

March 19, 2019

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

CATHERINE S. SHUBECK,

Respondent,

v.

JOHN R. SHUBECK AND SHELLY A.  
WILLIAMS,

Appellants.

No. 50979-2-II

UNPUBLISHED OPINION

SUTTON, J. — Catherine S. Shubeck sued her ex-husband John Shubeck and his spouse Shelly Williams, alleging that they fraudulently transferred their marital assets so that John could avoid paying Catherine a lifetime support obligation.<sup>1</sup> After a bench trial, the trial court agreed with Catherine that John and Shelly had engaged in a fraudulent transfer of their marital assets with the actual intent to hinder, delay, or defraud Catherine. The trial court entered findings of fact and conclusions of law and a judgment against John and Shelly, ordered that Shelly would be liable for any supplemental judgment if John stopped paying Catherine, granted a temporary injunction to bar the sale or transfer of their assets until the judgment has been fully satisfied, and ordered that John's spousal obligation to Shelly was avoided to the extent it interfered with his spousal obligation to Catherine, the judgment, or any supplemental judgment. The trial court also

---

<sup>1</sup> John Shubeck's, Shelly Williams', and Catherine Shubeck's first names are used for clarity. No disrespect is intended.

awarded Catherine attorney fees and costs at trial based on John's intransigence. John and Shelly filed a motion for reconsideration and amendment of judgment which the court denied.

On appeal, John and Shelly argue that (1) the trial court's findings of fact are not supported by substantial evidence, (2) the findings do not support the court's conclusions of law, (3) the court did not determine the value of the assets prior to entering judgment and the language that Shelly is liable for any supplemental judgment is ambiguous. John and Shelly ask that the judgment be reversed and we remand to the trial court to clarify the extent of Shelly's liability. They also request that we deny Catherine's request for fees and costs on appeal.

Because John and Shelly did not file a verbatim report of proceedings of the trial, we determine that the record is insufficient to review whether the challenged findings are supported by substantial evidence, instead we conduct a de novo review of the trial court's conclusions of law. Based on a de novo review, we hold that the trial court's conclusions of law are supported by the findings of fact, John's and Shelly's marital assets were community property and they engaged in a fraudulent transfer of their marital assets. We also hold that the trial court properly granted a temporary injunction barring the sale or transfer of their assets until the judgment has been satisfied, and the trial court properly ordered that John's spousal obligation to Shelly was avoided to the extent it interfered with his spousal obligation to Catherine, the judgment, or any supplemental judgment. However, we agree that the language in the judgment regarding Shelly's liability is unclear, and we remand to the trial court to clarify Shelly's liability and to modify the judgment accordingly. We also hold that the trial court's award of reasonable attorney fees and costs to Catherine based on John's intransigence was not an abuse of discretion, and we award Catherine reasonable appellate attorney fees and costs under RCW 26.18.160.

## FACTS

Catherine and John were married from 1982 to 2003. They divorced in 2003 in New Jersey. In 2009, John and Shelly were married in Olympia, Washington.

### I. JOHN'S AND SHELLY'S MARITAL ASSETS

In September 2010, John and Shelly purchased property in Washington at 6th Lane, Fox Island (6th Lane property). John and Shelly used the 6th Lane property as their personal residence.

In October 2012, John began transferring his assets to Shelly. On October 11, John transferred to Shelly (1) his interest in the 6th Lane property, (2) a 2006 Dodge Ram truck, and (3) a 2005 boat trailer. In November 2012, John transferred a 2003 Lexus ES 300 to Shelly. In February 2014, Shelly purchased property at Pilchuck Heights Drive, Fox Island (Pilchuck property). Shortly thereafter, John executed a quit claim deed conveying his community property interest in the Pilchuck property to Shelly.

### II. NEW JERSEY PROCEEDINGS

The New Jersey Superior Court retained jurisdiction over John's and Catherine's dissolution. On September 27, 2012, based on Catherine's motion, the New Jersey court entered an order requiring John to pay lifetime spousal support to Catherine in the amount of \$1,154 per week. John made payments from 2012 until early 2015, he then stopped paying spousal support and fell into arrears.

### III. WASHINGTON STATE ENFORCEMENT ACTION

On January 19, 2016, Catherine registered the 2012 New Jersey support order in Washington and served John with the petition to register. Ten days later, John and Shelly executed

a separate property agreement making Shelly the separate property owner of all of their marital assets except for wine, golf clubs, a piano, and other musical items left with John.

On March 7, the superior court in Washington entered an initial judgment in the amount of \$56,902.13 against John for unpaid spousal support owed to Catherine. Two days after the judgment was entered, Shelly filed for legal separation from John.

In April, Catherine filed the present action alleging a fraudulent transfer of marital assets by John and Shelly. John and Shelly filed counterclaims against Catherine for slander of title and malicious prosecution.

In July, John and Shelly entered an uncontested decree of legal separation. In that decree, the superior court divided the parties' assets according to the prenuptial agreement and separate property agreement, leaving John with virtually no assets, and imposed an obligation on him to pay Shelly \$9,600 per month in spousal support.

#### IV. TRIAL PROCEEDINGS

On August 1, 2017, after a five day bench trial, the trial court concluded that John and Shelly had engaged in a fraudulent transfer of all of their marital assets to avoid paying Catherine.

The trial court entered the following relevant findings of fact:

1. The Plaintiff, Catherine Shubeck, was previously married to Defendant John Shubeck. The parties were married for twenty years and had three children together. Mr. Shubeck worked and was the breadwinner, while Ms. Shubeck took care of the three children and was a homemaker. The parties divorced in New Jersey in 2003. Ms. Shubeck remained in the marital home after the divorce and Mr. Shubeck paid spousal support to her.

....

4. In 2008, Ms. Williams sold Mr. Shubeck her 2003 Lexus ES 300 and Mr. Shubeck registered it in his sole name.

....

6. Ms. Williams stated that the reason [she] and Mr. Shubeck entered into the Prenuptial Agreement was not to keep their assets separate from one another, as she trusted Mr. Shubeck, but instead to ensure that assets remained out of the reach of Ms. Shubeck.

7. The Prenuptial Agreement provides that:

a. Bank accounts would remain separate and distinct, not to be commingled;

b. Mr. Shubeck would maintain his separate ownership of the Lexus ES 300, as well as investment accounts he owned;

c. Each party would be responsible for their separate debts and liabilities; and

d. Ms. Williams would retain separate ownership of a home she owned in New Jersey, as well as any other homes she purchased in the future.

8. Throughout the marriage, Mr. Shubeck and Ms. Williams failed to abide by the terms of the Prenuptial Agreement. Specifically, they failed to maintain separate and distinct bank accounts, and instead commingled funds extensively and used funds in those accounts to make joint purchases and pay community debts. Mr. Shubeck eventually transferred his interest in the Lexus ES 300 and funds in his investment accounts to Ms. Williams. Mr. Shubeck's funds were used to pay for debts and liabilities that were alleged to belong to Ms. Williams. Ms. Williams was not the sole owner of the homes the parties purchased after marriage, as Mr. Shubeck was named on the title and paid for the homes. Mr. Shubeck's name, however, was only on title to the property on 6th Lane, Fox Island, [Washington].

9. Mr. Shubeck earned far more than Ms. Williams during their marriage. From 2011 through 2016, Mr. Shubeck had an average annual salary of approximately \$225,000. On the other hand, during that same time period, Ms. Williams only received approximately \$18,000 per year in Social Security Disability income. Throughout the marriage, Mr. Shubeck would transfer thousands of dollars every month into Ms. Williams' separate bank accounts. After the transfers were made, she would pay for assets, as well as pay other community debts and liabilities.

10. In September 2010, Mr. Shubeck and Ms. Williams jointly purchased real property located at 809 6th Lane FI, Fox Island, WA 98333 ("6th Lane Property")

for approximately \$760,000. Mr. Shubeck was named on the real estate purchase and sale agreement, the statutory warranty deed, deed of trust, and mortgage. Mr. Shubeck also deposited \$80,000 into Ms. Williams' bank account just weeks before the home closed, and those funds were utilized in the down payment for the home. Mr. Shubeck also deposited money on a monthly basis into Ms. Williams' separate bank account to pay for the mortgage and property taxes. Some of his electronic transfers to her account specifically mark the payment for the "mortgage" or "property taxes." Mr. Shubeck and Ms. Williams also filed joint income tax returns and benefitted from the mortgage interest deduction. The home was later sold in December 2016 for approximately \$980,000.

11. In 2011, Mr. Shubeck and Ms. Williams jointly purchased a 2006 Dodge Ram Truck for approximately \$26,000 and registered the vehicle in both their names.

12. In 2011, Mr. Shubeck and Ms. Williams jointly purchased a 2005 Regal Thirty Foot Commodore Cabin Cruiser ("boat") and a 2005 boat trailer for approximately \$42,000. The boat was registered in Ms. Williams' name only, but the trailer was registered in both parties' names. Just prior to purchasing the boat, Mr. Shubeck wrote Ms. Williams a check for \$35,000 and wrote "boat" in the memo line.

13. In early 2011, Mr. Shubeck and Ms. Shubeck's marital home sold. Shortly after, Ms. Shubeck initiated proceedings in New Jersey to modify Mr. Shubeck's spousal support obligation.

14. After numerous delays, the New Jersey court heard the matter on September 27, 2012, in which Mr. Shubeck failed to appear. Mr. Shubeck was ordered to pay Shubeck lifetime spousal support in the amount of \$1,154.00 per week. He was also ordered to pay retroactive spousal support, child support, and attorney fees. Mr. Shubeck's 401k was garnished to pay the retroactive support and fees.

15. Mr. Shubeck sought reconsideration of the September 27, 2012 Order, but it was denied. He then appealed the case to the New Jersey Court of Appeals. In September 2014, the appellate court denied him relief and issued an opinion, wherein the Appellate Court, in quoting the trial court, wrote that Mr. Shubeck "acted in bad faith, failed to appear, failed to be responsive to mediation sessions, failed to take and maintain positions throughout the case, and basically stonewalled [Ms. Shubeck], causing her to borrow significantly from her parents."

16. After entry of the September 27, 2012[,] order, Mr. Shubeck stated that he "panicked." Mr. Shubeck and Ms. Williams both stated that after witnessing what happened in the New Jersey proceeding, they decided to secure the various assets they had purchased by transferring title to Ms. Williams in order to keep them out of reach of Ms. Shubeck. They alleged that Mr. Shubeck never had an interest in

any of these assets to begin with because the Prenuptial Agreement made then all Ms. Williams, and these transfers were considered “corrections of title,” as opposed to transfers of title.

17. On October 11, 2012, Mr. Shubeck quit claimed his interest in the 6th Lane Property to Ms. Williams for no consideration. At the time of transfer, the home was valued at approximately \$688,000. The Defendants only owed appropriately \$374,000 on the mortgage, giving them approximately \$314,000 in equity.

18. Also on October 11, 2012, Mr. Shubeck transferred his interest in the 2006 Dodge Ram Truck to Ms. Williams for no consideration. The 2006 Dodge Ram Truck was valued at approximately \$22,000 at the time of transfer.

....

20. On or about October 18, 2012, Mr. Shubeck withdrew \$24,719.49 from his Vanguard investment account and transferred the funds to Ms. Williams for no consideration.

21. On or about October 23, 2012, Mr. Shubeck withdrew \$23,768.20 from his UBS investment account and transferred the funds to Ms. Williams for no consideration.

22. On November 5, 2012, Mr. Shubeck transferred his sole interest in the 2003 Lexus ES 300 to Ms. Williams for no consideration.

23. After making these transfers, Mr. Shubeck had no assets of significant value remaining. Yet Mr. Shubeck continued to make use of these assets and live in and work out of the 6th Lane Property home.

24. Later, in 2014 while Mr. Shubeck and Ms. Williams were husband and wife, Ms. William[s] purchased a vacant piece of land commonly known as 1350 Pilchuck Heights, Fox Island, WA 98333 (“Pilchuck Property”). Mr. Shubeck was never on the purchase documents. However, at the time of closing, Mr. Shubeck quit claimed his interest in the property to Ms. Williams for no consideration. The value of the vacant piece of land at the time of transfer was approximately \$180,000.

25. From 2014 through the time of trial, Mr. Shubeck and Ms. Williams have been constructing a new water view home with approximately 6000 feet of living space on the Pilchuck Heights property. In order to construct the home, the Defendants utilized a home equity line of credit in which the 6th Lane Property was used as collateral. Both Defendants are named as borrowers on the line of credit. Mr. Shubeck’s income was also used to construct the home, as he deposited funds into

Ms. Williams' bank accounts, and she paid for construction costs. After the 6th Lane Property sold in December 2016, proceeds from the sale of that home were used to construct the Pilchuck Property home. The current value of the Pilchuck Property, including the land and newly constructed home, is estimated to be over \$1,000,000.

....

27. In early January 2015, shortly after Mr. Shubeck's appeal to the New Jersey Court of Appeals was denied, Mr. Shubeck sent Ms. Shubeck a letter stating that he was retiring, that he was not going to be enslaved to her anymore, and that he would no longer be paying support. In that letter, he also stated that he had to "decide if it is reasonable to comply with the court order to pay alimony." He then stopped paying support.

....

32. Mr. Shubeck did not pay the arrears. Instead, from August 2015 through September 2016, he began to almost exclusively deposit his paychecks into Ms. Williams' bank account, which was different from their previous practice where Mr. Shubeck would transfer smaller sums of money to her on a monthly basis.

33. Unable to collect on the arrears from New Jersey, Ms. Shubeck then sought counsel in Washington to help her collect the outstanding support.

....

35. On January 29, 2016, only ten days after being served with the petition to register the order, Mr. Shubeck and Ms. Williams executed a Separate Property Agreement, which purported to make Ms. Williams the separate owner of all the above described assets, and much more, leaving Mr. Shubeck with assets consisting of wine, golf clubs, piano, and other musical accessories.

....

39. Since that Decree was entered, Mr. Shubeck and Ms. Williams continue to live together, make equal use of the assets described above, and carry on a marital relationship.

40. Eventually in late April 2016, per Washington State Employment Security Department subpoena, Ms. Shubeck discovered that Mr. Shubeck was actually still working and she was able to start garnishing Mr. Shubeck's wages. The wage garnishment is costly and needs to be renewed approximately every sixty (60) days.



Mr. Shubeck has not made any voluntary payment on the outstanding arrears, and has failed to pay support as it becomes due and owing. Mr. Shubeck has made Ms. Shubeck's attempts to enforce the support order laborious and costly. The outstanding debt at the time of trial was \$67,524.53. The support continues to become due and owing in the amount of \$1,154 per week. Currently the obligation is [\$6400] per month and accordingly the balance is increasing in amount.

Clerk's Papers (CP) at 231-40.

The trial court also entered the following relevant conclusions of law:

**Community Property vs. Separate Property**

2. In Washington, "all property acquired during marriage is presumptively community property." *In re Marriage of Mueller*, 140 Wn. App. 498, 501 (2007). While spouses may enter into contractual agreements to change community property into separate property, to recognize such an agreement, courts require "clear and convincing evidence" to overcome the "heavy presumption" that the property is characterized as community. *Id.* The requirement of clear and convincing evidence is not met through the use of self-serving declarations of the spouses claiming the property is separate and that he or she acquired it from separate funds and a showing that separate funds were available for that purpose." *Schwarz v. Schwarz*, 192 Wn. App. 180, 189 (2016). When community and separate funds are "so commingled they may not be distinguished or apportioned," the entire amount is rendered community property. *Id.* at 190. To establish clear and convincing evidence, the party purporting to convert community property to separate property must show both (1) the existence of the agreement and (2) that the parties mutually observed the terms of the agreement through their marriage. 140 Wn. App[.] at 501. A prenuptial agreement is unenforceable if the conduct of the parties is inconsistent with the terms of the agreement. *See In re Marriage of Sanchez*, 33 Wn. App. 215, 217-218 (1982); *see also In re Marriage of Fox*, 58 Wn. App. 935, 939-940 (1990).

3. The Defendants have failed to overcome the heavy presumption that the assets acquired during marriage were community in nature. None of the assets in question were ever the separate property of Ms. Williams, as the Defendants failed to abide by the terms of their Prenuptial Agreement, thereby rendering it unenforceable. Mr. Shubeck's income was deposited into Ms. Williams' bank accounts throughout the marriage and she paid for the assets. The Defendants failed to abide by numerous other terms in the Prenuptial Agreement as well. Therefore, Mr. Shubeck had an interest in the assets at the time of transfer, and continues to have an interest in those assets now.

**Fraudulent Transfers**

4. Washington's Uniform Fraudulent Transfer Act (UFTA) governs the Plaintiff's claims. Under RCW 14.40.041(a):

A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

- (1) With actual intent to hinder, delay, or defraud any creditor or debtor; or
- (2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
  - (i) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
  - (ii) Intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.

....

10. In considering the factors described above, there is clear and satisfactory evidence that Mr. Shubeck's transfer of assets to Ms. Williams constitutes a fraudulent transfer made with actual intent to hinder, delay, or defraud Ms. Shubeck. Specifically, (1) the transfers were made to an insider, his wife; (2) there was no consideration given for any of the transfers; (3) Mr. Shubeck retained possession and control over the assets after they were transferred; (4) directly before the transfers were made, Mr. Shubeck was involved in legal proceedings and ordered to pay spousal support; (5) the transfers were essentially all of Mr. Shubeck's assets; (6) Mr. Shubeck became insolvent, as his debts were greater than a fair valuation of all his assets, and he failed and refused to pay the support as it became due and owing; (7) Mr. Shubeck sought to conceal assets by titling them in Ms. Williams['] name only; and (8) a significant portion of the transfers occurred directly after the New Jersey court entered the spousal support order.

11. The Court also considered factors outside those provided for in the UFTA. Specifically, Mr. Shubeck's January 2015 letter telling Ms. Shubeck that he was not going to comply with the court order anymore and refused to be enslaved to her. Also, Mr. Shubeck's efforts to avoid enforcement by Ms. Shubeck's New Jersey counsel by returning mail and avoiding service, and that when the New Jersey court entered an order freezing his assets, he began to secrete his income in Ms. Williams' bank accounts. The Court also considers that Mr. Shubeck and Ms.

Williams executed a Separate Property Agreement ten days after being served with Ms. Shubeck's petition to register the New Jersey order here in Washington. The Court also considers the agreed upon Decree of Separation that the Defendants jointly entered into. The uncontested Decree of Legal Separation, its division of assets, and \$9,600 spousal support obligation is also a fraudulent transfer made with actual intent to hinder, delay, or defraud Ms. Shubeck, as it seeks to solidify the previous fraudulent transfers through a court order and it checks all the same badges of fraud. To the extent the legal separation and its consensual support obligation interferes in any way, as a matter of fact or as a matter of law, with Ms. Shubeck's ability to collect the spousal support, it is avoided.

12. There is also substantial evidence that the transfers were constructively fraudulent, as Mr. Shubeck did not receive any consideration for the transfers and at the time of transfer he knew that he would incur debts beyond his ability to pay as they became due and that he was insolvent.

**Relief**

13. The UFTA expressly allows for judgment against both the transferor and transferee. Under RCW 19.40.081(b), "to the extent a transfer is voidable in an action by a creditor . . . the creditor may recover judgment for the value of the asset transferred . . . or the amount necessary to satisfy the creditor's claim . . . . The judgment may be entered against . . . the first transferee of the asset or the person for whose benefit the transfer was made." The UFTA also provides for the avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claims, and subject to equity and the rules of civil procedure, and injunction against further disposition of assets by the debtor or transferee, and any other relief the circumstances may require. *See* RCW 19.40.071.

14. Judgment shall be entered against both Mr. Shubeck, the transferor, and Ms. Williams, the transferee. Ms. Shubeck shall be entitled to a principal money judgment against both Defendants in the present amount of \$67,524.53, reflecting the debt due and owing to her at the conclusion of trial. Ms. Shubeck shall also be entitled to seek supplemental money judgments against both Defendants in the future in the event that Mr. Shubeck fails to pay future support and new deficiencies arise. There shall also be a temporary injunction against further disposition of Mr. Shubeck and Ms. Williams' assets or other property, including funds in financial accounts. Mr. Shubeck's \$9,600 monthly spousal support obligation to Ms. Williams under their uncontested Decree of Legal Separation is avoided to the extent it interferes with Ms. Shubeck's right to collect due and owing to future spousal support.

**Reasonable Attorney Fees and Costs**

15. Under RCW 26.18.160, “in any action to enforce a support or maintenance order . . . the prevailing party is entitled to recover costs, including an award for reasonable attorney fees.” Further, in cases arising out of a marital dissolution, the court may grant reasonable attorney fees to a prevailing party based on the other spouse’s intransigence. Intransigence consists of delay tactics, obstruction, and any other actions that make proceedings unduly difficult and costly. *In re Marriage of Bobbitt*, 135 Wn. App. 8, 30, (2006).

16. The present case is an action to enforce a spousal support order, and Ms. Shubeck is the prevailing party. Therefore, she is entitled to recover her costs and reasonable attorney fees.

17. Mr. Shubeck’s intransigence also supports an award of reasonable attorney fees. Mr. Shubeck has persistently, dating back to 2011, resisted Ms. Shubeck’s efforts to collect this obligation. His obstructionist efforts in the New Jersey proceeding were well documented by the New Jersey Court of Appeals. Thereafter, his efforts to hinder, delay, and defraud Ms. Shubeck have cost her exorbitant amounts of time and money. He has consistently stonewalled her collection efforts and met her at every turn along the way to defend his unlawful actions. Mr. Shubeck had the ability to pay his debt, yet he simply refused to, and still refuses to. He has created needless litigation.

**Dismissal of Counter Claims**

18. Under Washington law, the necessary elements for a slander of title action are that the words: (1) must be false; (2) must be maliciously published; (3) must be spoken with reference to some pending sale or purchase of the property; (4) must result in a pecuniary loss or injury to the claimant’s title. *Pay’n Save Corp. v. Eads*, 53 Wn. App. 443, 448 (1989).

19. In a malicious prosecution action, the claimant must allege and prove (1) that the prosecution claimed to have been malicious was instituted or continued by the opposing party; (2) that there was want of probable cause for the institution or continuation of the prosecution; (3) that the proceedings were instituted or continued through malice; (4) that the proceedings terminated on the merits in favor of the claimant, or were abandoned; and (5) that the claimant suffered injury or damage as a result of the prosecution. *Eads*, 53 Wn. App. at 447.

20. The Defendants have failed to prove the elements of each cause of action, and therefore those claims are dismissed with prejudice.

After dismissing the counterclaims, the trial court entered judgment in the amount of \$67,524.53<sup>2</sup> against John and Shelly. After finding that John's conduct amounted to intransigence, the trial court awarded Catherine her reasonable attorney fees in the amount of \$83,826.00 and costs in the amount of \$5,625.24, plus interest at the rate of 12 percent.

The trial court also granted a temporary injunction against John and Shelly restricting the sale or transfer of their assets until Catherine's judgment has been fully satisfied. The trial court further ordered that "to the extent [John's] and [Shelly's] [d]ecree of [l]egal [s]eparation, including its division of assets or [John's] monthly \$9,600 spousal support obligation to [Shelly], interferes with [Catherine's] right to collect her spousal support award, or [the] judgment, or any supplemental judgment entered in this case, it is avoided." CP at 250. John and Shelly filed a motion for reconsideration and amended judgment which the trial court denied. John and Shelly appeal the trial court's order denying their motion for reconsideration and amendment of judgment, and the award of attorney fees and costs.

## ANALYSIS

### I. LEGAL PRINCIPLES

We review a trial court's decision to grant or deny a motion for reconsideration for an abuse of discretion. *Rivers v. Wash. State Conference of Mason Contractors*, 145 Wn.2d 674, 685, 41 P.3d 1175 (2002). A trial court abuses its discretion only if its decision is manifestly unreasonable or rests on untenable grounds or reasons. *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997). "A court's decision is manifestly unreasonable if it is outside the range of

---

<sup>2</sup> The amount awarded in the judgment reflected "the amount of spousal support due and owing to [Catherine] at the conclusion of trial." CP at 248.

acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard.” *Littlefield*, 133 Wn.2d at 47.

## II. RECORD ON APPEAL AND FINDINGS OF FACT<sup>3</sup>

“The party seeking review has the burden to perfect the record so that, as the reviewing court, we have all relevant evidence before us.” *Stiles v. Kearney*, 168 Wn. App. 250, 259, 277 P.3d 9 (2012). “An insufficient appellate record precludes review of the alleged errors.” *Stiles*, 168 Wn. App. at 259. The appellant must provide argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record. RAP 10.3(a)(6).

We review a trial court’s decision following a bench trial to determine whether substantial evidence supports the trial court’s findings of fact and whether those findings of fact support the conclusions of law. *Scott’s Excavating Vancouver, LLC v. Winlock Props., LLC*, 176 Wn. App. 335, 341, 308 P.3d 791 (2013). Where the record is inadequate to review whether the findings of fact are supported by substantial evidence, we treat the findings of fact as verities on appeal. *Morris v. Woodside*, 101 Wn.2d 812, 815, 682 P.2d 905 (1984).

---

<sup>3</sup> A commissioner of this court ordered John and Shelley to file an amended brief with proper citations to exhibits and evidence admitted at trial. Their amended brief and appendices A, B, and D do not comply with that order. Thus, we do not consider any documents, evidence, or appendices to the briefs not admitted at trial, nor do we consider any arguments not supported by proper citations to authority. RAP 10.3(a)(6).

Catherine argues that, because appellants failed to provide a verbatim report of proceedings (VRP) of the bench trial as required under RAP 9.2, the findings of fact are verities. John and Shelly argue that the findings are not verities on appeal because they “rely solely on exhibits entered as evidence at trial.” Reply Br. of Appellant at 8. They quote RAP 10.3(g) as authority to claim that because they “noted there are errors on 27 separate findings of fact,” we are not bound by the trial court’s findings. Reply Br. of Appellant at 4, 8. We agree with Catherine.<sup>4</sup> Because John and Shelly failed to file a VRP, the record on appeal is insufficient for us to review whether the challenged findings are supported by substantial evidence. Further, the unchallenged findings of fact are verities on appeal. *In re Marriage of Akon*, 160 Wn. App. 48, 57, 248 P.3d 94 (2011). Thus, all of the findings are verities.

Because the findings are verities, we do not need to determine whether substantial evidence supports the challenged findings, as John and Shelly claim. Instead, we review the conclusions of law de novo to determine whether the challenged conclusions of law are supported by the findings.<sup>5</sup>

---

<sup>4</sup> Without the VRP, the exhibits themselves are insufficient for our review because we are unable to determine what the trial court said in admitting them, what purposes they were admitted for, what weight the trial court gave them, if any, or whether the trial court admitted any contrary evidence.

<sup>5</sup> Although John and Shelly assign error to conclusions of law 18, 19, and 20 regarding their counterclaims for slander of title and malicious prosecution, they fail to provide argument in support of these assignments of error. Thus, we decline to review this issue further. *Milligan v. Thompson*, 110 Wn. App. 628, 635, 42 P.3d 418 (2002); RAP 10.3(a)(6).

### III. TRIAL COURT'S CONCLUSIONS OF LAW

Whether a trial court's findings of fact support its conclusions of law is a question of law that we review de novo. *Kitsap County v. Kitsap Rifle & Revolver Club*, 184 Wn. App. 252, 290, 337 P.3d 328 (2014). We review a trial court's conclusions of law by first determining whether the court applied the correct legal standard. *Rasmussen v. Bendotti*, 107 Wn. App. 947, 954, 29 P.3d 56 (2001).

#### A. COMMUNITY PROPERTY V. SEPARATE PROPERTY CHARACTERIZATION

John and Shelly argue that the trial court's findings of fact do not support the court's conclusions of law regarding the community property character of their marital assets. We disagree. The trial court's conclusions of law are supported by the findings that all of John's and Shelly's marital assets were community property based on their comingling of assets and funds and their violations of their prenuptial agreement and separate property agreement, which agreements are unenforceable.

"[P]roperty acquired during marriage is presumptively community property." *In re Marriage of Mueller*, 140 Wn. App. 498, 501, 167 P.3d 568 (2007). Spouses may enter into contractual agreements to change community property into separate property, but to recognize such an agreement, courts require "clear and convincing evidence to overcome the heavy presumption" that the property is characterized as community. *Mueller*, 140 Wn. App. at 501. "The requirement of clear and satisfactory evidence is not met by the mere self-serving declaration of the spouse[s] claiming the property in question [is separate and] that he [or she] acquired it from separate funds and a showing that separate funds were available for that purpose." *In re Marriage of Schwarz*, 192 Wn. App. 180, 189, 368 P.3d 173 (2016) (footnote omitted) (quoting *Berol v.*



*Berol*, 37 Wn.2d 380, 382, 223 P.2d 1055 (1950)). When community and separate funds are “so commingled that they may not be distinguished or apportioned,” the entire amount is rendered community property. *Schwarz*, 192 Wn. App. at 190.

To establish clear and convincing evidence, the party purporting to convert community property to separate property must show both (1) the existence of the agreement and (2) that the parties mutually observed the terms of the agreement throughout their marriage. *Mueller*, 140 Wn. App. at 501. A prenuptial agreement is unenforceable if the conduct of the parties is inconsistent with the terms of the agreement. *See In re Marriage of Sanchez*, 33 Wn. App. 215, 217-18, 654 P.2d 702 (1982); *see also In re Marriage of Fox*, 58 Wn. App. 935, 939-940, 795 P.2d 1170 (1990).

Here, the trial court’s conclusions of law are supported by the findings. John and Shelly purchased or owned during their marriage: the investment accounts with Vanguard and UBS, the 6th Lane property, the Dodge Ram truck, the boat and trailer, the Lexus, their bank accounts, the Pilchuck property, and the house they built on the Pilchuck property. Catherine registered the New Jersey support order in Washington to enforce it, and after the New Jersey court ordered John to pay retroactive support and he appealed and lost, the New Jersey appellate court found that John “stonewalled” Catherine. CP at 235.

Further, Shelly acknowledged that they entered into the prenuptial agreement to ensure that the assets remained out of reach of Catherine. The prenuptial agreement required that they keep their bank accounts separate, John would separately own the Lexus, each would be responsible for his/her own debts and liabilities, and Shelly would separately own the home in New Jersey plus any other home she purchased in the future.

John and Shelly failed to abide by the terms of their prenuptial agreement because they comingled their funds, used their funds to make joint purchases and pay community debts, and eventually had John transfer to Shelly virtually all of his assets that he purchased or owned during the marriage. And after the transfer, John continued to use the transferred assets as his own.

John earned an average of \$225,000 per year from 2011-2016, while Shelly received approximately \$18,000 per year in disability income. John transferred thousands of dollars into Shelly's accounts so that she could pay the community bills and debts. Although Shelly claimed during oral argument that John's payments on the mortgage and for taxes constituted "rent," the findings do not refer to any record of a rental agreement or rent paid or received. Wash. Court of Appeals oral argument, *Shubeck v. Shubeck & Williams*, No. 50979-2-II (Nov. 27, 2018), at 8 min., 39 sec. to 37 min., 22 sec. (on file with court).

The trial court properly concluded that John and Shelly violated the terms of their prenuptial agreement and separate property agreements which made the agreements unenforceable. The trial court's conclusion that John "had an interest in the assets at the time of transfer, and continues to have an interest . . . now" is also supported by the findings. CP at 241. The trial court also properly concluded that John and Shelly "failed to overcome the heavy presumption that the assets acquired during [their] marriage were community in nature," and that "[n]one of the assets in question were ever the separate property of [Shelly]" are supported by the findings. CP at 241. Because the conclusions of law are supported by the findings, we hold that John's and Shelly's arguments regarding the character of their marital property fail.

B. FRAUDULENT TRANSFERS

John and Shelly next argue that the trial court's conclusions of law are not supported by the findings that they engaged in a fraudulent transfer of their marital assets with actual intent to hinder, delay, or defraud Catherine. Amended Br. of Appellant at 18, 45-47. We disagree.

Under Washington's Uniform Voidable Transactions Act (UVTA), RCW 19.40:<sup>6</sup>

A transfer made or obligation incurred by a debtor is voidable as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(a) With actual intent to hinder, delay, or defraud any creditor or debtor; or  
(b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

(i) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(ii) Intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

RCW 19.40.041(1).

Fraudulent transfers occur when "one entity transfers an asset to another entity, with the effect of placing the asset out of the reach of a creditor, with either the intent to delay or hinder the creditor or with the effect of insolvency on the part of the transferring entity." *Thompson v. Hanson*, 168 Wn.2d 738, 744, 239 P.3d 537(2009). The UVTA provides for two types of fraudulent transfer. RCW 19.40.041(1). The first type is made "with actual intent to hinder, delay, or defraud any creditor." RCW 19.40.041(1)(a). The second type is a constructively fraudulent transfer. RCW 19.40.041(1)(b); see *Clearwater v. Skyline Const. Co.*, 67 Wn. App. 305, 320-21, 835 P.2d 257 (1992). Transfers made without consideration are constructively fraudulent without

---

<sup>6</sup> Formerly "Uniform Fraudulent Transfer Act." LAWS OF 1987, ch. 444.

regard to the actual intent of the parties, if the debtor was left by the transfer with unreasonably small assets. *Clearwater*, 67 Wn. App. at 320.

After John lost his appeal of the New Jersey order requiring that he pay Catherine lifetime support, he “panicked.” CP at 235. He decided to secure the various assets he and Shelly had purchased by transferring titled to her in order to keep them out of reach of Catherine. John and Shelly claimed that John never had any interest in the assets, and that they entered into a prenuptial agreement and agreed that all of their marital assets were Shelly’s separate property, not as transfers of title, but as “corrections of title.” CP at 235. John then transferred his interest in the 6th Lane property, the Dodge Ram truck, the boat and trailer, his two investment accounts, and the Lexus. While husband and wife, Shelly then purchased a vacant lot at Pilchuck Heights and began construction of a 6,000 square foot waterfront home. John and Shelly took out a joint line of credit using the 6th Lane property as collateral. John transferred his income into Shelly’s bank accounts which she then used to pay for construction costs from 2014 through trial. By trial, the land and new home were estimated to be over \$1,000,000 in value. They also continued to live together as husband and wife and make use of the assets.

Further, in early January 2015, John wrote a letter to Catherine stating that he was retiring and would no longer be paying her support. Catherine later discovered that John did not retire as he had claimed, and at her request, the Washington State Employment Security Department began to garnish his wages based on arrears as of April 2016 of \$67,524.53, or \$1,154 per week. Meanwhile, from August 2015 through September 2016, John began to exclusively deposit his paycheck into Shelly’s bank account. Catherine then sought counsel in Washington to enforce the outstanding support.

The trial court properly concluded that there was clear and satisfactory evidence that John's transfers of the marital assets to Shelly constituted a fraudulent transfer made with the actual intent to hinder, delay, or defraud Catherine. The transfers were made to an insider, John's wife; there was no consideration given for any of the transfers; John retained possession and control over the assets after they were transferred; and directly before the transfers were made, he was involved in legal proceedings and ordered to pay spousal support. Further, the transfers essentially consisted of all of John's assets rendering him unable to pay his support obligation to Catherine as his debts were greater than a fair valuation of all his assets, and he then failed and refused to pay the support as it became due and owing. Thus, the trial court's conclusion of a fraudulent transfer is supported by the findings that "[t]here is also substantial evidence that the transfers were constructively fraudulent, as [John] did not receive any consideration for the transfers and at the time of transfer he knew that he would incur debts beyond his ability to pay as they became due and that he was insolvent." CP at 245. Thus, because the court's conclusions of law regarding a fraudulent transfer are supported by the findings, John's and Shelly's claims on this basis fail.

C. RELIEF ORDERED AND SCOPE OF SHELLY'S LIABILITY

John and Shelly next argue that the trial court (1) did not determine the value of the assets prior to entering the judgment, (2) improperly granted an injunction, (3) ordered that John's spousal obligation to Shelly is avoided to the extent it interferes with his support obligation to Catherine, the judgment, or any supplemental judgment, and (4) ordered that Shelly was liable for any supplemental judgment if John stopped paying Catherine. They argue that the extent of Shelly's liability is unclear and request that we reverse the judgment and remand to the trial court to clarify her liability. We hold that the trial court did determine the value of the assets prior to

entering judgment, properly entered a temporary injunction, and avoided John's spousal obligation to Shelly to the extent it interfered with his spousal obligation to Catherine, the judgment, or any supplemental judgment. We agree that the extent of Shelly's liability is unclear, and we reverse the judgment and remand to the trial court to clarify this language and modify the judgment accordingly.

The UVTA provides that

[t]o the extent a transfer is avoidable in an action by a creditor[,] . . . the creditor may recover judgment for the value of the asset transferred . . . or the amount necessary to satisfy the creditor's claim . . . . The judgment may be entered against . . . [t]he first transferee of the asset or the person for whose benefit the transfer was made[.]

RCW 19.40.081(2)(a)(i). Here, the transferee is Shelly, the "person for whose benefit the transfer was made" is John.

After ruling that John and Shelly engaged in a fraudulent transfer, the trial court, based on its findings which are verities, entered conclusions of law as to the value of the assets prior to entering judgment. Thus, we disagree with John and Shelly that the trial court failed to determine the value of the assets. Further, the trial court properly granted Catherine a temporary injunction to bar any sale or transfer of their assets until the judgment has been fully satisfied. The trial court also properly ordered that John's \$9600 monthly spousal obligation to Shelly is avoided to the extent it interferes with John's support obligation to Catherine, the judgment, or any supplemental judgment. However, we agree that the extent of Shelly's liability is unclear. Therefore, we reverse the judgment and remand to the trial court to clarify this provision and modify the judgment accordingly.

#### IV. ATTORNEY FEES AND COSTS

##### A. INTRANSIGENCE

John and Shelly argue that the trial court erred in awarding Catherine attorney fees and costs at trial. Catherine contends that the trial court did not err in awarding her reasonable fees and costs. We agree with Catherine, and hold that the court did not err by awarding her reasonable attorney fees and costs based on John's intransigence.

Trial courts may award attorney fees on the basis of intransigence of a party. *In re Marriage of Greenlee*, 65 Wn. App. 703, 708, 829 P.2d 1120 (1992). "Awards of attorney fees based upon the intransigence of one party have been granted when the party engaged in "foot-dragging" and "obstruction" . . . or simply when one party made the trial unduly difficult and increased legal costs by his or her actions." *In re Marriage of Katare*, 175 Wn.2d 23, 42, 283 P.3d 546 (2012) (*quoting Greenlee*, 65 Wn. App. at 708).

When awarding attorney fees on the basis of intransigence, a trial court must make findings sufficient to allow appellate review. *In re Marriage of Bobbitt*, 135 Wn. App. 8, 30, 144 P.3d 306 (2006). "An appellate court will uphold an attorney fee award unless it finds that the trial court manifestly abused its discretion." *Berryman v. Metcalf*, 177 Wn. App. 644, 656-57, 312 P.3d 745 (2013). The trial court abuses its discretion by granting a fee award based on untenable grounds or for untenable reasons. *Berryman*, 177 Wn. App. at 657. RCW 26.18.160 provides authority for trial courts to award attorney fees and costs to the prevailing party "[i]n any action to enforce a support . . . order."

Here, the trial court reviewed the attorney's declaration filed in support of an attorney fee award for Catherine at trial. The trial court found that John's intransigence resulted in protracted litigation because John "persistently, dating back to 2011, resisted [Catherine's] efforts to collect this obligation." CP at 246. The trial court based its award on RCW 26.18.160, and awarded Catherine reasonable attorney fees and costs in the amount of \$89,451.24.

Based on our de novo review, the conclusions of law are supported by the findings of fact regarding John's intransigence. Because a fee award is authorized under RCW 26.18.160, and the award is not unreasonable or untenable, we hold that the trial court did not abuse its discretion in awarding Catherine reasonable attorney fees and costs at trial.

#### B. ATTORNEY FEES AND COSTS ON APPEAL

Catherine requests an award of reasonable attorney fees and costs on appeal based on RCW 26.18.160 and RAP 18.1. Because Catherine maintained this action to enforce a registered judgment in Washington for support, we agree that Catherine is entitled to an award of reasonable appellate attorney fees and costs under RCW 26.18.160.

#### CONCLUSION

We affirm the trial court's order denying John's and Shelly's motion for reconsideration and amendment of judgment. Because the extent of Shelly's liability is ambiguous, we remand for the trial court to clarify her liability and modify the judgment accordingly. We hold that the



No. 50979-2-II

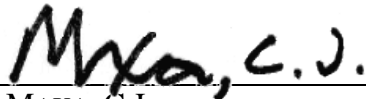
trial court did not abuse its discretion by awarding Catherine reasonable attorney fees and costs at trial and we affirm that order. We award Catherine her reasonable attorney fees and costs on appeal.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

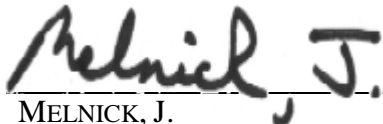


SUTTON, J.

We concur:



MAXA, C.J.



MELNICK, J.