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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 Opening Brief

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## I. INTRODUCTION

This appeal arises from the trial court's mischaracterization of a residence ("Schneider Residence") as marital property and its failure to determine the value of a community lien against the Schneider Residence as an equitable alternative to its legal determination. Specifically, the trial court's characterization was based on unsubstantiated factual findings and without clear and convincing evidence that Appellant Matthew E. Schneider ("Mr. Schneider") intended to transmute the Schneider Residence from his separate property to marital property. As a result, the Schneider Residence was wrongfully deemed marital property and the trial court made no effort to calculate or even consider if an equitable claim by the marital community against Mr. Schneider's separate property was appropriate. These errors of law and fact caused Respondent Sylvia A. Bolton ("Ms. Bolton") to receive an unjust and inequitable windfall of over \$200,000 in the division of assets.

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.

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**I. ASSIGNMENT OF ERRORS AND ISSUES PERTAINING TO  
ASSIGNMENT OF ERRORS**

**A. Assignment of Errors**

1. The trial court committed legal error and abused its discretion by characterizing the Schneider Residence as marital property based on Mr. Schneider's execution of quit claim deed to Ms. Bolton in 2003 that requested by Mr. Schneider's bank as an accommodation during his re-finance of his home.

2. The trial court abused its discretion because there is a lack of substantial evidence to support the trial court's finding of fact that mortgage payments for the Schneider Residence from 1999 to 2003 were paid from marital funds.

3. The trial court committed legal error and abused its discretion by not considering the option of a lien or offset against the Schneider Residence for any post-2003 contributions of the marital community to the value of his separate property.

**B. Issues Pertaining to Assignment of Errors**

1. Assignment of Error No. 1: Mr. Schneider challenges the trial court's determination that his execution of a quit claim deed (at the bank's request, not his) to Ms. Bolton in 2003 (as part of a re-finance of the Schneider Residence to borrow funds from the equity in his

of Law (“CL”), CP 80 at ¶2.8, subpart 2; RP 83, 100-101. Between 1989 and 1999, Mr. Schneider paid all mortgage payments.<sup>1</sup> *Id.* At the time of their marriage, the value of the Schneider Residence, net of its outstanding mortgage, was \$410,000. *Id.*

B. Source of Payments for Residential Improvements.

Between 1999 and the date of the parties’ separation on August 7, 2012, the Schneider Residence underwent three (3) renovations—one shortly after their marriage in August, 1999, another in 2001, and the final most extensive remodel in 2004-5. FF, CP 80 at ¶2.8, subpart 2; RP 38-39; RP 101.

The initial remodel involved emergency plumbing repairs in the approximate amount of \$30,000. RP 101. Payment for these repairs came exclusively from Mr. Schneider’s separate funds that he had saved prior to the marriage (approximately \$300,000). FF, CP 80 at ¶2.8, subpart 2; RP 101-102.

The second remodel principally involved the renovation of the kitchen in the approximate amount of \$100,000. Again, payment for the kitchen renovations came exclusively from Mr. Schneider’s separate pre-

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<sup>1</sup> The trial court determined that all mortgage payments after 1999 were paid with marital funds. FF, CP 80 at ¶2.8, subpart 2. This finding is accurate from 2004 forward; however, the finding is completely unsubstantiated and unsupported for the period between 1999 and 2003 (when the Schneider

marital funds. FF, CP 80 at ¶2.8, subpart 2; RP 103.

The cost of the final extensive renovations in 2004-5 was paid for by Mr. Schneider by re-financing the Schneider Residence in 2003 by borrowing against equity in his home. *Id.* At the time of the 2003 re-finance, the Schneider Residence was valued at \$552,000 and his outstanding mortgage was only \$119,000, which left Mr. Schneider with net equity of approximately \$443,000. FF, CP 80 at ¶2.8, subpart 2. To pay for the final and most extensive remodel, therefore, he borrowed approximately \$198,000 from the equity in his home. CP 72, Ex. 114.

Neither party disputes—and indeed the trial court found—that all these renovations were paid for from Mr. Schneider’s separate funds, FF, CP 80 at ¶2.8, subpart 2; RP 83-85, 105-106, 110, and further that no other improvements were made to the Schneider Residence between 2004-5 until the parties separated in August, 2012. *Id.* In total, Mr. Schneider invested approximately \$328,000 in his home from his own separate funds and/or assets between 1999 and 2004-5, and while the Schneider Residence was not appraised again until shortly before trial in July, 2013, *see* CP 72, Ex. 16, presumptively, the renovations increased the value of his home.

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Residence was re-financed for the second time).

C. The 2003 Quit Claim Bank Accommodation

In 2001, Mr. Schneider re-financed the Schneider Residence to obtain a lower interest rate on his mortgage. FF, CP 80 at ¶2.8, subpart 2; RP 104. No quit claim to his wife was required by the lender as a condition for this re-finance. Following this 2001 re-financing, therefore, he continued to hold title to his home in his name only. The only testimony before the trial court was that he had no intention of transmuting his home into marital property as recently as the 2001 re-finance. RP 104.

The 2003 refinance of the Schneider Residence was through Viking Bank, which handled Mr. Schneider's accounts for his boat and permit brokerage business, GSI.<sup>2</sup> RP 105. Similar to the 2001 re-finance only two years earlier, Mr. Schneider had no intent to transmute the Schneider Residence into marital property as part of this 2003 transaction. To facilitate the re-finance, however, Viking Bank required him to execute a quit claim deed to Ms. Bolton. CP 72, Ex. 49; RP 106-107. His signature, therefore, was purely an accommodation to Viking Bank from his perspective. RP 105-107.

In relevant part, the cover page of the quit claim deed provided:

It is understood and my/our intention to create community property

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<sup>2</sup>For an overview of Mr. Schneider's educational and vocational background, his business and the challenges caused by permanent structural changes in the fishing industry and by internet sales, *see generally* RP 112-119. For an overview of Ms. Bolton's educational and vocational background and design business, *see generally* RP 37-38, 73-78, 89, 92.

and that titled be vested in Matthew E. Schneider and Sylvia A. Bolton, Husband and Wife.

CP 72, Ex. 49; FF, CP 80 at ¶2.8, subpart 2. The language in the body of the quit claim deed further provided “for and in consideration of TO CREATE COMMUNITY PROPERTY.” *Id.*

Against this simple language of the quit claim deed, the trial court heard the following unrebutted testimony from Mr. Schneider:

- Q: Did you intend to transfer or create marital property out of the Commodore Way residence as part of that transaction?  
A: No, I did not.  
Q: Were you represented by counsel?  
A: No, I was not.  
Q: Did you understand what the potential consequences were or the legal ramifications of that quit claim deed that the Court has seen?  
A: Not at the time. It was the bank just said we need—

(objections overruled)

- Q: Again, you were starting to explain at least what the bank said.  
A: The bank that I banked with for years, they simply said, “we need you to sign these documents in order to make you this loan. We want Sylvia on there.” And I said, “Well, okay.”  
Q: Now earlier we had, the Court was referenced to the exhibit of the quit claim. Did you draft that?  
A: No.  
Q: Did you draft—so the language which says, there is language in that quit claim if I recall that says something to the effect that “I, Matthew Schneider, want to make this a marital property.” Words to that effect. Do you recall that?  
A: Yes.  
Q: Did you really direct the bank to do that?  
A: No, they drafted that up themselves.  
Q: And that was in your mind—was it kind of put to you as, “you have to do this,” or is this optional?  
A: They put the documents in front of me for the loan, you sign them,

you're done.

Q: Did you discuss it with Ms. Bolton at all?

A: No, I did not.

Q: Was there anything in writing or even oral where you said, "Honey, I'm going to quit claim this to you so that half of this now it's a marital property.

A: No.

RP 106-107.

With respect to the 2003 re-financing, Ms. Bolton testified as follows:

Q: Did you have anything to do with the arranging of that financing?

A: Matt dealt with all of our financial issues.

Q: Did you have anything to do with the preparation of the quit claim deed?

A: Matt did it.

RP 43. *See* RP 83-85.

No other evidence was before the trial court to substantiate the trial court's determination that "Mr. Schneider's separate interest was gifted to the community" by virtue of his execution of the quit claim deed. CP 80 at ¶2.8, subpart 2.

D. Source of Post-Marital Mortgage Payments.

The trial court ruled that all post-marital mortgage payments on the Schneider Residence were "made by the community." *Id.* No direct testimony was provided at trial, such that there is a lack of substantial evidence to support this finding.

E. 2009 Re-Finance of Schneider Residence.

In 2009, Mr. Schneider re-financed the Schneider Residence yet again, but not for purposes of renovation or remodeling. The parties had acquired four (4) homes during their marriage—three rental (income producing) properties in Arizona and a vacation home. Mr. Schneider borrowed \$119,000 in 2009 against the Schneider Residence to pay-off the mortgage of one of the rental homes. CP 72, Ex 2; RP 110-111.

All told, therefore, between the borrowed funds to improve the Schneider Residence (\$198,000) in 2003 and the \$119,000 in funds borrowed in 2009 to pay-off the mortgage on one of the Arizona rental properties (which were subsequently awarded to Ms. Bolton), Mr. Schneider financially burdened his home by taking on an additional \$317,000 of debt (not including \$130,000 expended from separate funds for improvements in 1999 and 2001).

#### F. Equitable Allocation of Marital Assets.

At trial, Mr. Schneider argued for a 50-50 split of marital property, while Ms. Bolton argued for a 55-45 split in her favor. Mr. Schneider agrees with the trial court's finding that "there is no reason that one of the spouses should be awarded more than the other" in ruling that "[a] just and equitable division of the assets between the parties is an equal or "fifty-fifty" division. CP 80, Asset Allocation Percentage. As the trial court found, the parties are healthy, both are trained for their respective

businesses, and Ms. Bolton was awarded the three incoming producing Arizona rental homes (including the rental home whose mortgage was paid in full with funds borrowed against the Schneider Residence in 2009) with a total value of \$557,000. CP 80; CP 72, Plaintiff's Property Matrix, Ex. 120; CP 72, Ex. 14-16; RP 112-119; RP 37-38, 73-78, 89, 92, 122-123, 134-138.

Mr. Schneider challenges, of course, the trial court's mischaracterization of his home as a marital property, which had only a net equity of \$382,716 as of the time of trial due to the substantial borrowing against the Schneider home for the 2004-5 remodel and 2009 re-finance. FF, CP 80 at ¶2.8, subpart 2.

### **III. 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.**

To allocate property and liabilities on a basis that is "just and equitable," the trial court must consider "all relevant factors including, but not limited to: (1) [t]he nature and extent of the community property; (2) [t]he nature and extent of separate property; (3) [t]he duration of the marriage . . .; and (4) [t]he economic circumstances of each spouse . . . at the time the division of property is to become effective. RCW 26.09.080.

The application of these factors requires the court to first determine

the character of property as either separate or community, which 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). While the trial court’s broad discretion will only be reversed upon a showing of manifest abuse, *In re Marriage of Kraft*, 119 Wn.2d 438, 450, 832 P.2d 871 (1992), manifest abuse results if the trial court mischaracterized the Schneider Residence as marital property.

i. The Schneider Residence Was Separate Property Until 2003.

The character of the property is established at the time of its acquisition. *In re Estate of Borghi*, 167 Wn.2d 480, 484, 219 P.3d 932 (2009). If the property is determined to be separate in character, the property is presumed to remain separate under the “inception of title” theory and remains separate unless the party challenging the characterization proves by clear and convincing evidence to show intent to transmute the property from separate into community property. *Id.* at 484-485.

As to the initial character of the Schneider Residence, the parties and the trial court are in unanimous agreement—the property was Mr. Schneider’s separate property. Findings of Fact (“FF”) and Conclusions of Law (“CL”), CP 80 at ¶2.8, subpart 2; RP 83, 100-101. Ms. Bolton,

therefore, has the heavy burden of overcoming this presumption by showing by clear and convincing evidence that Mr. Schneider intended to convert the Schneider Residence to community property. It is her burden, failing which the property retains its separate character.

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

As to the character of the substantial funds used to improve the Schneider Residence post-marriage, the parties and the trial court are further in unanimous agreement—the funds 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, if not exclusive, evidence offered by Ms. Bolton to show intent to transmute is the quit claim deed executed in 2003 by Mr. Schneider. CP 72, Ex. 49. As Washington courts have repeatedly held, however, no presumption arises from the mere placing of legal title in the names of both spouses, *Borghi* at 487-490; *In re Estate of Deschamps*, 77 Wash. 514, 137 P. 1009 (1914), because "there are many reasons it may make good business sense for spouses to create joint title that have nothing

to do with any intent to create community property.” *Borgbi* at 489 (citing *Guye v. Guye*, 63 Wash. 340, 115 P. 731 (1911)).

The critical inquiry here, therefore, is one of intent, and not just Mr. Schneider’s intent, but whether ***clear and convincing*** evidence was offered by Ms. Bolton to overcome the legal presumption and to show intent to transmute the Schneider Residence into community property for Ms. Bolton’s benefit. As a matter of law, Mr. Schneider respectfully submits the answer is “no.” The language of quit claim deed may be evidence, but it is neither conclusive nor clear and convincing in the face of un rebutted and substantial oral testimony to the contrary by both parties at trial.

Specifically, 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. Moreover, Mr. Schneider’s unequivocal and un rebutted testimony establishes that he did not request the quit claim deed from the bank in 2003. 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 to receive the funds.

Simply put, an accommodation is not intent in this particular circumstance, notwithstanding the language of the quit claim deed, and certainly the language of the quit claim deed in the face of unequivocal and un rebutted testimony to the contrary is not *clear and convincing* evidence of Mr. Schneider’s intent to transmute. At best, Ms. Bolton may be able to argue that Mr. Schneider’s intent was ambiguous, but even this futile argument should have precluded the trial court from re-characterizing the Schneider Residence as marital property. In sum, Ms. Bolton did not overcome her heavy burden of proof and the trial court committed an error of law.

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.

The secondary justification cited by the trial court to substantiate its decision to characterize the Schneider Residence as marital property is equally insufficient to overcome the presumption of separate property that attached to the Schneider Residence at the time of its acquisition. The

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<sup>3</sup> are properly evaluated, if at all, 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); *In re Marriage of Miracle*, 101 Wn.2d 137, 139, 675 P.2d 1229 (1984). Typically, any increase in the value of separate property is presumed to be separate property. *Elam* at 816. The trial court may, however, 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.<sup>4</sup> *In re Marriage of Pearson-Maines*, 70 Wn. App. 860, 869, 855 P.2d 1210 (1993).

Instead, the trial court ignored this line of legal authority and used certain disputed, but limited *post-quit claim deed actions* by the parties to find by clear and convincing evidence that Mr. Schneider intended to

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<sup>3</sup>The trial court erroneously ruled that all post-marital mortgage payments on the Schneider Residence were “made by the community.” *Id.* The burden is upon Ms. Bolton to offer clear and convincing evidence to rebut the separateness presumption, and yet no direct testimony was provided at trial regarding post-marital mortgage payments, such that there is a lack of substantial evidence to support this finding.

<sup>4</sup>The trial court was presented with exhibits and evidence that would have allowed the court to calculate the total of monthly mortgage payments from 2003 until the parties separated.

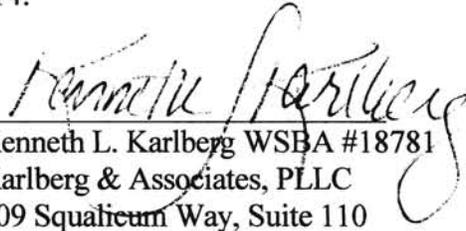
transmute the Schneider Residence into community property when he executed the quit claim deed in 2003. This is error.

The legal impact of the quit claim deed must be evaluated in the context of the circumstances in 2003 when Mr. Schneider executed the quit claim deed, not later unrelated circumstances. 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. *Borgi*, 167 Wn.2d at 491 n. 7.

#### **IV. 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 21<sup>st</sup> day of April, 2014.

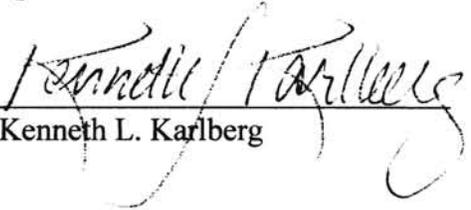
A handwritten signature in cursive script, reading "Kenneth L. Karlberg". The signature is written in black ink and is positioned above the printed contact information.

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**CERTIFICATE OF SERVICE**

I certify under penalty under the laws of the State of Washington that on April 21, 2014, I caused a true and correct copy of the foregoing APPELLANT'S OPENING BRIEF to be hand-delivered to the following:

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