Supreme Court No. 1035322

Court of Appeals No. 57644-9-II
Pierce County Cause No. 21-3-03038-1

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

CHRISTOPHER MILLES, PETITIONER

v.

DENISE MILLES, RESPONDENT

ANSWER TO PETITION FOR REVIEW

Superior Court of Pierce County
The Honorable Gretchen Leanderson

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B. STATEMENT OF THE CASE

The parties, Christoper Milles ("Chris") and Denise Milles ("Denise"), were married on August 10, 2011 and separated on June 25, 2021. (*CP 199)*. This is a second marriage for both of the parties and each party has children, from their previous marriage (RP 551-552). At the time of trial, Chris' two children and one of Denise' children had turned 18, and Denise still had one minor child in her care. (CP 165-166). Throughout most of the marriage, Chris' twin daughters resided with Chris and Denise, full time, without any financial support from their biological mother (CP 166). Denise's children also resided with the parties, full time, while Denise received child support from their biological father (CP 166). Denise provided primary parenting functions for all four children while Chris worked outside of the home (CP 166). Denise would ultimately return to work as an elementary school teacher toward the end of the marriage (CP 166).

Throughout the entirety of the marriage, the parties and

their respective children resided together at 1003 E. 68th St., Tacoma, Washington (hereinafter referred to as "the family home") (RP 14). Chris purchased the family home in 1996 (RP 14). He refinanced the home several times, in 2005 (RP 68), 2010 (RP 62) and 2020 (RP 29). Chris testified that he purchased the home in 1996 for $115,000, secured by a mortgage loan (RP 75). After his 2010 refinance (and shortly before his marriage to Denise), he owed $202,400 (RP 27). At the date of separation from Denise in June 2021, the mortgage obligation was $180,000 (RP 75).

In 2005, Chris refinanced the mortgage loan "to take cash out" (RP 62). In doing so, he added his first wife, Cara, to the mortgage loan and signed a Quit Claim Deed to the marital community with the intention of creating community property. (RP 181). In 2010, Chris and Cara divorced (RP 204). Chris agreed in those divorce proceedings, to characterize the family home as community property and divided the equity of the family home with Cara, 50/50, while also dividing their

vacation home (purchased during the marriage), 50/50 (RP 84). This is relevant to Chris' credibility because he testified that the agreement to share the family home equity with Cara, 50/50, was due to some sort of offset for the equity in the vacation home (RP 73), where no such offset even existed (RP 84). Chris refinanced the family home mortgage loan in 2010 to remove Cara from the loan, after the divorce was finalized (RP 62). He married Denise in 2011 (CP 199). Similar to his financial decision in 2005, Chris refinanced the family home mortgage loan in 2020 "to take cash out" (RP 63). In doing so, Chris added Denise to the mortgage loan and signed a Quit Claim Deed to the marital community with the intention of creating community property (RP 65-66). In fact, the 2020 Quit Claim Deed contains the following express language:

> "Christopher D. Milles, a married man for an in consideration of To establish community property conveys and quit claims to Christopher D. Milles and Denise M. Mills, husband and wife the following real estate…"

(See Trial Exhibit 105). The Quit Claim Deed also states at the

top of the first page, that when recorded, the document would be returned to Christopher D. Milles and Denise M. Milles at the family home address (See Trial Exhibit 105).

At trial, Chris claimed that he did not intend to create community property during the refinance process, despite signing a document expressly stating otherwise, and that he didn't know Denise became a title owner (RP 66). He acknowledged that Denise's name began appearing on monthly mortgage statements after the refinance was completed; while also testifying it was never his intent to obligate Denise on the mortgage loan (RP 66). He was not able to explain why he wasn't tipped off that Denise was being added to the loan and/or deed when she was required to sign the same refinance documents that he was signing. He stated that adding Denise to the title of the family home and the mortgage loan was all done without his knowledge, because he signed documents without reading them, and never met his loan officer in person (RP 64, 66-67).

Denise testified that once the refinance was complete, Chris never asked her to sign any documents that would divest her of any community interest in or obligation for the family home (RP 355).

The trial judge ultimately found that Chris intended to convert his separate property interest in the family home to Denise for a number of reasons, including, the express language of the Quit Claim Deed, the parties behavior evidencing intent to comingle their financial resources from "day one" of their marriage, Chris' prior behavior in converting the family home to community property with his first wife, and his history of financial management (RP 552-555). All in all, the trial judge found that Chris' testimony related to his intent and lack of understanding regarding the Quit Claim Deed was simply not credible:

> Again, both had been in prior marriages, both went through the divorce process recently before marrying each other, and I think both were intentional in how they commingled their resources.

So I'm going to address now the house. All right? And this is the primary -- the primary asset. So the issue before the Court is is it a community asset or a separate asset of Mr. Milles? And I will say that the house started as a separate asset of Mr. Milles. The Court, though, assessed the credibility of the witnesses, and I am finding the intent was to turn that separate property into community property when Mr. Milles signed the quit claim deed with the verbiage "intent to create community property."

The parties were married and had been married for quite time. They'd commingled funds, and also Ms. Milles had been paying on the mortgage just as he had. Because all of the funds had been commingled into that joint account from which the bills were paid.

Also, Mr. Milles had been through this before with his prior marriage in terms of quit claim deeding.

So I find kind of not very credible that Mr. Milles was just signing what was before him and that did he not understand what he was signing. He has been involved with finances. He's been through this before with the property, that same home. And I do find that his actions of signing with is the particular verbiage "intent to create community property" made that home become the community property of both of the individuals. Yes, that name alone on a title doesn't convert separate to community, but his prior knowledge and actions, his meticulous handling of financials makes it clear to the Court that this was, in fact, his intent when he signed the quit claim deed.

(RP 554-555).

There were also many other equitable factors that Denise asked the court to consider in making a just and equitable ruling. Denise entered the marriage as an unemployed stay-at-home mother; however, she was in receipt of monthly child support and spousal maintenance, totaling roughly $4,000 at that time. Denise agreed to marry Chris before her spousal maintenance award was scheduled to terminate, because Chris believed that being married would bolster his position in the parenting plan dispute that Chris was having with Cara at that time. By marrying Chris in August of 2011, Denise effectively gave up $21,000 in future spousal maintenance payments owed to her (because maintenance terminated upon Denise's remarriage). (RP 229-231; CP 175-176)

Less than a month after Denise and Chris married, Cara agreed to give Chris shared custody of his daughters, and reduce Chris' child support obligation from $703.33 per month, to $0. Later in the marriage, Chris' children would begin to live

with Chris and Denise, full time. Despite Denise's overt objection, Chris opted not to seek an award of child support from Cara to support the increased child-related expenses. Chris claimed that the child support payments received on behalf of Denise's children, was enough to be applied to the household for the support of all four children. Denise also remained unemployed as a home-maker and stay at home mother for the majority of the marriage at Chris' request, so that she could run the household assist Chris in caring for his children given the substantially increased amount of residential time he had with them since marrying Denise. (RP 231-233; CP 175-176)

Pursuant to Denise's Divorce Decree from December 2010, Denise entered her marriage with Chris with separate property, in addition to monthly child support payments. Her decree indicates she was awarded a 401k, two IRA accounts, a 529 college savings account, and Certificates of Deposit valued at $12,500 (CP 176; RP 245-246).

Most of Denise's separate assets were either spent during

her marriage to Chris, and/or used to pay off her separate debt. Significant funds from Denise's IRA accounts were co-mingled into a Charles Schwab account managed by Chris (CP 176; RP 245-246).

During the marriage, Denise deposited monthly child support payments for her two children, into a USAA bank account that Denise has prior to marriage, but that she added Chis' name to after marriage (RP 76-77). Chris would write and sign checks to himself from the USAA account each month, effectively transferring Denise' child support payments into another jointly-held Twinstar bank account, where the mortgage to the family home was paid from (RP 76-66). Throughout the marriage, Denise collected child support totaling $258,477.18. (CP 178). This was not community income to Denise – but rather separate resources provided to Denise in trust for her children. Chris, the home value, and his children benefited from these child support deposits (CP 178).

The mortgage payments were paid from the same joint

bank account where all employment funds and child support were deposited (CP 178). Throughout various loan modifications, the monthly payment varied slightly, but it appears that a rough total of $156,739.04 was contributed by the community and/or Denise, toward the mortgage during the marriage, thereby helping to increase the equity of the home (CP 178).

The trial judge found that the parties financial decisions made together during the marriage, the commingling of their financial resources, Chris' reliance on Denise to provide both financial and physical support for his daughters, and his financial intelligence was clear cogent and convincing evidence that Chris did understand what he was signing in the refinance process, that he did understand that he was transferring interest in the family home to the martial community, and that the language in the Quit Claim Deed expressly evidenced his intent to do so (RP 553-555).

The trial judge ordered a property equalization payment

of $128,709 (RP 559), taking into consideration the finding that the family home was valued at $318,660 (RP 555) , and adopting the allocation and valuations of other personal property assets as proposed by Denise (RP 559; Trial Exhibit 161), with the following changes: $10,000 in disability income received by Chris during the marriage was characterized as his separate property, and the Court ordered that $32,113 had to be repaid by Denise to Chris from her share of the community equity because the community paid for some of her pre-marital debt (RP 559). It is noteworthy, however, that Chris testified that Denise's child support payments paid off her pre-marital debt (RP 78).

Chris timely appealed, but the Court of Appeals affirmed the ruling of the trial court. The Court of Appeals disagreed with Christopher's interpretation of *Bhorgi* and *Watanabe*, and found further, by clear, cogent and convincing evidence, that Christopher intended to convert the family home from separate to community property. *Decision*, at 8. Finally, the Court of

Appeals found that substantial evidence exists to support the supports the trial court's decision and affirmed the characterization of the family home as community property. *Decision*, at 6.

C. ARGUMENT

1. THE COURT SHOULD DENY PETITION FOR REVIEW

To obtain this court's review, the Appellant must show pursuant to RAP 13.4(b), that (1) the Court of Appeals decision conflicts with a decision of the Supreme Court, that (2) with a published Court of Appeals decision, that (3) this decision calls into a question a law under the United States or Washington Constitution, or that (4) the Petition involves an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b).

Chris' Petition for Review is brought solely pursuant to RAP 13.4(b)(1), that the Court of Appeals opinion is in conflict with three previous Washington State Supreme Court Cases,

namely, *In re Estate of Deschamps*, 77 Wash. 514, 137 P. 1009 (1914), *In re Estate of Borghi*, 167 Wn.2d 480, , 219 P.3d 932 (2009), and *Matter of Marriage of Watanabe*, 199 Wn.2d 342, 506 P.3d 630 (2022).

The Court of Appeals decision provides a thorough discussion and analysis of both *Borghi* and *Wantanabe*, and reached the conclusion that the Trial Court decision to characterize the Family Home as community property was supported by clear, cogent and convincing evidence, to wit:

> In *Borghi*, the wife purchased real property before marriage. After the marriage, the wife executed a special warranty deed to her and her husband, as "husband and wife." 167 Wn.2d at 482. The couple lived on the property and later used it to secure a mortgage to purchase a mobile home to put on the property. *Id.* After the wife died, there was a dispute over whether the property was her separate property or community property. *Id*. at 482-83.
>
> The Supreme Court held that no presumption arose from the names on the deed or title and that no acknowledged writing evidencing the wife's intent to transfer her property to the community existed. *Id*. at 490-91. Therefore, in the absence of clear and convincing evidence, the property remained separate. *Id*. at 491.

In *Watanabe*, during marriage, the wife's mother died and left half of her estate to the wife. 199 Wn.2d at 345. The couple moved to a property in Arlington that the wife's mother had owned. *Id*. Later, in order to finance the purchase of property in Ford, the couple obtained a loan that was secured by the Arlington property. *Id*. at 346. But to get the loan, the bank required that the wife add the husband to the title of the Arlington property because the wife had no credit history. *Id*.

The wife quitclaimed her interest in the Arlington property to herself and her husband "to establish community property." *Id*. The wife did not recall signing the quitclaim deed and claimed that she did so only because the loan required it. *Id*. She testified that she never intended to convert the property to community property. *Id*. The trial court found based on the evidence that the wife did not intend to convert her separate property to community property. *Id*. at 347.

The Supreme Court held that although " 'a spouse may execute a quitclaim deed transferring the property to the community,' " the facts supported the trial court's finding that the wife did not intend to convert her separate property to community property. *Id*. at 352 (quoting *Borghi*, 167 Wn.2d at 488-89).

Christopher further argues that the trial court improperly relied on the quitclaim deed in determining his intent. He emphasizes that the Supreme Court has rejected the notion that including a spouse's name on a deed established an intent to convert separate property to community property.

> However, nothing in *Borghi* or *Watanabe* suggests that quitclaim deed language cannot be considered at all in determining the grantor's intent. The court in *Borghi* stated that "a party who intends to transmute her separate property into community property" can "execute a quitclaim deed transferring the property to the community." 167 Wn.2d at 488-89. The court in *Watanabe* stated that there must be "other evidence" besides the names on the title to determine the character of the property, "such as a quitclaim deed transferring the property to the community." 199 Wn.2d at 349.

Decision, at 3-4.

Further analysis is included, beginning at page 7 of the *Decision*, as follows:

> But the trial court did not rely on the mere fact that Denise was added to the title in the quitclaim deed. The court also relied on the language of the quitclaim deed, which expressly stated that the purpose of the deed was to "establish community property." Ex. 105, at 1. *Borghi* and *Watanabe* did not hold that quitclaim deed language was irrelevant. The court in *Watanabe* noted that the name on the title does not determine the property's character, but then stated, "Rather, there must be other evidence, such as a quitclaim deed transferring property to the community." 199 Wn.2d at 349. The court in *Borghi* also stated that a spouse could convert separate property to community property by executing "a quitclaim deed transferring the property to the community." 167 Wn.2d at 488-89.

Second, Christopher argues that the language in the quitclaim deed is insufficient to prove by clear and convincing evidence that he intended to convert the house to community property. However, the trial court did not rule that inclusion of the phrase "to establish community property" in the quitclaim deed standing alone established Christopher's intent. Instead, the court recited four additional factors that it considered along with the quitclaim deed language in assessing Christopher's intent.

Fourth, Christopher argues that *Watanabe* shows that there was insufficient evidence here to establish his intent. In *Watanabe*, the wife executed a quitclaim deed for separate property to her and her husband "to establish community property." 199 Wn.2d at 346. The trial court found based on the testimony and exhibits at trial that the wife did not intend to convert the property from separate to community. *Id*. at 347. The Supreme Court affirmed. *Id*. at 355.

However, the court did not hold that the quitclaim deed was irrelevant. Instead, the court noted that "[i]n *Borghi*, the court explicitly stated 'a spouse may execute a quitclaim deed transferring the property to the community.' " *Id*. at 352 (quoting Borghi, 167 Wn.2d at 488-89). The court emphasized that the grantor's intent is the ultimate determining factor. *Watanabe*, 199 Wn.2d at 352. The court concluded that "[t]he facts presented support the trial court's finding" that the grantor did not intend to convert her separate property to community property. *Id*. Here, the trial court reached the opposite conclusion based on the specific facts and circumstances of this case.

Decision, at 7.

*Wantanab*e is likewise, distinguishable from the present case. There, the wife inherited property in Arlington and neither party disputed it was her separate property at the time of acquisition. *Id*. The wife secured a loan against the Arlington property to finance the purchase of a property in Ford, Washington. In doing so, she used her Husband's credit to secure the loan and signed a Quit Claim Deed that reconveyed her separate interest in the Arlington property to the community. The quit claim deed, much like the deed in the present matter, stated an express intent to create community property. However, the Court found that the wife did not intend to transmute her separate property interest to the community based upon her testimony that the trial court found credible, as follows: 1) she had no recollection of signing the deed, 2) she did not have anyone explain what signing would entail, and 3) the loan company's requirement that Watanabe would be added to the title. *Id (see footnote 4)*.

These findings of fact can be distinguished from the present matter for several reasons. First, Chris did know what he was signing based upon his previous experiences with refinance transactions for this same property. Chris did recall signing the Quit Claim Deed and stated that he paid attention to the parts of the documents that interested him. He made an express decision to ignore other parts of the documents. He had knowledge that Denise had been added to both the title and the mortgage loan. Chris had gone through this process, twice prior. He states that he never met his loan officer "in person" due to the covid pandemic, but meeting a loan officer in person verses having conversations over the phone or via email does not provide evidence of what Chris did or did not understand about the process. He did not testify that the loan officer did not explain the Quit Claim Deed to him, just that the process was chaotic. He did not testify about what was or was not explained with the person he and Denise met with at the title company. The *Watanabe* court, furthermore, did not find that

the wife lacked credibility, as the trial Court in the present case found as to Chris.

In *Watanabe*, based upon the weight given to the wife's testimony, the Supreme Court found that there was substantial evidence to support the finding that she did not intend to create community property. The court does not have to reach the same decision in the Milles matter, given the extrinsic evidence presented by Chris, much like in *Watanabe*, is the grantor's testimony alone. The extrinsic testimony provided by party seeking to assert community interest, which does not exist in the *Watanabe* matter, is that Chris has a history of conveying interest in his property to the marital community, that Denise believed she had been added to the title when Chris refinanced the home to removed his first wife, and Chris always made clear to her that they were sharing all of their assets and debts from early on in the marriage.

Finally, *In re Estate of Deschamps*, 77 Wn. 514, 137 P. 1009 (1914) is a Supreme Court case that is over a century old,

which was discussed and analyzed at length in *Borgi*, and which served as the backbone of the *Bhorgi* opinion. So, while the precedential value of Deschamps is not at issue, it should not be disputed that the Court of Appeals decision in the present matter does not stray from this line of cases.

Deschamps is likewise distinguishable. The court held that there was extrinsic evidence showing the parties' intended the property to remain the wife's separate property. This evidence included the fact that in the wife's will, she specifically left the apartment building to her daughter and that after his wife's death, the husband's behavior indicated that he did not regard the property as his. *Id.* at 514–16, 137 P. 1009. *Borghi* held that the evidence in Deschamps demonstrates that the parties did not intend for the property to be community property, even though they listed both spouses on the deed. *Borghi*, at 495. There was no evidence presented in the Milles case to suggest the parties intended the property to remain Chris' separate property.

D. CONCLUSION.

The Court should not grant review pursuant to RAP 13.4(b)(1), because Chris has not shown that that the Court of Appeals decision conflicts with a decision of the Supreme Court.

Simply put, just because the trial court in the Milles case ultimately reached a different conclusion that what the Supreme Court arrived at in *Bhorgi*, *Watanabe* and *Deschamps*, does not mean that the decision is in conflict with the previous cases. The Trial Court and Court of Appeals followed the correct legal standard required by the previous cases, but the facts bore out a different result. The Court found by clear, cogent and convincing evidence that Chris intended to convert his separate property to community property, by not just the language in the Quit Claim Deed, but also based on several other factors after reviewing extrinsic evidence, and hearing testimony of both parties, and finding that Chris' testimony lacked credibility.

E. WORD COUNT COMPLIANCE CERTIFICATION

In reliance upon Microsoft Word software, which calculates the number of words in a Word document, this author certifies that this document contains 3,989 words, exclusive of words contained in the appendix, the title sheet, the table of contents, the table of authorities, the certificate of compliance, the certificate of service, signature blocks, and pictorial images (but inclusive of text boxes, footnotes and endnotes).

DATED: November 12, 2024.

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CERTIFICATE OF SERVICE

I certify that I caused to be transmitted via U.S. Mail, postage prepaid, transmitted via the Appellate Court on-line portal, and/or emailed, a copy of the foregoing ANSWER TO PETITION FOR REVIEW on the 12th day of November, 2024, to the following counsel of record at the following address:

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