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COURT OF APPEALS
DIVISION II

No. 37625-3-II

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STATE OF WASHINGTON
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DEPUTY

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

ALISSA VICTORIA SATALICH,

Appellant,

v.

CHRISTOPHER BARRON SATALICH,

Respondent.

APPEAL FROM SUPERIOR COURT OF CLARK COUNTY

HONORABLE EDWIN POYFAIR, JUDGE

CLARK COUNTY CAUSE NO. 05-3-0162-7

BRIEF OF APPELLANT

SUZAN L. CLARK, WSBA #17476
Attorney for the Appellant

Attorney at Law
1101 Broadway Street, Suite 250
Vancouver, Washington 98660

Telephone: (360) 735-9434

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I. ASSIGNMENTS OF ERROR

A. ASSIGNMENT OF ERROR NUMBER ONE: THE TRIAL COURT ERRED IN ENTERING FINDING OF FACT 2.9 AWARDING THE HUSBAND \$95,000 “EQUITABLE REIMBURSEMENT” FOR HIS SEPARATE PROPERTY INTEREST IN THE 45TH AVENUE RESIDENCE.

II. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

A. Are the trial court’s findings supported by substantial evidence in the record?

B. Did Mr. Satalich adequately trace and establish by clear, cogent and convincing evidence a \$95000 separate property contribution to the marital residence?

III. STATEMENT OF THE CASE

A. STATEMENT OF FACTS

Alissa Maxwell married Christopher Satalich on November 22, 2002.

(RP-1) The couple resided together in a residence Mr. Satalich owned prior to the marriage on 139th Avenue in Vancouver, Washington for about 6 weeks prior to their marriage. (RP-1) The couple never entered into a prenuptial agreement. (RP-1 to 2) They soon began to look for a new residence to accommodate the needs of the new family. (RP-2)

After several months of looking at new houses, Mrs. Satalich and the realtor found a house on 45th Avenue in Ridgefield, Washington. (RP-3) She believed that they were buying the house together. (RP-3) Mrs. Satalich arrived at the residence to sign closing documents with her three preschool age children. (RP-4)

Approximately 45 minutes later, as the children became impatient and fussy, the title company representative presented Mrs. Satalich with a quit-claim deed and indicated that she had to sign it as a condition of the loan. (RP-4 to 7) Mrs. Satalich was shocked by the quit-claim deed, but the realtor and title company representative assured her this happened all the time. (RP-5) The title company representative explained that the lender required the quit-claim deed because Mr. Satalich's income qualified them for the loan. (RP-6) Mrs. Satalich stayed home with the children at the time of the loan

and did not have any income. (RP-6)

If they did not close on the loan, the family would have no place to live in two weeks time. (RP-7) The title company prepared and had both parties sign a memo that indicated the parties signed and acknowledged a quit-claim deed to meet the requirements of the lender. (RP-8, Exhibit-1) Mr. Satalich promised her that he would undo the effect of the quit-claim deed after closing. (RP-8)

Mrs. Satalich had no intention to make the family home Mr. Satalich's separate property. (RP-9) She picked out flooring and finishing touches, made draperies for the windows, repainted some areas, purchased furniture and otherwise decorated the home. (RP-9) She believes some of the funds for decorating came from her employment earnings at Johnson Controls, money she had in a credit union account, money from funds she had from selling her home and that she might have sold some items on E Bay to purchase a drapery. (RP-31, 33, 37)

After closing, she asked Mr. Satalich on several occasions to execute the necessary deed to place her back on the title of the residence and he refused or ignored her requests. (RP-11)

According to the closing settlement statement entered on April 15,

2003 (Exhibit-23) the parties deposited \$13,968.13 in earnest money into escrow, \$12979.40 cash into escrow and \$84,019.86 into escrow at closing. (RP-12) Mrs. Satalich believes the earnest money came from a community checking account. (RP-12) At that time Mr. Satalich earned over \$15,000 per month. (RP-13) She does not know where the other funds came from. (RP-13)

In June, 2003 Mr. Satalich refinanced the residence to take out money to build a shop on the property. (RP-14) In November, 2004 Mr. Satalich refinanced again and borrowed \$29,788.69 to pay off debt and to make further improvements to the shop. (RP-19) The lender required Mrs. Satalich to sign a statement acknowledging that Mr. Satalich was borrowing money from a community property residence. (RP-21)

Mrs. Satalich never saw any documents that supported a separate property claim by Mr. Satalich to the 45th Avenue house. (RP-22)

Mr. Satalich indicated that Mrs. Satalich and their daughter, Meghan were severely injured in a car accident in April, 2004 and the insurance company was slow to pay some of the bills, so that was also a reason he needed to refinance. (RP-46)

Mr. Satalich contends that the 45th Avenue property is his separate

property. (RP-49) He claims to have made a separate property down payment of \$103,000 from the sale of his house he owned on North McKenna in Portland, Oregon. (RP-51) Initially, he testified that he bought the house for \$36,000 in 1985 and sold the house in 1999 for \$169,000, but than indicated he thought the house sold for \$165,000. (RP-51) He indicated that he used that money to pay for the house on Northeast 139th Avenue. (RP-52) He produced absolutely no documentation to support any of these claims. (RP-52)

When confronted with his divorce decree that showed the court awarded him both the North Mckenna house and the Northeast 139th Avenue house in 2001, he then admitted the purchase could have happened in 2001. (RP-53 to 54) He does not recall when he sold the Northeast 139th Avenue house. (RP-55) He believes that he used the approximately \$103,000 in equity from the sale of that house to purchase the 45th Avenue house. (RP-60) He provided no documentation whatsoever of this transaction to the court. (RP-60)

Mr. Satalich earned \$103,624 in income from the date of marriage to the date of purchasing the 45th Avenue residence. (RP-62 to 63) At the time of purchase of the 45th Avenue residence, he declared \$80,450 in liquid assets

and listed the Northeast 139th Avenue residence as an asset on the loan application. (RP-66, Exhibit-50) He indicated two Wells Fargo accounts, one with a balance of \$14, 562 and one with a balance of \$50,606. (RP-66) His monthly income fluctuated between \$10,000 and \$20,000 per month during that time period. (RP-69) His annual gross income for 2003 was \$214,586. (RP-69) Mr. Satalich's paychecks were deposited in to the two Wells Fargo accounts. (RP-70) Mr. Satalich received a tax refund of \$24,678 for the year 2002 . (RP-73)

B. STATEMENT OF PROCEDURAL HISTORY

This matter went to trial before the Honorable Edwin Poyfair on January 28 and 29, 2008. On February 25, 2008 the court ruled that Mr. Satalich was entitled to an equitable reimbursement on the 45th Avenue house and awarded him \$95,000 and fixed the community interest in the home as \$160,765. (RP-88) The trial court entered Findings of Fact and Conclusions of Law and a Decree of Dissolution on March 14, 2008. (CP-11, 16) From the entry of those orders this appeal timely follows.

IV. ARGUMENT

A. The trial court erroneously awarded a \$95,000 separate property interest in the marital residence to Mr. Satalich in the absence of clear cogent and convincing evidence in the record tracing any separate property interest in a presumptively community asset.

The trial court awarded Mr. Satalich a separate property interest in the marital residence under Finding of Fact 2.9 as follows:

The court finds through the husband's testimony that he owned a home prior to the marriage, sold that home and purchased another home. The father shall be awarded equitable reimbursement of equity in the home of \$95,000. This amount is based on the judge's calculations. (CP-11)

This court reviews a trial court's decision following a bench trial to determine whether the findings of fact are supported by substantial evidence and whether those findings support the court's conclusions of law. Dorsey v. King County, 51 Wn. App. 664, 668-69, 754 P.2d 1255 (1988). The appellate court engages in de novo review of a trial court's classification of property as community or separate. In re Marriage of Chumbley, 150 Wn.2d 1, 5, 74 P.3d 129 (2003).

Undisputedly, the Satalich's purchased the 45th Avenue house after marriage. (RP-1) The character of property as community or separate is determined as of the date of acquisition. In re Marriage of White, 105 Wn. App. 545, 550-51, 20 P.3d 481 (2001). Property acquired during marriage is presumptively community property. Dean v. Lehman, 143 Wn.2d 12, 19-20, 18 P.3d 523 (2001), RCW 26.16.030

While that presumption can be overcome, Mr. Satalich bears the burden of proving his separate property interest by clear and convincing evidence. In re Estate of Smith, 73 Wn.2d 629, 440 P.2d 179 (1968)

Under a "clear, cogent and convincing evidence" burden of proof, the fact finder's determination of an ultimate fact will be upheld on review "if supported by substantial evidence which the lower court could reasonably have found to be clear, cogent and convincing." In re Det. of LaBelle, 107 Wn.2d 196, 209, 728 P.2d 138 (1986).

Property acquired during the marriage has the same character as the funds used to purchase it. In re Marriage of Zahm, 138 Wn.2d 213,224 ,978 P.2d 498 (1999). Separate property maintains that characterization through transfers if it can be traced and identified; the separate property is not rendered community property unless the separate property is commingled to the extent that it may not be distinguished or apportioned. In re Marriage of

Pearson-Maines, 70 Wn. App. 860, 866, 855 P2d 1210 (1993).

At closing, the parties deposited \$13,968.13 in earnest money into escrow, \$12,979.40 cash into escrow and \$84,019.86 into escrow at closing. (RP-12) Neither side presented documentation tracing the source of these funds. Mrs. Satalich believes the earnest money came from a community checking account. (RP-12) She does not recall where the other funds came from. (RP-13)

Mr. Satalich claims a separate property down payment of \$103,000 from the sale of his house he owned on North McKenna in Portland, Oregon went into the 45th Avenue house. (RP-51) In contradictory testimony, he indicated that he rolled the money from selling the North McKenna house into the purchase of the Northeast 139th Avenue house. (RP-54)

At the time of purchase of the 45th Avenue residence, he declared \$80,450 in liquid assets and listed the Northeast 139th Avenue residence as an asset on the loan application, which seems to indicate that he had not sold the Northeast 139th Avenue residence prior to closing on the 45th Avenue house. (RP-66, Exhibit-50) He indicated two Wells Fargo accounts, one with a balance of \$14,562 and one with a balance of \$50,606. (RP-66) He did not identify the source of any of these funds.

His initial testimony indicated that he bought the house on Northeast McKenna for \$36,000 in 1985 and sold the house in 1999 for \$169,000, but then indicated he thought the house sold for \$165,000. (RP-51) He indicated that he used that money to pay for the house on Northeast 139th Avenue. (RP-52) He produced absolutely no documentation to support any of these claims. (RP-52)

When confronted with his divorce decree from his previous marriage that showed the court awarded him both the North McKenna house and the Northeast 139th Avenue house in 2001, he then admitted the purchase could have happened in 2001. (RP-53 to 54) He does not recall when he sold the Northeast 139th Avenue house. (RP-55) He believes that he used the approximately \$103,000 in equity from the sale of that house to purchase the 45th Avenue house, but provides no supporting documentation of the transaction to the court. (RP-60)

The evidence regarding sale of previous residences is confusing and contradictory at best. Mr. Satalich completely failed to trace any of the funds used to purchase the 45th Avenue house to a separate source. There is no evidence in the record that Mr. Satalich had access to any substantial separate funds that he could have contributed to the down payment on the 45th

Avenue residence. Absent such evidence, he cannot establish a separate property interest in the marital residence by tracing funds to separate property In re Marriage of Pearson-Maines, supra. To the contrary, the evidence appears to establish that the sale of the house on Northeast 139th Avenue occurred sometime after the couple closed on the 45th Avenue residence. (RP-66, Exhibit-50)

During the period leading up to the purchase of the house, the marital community received substantial income from Mr. Satalich's employment. (RP-62 to 63) He contributed \$103,624 in earnings to the marital community from the date of marriage to the date of purchasing the 45th Avenue residence. (RP-62 to 63) His monthly income fluctuated between \$10,000 and \$20,000 per month during that time period. (RP-69) His annual gross income for 2003 was \$214,586. (RP-69) Mr. Satalich's admits his paychecks were deposited into the two Wells Fargo accounts. (RP-70) The community also received substantial tax refunds during the marriage. (RP-73) No evidence in the record establishes what debts or expenses the parties had during that time, so the down payment could easily be comprised of community funds.

In the absence of evidence sufficiently tracing a separate property interest, the law favors characterization of property as community property

unless there is no question of its separate character. In re Marriage of Brewer, 137 Wn.2d 756, 766-67, 976 P.2d 102 (1999) The name under which the property is held does not determine whether the property is community or separate. Merritt v. Newkirk, 155 Wash. 517, 520-22, 285 P. 442 (1930).

The factual findings supporting the court's characterization require substantial evidence to support them. In re Marriage of Skarbek, 100 Wn. App. 444, 447, 997 P.2d 447 (2000) When questioned as to the finding that Mr. Satalich was entitled to \$95,000 as an equitable reimbursement of his separate property, the court initially indicated his reason was, "Because I said so." (RP-100) The trial court went on to indicate that he found that it was unrefuted that Satalich contributed \$103,000 from the sale of the previous house. (RP-100) The evidence outlined above shows that Mrs. Satalich clearly refuted the source of funds used to purchase the marital residence.

B. ATTORNEY FEES

Pursuant to RAP 18.1(b) and RCW 26.09.140, Mrs. Satalich requests an award of reasonable attorneys fees and costs in this matter. She has had to expend considerable funds to appeal the trial court's erroneous separate property characterization of \$95,000 in community assets.

V. CONCLUSION

Mr. Satalich failed to meet his burden to trace a separate property interest in the marital residence and for all of the reasons stated above, Mrs. Satalich respectfully requests this court reverse the trial court's award of \$95,000 to Mr. Satalich as a separate property interest in the marital residence and remand the matter to the trial court with directions to divide the marital residence as a community asset.

Respectfully submitted this 28th day of August, 2008



SUZAN L. CLARK, WSBA #17476
Attorney for the Appellant

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DIVISION II

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STATE OF WASHINGTON
BY _____
DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

In re the Marriage of:

ALISSA VICTORIA SATALICH,

Appellant,

and

CHRISTOPHER BARRON SATALICH,

Respondent.

NO. 37625-3-II

CLARK COUNTY SUPERIOR COURT
CAUSE NO. 05-3-01627-0

DECLARATION OF MAILING

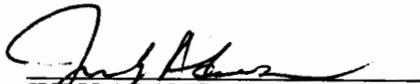
I, Judy Adams declare:

That I am a citizen of the United States of America; that I am over the age of 21 years, not a party to the above-entitled action and competent to be a witness therein; that on the 1st day of September, 2008 declarant deposited in the mails of the United States of America properly stamped and addressed envelopes directed to the following named individuals, to-wit:

Mr. David Ponzoha
Division II Court of Appeals
950 Broadway, Suite 300
Tacoma, Washington 98402

Mr. Christopher B. Satalich
20800 NE 45th Avenue
Ridgefield, WA 98642

said envelope containing a copy of this declaration and a copy of the Brief of the Appellant in this matter.



JUDY ADAMS

Declaration of Mailing

Suzan L. Clark
Attorney at Law
1101 Broadway Street, Suite 250
Vancouver, WA 98660
(360) 735-9434