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COURT OF APPEALS, DIVISION TWO
STATE OF WASHINGTON

JACOB DERICK COOPER,

Appellant,

v.

NANCY CAROLINA COOPER,

Respondent.

PETITION FOR REVIEW

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I. Identity of Petitioner

Petitioner Jacob Cooper seeks review of the Court of Appeals decision terminating review.

II. Court of Appeals Decision

Petitioner seeks review of the Court of Appeals' unpublished decision issued on June 25, 2024, In Re Marriage of Cooper, No. 58070-5-II, which is attached as Appendix A.

III. Issue Presented for Review

1. The Court of Appeals erred in remanding this case to the trial court after determining that trial court mischaracterized the wife's inheritance as separate property.

IV. Statement of the Case

Jacob and Nancy Cooper married in May 2016 after having lived together for over a year. **(CP 249).**

Jacob is in the military, and Nancy is a nurse. (CP 249).¹ They do not have any children. (CP 4).

Shortly after they married, Nancy inherited \$118,000 from her father's estate. (CP 250). Jacob deposited the money into a newly opened money market account. (CP 115). Jacob later added Nancy's name to this account. (CP 14-15) Over time, the parties made significant deposits and withdrawals into and out of this account. (CP 15-16, 20, 115).

A few month later, the parties purchased a new family home. (CP 311). The parties dispute to what extent Nancy's inheritance financed the purchase of the Port Orchard family home. (CP 311-16, 335).

Six months after they purchased the home, Jacob filed for dissolution. (CP 3). Before trial, the court

¹ This Brief uses the parties' first names for clarity. No disrespect is intended.

granted Nancy's motion for summary judgment, holding that her \$118,000 inheritance was her separate property. (CP 358).

Following a bench trial, the trial court entered a dissolution decree. (CP 349-55). The court awarded the family home to Jacob, but Nancy received a marital lien of \$354,420. (CP 349-50). The court equally divided the remaining community assets consisting of five Tesla stocks. (CP 350).

The Court of Appeals reversed in part. The court ruled that the trial court erred in finding that the inheritance constituted Nancy's separate property because the parties used both community and separate funds to purchase the family home. (App. 5).

Nevertheless, the court affirmed the trial court's property distribution. (App 6). The court reasoned that the trial court "was in the best position to

determine what was fair, just, and equitable,” having conducted a trial, considered testimony, and reviewed exhibits. (App. 6). The court also noted that the trial court did not reference its summary judgment finding in its final orders. (App. 5-6)

Jacob petitions this Court for review.

V. Argument

The Court of Appeals erred in not remanding this case after concluding that the trial court mischaracterized Nancy’s inheritance. Given the trial court’s lack of detailed findings and the parties’ dispute about the extent to which the inheritance financed the family home, the Court of Appeals should have remanded this case under RAP 13.4(b)(2).

If a trial court mischaracterizes property, this Court will remand for further consideration

when (1) the trial court's reasoning indicates that its property division was "significantly influenced" by its property characterization and 2) it is "not clear" that the court would have reached the same result had it characterized it properly. In re Marriage of Shannon, 55 Wash.App. 137, 142, 777 P.2d 8 (1989).

Here, the trial court awarded Nancy a marital lien on the Port Orchard home in the amount of \$375,000. But in so doing, the trial court did not provide any explanation for why Nancy deserved such a large marital lien, especially given the fact that the parties disagreed about how much of the inheritance financed the home. The court of appeals held that the trial court "was entitled to consider that Nancy's inheritance was a significant

contribution” to the purchase, but there is no evidence in the record from which the court determine it was significant. (App 6)

Because it awarded Nancy such a large marital lien, the trial court ultimately awarded Nancy a disproportionate share of the marital assets. The Court of Appeals implies that the trial court’s summary judgment order was immaterial to its ultimate property distribution, simply because the trial court didn’t reference it in its findings. Without its earlier summary judgment order, however, the trial court order does not make sense. It is equally reasonable—in fact, more reasonable—that the trial court felt little need to justify its lien because it had amply explained its reasoning at the summary judgment hearing. To that extent, the trial court’s

summary judgment order was **the** significant factor undergirding its final orders. The trial court's failure to enter detailed findings of facts or conclusions of law in its dissolution decree further illustrates this point.

VI. Conclusion

This Court should reverse the Court of Appeals and remand to the trial court with an order to make a just and equitable distribution of property after properly characterizing Nancy's inheritance as community property.

I certify that this Brief contains 805 words, in compliance with RAP 18.17(b).

DATED this 25th day of July 2024.

By: /s/ Brian Christopher Zuanich
Brian C. Zuanich, WSBA #43877
Attorney for Jacob Cooper

Certificate of Service

I certify under penalty of perjury under the laws of the State of Washington that on July 25, 2024, I served this Petition on Respondent's counsel via the Court's e-service portal.

/s/ Brian Zuanich

Brian Zuanich

Seattle, WA

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON June 25, 2024

DIVISION II

In the Matter of the Marriage of

JACOB DERICK COOPER,

Appellant,

and

NANCY CAROLINA COOPER,

Respondent.

No. 58070-5-II

UNPUBLISHED OPINION

MAXA, J. – Jacob Cooper appeals the trial court’s distribution of property in the dissolution decree that dissolved his marriage to Nancy Cooper.

Shortly after the marriage, Nancy¹ inherited \$118,000 from her father. Nancy deposited the money into a joint checking account, and then without Nancy’s knowledge or consent, Jacob transferred most of the money to his money market account. Jacob then added Nancy to the account. Over time, additional funds were deposited and withdrawn from the money market account. Nancy then used the inheritance funds to help purchase the family home.

The trial court ruled on summary judgment that the \$118,000 remained Nancy’s separate property. The court subsequently divided the family home in the dissolution decree by giving Jacob ownership but awarding Nancy \$118,000 plus half the remaining value of the home. Jacob argues that the \$118,000 became community property because it was commingled with community funds.

¹ We use first names to distinguish between the parties. No disrespect is intended.

We hold that the trial court erred in its ruling that \$118,000 constituted Nancy's separate property, but the trial court did not abuse its discretion in awarding Nancy \$118,000 plus half the remaining value of the family home as a fair and equitable distribution of the home.

Accordingly, we affirm the trial court's dissolution decree.

FACTS

Nancy and Jacob married in May 2016, and they petitioned to dissolve their marriage in March 2018. They came into the marriage with separate funds, which they combined into a joint bank account.

In February 2017, Nancy inherited \$118,000 from her father. Nancy deposited the money into the couple's joint checking account. Without Nancy's knowledge or consent, Jacob moved \$116,000 from the joint account to his money market account with Navy Federal Credit Union. Nancy's name later was added to that account. Nancy subsequently agreed to use the inheritance funds to help buy their family home. Six months after the home purchase, Jacob filed for dissolution of the marriage.

Jacob moved for partial summary judgment, asserting that all funds held in the money market account constituted community property, including the money from Nancy's inheritance. He argued that the inheritance became community property because it was commingled with community funds in the money market account. Jacob submitted multiple exhibits showing transactions involving the money market account and their other bank accounts.

Nancy filed a cross-motion for partial summary judgment, asserting that her \$118,000 inheritance remained her separate property. She claimed that the parties always considered the inheritance as separate funds and that Jacob could not show that she intended to make the inheritance community funds.

The trial court denied Jacob's motion and granted Nancy's motion for summary judgment.

Following a bench trial, the trial court entered findings of fact and conclusions of law and a final dissolution decree. The court awarded Jacob the marital home, but ordered him to pay Nancy a marital lien on the home of \$354,250, which constituted the \$118,000 inheritance plus 50 percent of the remaining value of the marital home. The court did not specifically mention its summary judgment ruling that the inheritance was separate property in the findings or the decree.

Jacob appeals the trial court's dissolution decree.

ANALYSIS

A. LEGAL PRINCIPLES

A trial court's characterization of property as separate or community is a mixed question of law and fact. *In re Marriage of Watanabe*, 199 Wn.2d 342, 348, 506 P.3d 630 (2022). The time and method of acquisition and the donor's intent are questions of fact that we review for substantial evidence. *Id.* But the characterization of property as separate or community is a question of law, which we review de novo. *Id.* at 348-49.

All property acquired during marriage presumptively is community property. *Id.* at 351. However, property acquired during marriage by inheritance is separate property. RCW 26.16.010; *Watanabe*, 199 Wn.2d at 351. And property acquired during marriage strictly with separate funds is separate property. *Watanabe*, 199 Wn.2d at 353.

"Separate property will remain separate property through changes and transitions, if the separate property remains traceable and identifiable; however, if the property becomes so commingled that it is impossible to distinguish or apportion it, then the entire amount becomes community property." *In re Marriage of Chumbley*, 150 Wn.2d 1, 5-6, 74 P.3d 129 (2003). In

addition, if separate funds are used to pay off debt on community property, they cease to exist as a separate asset and cannot be awarded as separate property in a dissolution. *In re Marriage of White*, 105 Wn. App. 545, 552-53, 20 P.3d 481 (2001).

Significantly, the trial court's characterization of property is not controlling for the trial court's ultimate distribution of property. *In re Marriage of Groves*, 10 Wn. App. 2d 249, 254, 447 P.3d 643 (2019). Instead, all the parties' property, whether separate or community, is before the court for distribution. *Id.* The trial court must make a distribution that is fair and equitable under all the circumstances. *Id.*

RCW 26.09.080 states that the trial court's "disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors." The relevant factors include:

- (1) The nature and extent of the community property;
- (2) The nature and extent of the separate property;
- (3) The duration of the marriage or domestic partnership; and
- (4) The economic circumstances of each spouse or domestic partner at the time the division of property is to become effective, including the desirability of awarding the family home or the right to live therein for reasonable periods to a spouse or domestic partner with whom the children reside the majority of the time.

RCW 26.09.080. The trial court has broad discretion "to make a just and equitable distribution of property based on the factors enumerated in RCW 26.09.080." *Groves*, 10 Wn. App. 2d at 254 (quoting *In re Marriage of Wright*, 179 Wn. App. 257, 261, 319 P.3d 45 (2013)).

Another factor a trial court can consider is one spouse's unusually significant contributions to the assets before the court. *White*, 105 Wn. App. at 551.

We review a trial court's distribution of property for abuse of discretion. *Groves*, 10 Wn. App. 2d at 254. This is a "highly deferential standard." *Id.* at 255. The trial court is in the best

position to determine what is fair, just, and equitable. *In re Marriage of Doneen*, 197 Wn. App. 941, 949, 391 P.3d 594 (2017).

B. CHARACTERIZATION OF PROPERTY

Jacob argues that the trial court erred in ruling on summary judgment that Nancy's \$118,000 inheritance remained separate property. We agree.

This court in *White* established that when separate funds are used to pay off debt on community property, they cease to exist as a separate asset and cannot be awarded as separate property in a dissolution. 105 Wn. App. at 552-53. The same rule necessarily applies when a spouse uses separate funds to assist in the purchase of the family home along with community funds. At that point, the inheritance "cease[s] to exist as a separate asset." *Id.* at 552.

Using separate funds as a partial contribution to purchasing property is different than when *only* separate funds are used to purchase property. In that second situation, the property purchased remains separate property. *Watanabe*, 199 Wn.2d at 353.

We hold that the trial court erred in determining on summary judgment that the \$118,000 was separate property.

C. DISTRIBUTION OF PROPERTY

The trial court's error does not necessarily require reversal. As noted above, the characterization of property is not controlling when the trial court distributes the parties' property. *Groves*, 10 Wn. App. 2d at 254. The ultimate question is whether the court has made a fair and equitable distribution under all the circumstances. *Id.*

Here, the trial court was tasked with distributing the family home. The court decided to award Jacob the family home, but stated that Jacob was required to pay Nancy \$118,000 plus half of the remaining value of the home. The court did not even mention its previous separate

property ruling. The court was entitled to consider that Nancy's inheritance was a significant contribution to the purchase of the family home. *See White*, 105 Wn. App. at 551. And the court made a specific finding that "[t]he division of community personal property described in the final order is fair (just and equitable)." Clerk's Papers (CP) at 354.

The trial court conducted a trial and considered the testimony of the parties before making its distribution ruling. We are not in a position to second guess the trial court's property distribution. The trial court was in the best position to determine what was fair, just, and equitable. *Doneen*, 197 Wn. App. at 949. According, we hold that the trial court did not err in its property distribution.

D. ATTORNEY FEES ON APPEAL

Nancy requests attorney fees on appeal. RCW 26.09.140 states, "The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter." RCW 26.09.140 also gives us discretion to "order a party to pay for the cost to the other party of maintaining the appeal and attorneys' fees in addition to statutory costs."

"In exercising our discretion, we consider the issues' arguable merit on appeal and the parties' financial resources, balancing the financial need of the requesting party against the other party's ability to pay." *In re Marriage of Kim*, 179 Wn. App. 232, 256, 317 P.3d 555, (2014).

As required in RAP 18.1(c), Nancy filed a financial affidavit outlining her income and expenses. Jacob did not file a financial affidavit, so we have no information regarding his ability to pay. Regarding the merits of the appeal, Nancy is the ultimate prevailing party. But Jacob prevailed on the separate property issue.

Exercising our discretion, we decline to award attorney fees to Nancy.

CONCLUSION

We affirm the trial court's dissolution decree.

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.


MAXA, J.

We concur:


VEL. ACIC, A.C.M.


CHE, J.

ZUANICH LAW, PLLC

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