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No. 1033028

Court of Appeals No. 58070-5-II

SUPREME COURT
OF THE STATE OF WASHINGTON

In re Marriage of:

JACOB DEREK COOPER,

Appellant,

v.

NANCY CAROLINA COOPER,

Respondent.

ANSWER TO PETITION FOR REVIEW

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INTRODUCTION

Petitioner Jacob Cooper does not argue any of the grounds for review, making only a passing reference to RAP 13.4(b) and citing a single case. There is no conflict.

Marriage of Shannon, *supra*, requires remand where there is a characterization error, “the trial court’s reasoning indicates that its division was significantly influenced by its characterization,” and it is unclear that the court would have divided the property the same way absent the error. Jacob did not even provide a transcript, so cannot possibly meet this standard. The appellate court correctly declined to remand, having found that the trial court did not even mention characterization in its findings, and made a just and fair distribution of assets.

Nancy Cooper left this very short marriage with the value of her inheritance and half the value of the marital home, the only significant asset. That is fair and just. This Court should deny review.

RESTATEMENT OF ISSUES PRESENTED FOR REVIEW

Should this Court deny review where Jacob does not even argue that a conflict exists?

FACTS RELEVANT TO ANSWER

- A. This entire appeal was about Jacob Cooper's efforts to obtain Nancy Cooper's inheritance after a two-year marriage, despite his open acknowledgement that Nancy never intended to gift it to the community.**

The facts are largely uncontested. Pet. at 1-3. Nancy agrees with the following:

The parties married in May 2016;

Shortly after their marriage, Nancy inherited \$118,000 from her father;

Nancy deposited the money into a joint account;

Without her knowledge or consent, Jacob moved Nancy's inheritance into a newly-opened account in his name only, later adding Nancy's name;

A few months later, the parties purchased a home, disputing the extent to which Nancy's inheritance financed the purchase;

Six months later, Jacob filed for divorce in March 2018;

The parties were married for less than two years;

The trial court ruled, as a matter of law, that the inheritance remained Nancy's separate property, awarded the

home to Jacob, and awarded Nancy a lien in the amount of \$118,000 for the inheritance and one-half the remaining value on the home;

The appellate court reversed the summary-judgment ruling on characterization, but affirmed the distribution of assets.

Pet. at 2-4; Unpub. Op. (attached) at 1-3.

But Jacob omits much. Nancy's inheritance was a gift from her father Salvador Villanueva ("Sal"), who fell gravely ill days before the parties' wedding and died within a few months. CP 342. Sal previously told Nancy that he would leave her, one of eight children, the \$118,000 at issue, making clear that he expected her to use the money to take care of the Villanueva family. See CP 342-43 Nancy promised to do so. CP 343.

The parties consistently referred to Nancy's inheritance as "Sal's money." CP 251, 312. Even Jacob's mother did the same. CP 251.

Nancy made clear to Jacob that her inheritance was her separate property and that she did not want it placed in the parties' joint account. CP 250. When Jacob persisted,

Nancy eventually gave in to avoid more arguments. *Id.* Jacob agreed that Nancy's inheritance would remain in their joint account and that the parties would use their community funds for any spending. CP 250, 333, 335. Nancy trusted him, so did not track their account. CP 333.

The same day Nancy received her inheritance, Jacob opened an account *in his name only*, transferring nearly all of Nancy's \$118,000 separate property into his account. CP 250, 334. This was after Jacob attempted to pressure Nancy into putting her inheritance into stocks he already owned. CP 334. Nancy refused. *Id.* Jacob then asked Nancy to pay off their mortgage. *Id.* She refused again. *Id.*

Nancy did not even know, for quite some time, that Jacob had taken her money and moved it to his account. CP 250. When she discovered this and confronted him, Jacob refused to return her money. CP 250-51. The parties instead added Nancy to Jacob's account. *Id.*

Although reluctant, Nancy eventually agreed to put her inheritance toward the purchase of a new marital home. CP 253, 335. It was Jacob's mother who persuaded Nancy, convincing her that investing in real estate was "the best way to honor her father" who also invested in real estate. CP 253, 282. Jacob agreed that Nancy's inheritance, and any money it generated, would remain her separate property. CP 253. Six months later, he filed for divorce. CP 254.

When Jacob moved for summary judgment that the inheritance was community property, he did not even argue that Nancy intended to "gift[] the inheritance to the community" RP 16. Instead, his sole argument was that Nancy's inheritance was hopelessly commingled. *Id.* It is undisputed that Nancy never gifted her inheritance to the community. CP 250.

B. The appellate court affirmed the trial court's just and equitable decision to award Nancy the value of her inheritance and 50% of the remaining house value.

Jacob states that the appellate court's rationale was simply "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." Pet. at 3-4 (quoting Unpub. Op. at 6). Jacob again omits much. The appellate court also explained (1) that a property characterization error does not necessarily require reversal; (2) that the character of property does not control the trial court's property distribution; (3) that the ultimate question is whether the distribution is fair and equitable; (4) that the trial court "did not even mention its previous separate property ruling" when dividing the parties' property; (5) that "[t]he court was entitled to consider that Nancy's inheritance was a significant contribution to the purchase of the family home"; and (6)

that the trial court expressly found that “[t]he division of community personal property described in the final order is fair just and inequitable.” Unpub. Op. at 5-6 (quoting CP 354). The appellate court held:

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. ... Accordingly, we hold that the trial court did not err in its property distribution.

(Unpub. Op. at 6 (citation omitted)).

REASONS THIS COURT SHOULD DENY REVIEW

A. There is no conflict with *Marriage of Shannon*.

Jacob’s sole argument is that once the appellate court held that the trial court mischaracterized Nancy’s inheritance, it erred in “not remanding” the case, but instead affirming the trial court’s property award. Pet. at 4-5. Jacob never makes an argument under any of the grounds for discretionary review, but merely cites RAP

13.4(b)(2) and ***Shannon***, *supra*. *Id.* This case does not conflict with ***Shannon***.

Under ***Shannon***, when the appellate court holds that a trial court has mischaracterized an asset, it must remand “where (1) the trial court’s reasoning indicates that its division was significantly influenced by its characterization of the property, and (2) it is not clear that had the court properly characterized the property, it would have divided it in the same way.” 55 Wn. App. 137, 242, 777 P.2d 8 (1989) (emphasis added). There, “the trial court explicitly stated in its oral opinion that it believed its characterization of the parties’ properties was critical to its decision.” *Id.* Thus remand was required. *Id.*

But here, as the appellate court correctly notes, the trial court did not even mention the summary judgment ruling when distributing the parties’ property. Unpub. Op. at 5-6. And Jacob did not provide the record from the trial

including the oral ruling. Thus, he has no support for his meanderings about what the trial court “felt.” Pet. at 6.

Thus, ***Shannon*** is easily distinguishable. The findings are silent on the summary judgment ruling so provide no indication that the court’s “division was significantly influenced by its characterization of the property” 55 Wn. App. at 142. And Jacob failed to provide the oral decision. There plainly is no conflict here.

Jacob’s other arguments are meritless too. Jacob faults the appellate court for “impl[ying] 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.” Pet. at 6. But the ***Shannon*** test is not whether characterization is “immaterial” to the distribution, but whether “the trial court’s reasoning indicates that its division was significantly influenced by its characterization of the property” 55 Wn. App. at 142. Jacob fails to meet that standard.

Jacob incorrectly implies that the judge who entered the summary judgment order also tried the case, suggesting that the court merely relied on its prior summary ruling. Pet. at 6. That is false. Judge Jeffrey Basset entered the summary judgment order and Judge Kevin Hull tried the case. CP 352, 355, 358. There is simply no reason to believe that the trial court felt constrained by the summary judgment ruling, *which recognized that the characterization was not controlling*. RP 4. But again, Jacob did not provide the trial transcript.

Jacob complains that “the trial court did not provide any explanation for why Nancy deserved such a large marital lien” Pet. at 5. The reason for the lien is quite obvious, and quite just – the court plainly wanted to award Nancy the value of her inheritance plus half the remaining value in the parties’ home. CP 350. That makes perfect sense in a very short marriage, particularly where Nancy always intended to keep her inheritance separate, and

Jacob knew that, but repeatedly tried to take her money. But again, Jacob failed to provide the oral ruling, so cannot complain that he does not know what the trial court thought.

Finally, Jacob argues that property characterization is the only way to make sense of the property distribution. Pet. at 6-7. That is utter nonsense. This was a two-year marriage during which Jacob did everything he could to take Nancy's inheritance outright, or to ensure that it was hopelessly commingled. He succeeded in the latter. But it makes perfect sense for Nancy to leave the marriage with the money her father gave her to care for the Villanueva family, and half of what the parties accumulated together. Anything less would be unjust.

B. The trial court's decision is plainly just and equitable, so the appellate court correctly affirmed it.

The appellate court correctly stated the applicable legal standards as follows (Unpub. Op. at 4-5):

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. [***In re Marriage of White***, 105 Wn. App. [545] 551], 20 P.3d 481 (2001)].

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).

Again, this was a very short-term marriage, during which Nancy inherited \$118,000 that she contributed to the parties’ home on the promise that it would remain hers. CP 249, 253. She did not intend to gift it to the community, which Jacob conceded. CP 250; RP 16.

The trial court was, as the appellate court correctly stated it, “entitled to consider that Nancy’s inheritance was a significant contribution to the purchase of the family home” and specifically found that “[t]he division of community personal property described in the final order is

fair (just and equitable).” Unpub. Op. at 6 (quoting CP 354). The appellate court correctly declined to “second guess the trial court’s property distribution [as the] trial court was in the best position to determine what was fair, just, and equitable.” Unpub. Op. at 6.

CONCLUSION

As there is plainly no conflict with ***Shannon***, *supra*, this Court should decline review.

The undersigned hereby certifies under RAP 18.17(2)(b) that this document contains 2222 words.

RESPECTFULLY SUBMITTED this 26th day of August 2024.

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

June 25, 2024

DIVISION II

In the Matter of the Marriage of

No. 58070-5-II

JACOB DERICK COOPER,

Appellant,

and

UNPUBLISHED OPINION

NANCY CAROLINA COOPER,

Respondent.

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.

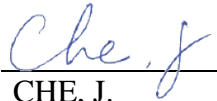


MAXA, J.

We concur:



VELACIC, A.C.J.



CHE, J.

CERTIFICATE OF SERVICE

I certify that I caused to be filed and served a copy of
the foregoing **ANSWER TO PETITION FOR REVIEW** on
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