

No. 71212-8-I

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COURT OF APPEALS FOR DIVISION I  
STATE OF WASHINGTON

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MATTHEW E. SCHNEIDER,

Appellant,

v.

SYLVIA A. BOLTON,

Respondent.

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Appellant Matthew E. Schneider's Reply Brief

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## INTRODUCTION

Ms. Bolton's Response Brief is equally notable for what it does not argue as what it does—and it serves to highlight the trial court's errors of law and fact, not to reconcile them.

Unfortunately, the parties are left to speculate as to whether the trial court applied the evidentiary presumption to which Mr. Schneider was entitled, or whether the trial court applied the "clear and convincing" proof standard to Ms. Bolton, or whether she overcame the presumption by offering substantial evidence to contradict that the Schneider Residence remained his separate property. *Id.* The trial court's failure to articulate proper legal standard and its reasoning and application of facts using the correct legal standard is, by itself, reversible error. *In re Marriage of Horner*, 151 Wn.2d 884, 896-7 (2004).

Despite this fatal oversight by the trial court, the Court should reverse and remand here even if the proper legal standard had been applied because the fundamental elements of Mr. Schneider's arguments stand unchallenged by substantial evidence (or any reasonable view of the evidence). Ms. Bolton does not dispute, for instance, that the trial court implicitly determined that the Schneider Residence was Mr. Schneider's separate property until at least 2003. Findings of Fact ("FF") and Conclusions of Law ("CL"), CP 80 at ¶2.8. Nor does Ms. Bolton dispute

her heavy burden of proof under the applicable “clear and convincing” evidentiary standard to determine if Mr. Schneider intended to transmute the Schneider Residence into marital property. Further, Ms. Bolton acknowledges that no evidence existed of Mr. Schneider’s intent to transmute the Schneider Residence prior to the execution of the quit claim deed in 2003. In fact, all evidence introduced at trial was to the contrary and unrebutted. *See* Appellant’s Opening Brief at pp. 7-8.

Instead, her principal rebuttal arguments are unreasonable, self-serving mischaracterizations of the trial testimony (*e.g.*, by asking this Court to speculate without foundation that the quit claim deed was not prepared by the bank) and limited to the literal language of the quit claim deed in isolation without regard for the circumstances surrounding the underlying bank accommodation by Mr. Schneider. Speculation and mischaracterizations do not equate to clear and convincing proof, or any reasonable view of substantial evidence, of intent by Mr. Schneider to transmute. For these reasons, as set forth in greater detail below, Mr. Schneider requests that this Court properly characterize the Schneider Residence as his separate property and remand the case to the trial court for further proceedings.

## TABLE OF CONTENTS

	<i>Page</i>
TABLE OF AUTHORITIES .....	5
I. ARGUMENT .....	6
a. The Quit Claim Deed Executed In 2003 Was Purely An Accommodation To The Bank And Did Not Transmute His Separate Property Into Marital Property.....	6
i. The Schneider Residence Was Separate Property Until 2003.....	6
ii. Mr. Schneider's Separate Funds Were The Exclusive Source Of Funds For Post-Marital Improvements And Renovations Of The Schneider Residence .....	6
iii. The Quit Claim Deed Did Not Change The Legal Character Of The Schneider Residence .....	6
iv. Any Community Efforts To Improve And The Use Of Marital Funds To Pay The Mortgage On The Schneider Residence From 2003 To 2012 Do Not Transmute His Separate Property Into Marital Property .....	9
II. CONCLUSION .....	11

**TABLE OF AUTHORITIES**

CASES

*In re Estate of Borghi*, 167 Wn.2d 480, 219 P.3d 932 (2009) ..... .6, 7, 10  
*In re Estate of Deschamps*, 77 Wash. 514, 137 P. 1009 (1914) ..... 7  
*In re Marriage of Elam*, 97 Wn.2d 811, 650 P.2d 213 (1982) .....10  
*In re Marriage of Griswold*, 112 Wn. App. 333, 48 P.3d 1018 (2002) ..6  
*In re Marriage of Horner*, 151 Wn.2d 884, 896-7 (2004) ..... 1, 9  
*In re Marriage of Pearson-Maines*, 70 Wn. App. 860, 869, 855 P.2d 1210  
(1993).....11

## I. REPLY ARGUMENT

A. The Quit Claim Deed Executed In 2003 Was Purely An Accommodation To The Bank And Did Not Transmute His Separate Property Into Marital Property.

i. The Schneider Residence Was Separate Property Until 2003.

The trial court did not expressly determine as a matter of law that the Schneider Residence was separate property prior to 2003, however, the determination can be reasonably implied. Moreover, Ms. Bolton does not dispute in her response that the determination of the character of property (as either separate or community) is a question of law subject to *de novo* review. *In re Marriage of Griswold*, 112 Wn. App. 333, 339, 48 P.3d 1018 (2002); *In re Estate of Borghi*, 167 Wn.2d 480, 484, 219 P.3d 932 (2009).

ii. Mr. Schneider's Separate Funds Were The Exclusive Source For Post-Marital Improvements And Renovations Of The Schneider Residence.

Further, Ms. Bolton does not dispute in her response that the substantial funds used to improve the Schneider Residence post-marriage were Mr. Schneider's separate funds or funds borrowed against equity in the home. Findings of Fact ("FF") and Conclusions of Law ("CL"), CP 80 at ¶2.8, subpart 2; RP 83, 100-101.

iii. The Quit Claim Deed Did Not Change The Legal Character Of The Schneider Residence

The primary evidence offered by Ms. Bolton in her response to show intent to transmute is the quit claim deed executed in 2003 by Mr. Schneider. Response Brief at pp. 9-10; *see* CP 72, Ex. 49. On the one hand, she acknowledges that no presumption arises from the mere placing of legal title in the names of both spouses, Response Brief at pp. 7-8, *see Borghi* at 487-490; *In re Estate of Deschamps*, 77 Wash. 514, 137 P. 1009 (1914), but she urges that Mr. Schneider's intent in executing the quit claim is clear and convincing from the testimony at trial.<sup>1</sup>

Ms. Bolton's position is untenable. Mr. Schneider's unequivocal and unrebutted testimony establishes that he did not request the quit claim deed from the bank in 2003, he did not draft it, and he did not understand its legal significance. RP 106-107. Again, if he had truly intended to transmute his home, he would have directed Viking bank *at the front end* of the application process. Instead, the bank, not Mr. Scheider, initiated the request for a quit claim deed for business reasons—and Mr. Schneider thereafter signed as an accommodation to the bank. *Id.*; *see* Statement of

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<sup>1</sup>Notably, Ms. Bolton offered no evidence to show that Mr. Schneider intended to convert his home to community property when he *initiated* the 2003 re-finance process. In fact, his actions just two years earlier strongly suggest that when Mr. Schneider re-financed the mortgage on Schneider Residence in 2001 to obtain a more favorable interest rate, he didn't even consider this option, *e.g.*, he could have gifted the property to her in that transaction, but he did not. Statement of the Case at p.10.

the Case at pp. 10-12. Ms. Bolton did not and could not rebut Mr. Schneider's testimony because she had no role whatsoever in the re-financing process. RP 43, 83-85; *see* Opening Brief at pp. 11-12.

In response, Ms. Bolton urges this Court to speculate without any foundation whatsoever that the quit claim was not drafted by the bank, *see* Response Brief at p. 12, and suggests that Mr. Schneider's testimony must have been ignored by the trial court as being self-serving because the trial court failed to articulate how it resolved Mr. Schneider's testimony on the quit claim issue against the proper legal standard.<sup>2</sup> *Id.* The Court need not and should not speculate—the burden of proof rests with her to show Mr. Schneider's intent to transmute, not with Mr. Schneider. Her counsel had full opportunity to cross-examine Mr. Schneider to clarify and presumably elected not to do so despite that the burden of proof rested with his client.

In short, the only reasonable view of the evidence offered is that the execution of the quit claim by Mr. Schneider was an accommodation only that he did not initiate or request. The *Borghi* decision stands, if nothing else, for the proposition that the trial court must review the operative language of the quit claim in the greater context of the re-financing application process and give appropriate weight to evidence of

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<sup>2</sup>Ironically, Ms. Bolton suggests that Mr. Schneider's testimony is self-serving, but implores the Court to embrace her "Matt said it was our home" testimony at

intent outside of the quit claim itself. Mr. Schneider respectfully urges *on de novo* review of the trial court's legal determination of the character of the Schneider Residence that the only evidence of intent beyond the quit claim ***actually contradicts the literal language itself.***

On the record before this Court, Ms. Bolton simply failed to carry her burden and the Schneider Residence should be deemed separate property as a matter of law.<sup>3</sup> At a minimum, the proper course of action on appeal is to reverse and remand due to the trial court's failure to articulate proper legal standard and its reasoning and application of facts using the correct legal standard.<sup>4</sup> *In re Marriage of Horner*, 151 Wn.2d 884, 896-7 (2004).

- iv. Any Community Efforts To Improve The Schneider Residence And The Use Of Marital Funds To Pay The Mortgage On The Schneider Residence From 2003 To 2012 Do Not Transmute His Separate Property Into Marital Property.

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face value.

<sup>3</sup>Ms. Bolton grasps at straws at pp. 13-15 of her response by offering irrelevant, unsubstantiated allegations of concealment of assets without evidentiary citations. The citations to the trial court's findings of fact do not support her naked allegations and, therefore, despite the temptation to refute the allegations, Mr. Schneider declines to address issues unnecessary to the appeal.

<sup>4</sup>Ms. Bolton urges, as well, that division of marital property may have been different if the Schneider Residence had been characterized as separate property. Mr. Schneider disagrees, see Opening Brief at pp. 13-14, however, even if Ms. Bolton was correct, the course of action on appeal is to reverse and remand in light of the determination that the Schneider Residence remained his separate property.

Interestingly, Ms. Bolton’s response does not dispute that post-marriage conduct of the parties (*e.g.*, joint efforts to design and improve the residence, RP 38-41) and the purported post-marriage payments of the mortgage from marital funds may be evaluated—if not for the trial court’s characterization of the Schneider Residence as a marital asset—in the framework of the whether these contributions by the marital community increased the value of the separate property. *In re Marriage of Elam*, 97 Wn.2d 811, 816, 650 P.2d 213 (1982). For example, later community property contributions to pay separate property obligations, improvements, or mortgages *may* give rise to a community “right [to] reimbursement” protected by an equitable lien, but such later actions do not change the property’s character from separate to community. *Borghini*, 167 Wn.2d at 491 n. 7.

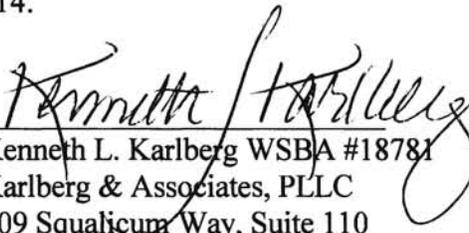
In response to Ms. Bolton’s “Mr. Schneider offered no testimony to establish a lien amount” argument, Response Brief at pp. 17-18, Mr. Schneider simply points out that the trial court did not address the topic because its erroneous ruling on the character of the Schneider Residence made such an analysis moot. Upon reversal and remand, however, the trial court would by necessity need to determine the value of the community contributions by either determining a reasonable wage or assessing the

resulting increase in value or value of marital payments. *In re Marriage of Pearson-Maines*, 70 Wn. App. 860, 869, 855 P.2d 1210 (1993).

## II. CONCLUSION

For the foregoing reasons, Mr. Schneider respectfully requests that this Court reverse the trial court's legal determination that the Schneider Residence was transmuted to marital property and remand the case to the trial court for further proceedings consistent with the Court's *de novo* re-characterization of the nature of the property.

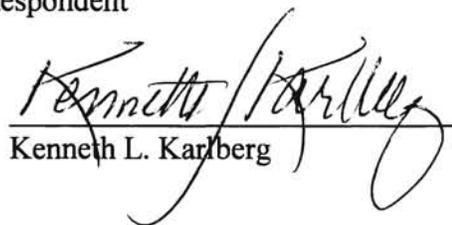
Dated this 19th day of June, 2014.

  
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**CERTIFICATE OF SERVICE**

I certify under penalty under the laws of the State of Washington that on June 19, 2014, I caused a true and correct copy of the foregoing APPELLANT'S REPLY BRIEF to be hand-delivered to the following:

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