint ownership ... upon their marriage" and "wishes to create joint ownership interest ... in the business with Wife after marriage" both transmuted the character of separate property to community property upon the happening of the

party's marriage, does the appellate court's failure to give different words and phrases in the Agreement different meaning creating a conflict with well-settled appellate decisions? RAP 13.4(b)(2).

In holding that the latter phrase related to Navazon transmuted the separate property company into community property (despite the "joint ownership interest" being undefined and unquantified, and despite the time "after marriage" being unidentified) does the appellate decision conflict with decisions from this Court and the appellate courts holding that community property is a present indivisible 50/50 interest in the whole? RAP 13.4(b)(1)&(2).

This Court should also accept review of the following errors, although they do not independently warrant review: (1) the incorrect interpretation of the Agreement as to Navazon's business accounts; (2) the characterization errors related to the incorrect interpretation of the Agreement; and (3) the inequitable distribution of assets.

FACTS RELEVANT TO PETITION FOR REVIEW

A. At issue on appeal was the meaning of the parties' prenuptial agreement, which states their respective "wishes" regarding the characterization of their assets and provides that in the event of a divorce, the parties will retain their separate property and split community property 50/50.

Petitioner Alan Adams founded Navazon LLC out of necessity after he was rear-ended and suffered a traumatic brain injury that left him unable to work a standard job. CP 268-69. Neck and back injuries had previously ended Adams' fifteen-year military career that included working in the Pentagon on September 11, 2001. CP 268. Adams then worked for Google and later Amazon, who asked Adams to leave in 2014 when his brain injury left him unable to focus and communicate. CP 268-69. Out of options, Adams started Navazon in 2015, using his experience at Amazon to teach online sellers how to maximize sales and profitability. CP 269; Ex 414 at 6; Ex 528 at 3.

Adams met Respondent Erin McCarthy after starting Navazon and the business was "well established" when they entered the Agreement shortly before their October 2017 wedding. CP 269, 1464. McCarthy was then well into her career at the Bill and Melinda Gates Foundation, where she remained at the time of trial. RP 65-66, 117-19.

The Agreement provides generally that each party's separate property would remain their separate property, subject to the property schedules they appended to the Agreement. Ex 1 at 6, ¶¶1 & 2. The parties agreed that in the event of divorce, their separate property would remain separate and would not be divided. Ex 1 at 8, ¶10.a.

The agreement provides for the creation of "community property," stating that "any and all property acquired in both of their names hereafter, as well as any property currently held in both their names shall be community property from and after the date of … their marriage." Ex 1 at 6-7, ¶4. To that end, the Agreement

directed the parties to fund joint accounts titled in both of their names to be used for community expenses. *Id.* at 7, ¶4. The parties agreed that in the event of divorce, all community property would be divided 50/50 and that if any such property is not easily divisible," then the total community property would be divided equitably. *Id.* at 8 ¶10.b.

The Agreement requires the parties, "at the request of the other" to provide any "instruments or documentation [necessary] to accomplish the intent of this Agreement." Ex 1 at 11, ¶18.g. Though McCarthy claims that the Agreement transmuted Navazon to community property when the marriage was performed, she never then (nor in the following years) sought any corporate recognition of her ownership interest. RP 476-77; CP 1261.

The Agreement provides that either party may seek "specific enforcement" if the other refuses or is unable or

unwilling to carry out the terms of the Agreement. Ex 1 at 9, ¶12. It provides separately that the parties "may sue to enjoin any breach of this Agreement and obtain a decree of specific performance." Ex 1 at 11, ¶18.i. Again, McCarthy never sought legal recognition of her alleged ownership interest in Navazon at any time before the divorce, including in 2019 when Adams converted Navazon to a C Corp with two shareholders. *See* RP 476-77; CP 557, 1261.

The parties each executed a property schedule, appended to the Agreement, listing those assets they wished to continue owning separately and those for which they wished to create "joint ownership … upon their marriage." Ex 1 at 14-18. These schedules list the parties' assets in categories, beginning with real property, which neither had coming into the marriage, proceeding to bank accounts, vehicles, retirement accounts, stock options, annual income, and debts and liabilities. *Id*.

When the parties wished to retain separate ownership, they stated, "[spouse] to be wishes to retain separate ownership of this property. *Id.* at 14, 16. When they wished to own an asset jointly, they identified the asset, such as a bank account, followed by "[spouse] to be wishes to create joint ownership of this property with [husband or wife] to be upon their marriage." *Id.* The parties followed this formula for identifying each asset – wishes to … retain separate "ownership" or wishes to create joint "ownership … upon their marriage." *Id.* There is a single exception.

For Navazon, which Adams solely owned when the parties married, Adams did not state a wish to retain separate ownership or a wish to create joint ownership with McCarthy upon their marriage. Ex 1 at 16-17. He did not use "joint ownership" or "upon their marriage." *Id.* Instead, in a stand-alone provision pertaining solely to Navazon, Adams used entirely different language, stating his wish to

create a "joint ownership *interest*" with McCarthy "*after* marriage":

> ***Business-Navazon Consulting LLC***:
>
> … Husband is CEO and President of the Company he started *dba Navazan Consulting LLC*. Husband wishes to create joint ownership interest with [*sic*] in this business with Wife after marriage.

Id. at 17 (emphasis added). This provision should read "wishes to create joint ownership interest ~~with~~ in this business with Wife after marriage." *See* RP 133; CP 832.

B. The trial court interpreted the Agreement to transmute Navazon to community property upon marriage, awarded it to Adams as his entire community property award, and ordered him to pay McCarthy $726,682 to equalize the community property award.

The trial court noted that what Adams meant by "'joint ownership interest'" in Navazon was "unclear." CP 1489; *see also* CP 1469, FF II(e). The court did not address the fact that wishing to create a joint ownership *interest after* marriage is markedly different than creating joint *ownership upon* marriage. *Id*. And although none of these provisions

say anything about community property, the court ruled that "any ownership interests Mr. Adams has in Navazon is community property." *Id.*

C. The appellate court affirmed, ruling that the phrases "upon their marriage" and "after marriage" mean the same thing, and ignoring the distinction between "joint ownership" of an asset, and "a joint ownership interest" in a business.

Adams' lead argument was, as the appellate court notes, that the court should "treat 'upon their marriage' and 'after marriage' differently." ***Marriage of McCarthy and Adams***, Wash. State Court of Appeals No. 85511-5-I at 6 (Nov. 19, 2024) (Appendix A). It is well recognized that "differences in contract wording indicate differences in intended meaning." ***City of Edmonds v. Edmonds Ebb Tide Ass'n of Apt. Owners***, 27 Wn. App. 2d 936, 949, 534 P.3d 392 (2023) (citing ***Sunbreaker Condo. Ass'n v. Travelers Ins. Co.***, 79 Wn. App. 368, 376-78, 901 P.2d 1079 (1995)). McCarthy did not disagree, trying to side-

step the issue with the argument that courts will interpret the same term used throughout a contract to mean the same thing. *See* BR 21 (citing ***Bellevue Sch. Dist. No. 405 v. Bentley***, 38 Wn. App. 152, 159, 684 P.2d 793 (1984)). While accurate, that is irrelevant. ***Bentley*** proves Adams' point, holding that the contract's use of "'salary'" and "'benefits'" in different parts of the contract created the presumption that salary does not include benefits. 38 Wn. App. at 159.

The appellate court began by examining Adams' intent, correctly noting that where, as here, it is established that an asset is separate property, a presumption arises that it will remain separate property. No. 85511-5-I at 6. Without saying, the court appears to have held that Navazon's separate-property presumption was rebutted, holding that: (1) Adams agreed that when the parties used the phrase "'wishes to create joint ownership of this property ... upon marriage' [they] meant that the assets

identified were transmuted from separate to community property when the marriage was performed"; (2) Adams also agreed that when the parties wished to retain separate ownership of an asset they used the language "'wishes to retain separate ownership of this property'"; and (3) thus, "if Adams wanted to retain the separate character of Navazon, he could have used that language." *Id.* at 6. But the court omits that this analysis cuts both ways, where it is equally true that if Adams had wanted to create joint ownership of Navazon, "he could have used the same language" used elsewhere in the Agreement: "create joint ownership ... upon their marriage." *Compare id. with* Ex 1 at 16. Instead, he used "create joint ownership *interest* ... in the business ... *after* marriage." *Id.* at 17 (emphasis added).

The appellate court acknowledged the difference between "upon their marriage" and "after marriage":

> The dictionary definition of "after" means subsequent to in time or order. While "upon" means on.

No. 85511-5-I at 7 (citations omitted). But eliding the very distinction it acknowledged, the court held that "upon their marriage" and "after marriage" both demonstrate the intent to form the same condition precedent – "the happening of the marriage" (*id.*):

> The parties' use of both terms, "after" and "upon," demonstrates their intent to form a condition precedent. And for both, the condition precedent was the happening of the marriage.

As addressed fully below, it is the penultimate conclusion where the court goes wrong and creates a conflict. "Upon" and "after" are both conditional, but the condition is not the same.[1]

"Upon," as the appellate court correctly notes "means on" – as in, on "the happening of the marriage." *Id.* But

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[1] A condition precedent is "'an event that must occur before there is a right to immediate performance of a contract.'" *Id.* (quoting ***U.S. Bank Nat'l Ass'n v. Roosild***, 17 Wn. App. 2d 589, 599, 487 P.3d 212 (2021)).

"after" does not mean on – it "means subsequent to in time or order." *Id*. Thus, after means *subsequent to* "the happening of the marriage," not *on* "the happening of the marriage." *Id*. That was Adams' entire point – the Agreement states nothing more than a desire to give McCarthy a joint ownership *interest* in Navazon in an undefined quantity and at an undefined time in the future "after marriage." BA 22-32; Reply 6-9; CP 552-53, 618-20, 975.

The appellate court next purports to reject Adams' argument that "the agreement alone cannot create a joint ownership interest in Navazon … because the parties never took any steps after the marriage to create a joint ownership interest in Navazon." No. 85511-5-I at 8. The court's rationale is that McCarthy need not have been issued Navazon stock or admitted to the LLC as a member, where the "separate or community character of property is not determined by the name on a deed or title." *Id*. That

oversimplifies Adams' point, which was that the Agreement's statement of a wish to give McCarthy an *ownership* ***interest*** *in* Navazon (as distinguished from *joint ownership of* an asset like a bank account) "after marriage" (as distinguished from "upon their marriage") requires something to happen at an undefined time in the future to determine and effectuate the ownership interest. *See* BA 24-29; Reply 9-17. That is – the parties had to take steps to quantify the interest and document it, such as by making her a member of the LLC and/or issuing stock. *Id*.

And here too, the appellate court again elides an important distinction, this time between "joint ownership of" an assert such as a bank account, and a "joint ownership interest" in an LLC:

> The agreement repeatedly used the phrase "joint ownership" and for, everything but Navazon, Adams concedes that this meant the asset was transmuted from separate to community property when the marriage was performed.

No. 85511-5-I at 9. The court appears not to have recognized that for all assets *other than Navazon*, the operative language is "wishes to create *joint ownership of* this property … upon their marriage," but for Navazon, the operative language is "wishes to create *joint ownership* ***interest*** *… in* this business with Wife *after* marriage." *Id.*; Ex 1 at 14-18. The reason Adams conceded that the Agreement changed the character of *other* property is that stating the desire to create "joint ownership" of a "property" "upon" marriage creates joint ownership when the marriage is performed, while stating the desire to create an unquantified joint ownership interest in a business at some undefined time after marriage does not.

REASONS THIS COURT SHOULD ACCEPT REVIEW

This Court may accept review when a decision from the appellate court conflicts with a decision from this Court or a published decision from the appellate court. RAP 13.4(b)(1)&(2). Here, numerous conflicts warrant review.

A. The appellate court upended the presumption that separate property remains separate in conflict with controlling decisions from this Court and the appellate courts.

Numerous decisions provide that once it is established that an asset is separate property, a presumption arises that the asset will retain its separate character. ***In re Estate of Borghi***, 167 Wn.2d 480, 484, 219 P.3d 932 (2009) ("Once the separate character of property is established, a presumption arises that it remained separate property in the absence of sufficient evidence to show an intent to transmute the property from separate to community property"); ***Guye v. Guye***, 63 Wash. 340, 352, 115 P. 731 (1911) ("when it is once made to appear that property was once of a separate character, it will be presumed that it maintains that character until some direct and positive evidence to the contrary is made to appear"); ***Marriage of Schwarz***, 192 Wn. App. 180, 189-90, 368 P.3d 173 (2016); ***Marriage of Byerley***, 183 Wn.

App. 677, 688, 334 P.3d 108 (2014); ***Marriage of Neumiller***, 183 Wn. App. 914, 921, 335 P.3d 1019 (2014). As this Court correctly held, this (and other) presumptions are "*true*" and "play a significant role in determining the character of property" (***Borghi***, 167 Wn.2d at 483-84):

> [P]resumptions play a significant role in determining the character of property as separate or community property. 19 Kenneth W. Weber, Washington Practice: Family and Community Property Law § 10.1, at 133 (1997) ("Possibly more than in any other area of law, presumptions play an important role in determining ownership of assets and responsibility for debt in community property law."). The presumptions are *true* presumptions, and in the absence of evidence sufficient to rebut an applicable presumption, the court must determine the character of property according to the weight of the presumption. *Id*.

The presumption that separate property remains separate may be rebutted by clear and convincing evidence demonstrating "the intent of the spouse owning the separate property to change its character from separate to community property." ***Borghi***, 167 Wn.2d at 484-85, 491-92; *see also* ***Guye***, 63 Wash. at 349

("separate property remains separate 'unless, by the voluntary act of the spouse owning it, its nature is changed'"); *see also* ***Schwarz***, ***Byerley***, and ***Neumiller***, *supra*. The burden to demonstrate this changed character falls squarely on the party arguing that the change has occurred. ***Borghi***, 167 Wn.2d at 490-91; ***Marriage of Skarbek***, 100 Wn. App. 444, 448, 997 P.2d 447 (2000)

Noting the presumption that separate property is presumed to remain separate, the appellate court never directly addresses whether McCarthy rebutted it, much less by clear and convincing evidence. No. 85511-5-I at 6. Rather, the court appears to imply that the presumption was rebutted, stating: "if Adams wanted to retain the separate character of Navazon, he could have used that language" used elsewhere in the Agreement "'wishes to retain separate ownership of this property.'" *Id*. at 6. This is a logical fallacy, where the opposite equally applies. Adams could have converted Navazon from separate

property to community property by using the language used elsewhere in the Agreement: "'wishes to create joint ownership of this property … upon marriage.'" *Id*.

Adams could have retained Navazon's separate character by using the same language used elsewhere in the Agreement. And he could have transmuted Navazon's character from separate to community by using the same language used elsewhere in the Agreement. He did neither. Instead, for Navazon, he used completely different language. Thus, McCarthy cannot have rebutted the presumption that Navazan remained Adams' separate property, nor does it appear the appellate court placed that burden on her. Thus, the appellate decision conflicts with decisions of this court and published decisions of the appellate courts. RAP 13.4(b)(1)&(2).

B. The appellate court gave different phrases the same meaning in conflict with controlling decisions from the appellate courts that different words and phrases mean different things.

The appellate court acknowledged that "upon" and "after" do not mean the same thing. No. 85511-5-I at 7. "Upon" means "on" which is precisely why Adams acknowledged when the Agreement stated a wish to retain separate ownership or create joint ownership "upon their marriage," the triggering event or condition precedent was the "happening of the marriage." *Id.* "After" is different.

"After" means "subsequent to in time or order." *Id.* Thus, stating the wish to give McCarthy in interest in Navazon "after marriage" does not and cannot mean on "the happening of the marriage." *Id.* Rather it plainly means subsequent to the happening of the marriage. *Id.*

The court's attempt to square its interpretation with other provisions in the Agreement proves Adams' point. *Id.* at 7-8. The court held that interpreting "after marriage" to

create a condition precedent of the "happening of the marriage" is consistent with the manner in which "after" is used elsewhere in the Agreement:

> In separate provisions of the Agreement, the parties used "after" and "from and after the date of the marriage["]: "The earnings and wages resulting from either party's employment after the date of marriage, together with all property acquired with or income derived therefrom, shall be community property from and after the date of the marriage.

Id. (court's emphasis). The appellate court ignores pertinent language. Here, the Agreement does not just say "after marriage," but "after the date of the marriage" which quite plainly makes the "date of the marriage" the condition precedent. Moreover, here the Agreement does not just say "after" but "from and after," meaning: *from* the date of the marriage *and* after it, their income and earnings are community property. That is, this provision ties the creation of community property to the date of the marriage, and the Navazon provision does not (nor does it even mention community property). Ex 1 at 17.

Thus, the appellate decision utterly fails to heed the established legal principle: "differences in contract wording indicate differences in intended meaning." ***Edmonds***, 27 Wn. App. at 949; ***Sunbreaker***, 79 Wn. App. at 376-78. In this way, the decision again conflicts with these published appellate decisions. RAP 13.4(b)(2).

C. The appellate court held that the Agreement transmuted Navazon from separate to community property when the marriage was performed in conflict with controlling decisions from this Court and the appellate courts that community property is a present 50/50 interest.

The appellate court plainly held that by stating the wish to give McCarthy a joint ownership *interest* in Navazon *after* marriage, Adams transmuted its character from separate to community property upon their marriage. No. 85511-5-I at 9. That directly conflicts with the very nature of community property, a present and equal interest:

> The theory of community property in this state is that each spouse has a present, undivided half interest in each specific item of community property.

Lyon v. Lyon, 100 Wn.2d 409, 413, 670 P.2d 272 (1983) (citing ***In re Estate of Patton***, 6 Wn. App. 464, 476-77, 494 P.2d 238 (1972)); *see also* ***Olver v. Fowler***, 161 Wn.2d 655, 670, 168 P.3d 348 (2007) ("In a marriage, each spouse has a present, undivided interest in the couple's community property"); ***Bortle v. Osborne***, 155 Wash. 585, 589, 285 P. 425 (1930) ("In the community property each of the spouses has an undivided one-half interest"). To transmute Navazon from separate to community property, the Agreement would have to have given McCarthy a present one-half interest in Adams' business without any of the necessary legal steps to taking an ownership interest in an LLC, such as membership or the issuance of stock. *See* BA 27-28. That makes no sense, and it is not what the Agreement says.

The Navazon provision does not purport to give McCarthy a one-half interest or a present interest. Ex 1 at 17. It does not use the words "community property." *Id.*

Instead, it states the wish to create an unquantified ownership *interest* with McCarthy at an unspecified time in the future *after marriage*. *Id*. The interest could be 5%, 15%, or 50%, and it could be created 5 days, 5 years, or 15 years after marriage. The appellate court's holding that this provision created a present, undivided, 50/50 interest in the whole business, the nature of community property, cannot be reconciled with the plain language of the Agreement. Here again, the appellate decision conflicts with decisions of this Court and published decisions of the appellate courts. RAP 13.4(b)(1)&(2).

CONCLUSION

This Court should grant review.

The undersigned hereby certifies under RAP 18.17(2)(b) that this document contains 3856 words.

RESPECTFULLY SUBMITTED this 16th day of January 2025.

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APPENDIX A

Opinion

Marriage of McCarthy and Adams
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Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of ERIN MCCARTHY, Respondent, and ALAN ADAMS, Appellant.	No. 85511-5-I DIVISION ONE UNPUBLISHED OPINION

MANN, J. — In this marriage dissolution proceeding, Alan Adams appeals the trial court's property distribution. Specifically, he argues that the court mischaracterized his business, Navazon, as community property based on the parties' prenuptial agreement. We disagree and affirm.[1]

I

Alan Adams and Erin McCarthy began dating in August 2015 and moved in together in July 2016. Around the same time Adams and McCarthy began dating, Adams founded a consulting business, Navazon Consulting LLC (Navazon). Navazon

[1] In a letter submitted two days before oral argument, McCarthy notified this court of a trial court order entered September 6, 2024, denying in part and granting in part Adams's CR 60 motion. The trial court found a clerical mistake under CR 60(a) in valuing the marital residence. The trial court determined the mistake did not change the ultimate property division. We decline to supplement the record as the information is not properly before us and does not change our decision.

provides expertise in e-commerce strategies, including teaching businesses to successfully market their products on Amazon.com.

Adams and McCarthy married in October 2017. Before the marriage, Adams told McCarthy that he wanted a prenuptial agreement (agreement). Adams's attorney prepared the first draft of the agreement and McCarthy obtained independent counsel. The parties signed the agreement about a week before their wedding.

Adams and McCarthy agreed "that any and all property acquired in both of their names hereafter, as well as any property, currently held in both of their names shall be community property from and after the date of the marriage." They also agreed that "earnings and wages resulting from either party's employment after the date of marriage, together with all property acquired with or income derived therefrom, shall be community property from and after the date of their marriage."

The agreement also provided that upon dissolution, "community property will be divided equitably between the parties and one-half (1/2) of the property shall thereafter belong to each party unless otherwise court-ordered."

The parties made a "full disclosure to the other party of all his or her property and assets and of the value thereof." The parties each listed the nature, extent, and value of their respective assets and liabilities, McCarthy in Schedule A and Adams in Schedule B.

Throughout Schedules A and B, the parties listed their assets and expressed their plans as "[Wife/Husband] to be wishes to retain separate ownership of this property" or "[Wife/Husband] to be wishes to create joint ownership of this property with [Husband/Wife] to be upon their marriage." Under the agreement, McCarthy would

retain separate ownership of three bank accounts and several retirement accounts. Adams would retain separate ownership of four bank accounts, a vehicle, four retirement accounts, and stock options.

For Navazon, the agreement provided, "Husband wishes to create joint ownership interest with in this business with Wife after marriage." Adams also specified that for Navazon's two business accounts: "Husband to be wishes to create joint ownership of this property with Wife to be upon their marriage." McCarthy testified that her understanding at the time she signed the Agreement was that "we would jointly own Navazon together."

During the marriage, Navazon grew, realizing over $3 million per year in gross profit.[2] McCarthy helped Adams with Navazon while working full-time for the Bill and Melinda Gates Foundation. McCarthy helped Adams prepare for learning seminars, developed agendas, prepared requests for proposals for hotels to host seminars, handled logistics, and wrote Adams's talking points. As Navazon grew, McCarthy reviewed Adams's communications, helped him prepare speeches, prepared briefing on a potential acquisition, booked Adams's travel, helped with presentations, helped staff, and reviewed internship resumes.

The parties separated in November 2020. McCarthy petitioned to dissolve the marriage.

At trial, McCarthy asked the trial court to enforce the agreement while Adams asserted that the Agreement was not valid or fair. McCarthy argued that, under the

[2] Each party hired an expert witness to prepare a valuation report on Navazon. The court deemed McCarthy's expert witness Douglas McDaniel's report more credible than Adams's expert witness.

agreement, Navazon was community property. The trial court found and concluded that "both parties had the opportunity, and took advantage of the opportunity, to consult with legal counsel prior to entering the prenuptial agreement. . . . [a]ccordingly, the prenuptial agreement is valid and enforceable."

In interpreting the agreement, the trial court found "and conclude[d] that the word 'wishes,' as used in the parties' prenuptial agreement evidences their clear, distinct, and unequivocal, expressions of how they intended for their debts and assets to be characterized upon entry of the marriage." As for Navazon, the trial court concluded:

> The Business-Navazon Consulting LLC section of the parties' prenuptial agreement indicates that joint ownership interest for Ms. McCarthy would be created in Navazon Consulting LLC, which I find and conclude is now Navazon, Inc. dba Navazon (Navazon), after marriage. See Exhibit 1, page 17. The evidence is unclear as to what exactly was meant by the words "joint ownership interest." However, a review of other characterizations identified in Schedule B show that Mr. Adams clearly identified assets and debts that were intended to remain separate property. Further, the language contained in the Business-Navazon Consulting LLC does not support such a designation. See Exhibit 1, pages 16-18. In fact, the Business-Navazon Consulting LLC section, when viewed along with the parties' stated intentions in the remainder of the prenuptial agreement, supports the finding and conclusion that any ownership interests Mr. Adams has in Navazon is community property. See Exhibit 1.

(Emphasis added.)

The trial court entered detailed findings and conclusions of law. The trial court awarded Adams and McCarthy each their separate property, $1,956,610 and $577,830 respectively. The trial court valued the total marital community at $5,877,636. It awarded Navazon, valued at $3,665,500, to Adams and $2,212,136 to McCarthy. To equalize the division, the trial court ordered Adams to make a $726,682 equalizing

payment to McCarthy. The trial court awarded a net total of $2,521,053 to Adams and $2,062,136 to McCarthy in community property.

Adams appeals.[3]

II

"Prenuptial agreements are contracts subject to the principles of contract law." In re Marriage of DewBerry, 115 Wn. App. 351, 364, 62 P.3d 525 (2003). "A pre-nuptial agreement freely and intelligently made is generally regarded as conducive to marital tranquility and the avoidance of disputes about property in the future." Friedlander v. Friedlander, 80 Wn.2d 293, 301, 494 P.2d 208 (1972).

We review the trial court's conclusions of law pertaining to contract interpretation de novo. Viking Bank v. Firgrove Commons 3, LLC, 183 Wn. App. 706, 712, 334 P.3d 116 (2014). "It is the duty of the court to declare the meaning of what is written, and not what was intended to be written." Berg v. Hudesman, 115 Wn.2d 657, 669, 801 P.2d 222 (1990) (quoting J.W. Seavey Hop Corp. v. Pollock, 20 Wn.2d 337, 348-49, 147 P.2d 310 (1944)).

To interpret the contract, we give its words their ordinary, usual, and popular meaning unless the entirety of the agreement demonstrates a contrary intent. Hearst Commc'ns, Inc. v. Seattle Times Co., 154 Wn.2d 493, 504, 115 P.3d 262 (2005). "An interpretation of a contract that gives effect to all provisions is favored over an interpretation that renders a provision ineffective." Snohomish County Pub. Transp. Benefit Area Corp. v. FirstGroup Am., Inc., 173 Wn.2d 829, 840, 271 P.3d 850 (2012).

[3] McCarthy originally filed a cross-appeal but later moved for voluntary dismissal.

And we "view the contract as a whole, interpreting particular language in the context of other contract provisions." Viking Bank, 183 Wn. App. at 713.

A

Adams first argues that the agreement did not create joint ownership of Navazon because stating the wish to do so at an unidentified time after marriage did not create an enforceable legal right. Adams urges this court to treat "upon their marriage" and "after marriage" differently. We disagree.

The character of property as separate or community is determined at the date of acquisition. In re Estate of Borghi, 167 Wn.2d 480, 484, 219 P.3d 932 (2009). Once the separate character of property is established, a presumption arises that it remained separate property in the absence of sufficient evidence to show an intent to transmute the property from separate to community property. Borghi, 167 Wn.2d at 484. "[T]he evidence must show the intent of the spouse owning the separate property to change its character from separate to community property." Borghi, 167 Wn.2d at 484-85.

Adams concedes that the language "wishes to create joint ownership of this property . . . upon marriage" meant that the assets identified were transmuted from separate to community property when the marriage was performed. Adams also concedes that where the parties wanted to retain separate ownership of an asset, they used the language "wishes to retain separate ownership of this property."

Thus, if Adams wanted to retain the separate character of Navazon, he could have used that language. He did not do so. The trial court came to a similar conclusion: Adams "clearly identified assets and debts that were intended to remain

separate property" but the language regarding Navazon "does not support such a designation."

Adams asserts that the provision addressing Navazon does not include a condition precedent whose occurrence makes the precatory language "wishes" mandatory.

"A condition precedent is an event that must occur before there is a right to immediate performance of a contract." U.S. Bank Nat'l Ass'n v. Roosild, 17 Wn. App. 2d 589, 599, 487 P.3d 212 (2021). "[W]ords such as 'provided that,' 'on condition,' 'when,' 'so that,' 'while,' 'as soon as' and 'after' suggest a conditional intent, not a promise." U.S. Bank Nat'l Ass'n, 17 Wn. App. 2d at 599 (quoting Tacoma Northpark, LLC v. NW, LLC, 123 Wn. App. 73, 79, 96 P.3d 454 (2004)). The dictionary definition of "after" means subsequent to in time or order.[4] While "upon" means on.[5]

The parties' use of both terms, "after" and "upon," demonstrates their intent to form a condition precedent. And for both, the condition precedent was the happening of the marriage.

Viewing the agreement as a whole, this interpretation is consistent throughout. Viking Bank, 183 Wn. App. at 713. In separate provisions of the agreement, the parties used "after" and "from and after the date of marriage: "The earnings and wages resulting from either party's employment after the date of marriage, together will all

[4] MERRIAM-WEBSTER ONLINE DICTIONARY, https://www.merriam-webster.com/dictionary/after (last visited Oct. 16, 2024).

[5] MERRIAM-WEBSTER ONLINE DICTIONARY, https://www.merriam-webster.com/dictionary/upon (last visited Oct. 16, 2024).

property acquired with or income derived therefrom, shall be community property from and after the date of their marriage." (Emphasis added.)

Regarding the two Navazon business accounts at the time the agreement was signed, the agreement states: "Husband to be wishes to create joint ownership of this property with Wife to be upon their marriage." When read together, the plain language in the agreement supports an intent to transmute the character of Navazon from separate to community property. Borghi, 167 Wn.2d at 484.

B

Adams next asserts that the agreement alone cannot create a joint ownership interest in Navazon. This is so, he contends, because the parties never took any steps after the marriage to create a joint ownership interest in Navazon, and thus it remains separate property. We disagree.

Adams argues that while Navazon was an LLC, to change the ownership the operating agreement would need to be changed or the records of the LLC would need to reflect McCarthy's admission as a member. And once Navazon was incorporated, Navazon would have had to issue McCarthy stock in a manner consistent with its bylaws.

Adams errs by concluding that being the named owner is different from property being characterized as separate or community. The separate or community character of property is not determined by the name on a deed or title. See Borghi, 167 Wn.2d at 488 ("property taken in the name of one of the spouses may be the separate property of the spouse taking title, the separate property of the other spouse, or the community property of both of the spouses") (quoting Merritt v. Newkirk, 155 Wash. 517, 520-21

285 P. 442 (1930)). The agreement repeatedly used the phrase "joint ownership" and for, everything but Navazon, Adams concedes that this meant the asset was transmuted from separate to community property when the marriage was performed.

For these reasons, we conclude that the trial court correctly characterized Navazon as community property.[6]

III

Adams argues that the property distribution should be reversed. We conclude that the trial court properly considered the agreement and the RCW 26.09.080 factors in making its distribution.

In dissolution proceedings, the trial court has broad discretion to make a just and equitable distribution of all property based on the factors enumerated in RCW 26.09.080. In re Marriage of Rockwell, 141 Wn. App. 235, 242, 170 P.3d 572 (2007). "All property, community and separate, is before the court for distribution." In re Marriage of Doneen, 197 Wn. App. 941, 948, 391 P.3d 594 (2017).

When fashioning just and equitable relief, the court must consider (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 property distribution is to become effective. RCW 26.09.080. These factors are not exclusive and the trial court must consider "all relevant factors." RCW 26.09.080.

[6] Because we do not agree with Adams that Navazon was separate property, we do not address his arguments that the trial court erred in characterizing several additional assets based on a mischaracterization of Navazon.

Just and equitable does not mean that the court must make an equal distribution. Friedlander, 80 Wn.2d at 305. A trial court has considerable discretion in making a property division, and "will be reversed on appeal only if there is a manifest abuse of discretion." In re Marriage of Muhammad, 153 Wn.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.'" Muhammad, 153 Wn.2d at 803 (quoting In re Marriage of Littlefield, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997)).

The agreement provides, upon dissolution or separation:

> The community property will be divided equitably between the parties and one-half (1/2) of the property shall thereafter belong to each party unless otherwise court-ordered. It is the parties' intention that if any such property is not easily divisible that they will agree on the value of that property and allocate the total community property in a manner that accomplishes an equitable division, as they then agree. [7]

On appeal, Adams concedes that the trial court's valuation of Navazon falls within the range of evidence. Two expert witnesses testified to Navazon's value and it was for the trier of fact to determine which testimony was credible.

The trial court does not abuse its discretion by assigning value to a property where the value assigned is within the scope of the evidence. In re Marriage of Soriano, 31 Wn. App. 432, 435, 643 P.2d 450 (1982). We will not "substitute our judgment for the trial court's, weigh the evidence, or adjudge witness credibility." In re Marriage of Greene, 97 Wn. App. 708, 986 P.2d 144 (1999).

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[7] For separate property, the agreement states: "Except as provided below, neither shall make any claim, and neither is entitled to, nor will receive, any of the separate property of the other." The trial court considered the agreement and concluded "all the parties' property characterized as separate property above, will remain separate property, and be distributed to the parties accordingly."

The trial court reviewed the factors of RCW 26.09.080 and the parties' agreement, including "the clause requiring that all their community property be equitably divided 50/50, and that their separate property remain separate."

In light of the overall distribution of assets and liabilities, the trial court did not demonstrate a failure to properly consider the statutory factors. See RCW 26.09.080. To the contrary, Adams was awarded 100 percent of his separate property, valued at $1,956,610, while McCarthy's separate property was valued at $577,830. The trial court valued the total marital community at $5,877,636. It awarded Navazon, valued at $3,665,500, to Adams and $2,212,136 to McCarthy. To equalize the division, the trial court ordered Adams to make a $726,682 equalizing payment to McCarthy. The trial court awarded a net total of $2,521,053 to Adams and $2,062,136 to McCarthy in community property.

We conclude that the trial court's distribution of property is within the range of acceptable choices, and the trial court did not abuse its discretion in dividing the parties' assets and liabilities.

Affirmed.

Mann, J.

WE CONCUR:

Díaz, J.

Hazelrigg, ACJ

CERTIFICATE OF SERVICE

I certify that I caused the filing and service of the foregoing **PETITION FOR REVIEW** on the 16th day of January 2025 as follows:

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