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No. 53582-3-II

COURT OF APPEALS, DIVISION II OF THE STATE OF
WASHINGTON

In the Matter of
AIRELLE BETH VANWEY,
Petitioner/Appellee,
v.
SCOTT HENRY VANWEY,
Respondent/Appellant.

BRIEF OF RESPONDENT

By:

Drew Mazzeo
Bauer Pitman Snyder Huff Lifetime Legal, PLLC
1235 4th Ave E #200
Olympia, WA 98506
(360) 754-1976
dpm@lifetime.legal

Attorney for Appellee

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1. INTRODUCTION

Scott Vanwey (“Scott”) and Airelle Vanwey (“Airelle”) met in 2008 and immediately began dating exclusively. They moved in together in April of 2009. The trial court found a committed intimate relationship (“CIR”) began in August of 2009. They formed a community and operated as an economic unit together. Nearly a year later, in March of 2010, the couple acquired their only significant asset, the family home, with no down payment. They were married in January of 2011 and had a child in 2013. Not until November of 2017, did they separate.

The trial court found that the couple’s only significant asset, the family home, was community-like property. Without Airelle being given an interest in the family home, a fair and equitable division of property was not possible. Scott, nevertheless, argues on appeal that the trial court abused its discretion in finding that the CIR began before the family home was acquired. He argues that the trial court abused its discretion in awarding Airelle any interest in the family home. Last, he argues that certain debts should not have been classified as community, or community-like, and that the trial court abused its discretion in its child support order.

Dispositive problems for Scott on appeal include that all of the trial court’s findings and conclusions are supported by substantial evidence and that the vast majority of the written findings are verities, never assigned

error. Moreover, he failed to raise, claim, or preserve—and thus waived or invited any alleged error—regarding child support at trial.

2. RESTATEMENT OF THE ISSUES

2.1. Whether Scott failed to assign error to the trial court's specific written findings of fact, whether the written findings of fact are verities on appeal, and whether unchallenged written conclusions of law have become the "law of the case"?

2.2. Whether substantial evidence supports the trial court's finding that the parties started a CIR in August of 2009, months after they began cohabitating, and many months after they first met and immediately began dating exclusively?

2.3. Whether substantial evidence supports the trial court's conclusion of law that the family home was community-like property because Scott failed to rebut the presumption that it was at trial, and whether the trial court's distribution of property was just and equitable?

2.4. Whether Scott failed to adequately raise the issue of a deviation in child support at trial, whether he failed to present evidence regarding the issue before the trial court, whether he failed to object to or raise error with the trial court's ruling on the issue, whether he failed to preserve or waived this claim, and/or whether he invited any error on this issue?

2.5. Whether the trial court abused its discretion when it denied Scott a deviation from his child support obligations determined by the standard calculation and child support worksheets, whether the trial court was required to make a detailed written finding on this issue under the circumstances, and if so whether the trial court's oral ruling was a sufficient substitute for a more detailed written finding?

2.6. Whether Scott adequately raised at trial, or adequately requested a ruling on, the issue of imputation of income on Airelle, whether he failed to object to, or raise error with, the trial court's ruling, whether he failed to preserve or waived this claim, and/or whether he invited any error on this issue?

2.7. Whether the trial court abused its discretion by not imputing income on Airelle under RCW 26.19.071(6), whether the trial court was required to make a detailed written finding on this issue under the circumstances, and if it was whether the trial court's oral ruling and written finding properly denied the claim?

2.8. Whether the trial court abused its discretion in its order equitably dividing the parities' community, and community-like, debt?

2.9. Whether Airelle should be granted attorney fees and costs on appeal?

3. RESTATEMENT OF THE CASE

3.1. Prior to meeting, Airelle rented an apartment in Gig Harbor, Washington. (RP June 4, 2019, at 15). Scott and Airelle met in 2008. (RP June 4, 2019, at 14-15). She was financially independent and working full time. (RP June 4, 2019, at 17-18). Airelle moved out of that apartment to live with Scott at a Tacoma rental residence in April of 2009. (RP June 4, 2019, at 14-15, 105). She helped furnish that residence. (RP June 4, 2019, at 17-18). The couple was in a serious, exclusive, relationship. (RP June 4, 2019, at 16-17). They discussed marriage, family, and children, and held themselves out to others to be engaged even though Scott had not officially proposed yet. (RP June 4, 2019, at 16-21). Shortly thereafter, Airelle and Scott decided to look for a home of their own. (RP June 4, 2019, at 18-21, 131). Airelle did much of the work finding the new home. (RP June 4, 2019, at 18-21). The couple found the home because Airelle knew the builder constructing it. (RP June 4, 2019, at 20).

3.2. In March of 2010, nearly a year after the couple began cohabitating, the family home in Orting Washington was purchased. (RP June 4, 2019, at 19-21, 106). No down-payment was needed because it was their first home. (RP June 4, 2019, at 110). The couple immediately moved into the home. (RP June 4, 2019, at 19-21). It was titled in Scott's name only under Airelle's belief that she would be put on the title later. (RP June 4, 2019, at 19-21). Scott made monthly payments on the loan for the property secured by the mortgage. (RP June 4, 2019, at 19-21). This was while Airelle planned and took care of expenses being incurred for the couples' wedding ceremony. (RP June 4, 2019, at 20-21, 113-14). The couple maintained separate bank accounts and credit cards but shared expenses and lived and supported each other as a family and economic unit. (RP June 4, 2019, at 14-104; Ex. 13).

3.3. By agreement, Airelle took care of the home in all aspects, all throughout the relationship. (RP June 4, 2019, at 14-104). She purchased the vast majority of groceries, and initially paid all of the water, garbage, sewer, utility, and cable bills until the couple's child was later born. (RP June 4, 2019, at 14-104, 113-15; RP June 5, 2019, at 191-95). She handled the housework, cleaning, and much of the yardwork. (RP June 4, 2019, at 14-104). She paid for upgrades and improvements to the family home such as concrete work, fencing, painting of the home, blinds, and furniture. (RP

June 4, 2019, at 14-104, 113-15, 135-36). She bartered hair dressing for work done on the kitchen. (RP June 4, 2019, at 23).

3.4. Four months after the home's purchase, in July of 2010, Scott purchased a wedding band and officially proposed marriage. (RP June 4, 2019, at 106). The parties were married on January 22, 2011, in Puyallup, Washington. (RP June 4, 2019, at 105)

3.5. On April 11, 2013, Airelle gave birth to their daughter, Brielle. When Brielle was born, Airelle and Scott agreed that Airelle would stop working to be a stay-at-home mother and homemaker. (RP June 4, 2019, at 47-56, 107-09). Airelle did not work for about two years. (RP June 4, 2019, at 47-56, 66-67, 107-09). Scott supported his wife during this time. (RP June 4, 2019, at 107-09).

3.6. In January of 2015, Airelle went back to work part-time, about twenty hours a week, as a customer service representative at Wells Fargo Bank. (RP June 4, 2019, at 47-56, 66-67, 107-09). From January of 2015 to the present day, Airelle has been Brielle's primary residential caretaker and continues to work at Wells Fargo approximately twenty hours a week. (RP June 4, 2019, at 47-56, 66-67, 107-09). The couple filed joint tax returns and refunds were deposited in Scott's account. (RP June 4, 2019, at 140).

3.7. The couple separated on November 4, 2017, when Airelle

and Brielle moved out of the family home. (RP June 4, 2019, at 15). Airelle was short on financial support and money. (RP June 4, 2019, at 54-56, 60-61). She was awarded maintenance for a few months before the dissolution finalized. (RP June 4, 2019, at 60). She found a low-cost apartment to live in with Brielle for \$1,086.00 a month in rent. (RP June 4, 2019, at 55). The low rent was, and is, contingent on her not exceeding low-income/part time employment thresholds. (RP June 4, 2019, at 54-56, 67).

3.8. Trial began on June 4, 2019. Airelle filed a trial brief. (CP at ___, Trial Brief of Petitioner Airelle Vanwey, filed 04/18/19).¹ Scott did not. Scott's attorney addressed the Court in his opening statement and presented the issues for trial as whether there was a CIR, whether the family home was community-like property, and whether certain debts should be characterized as Airelle's separate debt or community-like debt. (RP June 4, 2019, at 11-12). No issue regarding imputation of income for Airelle nor any issue regarding a deviation of child support obligations for Scott were mentioned. (RP June 4, 2019, at 11-12). Airelle's attorney stated, "Child support, I don't believe, is at issue. . . ." (RP June 4, 2019, at 10). Scott's attorney did not say it was. The parties indicated that they would present an agreed parenting plan later. (RP June 4, 2019, at 12, 68). Scott's attorney

¹ Second Supplemental Designation of Clerk's Papers, filed April 15, 2020, including a request for "Trial Brief of Petitioner Airelle Vanwey" filed with trial court on April 18, 2019.

represented to the court that “Details still needed to be worked out, but there’s no issue there.” (RP June 4, 2019, at 12).

3.9. During the trial, Scott argued that Airelle’s credit card bills increased after the date of separation, but Airelle explained that such community, and community-like, debts were incurred during the CIR, and marriage, and that balances only increased later because she was playing the credit card balance transfer “game” to make ends meet for their daughter and to reduce interest accumulating on community debt. (*e.g.*, RP June 4, 2019, at 83-86, 95-99). Airelle explained that she initially requested some family incurred debts be classified as hers and not community-like. (*e.g.*, RP June 4, 2019, at 81, 94). She did so because she was requesting maintenance from Scott at the time to pay for those bills, because she didn’t trust him to make bill payments, because she didn’t want her credit score harmed, and because she was not an attorney and was acting on attorney advice. (RP June 4, 2019, at 81, 94). Scott testified his memory was poor regarding dates, events, and when expenses were incurred. (*e.g.*, RP June 4, 2019, at 131, 135-36).

3.10. Also during the trial, Scott’s attorney questioned Airelle about working twenty hours a week to maintain low-cost rent. (RP June 4, 2019, at 67-69). Scott’s questioning did not mention “imputing” Airelle’s income, nor any variation of the word. (RP June 4, 2019, at 67-69). The

questioning had to do deviating from standard child support calculations “based on an equal parenting plan.” (RP June 4, 2019, at 67-69). Regardless, Airelle explained that if she worked more hours, she would forfeit the low-cost apartment that she and Brielle lived in—to the detriment to their child and paying off community, and community-like, debt. (RP June 4, 2019, at 67-69).

3.11. On the final day of trial, on re-direct examination of the last witness, and mere moments before closing arguments, Scott testified that he wanted his “child support” to be “adjusted appropriately.” (RP June 5, 2019, at 199-200). His attorney led him into clarifying that he wanted “some type of residential credit.” (RP June 5, 2019, at 199-200). No further reasoning, testimony, or evidence was provided.

3.12. In her closing argument, Airelle argued that based on the facts of the case there was a CIR between Scott and Airelle that began well before the purchase of the family home. (RP June 5, 2019, at 201-09). She argued that caselaw such as *Lindsey*, *Muridan*, and *Connell* well-supported such claim. (RP June 5, 2019, at 201-09). Airelle made clear that bills and wedding expenses were all traceable to have been incurred during the CIR and were community-like. (RP June 5, 2019, at 201-09). She explained that her proposed division of property and debts was equitable. (RP June 5, 2019, at 201-09). She also pointed out that Scott had provided no evidence

that his expenses increased due to more residential time, and that a deviation would be a hardship to Brielle. (RP June 5, 2019, at 201-09).

3.13. Scott, in his closing, mistakenly argued that Airelle had never pled a CIR. (RP June 5, 2019, at 209-14). He argued the family home was not community-like property because the parties did not have a joint account, and that he was akin to a “landlord.” (RP June 5, 2019, at 209-14). He stated, “it’s a mischaracterization to say that [the couple] supported each other in financial matters,” and questioned Airelle’s credibility. (RP June 5, 2019, at 209-14). He essentially argued that the language of RCW 26.16.010 supported the (long overturned) *Creasman* presumption regarding separate property. (RP June 5, 2019, at 209-14). He argued Airelle incurred credit card debt and bills, after the separation date, for only her own “motives.” (RP June 5, 2019, at 209-14). He stated Airelle was underemployed. (RP June 5, 2019, at 209-14).

3.14. Airelle responded, in her rebuttal, that a CIR would not need to be pled even if it had not been. (RP June 5, 2019, at 214-16). She pointed out that under *Lindsey*, the lack of, or existence of, a joint account was not a “determinative factor” as applied to the case at hand. (RP June 5, 2019, at 214-16). Rather, in *Lindsey* the couple didn’t have children together and that distinguished the case. (RP June 5, 2019, at 214-16). Separate bank accounts are often kept as a matter of convenience, and that the dispositive

facts were that couple supported and relied on each other as a family and economic unit during the CIR. (RP June 5, 2019, at 214-16). She pointed out that Scott argued outdated and inapplicable caselaw. (RP June 5, 2019, at 214-16). She argued what mattered in this case—per applicable and contemporary caselaw—was what property was acquired during the CIR. (RP June 5, 2019, at 214-16). She highlighted that Scott had not “presented any evidence of his increased expenses” based on his residential time. (RP June 5, 2019, at 214-16). She argued that Scott’s “house payment is [not] going to be any different because his daughter would be staying there another night a week.” (RP June 5, 2019, at 214-16). Post marriage, the bargain for exchange was that Airelle worked less but raised their child and took care of the home. (RP June 5, 2019, at 214-16).

3.15. The trial court provided its oral ruling on the last day of trial. It stated the issues presented at trial were whether there was a CIR and what was a just and equitable division of assets and debts:

This case came before the Court for trial. It appears the issues involved in this case come down to whether or not there was a committed intimate relationship prior to the entry of the very short-term marriage of six years and about ten months; and, two, what is a just and equitable distribution of assets and debts?

(RP June 5, 2019, at 216). The trial court went on to point out that a CIR was pled and that even if it was not, specific pleading of a CIR was not

required under caselaw, during a dissolution of marriage action:

The Respondent raised the issue in closing that the Court should not consider the issue of whether or not there was a committed intimate relationship in this case as it was not pled by the Petitioner. The Court has reviewed the petition filed December 12, 2017, and noted that in the petition, there is notice that the Petitioner was alleging that the home should be decided because there was a committed intimate relationship.

Also, the Court of Appeals in *In Re Marriage of Neumiller*, 183 Wn. App. 914, 2014, held that, "A committed intimate relationship is not required to be pled in a marital dissolution proceeding for it to be considered in the division of property when it is merely an evidentiary fact in a marriage dissolution proceeding and there was evidence produced to support the argument in closing regarding a committed intimate relationship."

(RP June 5, 2019, at 216-17). The trial court then went on to find that Scott and Airelle's relationship was exclusive since they met in 2008, they moved in together in April of 2009, shared expenses, and continued being exclusive and cohabitated until they separated in November of 201[7]:

The parties' relationship appeared to be exclusive from the day they met in 2008 where they started dating four to five months later. In April 2009, they moved in together and shared expenses, continuing to be exclusive with each other until separation in November of 201[7]; so, there has been continuous cohabitation

(RP June 5, 2019, at 217). The trial court also found that the purpose of the CIR "was companionship, support, and to create a family and support each other in these endeavors":

Another factor the Court can look at in determining committed intimate relationship is the purpose of the relationship. It is clear to this Court that the purpose of the parties' relationship was companionship, support, and to create a family and support each other in these endeavors. A little over one year of moving in together, Mr. Vanwey purchased an engagement ring, and the parties became engaged. They were married January 22, 2011, approximately six months after getting engaged and approximately two years after moving in together; and subsequently on April 11, 2013, their child, Brielle, was born. So, it appears to this Court that the purpose of the relationship was to have and create a family and companionship and support.

(RP June 5, 2019, at 217-18). The trial court found there was a pooling of resources and services for joint projects as well:

Was there pooling of resources or services for joint projects? During the relationship, the parties maintained separate bank accounts and appeared to not comingle their finances. In March of 2010, Mr. Vanwey purchased a home in his own name. The reason provided by the Petitioner was that she had accrued the wedding debt on her credit cards and was responsible for those, and he would qualify for the house, and then she would be placed on the deed; this never happened. It is clear that both parties contributed time, energy, and resources to the relationship and to raising their daughter. Mr. Vanwey paid the mortgage from his separate bank account, and Mrs. Vanwey paid for household expenses in taking care of the child and expenses in taking care of the family. From time to time, they both contributed to groceries and daycare expenses, food, utilities, et cetera.

(RP June 5, 2019, at 218-19). The trial court elaborated on the pooling of resources and services for joint projects, specifically finding that Airelle staying at home during the CIR to aid in the purpose of the relationship met

this element of a CIR:

Washington courts have held that labor in support of the relationship comes in many different forms; only some of it carries with it compensation in the marketplace. There's an opportunity cost when one partner stays home to raise children, does the shopping, cooks meals, cleans the house, and adds value to the property by repair or improvements. This kind of labor, our courts have said, can be purchased in the market, and the partner who does it could, instead, be holding down a job to pay for this kind of service; but the community property system recognizes that doing this kind of uncompensated labor may contribute as much, if not more, to the economic and psychological health of the marital partnership as does holding down a job outside the home and bringing home a wage which must, then, be expended, at least in part, for such services.

(RP June 5, 2019, at 219). The trial court addressed Scott's arguments otherwise, by pointing out that there was a power imbalance in the relationship, and that while accounts were kept separate the couple "functioned as an economic unit":

The community property system also recognizes that there are frequently power imbalances in marital partnerships, and we have that present in this case. Mrs. Vanwey was gainfully employed when she met Mr. Vanwey during the early parts of the relationship and became a part-time employee after giving birth to their child; whereby, she worked part-time hours and brought home a substantially less income than she did prior to that. It appears to this Court that even though the parties kept, for the most part, their finances separate, they functioned as an economic unit which supports the position that they were in a committed intimate relationship; whereby, each party would have an interest in property acquired during the relationship. It appeared to this Court that Mr. Vanwey's responsibility was the home, and Mrs. Vanwey's responsibility was other things other than the

home.

(RP June 5, 2019, at 219-220). The trial court gave examples of how the couple functioned as an economic unit:

Some examples of Mrs. Vanwey's contribution, stated in the testimony, was bids for the jobs on the home she handled, bids in regards to the fencing that was done, paying for paint work, contributing financially to the concrete work on the patio and bartering hair work for the tile work in the kitchen of the home.

(RP June 5, 2019, at 220). Based on these findings, and after addressing CIR factors enumerated by caselaw, the trial court orally ruled that there was a CIR that “started in 2009,” that the parties continued the relationship and in fact got married in 2011, and did not separate until November of 2017:

Therefore, this Court finds that this was, in fact, a committed intimate marriage that started in 2009 with the parties marrying on January 22, 2011, and separating on November 4, 2017

(RP June 5, 2019, at 220). The trial court then orally ruled that a just and equitable distribution of the family home was needed. It ruled that the equity in the home and the burden of paying community-like debts were to be split fifty percent to each party:

This Court finds that the marriage is irretrievably broken. A just and equitable distribution of the family home is needed for the period of the committed relationship through the end of the marriage in the amount of 50 percent to each party.

Debt incurred during a relationship for community-like purposes is considered community-like debt, so the distribution of the debt will be as follows: Each party is responsible for their individual debt incurred after the date of separation. Each party is responsible for half of all debt incurred during the committed intimate relationship and the marriage.

(RP June 5, 2019, at 220-21). The trial court ruled against Airelle’s request for attorney fees, ordering each party to pay their own fees: “Each party will be responsible for their own attorney's fees.” (RP June 5, 2019, at 221). The trial court ruled the parenting plan was not before it during trial, and that “there will be no deviation from the standard calculation” in child support:

As to a parenting plan, the parties had indicated that that matter was not before this Court during trial and that there was agreement that will be provided to the Court, so this Court will sign a parenting plan as indicated, 50/50 parenting plan as being in the child's best interest, when produced; and there will be no deviation from the standard calculation.

(RP June 5, 2019, at 221). No ruling was made on any imputation issue. Scott made no objections to, nor claimed any errors by, the trial court’s oral ruling(s). Scott did not ask for any further rulings nor clarification of the ruling. Between the end of trial and the presentation hearing on June 21, 2019, neither party requested anything of the Court.

3.16. On June 21, 2019, the parties presented final orders. There was a dialogue between counsel and the trial court. Scott did not object to, nor claim error in, the trial court’s written orders, findings, or conclusions.

Rather, Scott’s attorney stated that the written order “captured” the trial court’s previous oral ruling:

THE COURT: All right. This is Airelle Beth Vanwey vs. Scott Henry Vanwey, Cause No. 17-3-04637-9. Good morning, Counsels.

MR. KOLKE: Your Honor, I am present in court with my client, Scott Vanwey, and my name is Desmond Kolke.

THE COURT: All right. And this was set for presentation after I made a decision in this trial. Counsel, the documents?

MS. BISSELL: Yes, Your Honor, and Mr. Kolke and his client are signing them right now.

MR. KOLKE: Your Honor, I do think that -- *I do think that Ms. Bissell has captured the Court's ruling in this matter.*

THE COURT: Okay.

(RP June 21, 2019, at 226-28) (emphasis added). The Order for Child Support found and concluded that Airelle had an “actual income” of “\$2,413.00.” (CP at 26-27). Income was not imputed on her because imputed income “did not apply.” (CP at 26-27). Child support was determined by the standard calculation in the Child Support Schedule Worksheets (CP at 26-27, 57), “according to state law.” (CP at 57). As to a deviation in child support, none was granted. The Order for Child Support

reflected this by stating “neither parent asked for a deviation from the standard calculation.” (CP at 26-27).

3.17. As to the CIR and an equitable division of property, the trial court’s written findings and conclusions reflected its oral ruling:

4. Information about the marriage

The spouses were married on January 22, 2011 at Puyallup, WA. The parties commenced a Committed Intimate Relationship with each other when they moved in together at the latest date in August of 2009. The parties started acquiring community property and incurring community debt at this date.

8. Real Property

The spouses' real property is listed below:

Real Property Address	Tax Parcel Number	Community or Separate Property
1210 SIGAFOOS AVE NW Orting, WA 98360		Community property – to be divided as community property pursuant to the findings of fact of a committed intimate relationship existing as of the date of the purchase of the property and continuing throughout the relationship and marriage until the date of separation*(see below)

*The court finds the following facts determine there was a committed intimate relationship regarding the just and equitable distribution of the equity in the Orting home:
There was a Committed Intimate Relationship between the parties starting when they moved in together at the latest in August of 2009;
The parties were in an exclusive relationship from the day they moved in together five months after they met through their marriage until the date of separation;
The parties shared expenses from the date they moved in together, through the purchase of the Orting home, through their marriage, up until the date of separation;
The parties were married less than two years after they moved in together and less than one year after the purchase of the Orting home;
Mr. Vanwey purchased a wedding ring in July of 2010, four months after the purchase of the Orting home;
The purpose of the parties’ relationship all along was to have a family and create a home and provide emotional and financial support for each other;
There was a pooling of various forms of resources between the parties;
The parties did maintain separate bank accounts and credit card accounts, however, despite keeping those accounts separate the parties did function as a community unit;
Mr. Vanwey purchase the Orting home in his name and obtained a loan in his name;
The parties continued to reside in a community like relationship together and raised a daughter together after the purchase of the Orting home;
Mrs. Vanwey paid for household expenses and food;

Mr. Vanwey paid for the home mortgage and some food at all times;
Mr. Vanwey supported both parties and the child after the birth of their daughter in April of 2013;
Both parties contributed to Brielle's day care;
Mrs. Vanwey spent time and effort in locating the Orting home;
Mrs. Vanwey made some contributions financially to the work on the family home in that she purchased blinds, and fencing, concrete, and paid for paint work, and bartered hair work for some household work;
Mrs. Vanwey worked full-time before Brielle was born, and then worked part-time and brought home substantially less;
Mrs. Vanwey also contributed to the labor in working on fixing up the home and labor in support of a home comes in different forms and can be just as worthwhile in the market place as actual financial expenses.

Conclusion: Based upon the above findings of fact, the division of real property described in the final order is fair (just and equitable).

(CP at 54-55).

3.18. A money judgment was awarded to Airelle of \$45,259.00 for her interest in the family home. (CP at 59-60). The trial court found and concluded that Airelle had “no separate property” (CP at 55) and “no separate debt.” (CP at 56). As to community and community-like debt, Airelle was ordered to pay for the “Forrester Loan” and “401k Loan.” (CP at 55-56, 59-62). Scott was ordered to pay \$2,306.00 to “equalize the difference in community debts.” (CP at 61-62).

3.19. Thereafter, Scott did not make any requests of the trial court and did not file a motion for reconsideration on any issue. On July 19, 2019, Scott filed his Notice of Appeal and attached all of the final orders of the trial court entered on June 21, 2019. (CP at 65-91).

4. RESPONSIVE ARGUMENT

4.1. Scott Failed to Assign Error to Specific Findings of Fact and Failed to Challenge Written Conclusions of Law. Findings of Fact Unassigned Error are Verities on Appeal and Unchallenged Conclusions of Law are the Law of the Case.

An “appellant must present argument to the court why *specific*

findings of fact are not supported by the evidence and must cite to the record to support that argument or they *become verities on appeal.*” RAP 10.3(g) (emphasis added); *Buck Mountain Owner's Ass'n v. Prestwich*, 174 Wash. App. 702, 714, 308 P.3d 644, 651 (2013) (some internal punctuation omitted). “Strict adherence to the aforementioned rule is not merely a technical nicety.” *In re Estate of Lint*, 35 Wn.2d 518, 531-33, 957 P.2d 755, 762 (1998). This is because courts of appeal have no “obligation to comb the record with a view toward constructing arguments for counsel as to what findings are to be assailed and why the evidence does not support these findings.” *Estate of Lint*, 135 Wn.2d at 531-33. Conclusions of law are reviewed de novo. *In re Committed Intimate Relationship of Muridan*, 3 Wn. App. 2d 44, 54, 413 P.3d 1072, 1077 (2018); *Robel v. Roundup Corp.*, 148 Wn.2d 35, 42, 59 P.3d 611 (2002). However, when unchallenged they “become the law of the case.” *Detonics .45 Associates v. Bank of California*, 97 Wash. 2d 351, 353, 644 P.2d 1170, 1172 (1982); *State v. Slanaker*, 58 Wash. App. 161, 165, 791 P.2d 575, 578 (1990); *Millican of Washington, Inc. v. Wienker Carpet Serv., Inc.*, 44 Wash. App. 409, 413, 722 P.2d 861, 864 (1986). Mislabeled findings or conclusions are treated as what they are. *Dep't of Revenue v. Warehouse Demo Servs., Inc.*, No. 50057-4-II, 2018 Wash. App. LEXIS 649, at *6 (Ct. App. Mar. 20, 2018) (unpublished opinion). “[U]nsupported arguments need not be considered.” *Prestwich*,

174 Wash. App. at 714.

Here, Scott assigned the following errors:

A. The trial court erred in its legal conclusion that a committed intimate relationship existed when [Scott] purchased the [family] home in March of 2010.

B. The trial [c]ourt erred by not characterizing the [family] home purchased by [Scott] in March of 2010 . . . as his separate property in light of the substantial evidence presented at trial.

C. The trial [c]ourt erred in not imputing income for [Airelle] under RCW 26.19.071(6), and denying [Scott]'s request for a deviation from the Washington State Child Support Schedule Worksheet.

D. The trial [c]ourt erred in granting [Airelle]'s request to have the debt that was in her name characterized as community debt.

(Brief of Appellant at 7-8). Scott did not assign error to numerous *other* written findings. (CP at 65-91). He did not challenge *other* conclusions of law. These errors are fatal to his appeal. First, as to the CIR, and whether the family home was community-like property, the trial court found and concluded:

4. Information about the marriage

The spouses were married on January 22, 2011 at Puyallup, WA. The parties commenced a Committed Intimate Relationship with each other when they moved in together at the latest date in August of 2009. The parties started acquiring community property and incurring community debt at this date.

8. Real Property

The spouses' real property is listed below:

Real Property Address	Tax Parcel Number	Community or Separate Property
1210 SIGAFOOS AVE NW Orting, WA 98360		Community property – to be divided as community property pursuant to the findings of fact of a committed intimate relationship existing as of the date of the purchase of the property and continuing throughout the relationship and marriage until the date of separation*(see below)

*The court finds the following facts determine there was a committed intimate relationship regarding the just and equitable distribution of the equity in the Orting home:
There was a Committed Intimate Relationship between the parties starting when they moved in together at the latest in August of 2009;
The parties were in an exclusive relationship from the day they moved in together five months after they met through their marriage until the date of separation;

The parties shared expenses from the date they moved in together, through the purchase of the Orting home, through their marriage, up until the date of separation;
The parties were married less than two years after they moved in together and less than one year after the purchase of the Orting home;

Mr. Vanwey purchased a wedding ring in July of 2010, four months after the purchase of the Orting home;
The purpose of the parties' relationship all along was to have a family and create a home and provide emotional and financial support for each other;
There was a pooling of various forms of resources between the parties;
The parties did maintain separate bank accounts and credit card accounts, however, despite keeping those accounts separate the parties did function as a community unit;
Mr. Vanwey purchase the Orting home in his name and obtained a loan in his name;
The parties continued to reside in a community like relationship together and raised a daughter together after the purchase of the Orting home;
Mrs. Vanwey paid for household expenses and food;
Mr. Vanwey paid for the home mortgage and some food at all times;
Mr. Vanwey supported both parties and the child after the birth of their daughter in April of 2013;
Both parties contributed to Brielle's day care;
Mrs. Vanwey spent time and effort in locating the Orting home;
Mrs. Vanwey made some contributions financially to the work on the family home in that she purchased blinds, and fencing, concrete, and paid for paint work, and bartered hair work for some household work;
Mrs. Vanwey worked full-time before Brielle was born, and then worked part-time and brought home substantially less;
Mrs. Vanwey also contributed to the labor in working on fixing up the home and labor in support of a home comes in different forms and can be just as worthwhile in the market place as actual financial expenses.

Conclusion: Based upon the above findings of fact, the division of real property described in the final order is fair (just and equitable).

(CP at 545-55). These *other* findings, not assigned error by Scott, and these other unchallenged conclusions of law, easily support the elements of a CIR

beginning in “August of 2009.” *See Muridan*, 3 Wn. App. 2d at 55.

Scott’s failure to provide an “assignment of error for each finding of fact” he “contends w[ere] improperly made” causes all such CIR findings, not “specifically” assigned error, to now be verities on appeal. *See e.g.*, RAP 10.3(g). This includes when the CIR began, how Airelle contributed to it and pooled resources, how they continuously cohabitated, how they remained exclusive with one another, how Airelle spent time, money, and effort in regard to the family home and economic unit, how the relationship became serious shortly after meeting, and how the purpose of the relationship was to create an economic unit and family and provide support for one another. (CP at 545-55). It also includes the money judgment of \$45,259.00. (CP at 59-60). To the degree any of these findings, not assigned error, are actually conclusions of law, they become “the law of the case.”

Second, on the issue imputation of income, the trial court found that Airelle’s “Net monthly income” was “\$2,413.00.” (CP at 26). It found that “Imputed Income” for Airelle “Does not apply” (CP at 26), that her “actual income is used” (CP at 26), and that “dependent children should be supported according to state law” according to the “final Child Support Order and Worksheets.” (CP at 57). No assignments of error were made on these findings. They are verities on appeal or “the law of the case.”

Third, on the issue of a “Deviation from [the] standard calculation”

in child support based on residential time, the trial court found it should not deviate. (CP at 27). It found that “neither parent asked for a deviation from the standard calculation.” (CP at 27). This finding is supported by the trial court’s oral ruling that the parenting plan, and issues related to residential time, were “not before this Court during trial. . . .” (*See* RP June 5, 2019, at 221). Regardless, Scott failed to assign error to this written finding. It is a verity or “the law of the case” on appeal.

Third, on the issue of community, and community-like, debts, Airelle was found to have “no separate debt.” (CP at 56). The trial court made findings as to all debts that Airelle must pay and all debts Scott must pay. (CP at 55-56, 61-62). Scott was ordered to pay Airelle \$2,306.00 “to equalize the difference in community debts as of the date of separation.” (CP at 62). None of these findings were assigned error on appeal. They are verities, or the law of the case, on appeal.

4.2. Substantial Evidence Supports the Trial Court’s Ruling that the Parties Started a CIR in August of 2009, Months After They Began Cohabiting, and Many Months After They First Met and Immediately Began Dating Exclusively.

A “CIR, based on equitable principles, protects the interests of unmarried parties who acquire property during their relationship by preventing the unjust enrichment of one at the expense of the other when the relationship ends.” *Muridan*, 3 Wn. App. 2d at 55. Several nonexclusive

factors help determine whether the parties had a CIR: (1) continuity of cohabitation, (2) duration of the relationship, (3) purpose of the relationship, (4) pooling of resources and services for joint projects, and (5) the intent of the parties. *Id.*

“[A]ppellate review is limited to determining whether the findings are supported by substantial evidence and, if so, whether the findings support the trial court's conclusions of law and judgment.” *Prestwich*, 174 Wash. App. at 713-14. The trial court's findings are presumed supported, evidence and its persuasiveness is not reweighed on appeal, all reasonable inferences drawn from evidence are viewed in favor of the prevailing party, as is conflicting evidence, and “the party claiming error has the burden of showing that a finding of fact is not supported by substantial evidence.” *Prestwich*, 174 Wash. App. at 714; *Dave Johnson Ins., Inc. v. Wright*, 167 Wn. App. 758, 778, 275 P.3d 339, 351 (2012); *In re Estate of Muller*, 197 Wn. App. 477, 486, 389 P.3d 604, 609-10 (2016).

Here, Scott’s argument that the CIR did not exist in March of 2010, and that “cohabitation” was the only CIR factor met in this case is absurd. It ignores the trial court’s oral ruling, and written findings and conclusions which are now verities. Regardless, substantial evidence supports that the parties met in 2008 and immediately began dating exclusively. (RP June 4, 2019, at 14-15). It supports that the parties moved in together in April of

2009. (Brief of Appellant at 10; RP June 4, 2019, at 14-15, 105). Thereafter, substantial evidence supports that the relationship quickly became serious, that they discussed marriage, family, children, and that they held themselves out to be engaged both before the family home was purchased in March of 2010, and before Scott officially proposed. (RP June 4, 2019, at 16-21).

Furthermore, Airelle’s testimony demonstrated the parties’ outward intent and common purpose was to share expenses and debts, to pool resources, to start a family, and to act as an economic unit by March of 2010. (RP June 4, 2019, at 14-104). The trial court found the CIR began in August of 2009. (CP at 54). Thus, under caselaw, the elements of a CIR were easily met by March of 2010.

For example, this case is akin to *Muridan*. In *Muridan*, the parties cohabitated for over six years, never married, but had a child together. This Court held that “the purpose of the parties' relationship was companionship, support and to create a family.” *Muridan*, 3 Wn. App. 2d at 59. That’s exactly what the trial court ruled in this case. The cases are similar too because “both parties contributed time, energy, and resources to the relationship,” economic unit, and later “to raising their [child].” Both Airelle and the domestic partner in *Muridan* paid for utilities and housing expenses such as groceries and daycare. In fact, the only major difference between this case and *Muridan* is that Airelle and Scott *did get married*.

Scott implied at trial that *Muridan* would be overturned. He is now silent on this argument because review of *Muridan* was denied.

In Re Marriage of Lindsey provides even more persuasive, and applicable, caselaw supporting the trial court's ruling. 101 Wn.2d 299, 678 P.2d 328 (1984). In *Lindsey*, the parties resided together two years before they were married, just like in this case. The parties contributed to joint projects. Based on those two years of cohabitation and community formed together—*without children born to the relationship*—the Supreme Court held that the trial court could make a “fair and equitable” distribution of property acquired *since the date of the start of their cohabitation*. This is because caselaw from *Lindsay* to *Connell* to *Muridan* make it clear that it is not an abuse of discretion by a trial court, and quite common, to find that a CIR began at, or near, when cohabitation began. That was in August of 2009, a year before the home acquired in March of 2010, in this case.

4.3. Substantial Evidence Supports the Trial Court's Conclusion of Law that the Family Home was Community-Like Property. Scott Failed to Rebut the Presumption that It Was at Trial, and the Trial Court's Distribution was Just and Equitable.

“Upon determining that a CIR existed, courts may distribute property acquired during the relationship that would be treated as community property were the parties legally married.” *Muridan*, 3 Wn. App. 2d at 55. The trial court's discretion in making the property division

is limited by the bounds of equity. *Id.* at 63 (holding “the trial court’s classification of property is part of equitable property division”). Equity allows “broad remedies to do substantial justice to the parties and put an end to litigation.” *Hough v. Stockbridge*, 150 Wn.2d 234, 236, 76 P.3d 216, 217 (2003).

“Property and income acquired during a CIR is presumed to be community-like property.” *Muridan*, 3 Wn. App. 2d at 55. This presumption works to prevent the “cunning and the shrewd” from inequitably “wind[ing] up with possession of the property, or title to it in their names, at the end of . . . [the] relationship.” *Lindsey*, 101 Wn.2d at 303; *West v. Knowles*, 50 Wn.2d 311, 316, 311 P.2d 689, 693 (1957). The presumption may be rebutted if the distribution would, at the end of the relationship, unjustly enrich one party at the expense of the other. *Muridan*, 3 Wn. App. 2d at 56. Or by convincing the trial court that the property was acquired by “gift, bequest, devise, or descent with the rents, including the issues and profits thereof.” *Id.* at 63 (some punctuation omitted). However, when a CIR results in marriage, even separate property may be awarded to a spouse to “achieve a just result.” See RCW 26.09.080; *In re Marriage of Larson*, 178 Wn. App. 133, 144-45, 313 P.3d 1228, 1234 (2013). This includes when one spouse “generated the couple’s . . . wealth” and the other spouse’s “intangible contributions served equally to benefit the marital

community.” See RCW 26.09.080; *Larson*, 178 Wn. App. at 144-45. The court of appeals reviews for “abuse of discretion” the issue of “whether the trial court's distribution of property acquired during a CIR was just and equitable.” *Muridan*, 3 Wn. App. 2d at 56.

Here, the trial court’s specific findings of fact, not assigned error, are verities. Regardless, at trial, Scott failed to rebut the presumption that—the only major asset of the parties, *i.e.*, the family home—was community-like property, as determined by the eyes, ears, and sound discretion of the trial court. On appeal, he fails to show the trial court abused its discretion or that its findings were not based on substantial evidence. He erroneously invites this Court to reweigh evidence and presumptive burdens decided in favor of Airelle at trial.

First, despite testifying at trial that he had a poor memory as to dates, expenses, and happenings (*e.g.*, RP June 4, 2019, at 131, 135-36), Scott argues that Airelle could not have jointly supported the community by taking on wedding debt so Scott could then “pay” for the family home. Scott’s argument seems to presuppose that he made some large down payment on the family home, from purely non-community-like monies, on or before March of 2010. He did not. There was no down payment at all. Rather, the parties had been living together, and earning community-like income, for nearly a year already. Scott only made monthly payments on

the family home. He failed to demonstrate at trial that Airelle's joint efforts did not equitably contribute to the acquisition of the home. He failed to demonstrate, with particularity, that those first monthly payments came from income not earned during the previous eight months of the CIR. *He failed to demonstrate that a division of the parties' only significant asset, the family, home was not "a just result."*

Airelle, for her part, took on tens of thousands in credit card debt to pay for an elaborate wedding ceremony for the community. (RP June 4, 2019, at 20-21). Scott admitted at trial that she took on the bulk of the wedding expenses, while acknowledging he was not sure of amount of wedding debt incurred. (RP June 4, 2019, at 113-14). But for Airelle taking on this wedding debt, the purchase of the home *and* the elaborate/costly wedding were not both possible. The point being is that Scott and Airelle worked together as an economic unit to purchase a home *and have a nice wedding ceremony*, neither contributing more than the other in the eyes of equity applied to CIR caselaw. All of these facts are supported by substantial testimony and this Court cannot reweigh evidence or the trial court's presumptive burden rulings on appeal.

Second, Airelle found the family home after looking at other properties. This time spent was savings to Scott and the community in opportunity costs; Scott worked and contributed to the community that way,

instead of having to spend time and energy finding the couple's home. Airelle arranged the deal with the builder of the home. She did this because she considered it her home. She had an agreement with Scott to be on the title later. Scott reneged. Equity does not tolerate such things. Notably, *Knowles* and *Lindsey*'s statements about preventing the "cunning and the shrewd" from inequitably "wind[ing] up with . . . property title . . . in their names . . . at the end of . . . [the] relationship"—was implicit to the trial court's ruling. *See Lindsey*, 101 Wn.2d at 303; *Knowles*, 50 Wn.2d at 316; RP June 5, 2019, at 219-20 (trial court recognizing there was a "power imbalance" in this case).

Third, Airelle maintained and improved the home as the couple planned their marriage and life together. Notably, the parties discussed marriage and family and held themselves out in the eyes of third parties to be engaged before the official proposal occurred. Scott claiming that the couple never discussed marriage, or family, before he officially proposed in August of 2010, or that he was nothing more than Airelle's "landlord," was disingenuous at best and not credible at worse. Regardless, the trial court rejected Scott's testimony in favor of Airelle's testimony.

Last, the purpose of acquiring, and maintaining, the home and providing emotional, labor, and financial support for one another, and their child, was clearly established at trial. Airelle purchased home furnishings,

blinds, and improved the property with fencing, kitchen remodeling/tiling, and concrete work. She stayed at home, and worked less, so that Scott could do less regarding the home and childcare. The trial court's written findings and oral ruling reflect this reality. Its distribution was not an abuse of discretion, as *without giving Airelle an interest in the home there could not have been a fair and equitable division of property.*

4.4. Scott Failed to Adequately Raise the Issue of a Deviation in Child Support at Trial, Failed to Present Evidence Before the Trial Court Regarding the Claim, Failed to Object to, or Raise Error with, the Trial Court's Ruling, Failed to Preserve and Waived this Issue, and Invited Error, if Any.

An “appellate court may refuse to review any *claim of error which was not raised* to the trial court.” RAP 2.5(a) (emphasis added); *In re Marriage of Choate*, 143 Wn. App. 235, 245, 177 P.3d 175, 179 (2008). A party fails to preserve and waives alleged errors by failing to object, or by failing to claim error, at the time the error is allegedly made. *In re Det. of Audett*, 158 Wn.2d 712, 724, 147 P.3d 982, 987 (2006) (citing *State v. Guloy*, 104 Wn.2d 412, 421, 705 P.2d 1182 (1985) (holding “a litigant cannot remain silent as to claimed error during trial and later, for the first time, urge objections thereto on appeal.”)). This is for sound policy reasons, for example, of giving the trial court and opposing parties the opportunity to respond. 2A Karl B. Tegland, *Washington Practice: Rules Practice RAP 2.5(1)*, at 192 (6th ed. 2004); *see also Smith v. Shannon*, 100 Wn.2d 26, 37,

666 P.2d 351 (1983); *Muller*, 197 Wn. App. at 484. Last, waiver of an issue on appeal occurs if the party invited the trial court to make the alleged error in the first place. The invited error doctrine bars a party from setting up an alleged error and then complaining about the error on appeal. *Muller*, 197 Wn. App. at 484; *Angelo Prop. Co. v. Hafiz*, 167 Wn. App. 789, 823, 274 P.3d 1075 (2012).

Here, on the first day of trial, the only issues presented by Scott had to do with the CIR and whether certain debts should be characterized as community-like. (RP June 4, 2019, at 11-12). Issues regarding the parenting plan and residential time were specifically not before the Court by agreement. (RP June 4, 2019, at 11-12). Airelle’s attorney did not believe child support was at issue and Scott’s attorney did not correct her. (RP June 4, 2019, at 10). The first time the child support deviation issue was mentioned at trial was not in a trial brief—but during witness questioning—specifically during cross examination of Airelle. (RP June 4, 2019, at 54). Even then, a child support deviation was not requested of the trial court; Scott’s attorney *hypothetically* asked Airelle about the issue as a “what if” scenario: “What are you asking the Court to order for a final order of child support?” (RP June 4, 2019, at 54). Airelle replied, “To keep it the same [as temporary orders].” (RP June 4, 2019, at 54). Scott’s attorney then asked, “And *what if* Scott asks for a deviation downward for having Brielle more

time than he had before?” (RP June 4, 2019, at 54) (emphasis added). Airelle replied, “I *would* ask for it to be denied.” (RP June 4, 2019, at 54) (emphasis added). The “what if” questioning demonstrates that the deviation issue was not actually requested. Regardless, not until the last witness was heard on redirect examination, on the last day of trial and moments before closing arguments, did Scott make any mention of having his child support “adjusted appropriately.” (RP June 5, 2019, at 199). Even then, Scott provided no basis or evidence for the request. (RP June 5, 2019, at 199).

Unsurprisingly, the trial court’s oral ruling summarily denied any child support deviation, reasoning “As to a parenting plan, the parties had indicated that that matter was not before this Court during trial and that there was agreement that will be provided to the Court. . . . there will be no deviation from the standard calculation.” (RP June 15, 2019, at 221). After the trial court finished its oral ruling, Scott did not object to, nor claim error by, the trial court refusing to address in detail, or grant, a child support deviation. Weeks later, at the presentation hearing, Scott again did not object, nor claim error, regarding the trial court’s refusal to address or grant a child support deviation. (RP June 21, 2019, at 226-28). Instead, Scott’s attorney stated that the final orders “captured the Court’s ruling in this matter.” (RP June 21, 2019, at 226-28). Thus, the final order reflected that

no party requested a deviation. (CP at 27). Scott did not move for reconsideration.

Accordingly, because the trial court ruled that the child support deviation issue was not before it at trial, because the trial court denied deviation on that basis, because Scott failed to preserve, object to, or claim error by the trial court on this issue, and because Scott attempted to invite an error on appeal—this Court need not address this issue on appeal. *See* RAP 2.5(a); *Det. of Audett*, 158 Wn.2d at 724; 2A Karl B. Tegland, *Washington Practice: Rules Practice RAP 2.5(1)*, at 192 (6th ed. 2004); *Muller*, 197 Wn. App. at 484.

4.5. The Trial Court Did Not Abuse Its Discretion when It Denied Scott a Deviation from His Child Support Obligation Determined by the Standard Calculation and Child Support Worksheets. The Trial Court was Not Required to Make a Detailed Written Finding on the Issue Under the Circumstances, and if It was, the Trial Court’s Oral Ruling was a Sufficient Substitute for a More Detailed Written Finding.

A deviation from the standard support amount is an exception and should only be used where it would be inequitable not to do so. *In re Marriage of Burch*, 81 Wn. App. 756, 760, 916 P.2d 443 (1996). Under RCW 26.19.075(d), the trial court “may not deviate . . . if the deviation will result in insufficient funds in the household receiving the support to meet the basic needs of the child. . . .” In making its decision, the trial court

considers “evidence concerning the increased expenses to a parent making support transfer payments resulting from the significant amount of time spent with that parent.” RCW 26.19.075(d). It also considers “the decreased expenses, if any, to the party receiving the support resulting from the significant amount of time the child spends with the parent making the support transfer payment.” RCW 26.19.075(d). Under RCW 26.19.075(3), the trial court is required to enter written findings when a child support deviation is denied. However, a technical error of not supplying written finding is “harmless if the trial court's oral findings are sufficient to permit appellate review.” *State v. Smith*, 145 Wn. App. 268, 274, 187 P.3d 768, 771 (2008); *In re Marriage of Griffin*, 114 Wn.2d 772, 777, 791 P.2d 519, 522 (1990); *State v. Heyer*, No. 49985-1-II, 2018 Wash. App. LEXIS 2591, at *9 (Ct. App. Nov. 15, 2018) (unpublished).

A trial court is granted great deference when denying a child support deviation. *Griffin*, 114 Wn.2d at 776 (holding “setting of child support . . . in dissolution proceedings will seldom be changed on appeal.”). Families’ emotional and financial interests are best served by finality and appeals regarding child support deviation orders are discouraged. *See In re Parentage of Jannot*, 149 Wn.2d 123, 126-27, 65 P.3d 664, 666 (2003). A trial court’s decision regarding a deviation will not be disturbed unless manifestly unreasonable. *Griffin*, 114 Wn.2d at 779.

Finally, “error without prejudice is not grounds for reversal.” *Mut. of Enumclaw Ins. Co. v. Gregg Roofing, Inc.*, 178 Wash. App. 702, 728-29, 315 P.3d 1143, 1156 (2013) review denied sub nom. *Mut. of Enumclaw Ins. Co. v. Gregg Roofing Co.*, 180 Wash. 2d 1011, 325 P.3d 914 (2014). “An error will be considered not prejudicial and harmless unless it affects the outcome of the case.” *Id.*; see also *Havens v. C & D Plastics, Inc.*, 124 Wash. 2d 158, 169-70, 876 P.2d 435, 441 (1994).

Here, any alleged error by the trial court not providing a detailed written finding under RCW 26.19.075(3) is harmless because the trial court’s oral ruling provided sufficient reasoning as to why the deviation request was denied. *See Smith*, 145 Wn. App. at 274. It is also harmless because Scott provided no evidence to base such a ruling on and the outcome of the case could not have been affected.

First, Scott did not provide a trial brief. At the start of trial, the parties did not raise issues regarding residential time, a parenting plan, or child support. (RP June 4, 2019, at 11-12). The trial court relied on that stipulation. (RP June 15, 2019, at 221). Airelle’s attorney did not believe child support was at issue, and Scott’s attorney did not correct her. (RP June 4, 2019, at 10). At the end of trial, based on a proffered agreed parenting plan not being provided yet, the trial court did not address issues having to do with the parenting plan or residential time. (RP June 15, 2019, at 221).

Because Scott plainly failed at trial to provide any evidence of “increased expenses” that he incurred with increased residential time, and because he failed to provide any evidence of “decreased expenses” that Airelle incurred because of decreased time she would spend with the child, he failed to adequately request the deviation issue at trial. *See* RCW 26.19.075(3). In fact, Scott literally provided no reasons or evidence under RCW 26.19.075(3) for a deviation at all; moments before closing arguments, he merely stated, “I feel it should be adjusted appropriately.” (RP June 5, 2019, at 199). Thus, the trial court had no basis to make a detailed oral ruling on the deviation issue. It did not abuse its discretion by stating there would be no deviation in its oral ruling, or by denying the request in its written findings on the grounds that the request was not before it at trial.

Second, *arguendo*, even if a deviation request was properly presented at trial, the requisites for granting a deviation under RCW 26.19.075(3) were not supplied by Scott. As the trial court orally ruled, Scott financially provided more for the family during the marriage, while Airella mostly took care of the child, household, and home. (RP June 5, 2019, at 218-19). The household labor and childcare provided by Airella was just as important to the family unit as Scott’s financial contributions. (RP June 5, 2019, at 219). However, when the “economic unit” was split apart by the couple separating, it is clear from the trial court’s oral ruling

that Airelle, *i.e.*, “the household receiving the support to meet the basic needs of the child,” would receive “insufficient funds” if the trial court granted a child support deviation to Scott. *See* RCW 26.19.075(3); RP June 5, 2019, at 219.

Accordingly, the trial court’s oral ruling provided sufficient reasons for denying a child support deviation. It was not required to make a detailed written finding under the circumstances. Regardless, any alleged error of not supplying a more detailed written finding was harmless, as it did not affect the outcome of the case.

4.6. Scott Never Adequately Raised, Nor Requested a Ruling On, the Issue of Imputation of Income on Airelle at Trial. Regardless, Scott Failed to Object to, or Raise Error with, the Trial Court’s Ruling on this Issue, Failed to Preserve and Waived this Issue, and Invited Error, if Any.

Appellate courts “may refuse to review any claim of error which was not raised to the trial court.” RAP 2.5(a); *Choate*, 143 Wn. App. at 245. A party must preserve and raise errors at trial. *E.g.*, *Det. of Audett*, 158 Wn.2d at 724. A trial court is not explicitly required under RCW 26.19.071(6) to make written findings. Parties may not invite errors on appeal. *Muller*, 197 Wn. App. at 484.

Here, Scott did not provide a trial brief. At the start of the trial, the issue of imputing income on Airelle was not raised. (RP June 4, 2019, at 11-12). Airelle’s attorney did believe it to be at issue, and Scott’s attorney

did not correct her. (RP June 4, 2019, at 10). During the course of the trial, Scott's questioning of Airelle regarding her employment was couched in terms of hypothetically requesting a deviation in child support based on Scott's increased residential time. (RP June 4, 2019, at 67-69). Not until his closing argument did Scott mention the word "underemployment" at all. No variation of the word "imputation" was stated at trial. The statute at issue, RCW 26.19.071(6), was never mentioned. Thus, the issue was not adequately raised at trial.

Regardless, after the trial court's oral ruling, Scott failed to preserve any alleged error by not objecting to, nor claiming any error by, the trial court not ruling on any imputation of income issue. *See e.g., Det. of Audett*, 158 Wn.2d 724. At the presentation hearing, Scott waived the issue by not objecting to, nor claiming any error in, the final orders. *See e.g., id.* Instead, Scott's attorney praised the final orders, stating they "captured the Court's [oral] ruling in this matter." (RP June 21, 2019, at 226-28).

On appeal, Scott glosses over the fact he never adequately raised, claimed error on, nor requested a ruling on, the imputation issue at trial. He combines a deviation argument with an imputation of income argument. In doing so, for the first time, he argues that the "testimony at trial showed that [Airelle] was voluntarily underemployed and that income should be imputed" on her based on "RCW 26.19.071(6)(a)." (Brief of Appellant at

18). But alleged errors not raised before the trial court are not heard, for the first time, on appeal. *See* RAP 2.5(a); *Choate*, 143 Wn. App. at 245. Furthermore, Scott concedes on appeal that the trial “court . . . did not impute income to [Airelle]. . .” (Brief of Appellant at 19). That is the exact point made here by Airelle on appeal; RCW 26.19.071(6)(a) was never mentioned at or after trial. The written final orders reflect this reality.

This situation is not much different than what happened in *Muller*. There, appellants claimed on appeal that the findings of facts and conclusions of law were inadequately supported, just like Scott is claiming in this appeal as to this issue. *Compare Muller*, 197 Wn. App. at 488-89 with Brief of Appellant at 15-20. This Court in *Muller* ruled that the appellants “waived this issue by failing to raise it in the trial court” or in the alternative invited error on appeal. *Muller*, 197 Wn. App. at 488. *Muller*’s was largely based on the dialogue between the appellants’ counsel and the trial court at the presentation hearing. *Id.* Such dialogue caused the “the trial court” to “not address any of the objections” previously made by appellants. *Id.* In this case, Scott’s position is even worse than the appellants in *Muller* because Scott never objected, and never claimed error, on the issue of imputation of income. Scott’s attorney, instead, like the appellants attorney in *Muller* agreed to enter the findings of fact as they were written.

Accordingly, Scott failed to preserve this issue and waived it. In the

alternative, he invited an error on appeal. Either way, this Court need not address the issue. *See* RAP 2.5(a); *Det. of Audett*, 158 Wn.2d at 724; 2A Karl B. Tegland, *Washington Practice: Rules Practice* RAP 2.5(1), at 192 (6th ed. 2004); *Muller*, 197 Wn. App. at 484.

4.7. The Trial Court Did Not Abuse Its Discretion by Not Imputing Income for Airelle Under RCW 26.19.071(6). The Trial Court was Not Required to Make a Detailed Written Finding Under the Circumstances, and if It was the Trial Court's Oral Ruling and Written Finding Properly Denied the Claim.

Under RCW 26.19.071(6), imputation of income is appropriate when the court “finds that the parent is purposely underemployed to reduce the parent’s child support obligation.” RCW 26.19.071(6). The court considers the “*parent’s work history*, education, health, age, or *any other relevant factors*.” RCW 26.19.071(6) (emphasis added). “Care for the community and children are ‘other relevant factors’ that the trial court must consider in determining whether [a party i]s voluntarily unemployed.” *In re Marriage of Kaplan*, 4 Wn. App. 2d 466, 485, 421 P.3d 1046, 1052 (2018), *review denied*, 191 Wn.2d 1025 (2018) (citing RCW 26.19.071(6)). In *Kaplan*, the appellate court reversed the trial court, finding the trial court abused its discretion when it imputed income on a stay at home mom. *Id.* at 486. In doing so, the court of appeals rejected the argument that a trial court must impute income on a spouse when that spouse “stays home to care for

the children and manage the household while the other spouse works outside the home.” *Id.* The Supreme Court denied review.

Here, if Scott raised the imputation issue at trial, the trial court’s lack of a detailed written finding, was not an abuse of discretion. This is because the trial court’s well-reasoned oral ruling implicitly provided sufficient reasons for denying imputation of income on Airelle. The oral ruling explained the “parent’s work history” and how the parties worked as economic unit during the CIR and marriage. It took into account that neither party considered each other over, or underemployed, during the marriage; they worked as a community to make ends meet, to procure and take care of the family home, to create an economic unit, and to create a family and raise their child. The trial court to utilizing Airelle’s actual income in child support calculations, and not imputing income on her, given the past work history of the parties was not manifestly unreasonable.

Furthermore, the trial court’s oral ruling implicitly took into account “[c]are for the community and children” as an “other relevant factor” under RCW 26.19.071(6). *Kaplan* supports the trial court’s ruling denying imputation of income. While Airelle was not in a long-term marriage like the wife in *Kaplan*, Airelle is working twenty hours a week (and is not completely unemployed like the spouse in *Kaplan*). Airelle is doing so—not to avoid or reduce child support payments—but to support the

community by giving her more time to care for the parties' young child, to save on child care expenses, to maintain low cost housing as a part of executing a larger, fiscally prudent, reasonable, overall community debt reduction and wealth creation plan for the benefit of the parties' child. (*e.g.*, RP June 4, 2019, at 55-56, 67-69). She's making the most of the resources, best options, and income available to her; that's not being voluntarily underemployed. The trial court obviously found her testimony credible:

MR. KOLKE: . . . [A]re you happy with the 20 hours a week at Wells Fargo?

AIRELLE: Yeah.

MR. KOLKE: Okay. Have you looked for work that would give you the opportunity to make more?

AIRELLE: Well, they can increase my hours there, but it's a whole cycle. I can't work more hours because then I make more money. If I make more money, I can't live where I live where my rent is low, and with all this debt that I have to pay every month, I can't afford a house, but that's -- ideally, what is supposed to happen is all the debt gets paid off, and then a down payment, to be able to move Brielle and I into a place where she can run and play in the yard and I work full-time.

MR. KOLKE: So a deviation in the child support --

AIRELLE: I asked the child support be -- stay the same --

MR. KOLKE: Correct.

AIRELLE: -- and not change.

MR. KOLKE: And that's -- and that's based on the fact that it would negatively impact your household; correct?

AIRELLE: Yeah.

MR. KOLKE: Okay. And that -- so that you can continue to work 20 hours a week; correct?

AIRELLE: No. Not so I can continue to work 20 hours a week.

MR. KOLKE: So that you can continue to live in the place where you live and not really seek more full-time employment; correct?

AIRELLE: No. That is not correct at all.

(RP June 4, 2019, at 67-69; *see also* RP June 4, 2019, at 55-56).²

Accordingly, the trial court's oral ruling was sufficient on this issue, as it implicitly addressed relevant statutory factors regarding imputation of income. No detailed written finding was required.

4.8. The Trial Court Did Not Abuse Its Discretion in Its Order Equitably Dividing the Parties' Community, and Community-Like, Debt.

Property, income, and debt acquired during a CIR is presumed to be community-like. *Muridan*, 3 Wn. App. 2d at 63. This presumption applies even if the property, income, or debt is held or titled in only one party's name. *Connell v. Francisco*, 127 Wn.2d 339, 351, 898 P.2d 831, 836

² Airelle handled the cross-examination exceedingly well. She established that she was not trying to avoid or reduce child support payments. One of undersigned counsel's major areas of practice is landlord-tenant law, and \$1,000.00 a month for rent, in Pierce County, in today's rental market is exceedingly low.

(1995); *Olver v. Fowler*, 161 Wn.2d 655, 668-69, 168 P.3d 348 (2007). A party can challenge the presumption with evidence that income, property, or debt was acquired with funds, or at a time, that would characterize it as separate property or debt had the parties been married. *Connell*, 127 Wn.2d at 352. Equity allows broad remedies to do substantial justice. *Hough*, 150 Wn.2d at 236. A “trial court's classification of property” and debt “is part of equitable property division” therefore courts of appeal “review it for abuse of discretion.” *Muridan*, 3 Wn. App. 2d at 63.

Here, the trial court found that the CIR began in August of 2009. (CP at 54). It found there was a pooling of resources. (CP at 55). It found the parties functioned as an economic unit. (CP at 55). It found that Airelle had no separate debt. (CP at 55). It equitably divided debt by having Airelle pay the community debt of the Twin Star CU Forester Loan and the Wells Fargo 401K loan, amounting to over \$7,600.00. (CP at 55). Other credit cards and day care expenses were equitably ordered to be paid equally. (CP at 55; CP at 59-62).

Scott argues on appeal that Airelle’s credit card bills increased after the date of separation; therefore, the debt must be Airelle’s separate debt. But Airelle explained at trial that such community, and community-like, debts were incurred during the CIR and marriage. (*e.g.*, RP June 4, 2019, at 83-86, 95-99). The balances only increased later because she was “playing”

the credit card balance transfer “game” to make ends meet for her and their daughter and to prevent the community from incurring high interest rates. (e.g., RP June 4, 2019, at 83-86, 95-99). Airelle explained that while she initially requested some family incurred debts be classified as hers and not community-like, when the litigation began, it was because she was requesting maintenance from Scott at the time to pay for those bills, because she didn’t trust him to make bill payments, because she didn’t want her credit score harmed, and because she was not an attorney and was acting on attorney advice. (RP June 4, 2019, at 81, 94).

Accordingly, substantial evidence supports the trial court’s classification of community, and community-like, debts. Its reasoned decision dividing such debts amongst the parties was not an abuse of discretion. Scott simply failed to rebut the presumption that all such debts were community, or community-like. This Court cannot reweigh such evidence, or the trial court’s ruling on the persuasiveness of the evidence and presumptive burdens.

5. ATTORNEY FEES ON APPEAL

If the parties were not ever married, or in a domestic partnership, attorney fees and costs on appeal are not available in cases regarding CIRs. *See W. Cmty. Bank v. Helmer*, 48 Wn. App. 694, 699, 740 P.2d 359 (1987); *Foster v. Thilges*, 61 Wn. App. 880, 887-88, 812 P.2d 523 (1991). However,

when cases involve both a dissolution and CIR claims, this Court may award costs and attorney fees on appeal RCW 26.09.140 after considering the financial resources of both parties. *In re Domestic P'ship of Walsh*, No. 51125-8-II, 2019 Wash. App. LEXIS 1660, at *45 (Ct. App. June 25, 2019) (unpublished decision). One reason is because CIR claims are just an evidentiary fact that is a part of an equitable distribution of property, which need not even be pled, in a domestic dissolution action. *See In re Marriage of Neumiller*, 183 Wn. App. 914, 922, 335 P.3d 1019, 1024 (2014). Moreover, RCW 26.09.140 grants discretion to award fees and costs on “any appeal” arising from a domestic dissolution. *Walsh*, No. 51125-8-II, 2019 Wash. App. LEXIS 1660, at *45.

Here, the trial court did not grant attorney fees to any party. That was reasonable given the nature of the claims and short duration of the trial. However, what was not reasonable was Scott bringing this appeal, given the standard of review and lack of appealable claims. Scott’s opening brief just broadly claimed that the trial court erred in its ultimate rulings. He did not follow rules on appeal requiring specific assignments of error related to specific findings of fact. Scott provided minimal citation and argument regarding claimed error. He asserted errors by the trial court that were never raised at trial. This reality placed Airelle in a “catch-22,” and in the expensive position of choosing to broadly defend all of the trial court’s

findings, not specific findings, or relying on procedural arguments alone—and chancing losing the appeal. Airelle should not have had to devote a large portion of her brief to procedural issues.

Last, Airelle is clearly without the means to pay for this appeal. She lives in a low-cost apartment, as a single mom, to just to make ends meet. Having her pay attorney fees on appeal is beyond her financial resources to the degree that it would be a negative impact on the parties' child and Airelle's ability to quickly pay community debt; whereas, no such result will occur if Scott must pay fees and costs on appeal.

Accordingly, after examining this appeal, and examining the financial resources of both parties, Airelle should be awarded attorney fees and costs.

6. CONCLUSION

Airelle respectfully requests that the trial court be affirmed and that she be awarded attorney fees and costs on appeal.

Respectfully submitted this 28th day of April, 2020,



Drew Mazzeo
Attorney for Respondent
WSBA No. 46506

CERTIFICATE OF SERVICE

I declare under penalty of perjury under the laws of the state of Washington that on April 28, 2020, I caused to be served:

Brief of Respondent

On:

Law Offices of Desmond Kolke
Att: Desmond Kolke, Attorney for Petitioner
1201 Pacific Ave. #600
Tacoma, WA 98402
Email: ddklawoffice@gmail.com

Via email and electronic service by the Court of Appeals.

Dated April 28, 2020, at Olympia, Washington.



Stacia Smith

LIFETIME LEGAL, PLLC

April 28, 2020 - 2:44 PM

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