FILED
5/18/2020
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Marriage of

JULIANNA P. NOBLE,

Appellant/Cross Respondent,

and

E. LEE NOBLE III,

Respondent/Cross Appellant,

and

EDWIN NOBLE, JR.; TALLMAN BUILDING, LLC, a Washington limited liability company,

Respondents/Cross Appellants.

No. 78867-1-I

DIVISION ONE

UNPUBLISHED OPINION

APPELWICK, J. — This is the second appeal in this consolidated dissolution and breach of contract action. Lee and his father Ed formed a number of LLCs, including Tallman, before Lee's marriage to Pozega. Lee formed additional LLCs during the marriage, both with and without Ed, and used them to purchase property. At the first trial, the court disregarded all of the LLCs and ruled that any properties acquired by Lee and Ed during the marriage were community property. In doing so, it awarded Pozega nearly half the marital estate. This court reversed that award and remanded for redistribution. It held that the trial court erred in disregarding the LLCs, and ordered it to address evidence tracing properties Lee purchased during the marriage to his premarital assets. It also reversed an order dismissing a breach of contract action Ed brought against Tallman and remanded for further proceedings.

On remand, the court held a bifurcated trial. In the Tallman action, it allowed Pozega to file cross claims for (1) a declaratory judgment as to any amounts owed between Ed and the marital community and (2) an accounting of Ed's interests in the LLCs. It concluded that Ed was not entitled to any further proceeds from Tallman. In the dissolution action, the court found that the parties had previously stipulated to an expert report tracing funds Lee used to purchase properties during the marriage to his premarital assets. It ordered Pozega to return ownership of two properties she was awarded at the first trial, and to disgorge a portion of the rents received from those properties. On appeal, Pozega argues that the trial court erred in dismissing her cross claim for a declaratory judgment that Ed lacked an ownership interest in the LLCs. She also contends that it erred in finding that she stipulated to the expert report tracing funds. As a result, she asserts that Lee failed to rebut the community property presumption regarding properties purchased during the marriage. We affirm.

FACTS

This action began in December 2011, when Julianna Pozega[1] filed for dissolution of marriage from E. Lee Noble III. Pozega and Lee[2] commenced a

[1] At the time she filed for dissolution, Pozega's last name was Noble. She has since remarried and changed her last name. Accordingly, we refer to her as Pozega throughout the opinion.

[2] We use Lee's first name for clarity.

committed intimate relationship in June 2004, married in September 2004, and separated in April 2012.

Prior to the marriage, Lee partnered with his father, Ed Noble, Jr., in the acquisition, development, and lease of real properties through limited liability companies (LLCs). In re Marriage of Noble, No. 71206-3-I, slip. op. at 2 (Wash. Ct. App. May 2, 2016) (unpublished), http://www.courts.wa.gov/opinions/pdf/712063.pdf. After the marriage, Lee continued to manage, buy, sell, and develop real estate, both alone and with Ed.[3] Id. at 3. Lee received no specific compensation for his labor. Id. However, he took frequent draws in amounts between $4,000 and $8,000 from a centralized account maintained under the umbrella of his and Ed's first LLC, Investment Management Holding Company LLC (IMHC). Id. at 2-3. Lee deposited those draws into a KeyBank personal and business checking account. Id. at 3. He paid personal expenses, including the mortgage on his and Pozega's residence, from this account. Id. During the marriage, he deposited about $800,000 to $1 million. Id.

By the time Lee married Pozega in 2004, he owned real properties worth about $6.28 million. Id. at 3-4. Before the marriage, Pozega worked for 25 years in the travel industry. Id. at 4. After the marriage, she began working on Lee's real estate projects. Id. She eventually quit the travel business and worked full time for Lee's real estate business. Id. She received a total of $135,750 for her work during the marriage. Id. She was paid from the IMHC account. Id. at 3-4.

[3] We use Ed's first name for clarity.

One of the LLCs Lee and Ed formed was Tallman Building LLC (Tallman). Id. at 4. They formed Tallman as equal owners in 1999. Id. In 2011, Tallman agreed to sell its properties for $9.5 million.[4] Id. Lee and Ed used some of the sale proceeds for various purposes. Id. In 2013, Lee and Pozega agreed to distribute some of the sale proceeds pending the dissolution proceedings. Id. Specifically, they agreed to distribute $1 million of the proceeds to Ed. Id. They agreed to place the remaining $2.183 million in a trust account pending the dissolution. Id.

In April 2013, Ed sued Tallman for his share of half of the Tallman sale proceeds, claiming anticipatory breach of the Tallman operating agreement. He explained that, when the purchase and sale agreement was signed, Lee declared that each member would receive a distribution at the close of sale equal to 50 percent of the net sale proceeds. Prior to closing, Tallman received $2.5 million from the buyer as partial payment for the property, of which $1,668,256 was distributed to Lee. When the sale closed in March 2013, Tallman received about $3,654,666 in additional proceeds. Ed stated that Lee received $571,289 from those additional proceeds, and that he was entitled to $3,065,242 from the remaining proceeds. Ed received $1 million of that amount under Lee and Pozega's agreed order, and sought a judgment against Tallman for the remaining $2,065,242. Pozega then intervened in the case. She asked the trial court to

[4] This amount was later reduced to $8.75 million. Noble, No. 71206-3-I, slip. op. at 4.

consolidate both the dissolution and breach of contract actions. The court granted the motion and consolidated the cases.

In November 2013, after a trial in the consolidated action, the court entered a dissolution decree and findings of fact and conclusions of law. Among its conclusions, it disregarded all of the LLCs in which Lee and Ed were members, and invalidated all of the LLC operating agreements based on a corporate disregard theory. Noble, No. 71206-3-I, slip. op. at 6. It stated in part,

> [A]ll of the LLC's [sic] in this case, whether owned jointly by Ed and Lee Noble or solely by Lee Noble, shall be disregarded as independent entities for purposes of the cases herein due to the lack of documentation sufficient to define the LLCs and the disregard of the LLC structures in their long term course of conduct.

Further, the trial court ruled that any properties acquired by Lee and Ed after the marriage were community property. Id. It reasoned that the community was undercompensated by $1.1 million for community labor during the marriage. Id. at 6-7. It stated that this undercompensation was due to inadequate compensation to Pozega, the lack of a salary for Lee, and the lack of commissions for leasing, purchase, and sale transactions during the marriage. It explained that these community funds were retained and commingled in the pooled Noble accounts and Lee's KeyBank account:

> [N]ot less than $1.1 million of undercompensated community funds were retained and commingled in the pooled business accounts of Noble Homes/IMHC and Lee Noble's KeyBank account. There was no contemporaneous segregation of those funds from purported separate income. It is not possible to allocate the under-compensation on an LLC-by-LLC basis; the undercompensation is allocable jointly and severally across the LLCs and among the non-LLC properties purchased by the community. This commingling of undercompensated community funds began as early as June 2004,

> the date when both parties agree a committed intimate relationship was commenced and when [Pozega] began working on the properties in the evenings and on the weekends.

The trial court estimated that the community estate at the time of trial was worth nearly $13.8 million. Noble, No. 71206-3-I, slip. op. at 7. It awarded the property to Pozega and Lee in roughly equal shares. Id. Lee received property valued at $6,889,840, and Pozega received property valued at $6,884,042. Id. Pozega's share included the following three properties in Seattle: (1) 5021 Colorado Avenue South (Colorado), (2) 509-519 North 85th Street (Pullington), and (3) 8420 Dayton Avenue North (Dayton). It also included the remaining $2.183 million Tallman proceeds held in trust.[5] Id. The court declined to award any remaining Tallman proceeds to Ed, and dismissed his breach of contract action.[6] Id. It determined that Ed lacked standing to sue Tallman because Tallman was "not yet winding up" and the marital community, as creditors, had not been paid. Last, it ordered Lee to pay Pozega $150,000 in attorney fees and costs. Lee and Ed both appealed. Id. at 7.

On appeal, Lee and Ed argued that the trial court erred in ruling on Ed's property interests, corporate disregard, and community undercompensation. Id. at 8-9. This court affirmed in part and reversed in part. Id. at 2. First, it held that the trial court lacked authority over Ed's disputed property interests. Id. at 2. It found that the trial court was "arguably authorized to resolve questions involving

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[5] With the exception of $1,000,000, the trial court stayed disbursement of this amount pending appeal.

[6] The court also dismissed a separate action Ed had brought against Lee regarding the validity of various promissory notes. Id. at 5, 7. This third action had also been consolidated with the dissolution proceeding. Id. at 5. That action is not at issue in this appeal.

the validity of the promissory notes and the amount of remaining Tallman proceeds owed to Ed via the consolidated lawsuits." Id. at 14. But, it found that the trial court exceeded its authority by ruling on Ed's shared property rights. Id.

Next, this court held that the trial court compounded the above error "by relying on an untenable legal theory—corporate disregard—to sweep aside all the LLCs whether owned jointly by Ed and Lee or solely by Lee." Id. It noted that corporate disregard is an "extraordinary remedy . . . reserved only for exceptional cases of misconduct." Id. at 23. It found that the "essential factors to disregard the LLC forms are absent here." Id. at 22.

Further, this court held that the trial court mischaracterized the marital estate as mostly community. Id. at 2. It noted that the court failed to address the "substantial tracing evidence presented at trial," most of which was not disputed. Id. at 27-28. The evidence traced funds used to purchase properties during the marriage to premarital assets owned by Lee and Ed. Id. at 24-25. This court also explained that improving the disputed properties with community labor during the marriage did "not change their character from separate to community." Id. at 31. It found no evidence showing that Lee "intended to change his separate property's character or that Ed intended to give up his property interests." Id.

Accordingly, this court reversed the trial court's order distributing the parties' assets and remanded for redistribution consistent with the opinion. Id. at 41. It reversed the order dismissing Ed's Tallman lawsuit, finding that the trial court's ruling on standing was erroneous, and remanded for further proceedings. Id. at

36, 41-42. It also reversed the order granting Pozega $150,000 in attorney fees.[7] Id. at 42.

About two months later, Pozega filed a motion with the trial court requesting leave to file an answer and cross claims[8] in Ed's Tallman lawsuit. Among her proposed cross claims, she sought multiple declaratory judgments, including a judgment that Ed had no ownership interest in any of the LLCs at issue.[9] She also sought an accounting of Ed's interest in the LLCs, and brought claims for fraud, replevin, and conversion against him. The court granted Pozega's motion over Lee's and Ed's objections. It also ordered bifurcated trials for the dissolution and Tallman actions. It explained that "valuation of the marital estate, subject to division upon dissolution . . . depends upon the outcome of . . . claims between father and son, and [cross]claims by intervenor [Pozega]."

Ed then moved for summary judgment in the Tallman action. He requested that the trial court strike Pozega's affirmative defenses and dismiss her cross claims. Specifically, he argued that Pozega lacked standing to challenge his ownership interests and right to the Tallman proceeds, because she was not a

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[7] This court also affirmed the order dismissing Ed's promissory note lawsuit. Id. at 41.

[8] The parties and the trial court referred to these claims interchangeably as counterclaims and cross claims. For consistency, we refer to them as cross claims.

[9] In addition to Tallman, Pozega sought this judgment in reference to at least 11 other LLCs. These LLCs included: (1) IMHC (2) Carstens Building LLC, (3) Ellis Garage LLC, (4) Ellis LLC, (5) Elin LLC, (6) Commercial Renovators LLC, (7) East Marginal Way Building LLC, (8) Pullington LLC, (9) Colorado Building LLC, (10) Merit Building LLC, and (11) Dayton Building LLC.

Ed and Lee formed IMHC, Carstens LLC, and Merit Building LLC before the marriage. Id. at 2, 4-5, 9. They formed Dayton Building LLC during the marriage. Id. at 5. Lee formed Ellis Garage LLC, East Marginal Way Building LLC, Colorado Building LLC, and Pullington LLC during the marriage. Id. at 5.

member or creditor of Tallman. He asserted that Pozega could not challenge or seek an accounting of transactions between him and Lee that predated her committed intimate relationship with Lee. Further, he contended that Pozega waived any challenge to his interest in three specific properties, because she acknowledged his 50 percent interest in her proposed findings of fact in the first trial. He also argued that she waived any challenge to the $1 million distribution to him from the Tallman proceeds, because she agreed to the distribution in a previous order. He asserted that she could not satisfy the elements of corporate disregard to set aside the LLCs and reach his interests. Finally, he argued that her claims were time barred.

The trial court granted Ed's motion as to the majority of Pozega's affirmative defenses and cross claims. It found that Pozega lacked standing to challenge Ed's ownership interest in the LLCs formed by him and Lee because she was not a member. It concluded that, as a nonowner, Pozega could not challenge LLC transactions that predated the commencement of the committed intimate relationship in June 2004. It noted that she may "have an equitable claim upon which to challenge transactions limited to the LLCs created within the time span of [the committed intimate relationship] and the end of the marriage." The court also found that "[t]he Court of Appeals opinion . . . resolved the question of the previous distribution of $1 million from the Tallman proceeds to [Ed], pursuant to a stipulated order entered on March 20, 2013."

But, the trial court denied Ed's motion as to certain declaratory judgment and accounting claims. It stated, "Intervenor's Declaratory Judgment claim survives and seeks a determination of the amounts owed between [Ed] and the marital community of [Pozega] and Lee Noble." It further stated, "[Pozega]'s Accounting claim remains, for the limited time period, beginning with the date of [the committed intimate relationship] through the length of the marriage."

Pozega filed two separate motions for reconsideration, both of which the trial court denied. In the first order denying reconsideration, the court clarified that Pozega was "barred from challenging the fact and legitimacy of Ed Noble's ownership interests in any of the LLC's [sic], other than Tallman Building, as explained in the Court of Appeals order on remand." It further clarified its decision in the second order:

> While the allocation of the Tallman proceeds between Ed and Lee remains an issue to be resolved, Julianna cannot challenge "the fact and legitimacy of Ed's ownership interest" in the Tallman Building, LLC, "as explained in the Court of Appeals order on remand" and this Court's November 16, 2017 order partially granting Ed's motion for summary judgment.

The trial in the Tallman action began on March 12, 2018, and ended on April 6, 2018.[10] The court concluded that Ed was not entitled to any Tallman proceeds beyond the $1 million Pozega and Lee had already agreed to distribute to him. It explained,

> The Accounting sought by Petitioner/Intervenor Pozega demonstrates that the forensic analysis of capital accounts between the members Ed and Lee Noble for Tallman Building LLC, was based

[10] Ed passed away shortly after the trial concluded. His son, Russell Noble, was later substituted as plaintiff in the consolidated case

> upon untrustworthy testimony, both by Ed and Lee Noble and unreliable documentary evidence relied upon by Ben Hawes. Thus, by a preponderance of the evidence, Ed Noble's claim of entitlement to any further proceeds from either, Lee Noble or Tallman Building, LLC., [sic] is without merit.

The trial in the dissolution action began on June 4, 2018, and ended on June 7, 2018. This court had ordered the trial court on remand to resolve the tracing issue, essential to the characterization of properties purchased during the marriage and held in the LLCs. Noble, No. 71206-3-I, slip. op. at 30. The trial court found,

> a. The tracing evidence presented at trial in 2013 by Lee Noble's expert, Mr. Ben Hawes, was disputed by Petitioner's expert, Neil Beaton, at the remand hearing, who concluded that the underlying accounting methods used by the Respondent's businesses together with the information given to Respondent's forensic expert, Ben Hawes, lacked sufficient and reliable documentation. At the trial in 2013, Beaton testified that it was difficult to reach a firm conclusion with professional certainty because of the poor bookkeeping.
> b. Yet, in the 2013 trial, Petitioner's counsel stipulated to Mr. Hawes'[s] tracing report, Exhibit No. 485, which determined Respondent's real property purchased during the marriage could be traced to pre-marital funds.

The court stated that this court treated the stipulation as a verity on appeal, and therefore did the same:

> Treating this stipulation as a verity, as did the Court of Appeals, the Court finds the Hawes report's conclusions, specifically that the cash, loan proceeds, 1031 exchanges, and the acquisition of the real estate during the marriage traced back to Respondent's pre-marital funds. The Court received testimony in [the] Phase One Trial that some source documents, relied upon by Hawes, were dubious and untrustworthy because they related to a sham corporation, Abstract Equities, created by father and son Noble. Petitioner has entreated this Court to accept that Phase One Finding to discredit the Hawes report in Phase Two, the instant matter. The Court declines to do so given the import of the 2013 trial stipulation by Petitioner's former counsel.

The trial court ultimately concluded,

> The tracing evidence presented by Ben Hawes proved by clear and convincing evidence that the source of all funds and credit extensions for each property acquisition by Lee Noble and for the real estate purchased during marriage was Lee Noble's separate property alone because all of the limited liability companies and their real estate holdings were either the sole separate property of Lee Noble or jointly owned with his father.
>
> The marital community has no ownership interest in any of the limited liability companies or any of the real properties.

Based on this tracing evidence, the court ordered Pozega to immediately return ownership of two of the three properties awarded to her in the 2013 dissolution decree, the Dayton and Pullington buildings. It allowed Pozega to retain only half of the rental proceeds collected from the Dayton building since the dissolution.[11] It allowed her to retain all of the rental proceeds collected from the Pullington building since the dissolution, apart from those received after July 2018.

[11] The trial court initially awarded Pozega all of the rental proceeds collected from the date of dissolution. However, in a posttrial order on a motion for reconsideration by Pozega and a motion for clarification by Lee, the court ordered Pozega to disgorge the entirety of rents and proceeds from the date of dissolution through July 3, 2018, based on Ed's half interest in the building. It stated, "[A]ll rents and proceeds due co-owner Ed Noble, Jr., now Russel Noble shall be disgorged within 30 days of the conclusion of the Dayton Building Accounting." In a second posttrial order, the court explained that, although Lee also had a half interest in the building, his interest was subject to an equitable division as part of the marital estate. It clarified that it was not similarly awarding him rents and proceeds based on his half interest in the building. We construe these orders as awarding Pozega one half of the rental proceeds from the Dayton building.

Further, the court awarded Pozega the Colorado building as an equitable lien against the estate.[12]

Last, the court found that the marital community was undercompensated in the amount of $1.1 million given "(1) the lax accounting records for any compensation to [Pozega], (2) the lack of a salary recorded in the lax accounting for Lee Noble, [and] (3) the lack of real estate agent commissions paid to the parties for leasing, purchase and sale transactions." It concluded that the $1.1 million net from the Tallman proceeds was an equitable lien for labor undercompensation and was a community asset. As a part of a just and equitable division of marital assets, it awarded this entire amount to Pozega. It clarified that the $1 million distributed to her after the first trial would be debited against this award.[13]

Pozega appeals. Lee, Russell Noble, as personal representative for Ed's estate, and Tallman cross appeal.

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[12] In its first posttrial order, the court added to its reasoning for awarding Pozega the Colorado building:

> Here, in a short term marriage, upon dissolution of the marriage, where both parties work in the Respondent's business, wife as employee and husband as owner; where the wife, Petitioner, had no pension from this employment in her husband's business; where there is separate property available to award which makes the wife, Petitioner, financially secure going forward; the Court awards the Colorado property in addition to the monetary amount of $1.1 million marital lien for under-compensation.

[13] In its first posttrial order, the trial court also clarified that the remainder of the Tallman sale proceeds were Lee's separate property.

DISCUSSION

Pozega makes two main arguments. First, as to the Tallman action, she argues that the trial court erred in dismissing her cross claim for a declaratory judgment regarding Ed's ownership interests. Second, as to the dissolution action, she argues that the trial court erred in finding that the parties stipulated to the tracing evidence at the first trial. She therefore argues that the court erred in relying on that stipulation to conclude that Lee rebutted the community property presumption regarding properties purchased during the marriage.

The Nobles[14] make one argument. They assert that the trial court erred in allowing Pozega, for the first time on remand, to file cross claims in the Tallman action. In doing so, they ask this court to strike the findings entered on remand.

I. Motion to Dismiss Cross Appeal

As an initial matter, Pozega seeks to dismiss the Nobles' cross appeal. She contends that they seek no affirmative relief.

The Nobles argue on cross appeal that Pozega's cross claims in the Tallman action sought the same relief that this court reversed in the first appeal. As a result, they assert that her cross claims exceeded the scope of the remand, and opened the door for the trial court to reconsider issues decided against her by this court. They ask this court to reverse the order allowing Pozega to file cross claims and vacate the trial court's findings. They do not seek review of the court's

[14] We refer to Lee, Ed's estate, and Tallman collectively as "the Nobles" in discussing their arguments.

ultimate conclusion that Ed was not entitled to any further proceeds from Lee or Tallman.

Only an "aggrieved party" may seek review of a trial court decision. RAP 3.1. For a party to be aggrieved, the decision must adversely affect that party's property or pecuniary rights, or a personal right, or impose on a party a burden or obligation. Randy Reynolds & Assocs. v. Harmon, 193 Wn.2d 143, 150, 437 P.3d 677 (2019).

The Nobles contend that they are clearly aggrieved from the judgment in the Tallman action, because it adversely affects their property or pecuniary rights. They state that the trial court's order "concluding that Ed had no interests in proceeds from the sale of properties owned by Tallman" was clearly not a favorable decision. Further, they contend that "[a] request for 'affirmative relief [is] . . . anything other than an affirmation of the lower court's ruling.'" (Alterations in response to motion) (quoting Singletary v. Manor Healthcare Corp., 166 Wn. App. 774, 787, 271 P.3d 356 (2012)). They point out that, instead of seeking an affirmation of the lower court's ruling, they are asking this court to vacate the findings entered by the trial court in the Tallman action.

The Nobles rely on Kerr v. Department of Game, 14 Wn. App. 427, 542 P.2d 467 (1975). There, the appellants sought a writ of mandamus requiring the Game Department (Department) to remove a provision from its manual prohibiting Department employees and their dependents from applying for controlled hunt permits. Id. at 428. The trial court denied the petition, finding that primary jurisdiction over the dispute rested with the Washington State Personnel Board

(Board). Id. However, it also reached the merits of the dispute, finding that (1) the challenged policy could be made a subject of mandatory collective bargaining, and (2) the policy bore a reasonable relationship to a legitimate object of state government. Id.

This court affirmed the trial court's conclusion that primary jurisdiction rested with the Board, but vacated the remainder of the court's findings of fact and conclusions of law. Id. It held that the trial court abused its discretion in proceeding to the merits of the case despite finding that primary jurisdiction rested elsewhere. Id. at 431-32. It explained that the more appropriate procedure would have been to postpone the action until the appropriate administrative agency was given an opportunity to apply its expertise. Id. at 431.

The Nobles state that "[h]ere, too, the trial court erred in making findings in deciding cross[ ]claims it had no authority to decide under the law of the case." The Nobles are clearly aggrieved by the trial court's conclusion that Ed cannot recover any remaining Tallman proceeds. But, unlike Kerr, the Nobles are not asking this court to vacate that conclusion. Rather, they are asking this court to vacate only the findings entered in support of that conclusion.

Because they do not seek any affirmative relief, we grant Pozega's motion to dismiss and decline to hear the Nobles' cross appeal.

II. Dismissal of Pozega's Cross Claim for Declaratory Judgment

Pozega argues that the trial court erred in dismissing her cross claim for a declaratory judgment that Ed had no ownership interests in Tallman, Carstens Building LLC, and Dayton Building LLC.

Pozega specifically contends that the trial court erred in relying on this court's decision in the first appeal as a basis to dismiss her claim. She states that nothing in this court's dtecision precluded the trial court from determining whether Ed had genuine ownership interests in those LLCs. Rather, she asserts that this court concluded only that the trial court lacked jurisdiction to decide the issue because it was beyond the scope of the pleadings in the 2013 trial.

This court reviews summary judgment orders de novo, considering the evidence and all reasonable inferences from the evidence in the light most favorable to the nonmoving party. Keck v. Collins, 184 Wn.2d 358, 370, 357 P.3d 1080 (2015). "Summary judgment is appropriate only when no genuine issue exists as to any material fact and the moving party is entitled to judgment as a matter of law." Id.

In seeking a declaratory judgment that Ed had "no right, title[,] or interest" in any of the LLCs, Pozega asked the trial court to determine that all of the operating agreements for the LLCs were "invalid, inauthentic, and unenforceable." Further, she sought a judgment that all of the LLCs "should be disregarded as corporate entities" and "treated as the sole property of" her, Lee, and their former marital community. The trial court dismissed these claims on partial summary judgment. In its first order on reconsideration, the court clarified that Pozega was "barred from challenging the fact and legitimacy of Ed Noble's ownership interests in any of the LLC's [sic], other than Tallman Building, as explained in the Court of Appeals order on remand." (Emphasis added.) In its second order on reconsideration, it clarified that Pozega could not challenge "'the fact and legitimacy of Ed's ownership interest' in the Tallman Building, LLC, 'as explained in the Court of Appeals order on remand' and this Court's November 16, 2017 order partially granting Ed's motion for summary judgment." (Emphasis added.) Because these statements reference this court's decision in the first appeal, we construe them as the rulings that Pozega challenges.

"[T]he law of the case doctrine stands for the proposition that once there is an appellate holding enunciating a principle of law, that holding will be followed in subsequent stages of the same litigation." Roberson v. Perez, 156 Wn.2d 33, 41, 123 P.3d 844 (2005). This doctrine applies "only when an appellate court holding has issued in a prior appeal of the same case." Fluke Capital & Mgmt. Servs. Co. v. Richmond, 106 Wn.2d 614, 620, 724 P.2d 356 (1986). And, it applies "only to issues actually decided." Id.

In the first appeal, this court held that the trial court "improperly adjudicated Ed's property interests." Noble, No. 71206-3-I, slip. op. at 14. Pozega had argued on appeal that Ed's interests were not adjudicated at trial because the court found "'he possessed no interest.'" Id. at 12. This court found her argument "nonsensical and unsupported by the record." Id. It explained,

> For example, Ed and Lee each owned half interests in Commodore Way, Merit Building, and 9233 25th Avenue West. The trial court acknowledged Ed's interest in these properties when it awarded Lee a half interest in these properties. Ed also owned half interest in the Tallman, Carstens, and Dayton LLCs. The court ruled Ed owned no interest in these properties based on a corporate disregard theory discussed below. As to Ed's interest in the Dayton property, the court outright awarded it to Julianna.

Id. at 12-13 (emphasis added).

This court concluded,

> The trial court lacked authority over Ed's property rights in the dissolution proceedings. It was arguably authorized to resolve questions involving the validity of the promissory notes and the amount of remaining Tallman sale proceeds owed to Ed via the consolidated lawsuits. But the trial court erred when it exceeded its limited authority by ruling on Ed's shared property rights.

Id. at 14 (emphasis added). It went on to state, "The trial court compounded its third party adjudication error by relying on an untenable legal theory—corporate disregard—to sweep aside all the LLCs whether owned jointly by Ed and Lee or solely by Lee." Id.

Pozega's cross claim for a declaratory judgment that Ed had no genuine ownership interests in Tallman, Carstens Building, and Dayton Building is an attempt to raise issues already decided by this court in the first appeal. The trial court ruled in 2013 that Ed owned no interests in these LLCs based on a corporate disregard theory. Id. at 12-13. This court held on appeal that the trial court lacked jurisdiction over Ed's shared property rights in the dissolution proceedings. Id. at 14. It also determined that the trial court erred by using "the exceptional remedy of corporate disregard to reach LLC-owned properties and invalidate the operating agreements." Id. at 23. It specifically stated that Ed "owned half interest in the Tallman, Carstens, and Dayton LLCs." Id. at 12. That statement tracked the LLC operating agreements as to ownership.[15] Under the law of the case doctrine, the trial court was compelled to follow that holding on remand.

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[15] To the extent Pozega was trying to expand the size of the marital estate subject to an equitable division by seeking a judgment that Ed had no ownership interests in the LLCs, that attempt would have failed. Lee's bookkeeper, Sandra Maluy, testified at the 2013 trial that she was tasked with maintaining the

Accordingly, the trial court did not err in dismissing Pozega's cross claim for a declaratory judgment that Ed had no genuine ownership interests in Tallman, Carstens Building, and Dayton Building.[16]

III. Tracing Evidence and Characterization of Lee's Bank Accounts

Pozega argues next that the trial court erred in ruling that Lee rebutted the community property presumption regarding properties acquired during the marriage. She explains that the trial court based this ruling "on the notion that this [c]ourt found there was a stipulation to tracing during the 2013 trial." At the 2013 trial, Lee's expert witness, Ben Hawes, concluded in a report that "the cash, loan proceeds, 1031 exchanges, and the acquisition of the real estate during the marriage traced back to [Lee's] pre-marital funds." (Emphasis added.) Pozega

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QuickBooks accounts and other spreadsheets recording business and personal transactions for the LLCs. She stated that she was not charged with maintaining records that would allow balance sheets or capital accounts to be generated for any of the individual LLCs. She therefore explained that because of the way they had been kept, QuickBooks could not be used to produce accurate balance sheets for the LLCs. Lee's expert witness at the 2013 trial, Ben Hawes, similarly testified that QuickBooks could not be used to produce accurate balance sheets for the LLCs. Pozega's own expert witness, Neil Beaton, was also of the opinion that it was "impossible to calculate Ed's interest in Tallman, given the absence of indispensable accounting data, which all the experts and parties agreed was missing and necessary to calculate the capital accounts of Ed and Lee." Without a capital accounts analysis, there was no way to assess Lee's and Ed's respective ownership interests apart from looking to the LLC operating agreements. As a result, this court and the trial court on remand were correct in stating that Lee had a 50 percent ownership interest in the LLCs.

[16] Pozega also argues that her cross claim for a declaratory judgment was not time barred. In its order granting Ed partial summary judgment, the trial court found that her cross claims for replevin and conversion were time barred under the relevant statutes of limitations. The court found that her declaratory judgment claim survived—not that it was time barred. Pozega does not point to elsewhere in the record where the court made such a finding. Because the trial court did not determine that her declaratory judgment claim was time barred, we do not address this argument.

asserts that this court did not find that there was a stipulation to Hawes's report. She also states that her attorney did not stipulate that his report was complete or reliable.

Pozega challenges the reliability of Hawes's tracing report based on the trial court's findings in the Tallman action on remand. She also contends that she presented evidence at trial that property acquisition funds were commingled with community wages and loan proceeds before being spent. She indicates that even if the tracing in Hawes's report is accurate, the character of the accounts to which Hawes traced the funds were community property accounts, rather than separate property accounts.

All property acquired during a marriage is presumed to be community property. In re Marriage of Mueller, 140 Wn. App. 498, 504, 167 P.3d 568 (2007). Commingled funds are also presumed to be community property. In re Marriage of Skarbek, 100 Wn. App. 444, 448, 997 P.2d 447 (2000). The burden is on the spouse claiming separate funds to clearly and convincingly trace the funds to a separate property source. Id. "Once the separate character of property is established, a presumption arises that it remained separate property in the absence of sufficient evidence to show an intent to transmute the property from separate to community property." In re Estate of Borghi, 167 Wn.2d 480, 484, 219 P.3d 932 (2009). One way of establishing this is where "the property becomes so commingled that it is impossible to distinguish or apportion it." In re Marriage of Chumbley, 150 Wn.2d 1, 5-6, 74 P.3d 129 (2003). In that case, "the entire amount becomes community property." Id.

We review the characterization of property as community or separate de novo. In re Marriage of Griswold, 112 Wn. App. 333, 339, 48 P.3d 1018 (2002). We review the factual findings supporting the trial court's characterization of property for substantial evidence. Mueller, 140 Wn. App. at 504.

A stipulation is an express waiver made in court or before trial by a party or a party's attorney conceding for the purposes of trial the truth of some alleged fact. Key Design Inc. v. Moser, 138 Wn.2d 875, 893-94, 983 P.2d 653, 993 P.2d 900 (1999). The effect of a stipulation is that one party need not offer evidence to prove the fact, and the other party is not allowed to disprove it. Id. For an admission by an attorney to be binding upon a client, the admission must be distinct and formal, and made for the express purpose of dispensing with the formal proof of some fact at the trial. Hogenson v. Serv. Armament Co., 77 Wn.2d 209, 214, 461 P.2d 311 (1969).

A. Tracing Evidence

Hawes reached the following conclusions in his 2013 tracing report:

> 1. Lee Noble owned and operated a collection of business entities prior to his marriage to [Pozega]. We found no evidence that the Community or [Pozega] contributed any funds towards these business entities during the marital period.
>
> 2. The acquisitions and re-finances of residential properties during the marital period were facilitated though funds loaned on Mr. Noble's individual credit only. For both residential properties acquired during marriage [Pozega] signed quit claim deeds, granting her interests in the property to Lee Noble.
>
> 3. Tax returns filed during the Noble's marriage illustrate that the parties reported minimal amounts of earned income. The amount of reported earned income covered a fraction of the parties living expenses. The shortfall was covered with cash flow from Mr.

> Noble's pre-marriage business entities and proceeds from various refinances of Mr. Noble's pre-marriage residential properties. We noted no instances wherein earned income funds during the marital period were utilized to acquire commercial and/or residential assets.
>
> 4. [Pozega] appears to have signed a spousal or grantor's consent provision in connection with commercial guaranties for one line of credit. The line of credit was cross collateralized by three separate property commercial properties, as well as Mr. Noble individually. [Pozega] was not a co-borrower under the terms of the line of credit and at the time the line of credit was extended the collateral (equity) ratios and requirements of the associated properties were sufficient to fully collateralize the debt obligation and not expose the remainder of Mr. Noble's separate estate or the community to further obligation. Further, the Line of Credit was paid off with proceeds from sales of Lee Noble's separate property interests in 2011 and 2012.

Pozega argues that the trial court's finding of "Hawes'[s] unreliability" in the Tallman action on remand "necessarily means that Lee failed to rebut the community[ ]property presumption." She cites the following findings of fact and conclusion of law from that action:

> 14. Ben Hawes testified that he relied upon the integrity of recorded instruments in his capital account in this matter and his tracing analysis in the 2013 trial. Upon cross examination in Phase I, Hawes testified he was <u>completely unaware</u> of any off shore account, or transactions with that account, undertaken by Ed and Lee Noble.
>
> . . . .
>
> 29. In sum, the first quit claim, for a change in identity, indicates that Lee Noble considered himself a 100% owner of "Abstract Equities" and thereby 100% owner of the Maple Valley property, thus, it belies the tracing evidence upon which Ben Hawes identifies Ed Noble's half interest in the Tallman Building, LLC. Moreover, such untrustworthy evidence undermines the opinion and concomitant remand, from which the Court of Appeals relied.
>
> . . . .

> 41. In summary, Ben Hawes'[s] unawareness of the fallibility of the encumbrances through Abstract Equities; the creation and utilization of offshore bank accounts; the widespread misrepresentation of their assets and; [. . .] the allegations of falsehood involving the creation of the Tallman Building relied upon in his 2013 tracing undermines the credibility of his conclusions for the 2018 forensic accounting evidence.
>
> II. CONCLUSIONS OF LAW
>
> 1. Credibility findings are within the discretion and purview of the trial court. The Accounting sought by Petitioner/Intervenor Pozega demonstrates that the forensic analysis of capital accounts between the members Ed and Lee Noble for Tallman Building LLC, was based upon untrustworthy testimony, both by Ed and Lee Noble and unreliable documentary evidence relied upon by Ben Hawes. Thus, by a preponderance of the evidence, Ed Noble's claim of entitlement to any further proceeds from either, Lee Noble or Tallman Building, LLC., [sic] is without merit.

(Emphasis in original.)

The trial court found on remand that the forensic analysis Hawes conducted of the capital accounts between Lee and Ed was based on untrustworthy testimony and unreliable documentary evidence. Yet, there is no evidence that the Tallman findings were probative of where the money came from to <u>acquire</u> real estate during the marriage. Tracing the LLC transactions to reconcile the capital account allocations between Lee and Ed is a different inquiry from tracing the origin of the funds used to purchase properties owned by the LLCs. The capital account reconciliation goes to what portion of ownership of the LLCs is properly included in the community estate in the dissolution action. Unreliable documentary evidence as to Lee's and Ed's respective LLC capital account interests does not contradict the evidence tracing the money Lee used to acquire real estate during the marriage to separate rather than community funds. Accordingly, the trial court did not err in declining to use the Tallman findings to discredit Hawes's tracing of Lee's property acquisitions in the dissolution action.

B. Characterization of Lee's Bank Accounts

Pozega made clear in her closing argument on remand that her other dispute with Hawes's tracing had to do with the character of Lee's KeyBank account. She explained, "[Hawes] accurately stated that the source of money for a bunch of these properties, what [sic] came from this Key Bank account. We agree with that. What we disagree with is the characterization of that Key Bank account [as separate property]." Pozega asserts on appeal that the trial court failed to enter sufficient factual findings to support its rejection of her theory that commingled funds existed in Lee's KeyBank account.

Pozega argues that the commingling of community wages and loan proceeds in Lee's KeyBank account, and the use of that account for community expenses, affected the character of the IMHC account. She explained in closing argument on remand that community funds in his KeyBank account were transferred back to the IMHC account, thereby commingling his business account as well.

Wages earned during a marriage are presumed to be community property. Mueller, 140 Wn. App. at 505. Commingling occurs when a substantial amount of separate property is intermixed with a substantial amount of community property to the extent that it is no longer possible to identify whether the remainder is separate or community property. In re Marriage of Shui, 132 Wn. App. 568, 585, 125 P.3d 180 (2005). Evidence that Lee's bank account was commingled could rebut the evidence in Hawes's report tracing the funds used to acquire real estate during the marriage to Lee's premarital assets.

Pozega contends that Lee received nearly $860,000 from his companies during the marriage, which he deposited into his personal KeyBank account. Although Lee classified the payments as draws on equity, she asserts that he "spent the money on community living expenses while reporting no taxable wages." She maintains that the payments were compensation for services. To support this claim on remand, she cited exhibit 496. That exhibit shows the parties' household expenses from 2004 to 2012, including the deposits used for such expenses. It does not establish that the deposits were wages or compensation for services from the IMHC account rather than draws on equity. Pozega also cited exhibit 1146 as evidence of commingling. Exhibit 1146 is a transaction detail by account showing, inter alia, the deposits Lee made into his KeyBank account during the marriage. It does not establish that the deposits were distributed as wages or compensation for services from the IMHC account. No other evidence shows that the funds Lee took from the IMHC account were actually wages rather than draws on equity. Nothing in the record on appeal contradicts the trial court's finding in 2013 that Lee "received $0 salary for his work." Nothing in the record would support a finding that the funds Lee received from the IMHC account he owned with Ed and deposited into his KeyBank account were wages instead of draws on his equity.

Pozega argues next that "Lee repeatedly refinanced single-family homes during the marriage, deposited the proceeds in his personal [KeyBank] account, and used them in part for community living expenses." She notes that "[t]he community was potentially at risk on the loans, as [Pozega] signed multiple deeds of trust and loan paperwork acknowledging the payment obligations." She goes on to explain,

> Lee drew on that same account to acquire properties, including Maple Valley . . . ; the Colorado Building . . . ; the Pullington Apartments . . . ; and the Dayton Building . . . . Because of commingling, those were community funds. And because Lee commingled all company accounts, the community's interest permeated his interest in all the companies.

On remand, the trial court found,

> Lee Noble testified that there were refinances of various residential properties during the marriage, in part to fund Lee Noble's business operations and the parties' living expenses. The re-finance transactions were completed by Lee Noble individually using his own bank accounts. Lee Noble identified his name on the loan documents as the sole borrower for these transactions in trial testimony.

Pozega assigns err to this finding.[17] She argues that she signed "multiple deeds of trust and loan paperwork acknowledging [the community's] payment obligations." She cites exhibits showing that she signed four deeds of trust for loans Lee took out to refinance or purchase residential properties during the marriage.

[17] She does not explicitly argue that she was a borrower under the loan documents. But, she made this argument at the proceedings on remand.

Only one of the exhibits includes the promissory note. Exhibit 154 includes an adjustable rate note for the 2008 refinancing of the Gay Avenue West property. That note is signed only by Lee.[18] Pozega does not allege that she signed the corresponding promissory notes for the four deeds of trust as a borrower.

The first deed of trust Pozega cites was for a loan Lee took out in March 2005 to purchase a property located on Perkins Lane West. The deed of trust defines the borrower as “E L NOBLE, A MARRIED MAN.” Lee and Pozega both signed the deed of trust. Their signatures appear on lines above the word “Borrower.” Hawes stated in his report that King County property records show that Lee was the sole buyer of the property, and that Pozega granted her interest in the property to Lee through a quitclaim deed. He explained, “This quit claim deed appears to have been required by Countrywide [Home Loans, Inc.] as part of their loan documentation file for administrative purposes only as Lee Noble was identified as the sole borrower for this acquisition.”

The second deed of trust Pozega cites was for a loan Lee took out in March 2007 to refinance the Perkins Lane property. The deed of trust defines the borrower as “E LEE NOBLE, A MARRIED MAN AS HIS SOLE AND SEPARATE PROPERTY.” Lee and Pozega both signed the deed of trust. Their signatures appear on lines above the word “Borrower.” Hawes found that Lee used the equity proceeds for business purposes and living expenses.

[18] The record explicitly states that the promissory notes for the 2005 and 2007 deeds of trust relating to the Perkins Lane West property are not in evidence. The remaining note was not found in the record.

The third deed of trust Pozega cites was for a loan Lee took out in May 2008 to refinance a property located on Waverly Place North. Lee purchased the property before the marriage in 2000. Pozega stipulated at the 2013 trial that the Waverly Place property was Lee's separate property. The deed of trust defines the borrower as "E L NOBLE, A MARRIED MAN AS HIS SEPARATE ESTATE, WHO ACQUIRED TITLE AS E L NOBLE, AN UNMARRIED MAN." Lee and Pozega both signed the deed of trust. Their signatures appear on lines above the word "Borrower." Hawes again found that Lee used the equity proceeds for business purposes and living expenses.

The last deed of trust Pozega cites was for a loan Lee took out in September 2008 to refinance a property located on Gay Avenue property. Lee purchased the property before the marriage in 1980. Pozega also stipulated at the 2013 trial that the Gay Avenue property was Lee's separate property. The deed of trust defines the borrower as "E Lee Noble, a married man as his separate estate." Lee and Pozega both signed the deed of trust. While Lee's signature appears on a line above the word "Borrower," Pozega's signature is located underneath a sentence that states, "I hereby acknowledge priority of interest as 1st lien position by Banner Bank and evidence no future homestead rights to subject property." Hawes again found that Lee used the equity proceeds for business purposes and living expenses.

A basic rule of textual interpretation with regard to contracts is that a specific provision prevails over a general one. T-Mobile USA Inc. v. Selective Ins. Co. of Am., 194 Wn.2d 413, 423, 450 P.3d 150 (2019). Moreover, debts incurred by either spouse during a marriage are presumed to be community debts. Sunkidd Venture, Inc. v. Snyder-Entel, 87 Wn. App. 211, 215, 941 P.2d 16 (1997). But, this presumption may be rebutted by clear and convincing evidence that the debt was not contracted for community benefit. Id.

Each of the three transactions was a loan to Lee as the sole borrower. Each loan was secured by a deed of trust on property that was the separate property of Lee prior to the transaction. Although Pozega's signature on three of the deeds of trust is placed above the word "Borrower," the text of the deeds of trust clearly identifies Lee as the sole borrower. Under these circumstances, Pozega's signature above the word "Borrower" did not bind the marital community on the loan. It did not change the character of the loan proceeds or the property securing the loan. Accordingly, substantial evidence supports the trial court's finding that the refinance transactions were completed by Lee individually using his own bank accounts.

Pozega also appears to indicate that because the draws on equity Lee deposited into his KeyBank account were spent on community living expenses, those expenditures changed the character of that account. We reject that assertion. Spending money from a separate account on community purposes does not establish commingling.[19]

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[19] To the extent Pozega argues that alleged unpaid community labor intermixed in the real estate business and Lee's KeyBank account converted the assets acquired during the marriage to community property, this court rejected that theory in the first appeal. See Noble, No. 71206-3-I, slip. op. at 31-33. It explained in part that even if unpaid community labor was intermixed with LLC profits, "Lee contends he traced the disputed assets acquired during the marriage to his

The monies Lee withdrew from the IMHC account and deposited into his KeyBank account were not community property. As a result, they did not create a commingling of funds in Lee's bank account. The deposit of funds from the refinance of properties did not result in a commingling of funds in Lee's bank account. And, the use of Lee's bank account to pay community expenses did not result in a commingling of funds in that account. Based on the record, the account remained separate in character. Therefore, any transfer of funds from Lee's KeyBank account back to the IMHC account did not involve the transfer of community funds. Thus, it did not result in a commingling of funds in the IMHC account and did not create a community interest in that account.

The trial court findings rejecting Pozega's commingling theory were adequate and were supported by substantial evidence.

C. Stipulation to Hawes's Tracing Report

Pozega and Lee agree that she did not stipulate at the 2013 trial to the ultimate legal conclusion that properties purchased during the marriage were Lee's separate properties. But, they disagree as to the effect of other statements made at trial. During Hawes's direct examination by Lee's counsel, Edward Skone, the parties stipulated to the admission of five exhibits. The trial court inquired as to whether Skone might forego further direct examination of Hawes about the exhibits because the parties had stipulated to their admissibility. The following exchange

separate property by clear and convincing proof." Id. at 33-34. We address that unrebutted tracing evidence below.

then took place between the trial court, Skone, and Pozega's counsel, Douglas Becker:

> MR. SKONE: Do we have a stipulation that Mr. Hawes'[s] tracing endeavor shows, with the exception of the difference between $900,000 and $761,000 on the money that went to Colorado, and the exception of who owned the entity that received the $140,000, is tracing by clear and convincing evidence that all of the real estate is the separate property of Mr. Noble?
>
> MR. BECKER: Your Honor, that's a legal term. But if the discussion is traceable back to the two sources who are identified by this witness, which was purchases prior to marriage and purchases after marriage that were funded wholly by either refinances or sales or income from those properties, I would -- just one moment, Your Honor.
>
> Obviously I don't want to say that our whole case is that it's not separate property, but in terms of these transactions being traced, we agree that those are accurate. Those are the sources of the money that got us here.

The trial court then asked Becker if there was a stipulation. Becker responded, "That these properties can be -- that the source of money for the purchase of these properties can be tracked to the sources identified by [Hawes in his report], yes." At that point, the court suggested that the parties attempt to reach a written stipulation. The next morning, Skone reported that they did not reach a stipulation. But, when asked about Hawes's work later that day, Becker stated, "As [Neil] Beaton[, Pozega's expert,] testified for all of these documents that have been produced, those are accurate and the conclusions about the genesis of the acquisition of the properties was stipulated."

As explained above, this court held in the first appeal that the trial court mischaracterized the marital estate as mostly community. Noble, No. 71206-3-I, slip. op. at 2. It stated that, even if unpaid community labor was commingled with LLC profits, "Lee contends he traced the disputed assets acquired during the marriage to his separate property by clear and convincing proof." Id. at 32-33. It noted that most of the tracing evidence was not disputed. Id. at 28. In doing so, it pointed to testimony by Pozega's expert, Beaton. Id. at 28-30. That testimony included the following exchange:

> "[SKONE]: Are you aware of any documentation that is inconsistent with Mr. Hawes'[s] report as to the simple question of where did the funds come from to acquire the real estate by Lee Noble during the marriage? Other than the two exceptions you noted, the $140,000 to Dayton and the approximately same amount to Colorado?
> [BEATON]: No. The only one I was questioning would have been the Dayton, but all he puts down is $140,000. He doesn't say where it came from. But yes, I would agree then that the cash and assets used to acquire were traced from certain accounts to the acquisition of properties accurately."

Id. at 30. Based on Beaton's testimony, this court noted that Pozega's own expert acknowledged, and the record confirmed, that "the documentary evidence standing alone supported Lee's tracing." Id. at 30. It also made clear that Pozega "presented no rebuttal evidence to undermine Lee's tracing evidence." Id. at 33 n.17. It therefore ordered the trial court to "resolve the tracing issue and enter specific findings of fact and conclusions of law to support its tracing decision." Id. at 30. This court did not find that the parties stipulated to Hawes's tracing report. Nor did it treat any stipulation as a verity on appeal.

In its findings of fact and conclusions of law on remand, the trial court found that Pozega's counsel stipulated to Hawes's tracing report. It believed that this court had treated the stipulation as a verity in the first appeal and did the same.

Accordingly, it concluded that Hawes's tracing evidence proved "by clear and convincing evidence that the source of all funds and credit extensions for each property acquisition by Lee Noble and for the real estate purchased during marriage was Lee Noble's separate property alone."

The trial court erred in finding that Pozega stipulated to Hawes's tracing report. Skone made clear that the parties failed to reach a written stipulation that Hawes's report proved by clear and convincing evidence that the properties purchased during the marriage were Lee's separate property. Further, the trial court erred in finding that this court treated the alleged stipulation to Hawes's report as a verity on appeal. This court never stated that the parties had stipulated to such evidence. See Noble, No. 71206-3-I, slip. op at 30.

However, any error by the trial court in finding a stipulation by the parties or a holding of a stipulation by this court was harmless. In the first appeal, this court recognized that most of the evidence at the 2013 trial tracing the source of funds used to acquire real estate during the marriage was undisputed. Id. at 28. It specifically noted that Pozega presented no rebuttal evidence to undermine Lee's tracing evidence. Id. at 33 n.17. Statements by Becker and Beaton made clear that they agreed Hawes's tracing of the source of funds was accurate. This is clear and convincing evidence that the source of funds used to purchase the real estate was separate. No evidence produced by Pozega on remand rebutted this evidence. On this record, the trial court could not have found otherwise. The error regarding the existence of a stipulation was clearly harmless.

Accordingly, the trial court did not err in concluding that Lee rebutted the presumption that the real property acquired during the marriage was community property through Hawes's tracing report.[20]

IV. Sanctions for Trial Behavior

Pozega argues that this court should direct the trial court to impose sanctions against Lee and Ed for litigation misconduct, including fraud on the court. In her trial brief for the Tallman action, she stated,

> We believe that after the court has heard all the evidence in this case, it will conclude that Ed and Lee have engaged in a massive fraud upon this court, and upon the Court of Appeals. This abuse ran through two separate collusive lawsuits aimed at peeling assets away from Lee in advance of trial; it continued in the trial before this court; it was carried forward in misrepresentation upon misrepresentation made before the Court of Appeals; and it remains ongoing before this Court on remand.

She cited case law in her brief providing "that when there has been a finding of bad faith, in the way a party conducts themselves during trial, the court may award attorney fees and costs." (Citing State v. S.H., 102 Wn. App. 468, 475, 8 P.3d 1058 (2000)). Accordingly, she asked the trial court to make a finding of bad faith and grant her attorney fees.

A trial court may impose sanctions, including attorney fees, under various court rules, or under its "inherent equitable powers to manage its own proceedings." State v. Gassman, 175 Wn.2d 208, 210-11, 283 P.3d 1113 (2012).

[20] Pozega argues that this court should remand for reinstatement of the 2013 property division based on the trial court's mischaracterization of Lee's bank accounts and the real property acquired during the marriage. She has not challenged the property division as an abuse of discretion in the absence of a mischaracterization of property. Having concluded that the trial court did not err in characterizing the property, we find no basis to reverse the award below.

"Trial courts have the inherent authority to control and manage their calendars, proceedings, and parties." Id. at 211. This court may set the boundaries of the exercise of that power. Id. But, the trial court here did not make a finding of bad faith necessary to impose sanctions. We cannot say on this record that this was an abuse of discretion. As a result, we deny her request.

V. Attorney Fees on Appeal

A. Pozega

Pozega requests attorney fees on appeal under RAP 18.1. RAP 18.1(a) allows a party to request fees "[i]f applicable law grants to a party the right to recover reasonable attorney fees and expenses." She states that "[t]he same authority that supports imposing on Lee and Ed the sanction of the fees [she] has had to incur in the trial court . . . amply supports an award of her appellate fees." However, her argument for sanctions cites case law regarding the trial court's power to impose sanctions. Such case law does not apply to her request for attorney fees on appeal. Pozega fails to cite any other applicable law. Therefore, we deny her request.

B. Nobles

The Nobles request attorney fees on appeal under RAP 18.9. RAP 18.9(a) provides,

> The appellate court . . . on motion of a party may order a party or counsel . . . who uses these rules for the purpose of delay, files a frivolous appeal, or fails to comply with these rules to pay terms or compensatory damages to any other party who has been harmed by the delay or the failure to comply or to pay sanctions to the court.

The Nobles argue that Pozega "[tried] to convince the trial court on remand to reinstate decisions that were reversed on appeal." They also assert that she "asks this Court for relief that she cannot possibly receive." But, they fail to establish that Pozega filed a frivolous appeal. They likewise fail to establish that she used the rules for the purpose of delay, or failed to comply with them. Accordingly, we deny their request.

We affirm.

Appelwick, J.

WE CONCUR:

Mann, C.J.

Verellen, J.