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

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

In re the Marriage of:

CHRISTOPHER MILLES, Petitioner,

and

DENISE MILLES, Respondent.

PETITION FOR REVIEW

Laura A. Carlsen, WSBA No. 41000

CARLSEN LAW OFFICES, PLLC
1001 Yakima Ave., Suite 7B
Tacoma, WA 98405
Phone: 253-215-1849
Fax: 253-212-9828

Attorney for Petitioner, Christopher Milles

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Washington Cases

Statutes and Rules

I. IDENTITY OF PETITIONER

Christopher Milles, Appellant in the Court of Appeals, is the Petitioner before this Court in the above-captioned dissolution of marriage. He asks this Court to accept review of the Court of Appeals' decision terminating review in Part II of this Petition.

II. DECISION BELOW

The Petitioner requests review of the Court of Appeals, Division II, opinion in case number 57644-9-II filed on September 10, 2024. A copy of the decision is attached as Appendix A.

III. ISSUES PRESENTED FOR REVIEW

This Court should accept review under Rule of Appellate Procedure 13.4(b)(1) as follows:

The Decision of the Court of Appeals is in conflict with a decision of the Supreme Court, namely *In re Estate of Deschamps*, 77 Wn. 514, 137 P. 1009 (1914), *In re Estate of Borghi*, 167 Wn.2d 480, 219 P.3d 932 (2009), and *In re Marriage of Watanabe*, 199 Wn.2d 342, 506 P.3d 630 (2022). Specifically, this Court has long held that merely signing a Quit Claim Deed as part of a refinance is insufficient evidence of an intent to transfer separate real property to the community, and yet, that is the decision below. No evidence was presented at trial of intent to transfer this property to this community.

STATEMENT OF THE CASE

Christopher Milles (Appellant) and Denise Milles (Respondent) were married on 8/10/11, separated 9 years later on 6/25/21, and divorced by the Pierce County

Superior Court on 10/25/22. Trial focused primarily on the characterization of real property ("the Property") Mr. Milles purchased 15 years before marriage. Ms. Milles argued the Property was transmuted to community property in 2020 when, as part of a refinance during COVID to obtain a lower interest rate, her name was included on the quit claim deed drafted by the lender.

Relying on this deed and information about Mr. Milles' previous divorce in a separate relationship, the trial court characterized the Property as community and included its value in the calculated 50/50 division of assets and debts. As a result, what was a net community estate of $82,864 became a net community estate of $401,524, and Ms. Milles was awarded a $128,709 cash equalization payment secured by the Property.

With this appeal, Mr. Milles asks this Court to reverse the trial court's decision, hold that the Property remained separate, and remand the case for entry of new final orders consistent with that holding. The following discusses the facts of this case with respect to that Property and the trial court's decision.

1. Mr. Milles purchased the Tacoma Property in 1996 – fifteen (15) years <u>before</u> he married Ms. Milles.

In April of 1996, Mr. Milles purchased the Property from his godparents, who "were like a grandpa and grandma" to him, for $115,000. **RP 25.** He has resided in that home ever since, totaling 26 years as of the time of trial. **RP 25.** The home and neighborhood are special to Mr. Milles, for he grew up in that neighborhood, noting

his "parents live right next door" and that he has an "uncle that lives across the street[.]" **RP 25.**

Mr. Milles' purchase of the Property was evidenced by a Statutory Warranty Deed and Deed of Trust, both of which listed his name as the sole owner. **TRIAL EXHIBIT ("EX") 1-2.**

2. Mr. Milles' First Marriage

In June of 2000, Mr. Milles married his first wife, Cara Farley (f/k/a Milles).[1] **RP 25 (Vol. 1).** After they married and had children, they decided to refinance the Property. **RP 73, 181, 205 (Vol. 1); EX 139.** Mr. Milles testified,

> This was my first marriage, and I felt like I needed to do that with her. . . . [W]e had kids together. And we were looking at buying a second home at Ocean Shores.

[1]In order to avoid confusion, this Brief refers to Mr. Milles' first wife by the surname she began using after her divorce from Mr. Milles, "Farley."

RP 181. They refinanced the Property at the same time as they purchased the second home, signing all paperwork at once with the same loan officer. **RP 364-65.** His intent at that signing was to add Ms. Farley to the loan, and they were each indebted on both properties going forward. **RP 205.** Although both names were included on the paperwork prepared by the lender, the quit claim deed he signed made no mention of the purpose for including Ms. Farley's name or to an intent to change the Property's character. **EX 139 ("2005 Quit Claim Deed").** This quit claim deed was only one (1) page long and had Mr. Milles' signature just underneath the quit claim language and property description. **EX 139.**

In 2009, Mr. Milles and Ms. Farley separated and settled their divorce case by agreement. **RP 26.** As part

of their settlement agreement, Mr. Milles agreed to treat the Property as community property. **RP 73-74.** Aside from the 2005 quit claim deed and Mr. Milles' testimony, no other evidence was provided about that earlier case. On 10/19/10, Mr. Milles refinanced the property for $202,400 in his sole name. **EX 3 p. 2, EX 17; RP 26-27.**

3. **Right after the parties married, they merged some financial accounts and consolidated some debts, but the Tacoma Property remained in Mr. Milles' sole name.**

On 8/10/11, Mr. Milles and Ms. Milles were married. Her previous divorce had been finalized approximately 8 months before. **RP 229.**

Despite this marriage, the Property remained in Mr. Milles' sole name through April of 2020, which was about one year before the parties separated. **RP 28-29.**

Right after they married in 2011, the parties discussed how to handle their joint finances, agreeing to combine some financial accounts and consolidate some debts. Ms. Milles put Mr. Milles' name on her bank accounts and he did the same, all at the same time just after marriage. **RP 78-79, 239-40.**

Ms. Milles also added Mr. Milles' name to her Charles Schwab account she brought into the marriage, saying "I allowed him to – I shouldn't say play with it, but learn how to invest in it, so I added him to the Charles Schwab account to learn how to do things[.]" **RP 256.** Other financial accounts, including retirement, investment, and debt accounts remained in each party's respective names. **EX 12, 17, 107-18, 137, 140, 143-44, 151-59, 162.** They each brought vehicles into the marriage, but

did not add each other to the titles. The Property and the mortgage also remained in Mr. Milles' sole name.

During the marriage, the parties paid their expenses from a joint account primarily funded by Mr. Milles' income as an employee in the maintenance department of Lacey Water. **RP 50, 340.** Ms. Milles was unemployed through their marriage until 2014, when she became a part-time substitute teacher. **RP 77-78, 228, 335.** She became a full-time teacher in 2016. **RP 77-78, 228, 335.** Ms. Milles also received child support for her two young children, which was also contributed to the parties' joint account. **RP 763-77.** These children resided primarily with Ms. Milles and Mr. Milles. **RP 763-77.**

The joint account was used to pay the mortgage as well as all household bills, each party's expenses, and

expenses for the children. **RP 240, 341, 763-77.** Ms. Milles used the account to purchase clothes for herself, gifts for others, food for the family, vacations for the family, the children's activities, and other typical family expenses. **RP 240.** At the time of marriage, Ms. Milles' children were about three and six/seven, and for the next nine years, the joint account provided them with a home at no charge, **RP 117,** clothes, their activities (swimming, soccer, baseball, basketball), gifts for different occasions, uninsured medical expenses, vacations, **RP 184,** and health insurance for Ms. Milles' minor children. **RP 341.**

Those funds also went to pay off large separate debts Ms. Milles brought into the marriage. **RP 31, 34-35.** While Mr. Milles' only debt coming into the marriage was the mortgage on the Property, Ms. Milles came into

the marriage with credit card, auto loan, and student loan debts. **RP 31.** Trial exhibits showed she owed $15,617.06 in credit card debt, $9,818.26 in auto loan debt, and $21,487 in student loan debt. **EX 35-36; RP 24-25.** These debts were paid off during the marriage. **RP 34-35.**

4. In April 2020, just after the onset of the COVID crisis, Mr. Milles opted to refinance the Property to take advantage of low interest rates available due to COVID.

On 4/27/20, a married Mr. Milles refinanced the Property for $195,000. **RP 29; EX 4.** He did this to "take advantage of the low interest rate" offered as a result of COVID-19, and used the opportunity to pull out $25,000 and pay off credit card debt. **RP 30-31.**

For the first time, Ms. Milles' name was included on the refinance paperwork prepared by the lender. **EX 4, p.**

1 ("Prepared by: Erika Cooling, TwinStar Credit Union"); EX 5. From this refinance with TwinStar, $24,455.52 was transferred to the parties' TwinStar Credit Union checking account, **EX 6-7,** of which $22,828.93 was paid toward a USAA credit card and $4,000 was paid toward a Bank of America credit card**, EX 21, p. 4.**

Mr. Milles testified that he did not do this refinance with the intent to create community property. **RP 30-31; RP 181-82.** He claimed Ms. Milles' name had been placed in the documents without him knowing, as he "signed whatever documents they gave" him. **RP 63.** He explained that he did not read the entire documents, focusing on the part he was most interested in – the new interest rate. **RP 63-64.** He knew that the bank had Ms. Milles sign paperwork for the refinance, but did not

intend for her to be put on the property or be responsible for the loan. **RP 66.** Mr. Milles had no reason or intent for Ms. Milles to be included in the paperwork, but the "bank is the one that asked for all this information" and wanted to know if Mr. Milles was married or not. **RP 67.** If COVID never came, none of this would have happened, and Ms. Milles' "name never would have been on this home . . . Interest rates dipped down. I took advantage of it like a lot of people did. And that was it. And I did what the banks told me to do." **RP 74.**

Due to COVID protocols, this refinance process was quite a different process from previous refinances, as everything but the final signing was done remotely. **RP 366.** The lender prepared the paperwork and asked for

Ms. Milles' information, then asked the parties to come in and sign the paperwork, which they did. **RP 67.**

> It was really different because of COVID. I never met my loan officer. I don't even know what she looks like. We did everything over the phone. It was real chaotic. I remember she was having a hard time trying to gather information. And I remember one example was . . . trying to confirm whether I had insurance on the house or not. And she couldn't even get ahold of anybody in the insurance agency because . . . no one was there. So she was calling me asking for help . . . we were going to miss the deadline of the lock of the loan.

RP 367.

When asked how the paperwork was presented and signed, he testified that they were eventually directed to sign paperwork in person at a title company, in front of a stranger who told them "this is what you need to sign." **RP 367.** They put it in front of him and he signed it, then

moved onto the next page. **RP 367.** There was no time to really read anything, and the loan officer was not there. **RP 367.** He never spoke with the loan officer about including Ms. Milles, nor did he consult with an attorney. **RP 367.** He did not pay attention to what they had Ms. Milles fill out or sign. **RP 66.**

Notably, the Quit Claim Deed itself is three pages long, with the first page containing the reference to Ms. Milles and the second page containing only Mr. Milles' signature and notary block. **EX 105, p. 1-2.** There is no reference to Ms. Milles on the second page where Mr. Milles signed. **EX 105, p. 2.** The first page of the other refinance paperwork referenced the new loan payment amount and terms. **EX 22, p. 1.**

//

5. **Ms. Milles admitted at trial that the purpose of the refinance was financial and there was never a discussion about changing the Property's character or putting her on the title.**

Ms. Milles admitted at trial that there was never a discussion or agreement between her and Mr. Milles that the Property would become community property. **RP 342-43.** She described their conversations about commingling bank accounts, bills, and expenses, **RP 239-46,** but with respect to the Property, it was her "assumption" that the Property was "theirs" and that she had already been added to the title in Mr. Milles' 2010 refinance, **RP 250.** She based this assumption on their commingled financial accounts and that Mr. Milles "sounded like he had every intention to treat me as a partner in marriage." **RP 247-48.**

While the parties discussed care of and repairs to the Property during the marriage, no conversation about the Property's ownership or character was described. **RP 248-49, 239-49.** Ms. Milles claimed that after she moved onto the Property, Mr. Milles described it as "our home." **RP 248.**

Mr. Milles testified to the same, stating there was never a discussion with her about putting her name on the property. **RP 365.** "We never ever had the discussion. It just – we got married and started living our life. It never ever came up." **RP 365.**

Regarding calling the Property "our home," he explained:

> [I]f we're out and about doing something, we'll say, hey, we're going to go home now. I mean, that's where you live. It's where you reside at.

RP 365. By calling the Property "our home," Mr. Milles explained that it was never in reference to ownership or to it becoming community property. **RP 365-66.**

Mr. Milles testified that if he had ever intended for the Property to become community, he would have done so when they merged some of their other finances just after marriage. **RP 205.** But he never did that, instead "simply taking advantage of the interest rates at the time." **RP 205.** There was no benefit to him in adding Ms. Milles' name to the property, and he had good credit to support the loan himself. **RP 67.**

Ms. Milles also admitted that the refinance was done because "it hadn't been refinanced" and "it was just a good time for us to do that." **RP 250.** Since she already assumed she was on the title, she was not surprised when

asked to sign the refinance paperwork, saying "[w]e did things together all the time." **RP 250.**

The parties separated about a year later. Mr. Milles continued making the payments on the loan during separation and through trial. **RP 40.** At that time, he had paid the mortgage on that home every month since 1996. **RP 40.**

At the time the parties separated a little over a year later, the loan balance was $184,000. **RP 40.** The mortgage value had only decreased about $18,000 since the parties married. **RP 26-27, 40.**

//

//

//

//

6. **The trial court held that the Property purchased by Mr. Milles in 1996 became community property in 2020 when the lender added Ms. Milles' name to the paperwork as part of the refinance.**

At trial, Ms. Milles agreed that Mr. Milles should keep the Property, but wanted it characterized as community and factored into their division of community assets and debts. **RP 254.** Mr. Milles asked the trial court to characterize it as his separate property and divide only the community estate.

Trial occurred over several days in September, 2022, with only the parties testifying. The trial court's oral decision was rendered on 10/7/22. **RP 549-50.**

Based on this characterization, the Property's net value of $318,660 was included in the trial court's calculated 50/50 division of assets and debts. **RP 558-60.**

Including the Property as community, the division looked like this:

Division of Assets and Debts (including Property as community)

Asset/Debt	**To Wife (from community property)**	**To Wife (as her separate property)**	**To Husband (from community property)**	**To Husband (as his separate property)**
Home			$318,660	
IRA	$9,310	$33,081		
Investment Account		$14,793		
IRA	$1,463			
IRA			$3,988	
Retirement Account	$24,557			
Retirement Account	$1		$1	
Retirement Account			$30,954	$27,896
Bank Account	$1,600		$3,908	
Bank Account	$3,000		$3,895	
Bank Account	$9			

Asset/Debt	**To Wife (from community property)**	**To Wife (as her separate property)**	**To Husband (from community property)**	**To Husband (as his separate property)**
Bank Account			$155	
Bank Account			$1,000	
Investment Account			$228	
Husband's Disability				$10,000
Car	XXX	XXX		
Car				XXX
Car				XXX
8'x4' Trailer				$1,000
Credit Card			-$103	
Credit Card			-$1,102	
Total:	**$39,940**	**$47,874**	**$361,584**	**$38,896**

//

//

//

Division of Assets and Debts (including Property as separate)

Asset/Debt	To Wife (from community property)	To Wife (as her separate property)	To Husband (from community property)	To Husband (as his separate property)
Home				$318,660
IRA	$9,310	$33,081		
Investment Account		$14,793		
IRA	$1,463			
IRA			$3,988	
Retirement Account	$24,557			
Retirement Account	$1		$1	
Retirement Account			$30,954	$27,896
Bank Account	$1,600		$3,908	
Bank Account	$3,000		$3,895	
Bank Account	$9			
Bank Account			$155	
Bank Account			$1,000	

Asset/Debt	**To Wife (from community property)**	**To Wife (as her separate property)**	**To Husband (from community property)**	**To Husband (as his separate property)**
Investment Account			$228	
Husband's Disability				$10,000
Car	XXX	XXX		
Car				XXX
Car				XXX
8'x4' Trailer				$1,000
Credit Card			-$103	
Credit Card			-$1,102	
Total:	**$39,940**	**$47,874**	**$42,924**	**$357,556**

Based on these numbers, the net community estate without including the Property is $82,864, consisting almost entirely of cash, investment, and retirement accounts. Including the Property in the community estate increases its value to $401,524.

As a result of these calculations and characterization of the Property as community, Mr. Milles was ordered to refinance the home and make a $128,709 property equalization payment to Ms. Milles. **RP 560.** This payment is calculated as follows:

Total net community estate= $401,524

50% of net estate to each party= $200,762

Ms. Milles' 50% share, minus what she is already awarded in community property assigned to her:

$200,762 - $39,940 = $160,822 cash equalization to get Ms. Milles her full 50% share of the community estate.

Ms. Milles' cash equalization payment, minus $31,113 in reimbursement to Mr. Milles for payment of the separate debt she brought into the marriage=

$160,822 - $32,113 = **$128,709** final cash equalization payment

On 10/25/22, the trial court signed a Final Divorce Order that gave Mr. Milles the Property with the condition

that he begin the refinance process in 30 days, and if it is not refinanced within 90 days, it was to be sold. **CP 205-06**. Concurrently, the trial court found that this division of real property was "fair (just and equitable)", **CP 199,** that the Property was community property – not separate, **CP 200,** and that the mortgage was a community debt, **CP 200-01**. The court also made specific relevant findings. **CP 202-04.** On 11/28/22, Mr. Milles timely filed his Notice of Appeal. **CP 211-24.**

On September 10, 2024, Division II of the Washington State Court of Appeals issued its decision affirming the trial court's decision and holding that Mr. Milles intended to transfer the property to the community when he signed the Quit Claim Deed as part of the refinance.

ARGUMENT

The Court of Appeals' decision upholding the trial court's decision is directly in conflict with this Court's decisions in *Deschamps*, *Borghi*, and *Watanabe*, as cited above. Mr. Milles' Opening Brief thoroughly discusses each of these cases.

Deschamps

in *Estate of Deschamps*, this Court upheld a finding that the wife's property remained separate property even though she told the mortgage broker to include her husband's name on the title as it belonged to "equally" to them "both." *In re Estate of Deschamps*, 77 Wn. at 517-18. There, the wife already owned an apartment building when the parties married. *Id*. at 515. During the marriage, she traded one-half of her interest in the

apartment building in exchange for a residence and two parcels of land. *Id.* at 516. Both the wife and the husband assumed the mortgage on the new property, and both were placed on the title. *Id.* Witnesses testified as to the circumstances of signing this paperwork, which the parties did together in an office in order to close the deal. *Id.* at 517. The seller testified that the husband had asked the wife if she wanted his name on the property, and she agreed. *Id.* at 517. The broker for the sale also testified that he asked the wife if she wanted to include her husband's name on the paperwork, and she responded, "Why certainly . . . the property belongs equal between us both." *Id.* at 517-18.

Despite this evidence, this Court held that the property remained separate, i*d.* at 519, noting that there

was no evidence that she ever intended to give up a one-half interest in the property, and consideration for the purchase was "almost, if not entirely" paid out of the wife's separate property. *Id.* Having both names on the title did not resolve the issue, as "courts will not be bound by the terms of the deed but will look beyond it and ascertain, if possible, the true intent and purpose of the parties." *Id.* In consideration of this principle and all facts in the record, this Court held "we are not satisfied that the husband has made out a case that would warrant this or any other court in decreeing him to be the owner of a one-half interest in the property." *Id.* at 518. *See also Hurd v. Hurd*, 69 Wn. App. at 848 (remanding for determination of intent even though title was in both names "for love and consideration").

In the instant case, there was no express statement from Mr. Milles that he wanted Ms. Milles included on the title or that it "belonged" to them "both," and aside from the parties, no other witnesses testified. Further, all consideration for the refinance was provided by Mr. Milles when the loan was secured by his separate property. Therefore, like *Deschamps*, there was insufficient evidence to show intent to change the Property's character even though both names were placed on the title.

Borghi

In *Borghi*, this Court upheld *Deschamps* and disagreed with the Court of Appeals' analysis of *Deschamps*, *Hurd*, and a "joint title gift presumption" arising from changing title to include both spouse's

names. *In re Estate of Borghi*, 167 Wn.2d 480, 481, 219 P.3d 932 (2000).

> We have consistently refused to recognize any presumption arising from placing legal title in both spouses' names and instead adhered to the principle that the name on a deed or title does not determine the separate or community character of the property or even provide much evidence.

Id. at 488. Instead, the evidence required to transmute separate property to community property must specifically go to the "intent" to "create community property" – not just the intent to put the property into both names. *Id.* at 485, 489. "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." *Id.*

> Allowing a presumption to arise from a change in the form of title inappropriately

> shifts attention away from the relevant question of whether a gift of separate property to the community is intended and asks instead the irrelevant question of whether there was an intent to make a conveyance into joint title.

Id.

Moreover, the evidence of intent to create community property must be sufficient to overcome the presumption that the property remained separate, and even when there is *some* evidence that the intent was to gift to the community, it has to be enough to overcome the presumption. *Id.* at 488-89.

In *Borghi*, no evidence was presented as to *why* the husband's name was included on the deed, for it may have been done at the wife's direction, it may have "been drafted at the direction of another person, or it may have

been a scrivener's error. Nothing in the record answers this question." *Id.* at 489.

This Court also addressed Division 1's concern that not allowing a joint title gift presumption would "thwart legitimate attempts to gift to the community[.]" *Id.* at 488 (citing *Borghi*, 141 Wn. App. at 302).

> This misapprehends the nature of the relevant presumptions. Disregarding title as relevant to the characterization of property does not hinder a party who intends to transmute her separate property into community property from doing so. With respect to real property, a spouse may execute a quitclaim deed transferring the property to the community, join in a valid community property agreement, or otherwise in writing evidence his or her intent.

In re Estate of Borghi, 167 Wn.2d at 488. At first glance, it appears that this Court was suggesting a party can demonstrate intent to convert property to community

property via quit claim deed to the community. But a close reading of the paragraph as well as this Court's subsequent decision in *Marriage of Watanabe* show that this is not true, **although this is what the Court of Appeals focused on in the instant case.**

Watanabe

In *Watanabe*, the wife inherited a 50% interest in real property ("Arlington property") from the death of her mother. *Id.* Thereafter, the spouses purchased another property ("Ford property"), financed with a loan secured by the Arlington property. *Id.* at 346. To obtain the loan, both parties needed to be on the title as the wife had no credit history, and the wife executed a quit claim deed to herself and her husband "to establish community property." *Id.* Later in their divorce trial, the wife did not

recall signing the quit claim deed and "claims she did so only because the loan required it." *Id*. She testified that she "never intended to convert Arlington to community property and did not remember signing the quit claim deed." *Id*. Thereafter, the parties paid the loan with funds from their joint account. *Id*.

The trial court characterized the Ford property as separate, for despite the quit claim deed "to establish community property," evidence at trial showed the wife did not intend to convert her separate Arlington property to community property. *Id*. at 347.

On appeal, the husband argued it was error to characterize this property as separate, but Division III upheld the trial court's findings. *Id*.

On review, this Court explained its comments in *Borghi* that "a spouse may execute a quitclaim deed transferring the property to the community, join in a valid community property agreement, or otherwise in writing evidence his or her intent." *Id.* at 488. This Court emphasized the prior sentence that "[d]isregarding title as relevant to the characterization of property does not hinder a party **who intends** to transmute her separate property into community property from doing so[,]" explaining that intent is still required and the listed actions are mechanisms *by which* a person *who intends to* transmute property may do so – not that signing the deed is how a party's intent is proven. *Id.* at 352 (emphasis added); *see also In re Estate of Borghi*, 167 Wn.2d at 488-89 (citing *Volz v. Zang*, 113 Wn. 378, 383, 194 P. 409

(1920)). This Court noted that *Borghi's* citation to *Volz v. Zang* in *Borghi* explains this further.

In *Volz*, this Court stated that property changes from separate to community "*when the parties intend such a change* to take place and evidence this intention by a conveyance, conforming in all essentials to the requirements of the law affecting the transfer of real property." *Id.* at 352 (citing *Volz v. Zang*, 113 Wn. at 384).

With respect to *Watanabe*, this Court determined the property remained separate as there was insufficient evidence of intent to change its character. *Id.* at 352. Even though the quit claim deed included both spouses to establish "community property," evidence presented showed that it was not the wife's intent to convert the property from separate to community. *Id.* "The evidence

includes the fact that the deed was drafted by the lender, [the wife's] testimony that she had no recollection of signing the deed and did not have anyone explain what signing would entail, and the loan company's requirement that [the husband] be added to the title." *Id.* at 352 n.4. Therefore, the evidence was insufficient to establish an intent to transmute the property, and it was properly characterized as separate. *Id.*

CONCLUSION

For the reasons set forth above, Mr. Milles respectfully requests that this Court accept review under RAP 13.4, reverse the Court of Appeals and trial court, and remand this matter for entry of an order characterizing the property as separate.

//

I certify under RAP 18.17(c) that the number of words contained in this document is 4842.

DATED: October 10, 2024.

CARLSEN LAW OFFICES, PLLC

Laura A. Carlsen, WSBA No. 41000
Attorney for Petitioner

PROOF OF SERVICE

Laura A. Carlsen certifies as follows:

On October 10, 2024, I served upon the following persons a true and correct copy of this Petition via electronic service to:

Stacey D. Swenhaugen, Esq.
Law Offices of Sophia M. Palmer
615 Commerce Street, Suite 101
Tacoma, WA 98402-4605
253-777-4165
stacey@sophiapalmerlaw.com

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

SIGNED AND DATED this 10th day of October, 2024, at Auburn, WA.

Laura A. Carlsen

Laura A. Carlsen, Attorney

CARLSEN
LAW OFFICES, PLLC
P.O. Box 7728, Covington, WA 98042 (253) 215-1849
www.carlsenlawoffices.com

Appendix A

Filed
Washington State
Court of Appeals
Division Two
September 10, 2024

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of the Marriage of CHRISTOPHER DEAN MILLES, Appellant, and DENISE MAXINE MILLES, Respondent.	No. 57644-9-II UNPUBLISHED OPINION

MAXA, J. – Christopher Milles appeals the trial court's characterization of his house as community property. He purchased the house in 1996 and married Denise Milles in 2011. In 2020, Christopher[1] refinanced the house to obtain a lower interest rate and to take cash out. As part of that process, he quitclaimed the house to himself and Denise and the deed stated that it was to establish community property.

We conclude that (1) the trial court properly applied the correct legal analysis in assessing the character of the house and (2) substantial evidence supports the trial court's finding that Christopher intended to convert the house from separate property to community property. Accordingly, we affirm the trial court's characterization of the house as community property.

[1] To avoid confusion, the Milles will be referred to individually by their first names. No disrespect is intended.

FACTS

Background

Christopher and Denise Milles were married from 2011 to 2021. This was the second marriage for both Christopher and Denise, and both came into the marriage with children and separate assets. Denise also entered the marriage with some separate debt.

Throughout their marriage, the family lived together at a house located in Tacoma (the house). Christopher had purchased the house in 1996 when he was single.

Christopher's First Marriage

Christopher married his first wife, Cara, in 2000. In 2005, Christopher refinanced the house to take cash out of the house's equity. In doing so, Christopher signed a quitclaim deed giving title of the house to himself and to Cara. The deed stated, "Christopher D. Milles, a Married Man conveys, and quit claims to Christopher D. Milles and Cara S. Milles, Husband and Wife, the following described real estate." Ex. 139, at 1. Christopher testified that when signing the quitclaim deed, he intended to convert the house to community property.

Christopher and Cara divorced in 2010. During Christopher's and Cara's divorce settlement, Christopher agreed that the house was community property. As part of the divorce settlement, Christopher refinanced the house to remove Cara's name from the title and to take money out to pay Cara her share of the community property.

The Milles' Finances

The Milles had six bank accounts. Three of them were joint accounts. They also had a joint tenancy investment account.

Christopher testified that he paid the family's debts using money from his paycheck, Denise's paycheck, and the child support payments that Denise received from her first husband.

He also stated that he and Denise consolidated and comingled their financial accounts from early on in their marriage because it was the best way to pay off their debts.

Although Denise was included in all the financial decisions and made debit and credit card transactions, Christopher testified that he was the one to pay the bills by writing checks and making money transfers. Christopher primarily made the payments to the family's creditors and he kept track of the debt and finances. Christopher paid the bills, including the mortgage on the house, from a joint TwinStar account. In addition, Christopher testified that Denise did not help him budget and she did not pay attention to the finances.

Denise testified that right after they were married, Christopher wanted to combine their finances. They discussed how they were going to spend their money and fix up the house together. Denise put Christopher's name on every account she had. She added Christopher to her rollover IRA account. She initially funded the account with money she earned before marrying Christopher, but once married, Christopher transferred money from their joint TwinStar account into the IRA account.

Christopher had access to all of Denise's accounts and he managed paying the bills. Although they would discuss how they were spending their money, Denise never felt the need to look at their bank records or transaction history because Christopher managed the finances.

2020 Refinance and Quitclaim Deed

Christopher testified that he refinanced the house in 2020 for $195,000 and received $25,000 cash back. The money he received from the refinance went toward paying credit card debt incurred during marriage.

The bank prepared the deed of trust and either the bank or title company prepared the quitclaim deed. The deed stated, "Christopher D. Milles, a married man for and in consideration

of *To establish community property* conveys and quit claims to Christopher D Milles and Denise M Milles, husband and wife the following described real estate." Ex. 105, at 1 (emphasis added).

Christopher testified that it was not his intention to create community property with Denise. Instead, he wanted to take advantage of the low interest rate. He stated that Denise's name was put on the deed without him knowing because he just signed all the documents that were given to him. He was only interested in the interest rate and did not read or pay attention to the rest of the document.

Bench Trial

The trial court conducted a bench trial in which only Christopher and Denise testified. Following the trial, the court entered findings of fact and conclusions of law. The findings included the following in finding of fact 22:

> j. The home [in] Tacoma, WA started as a separate asset of [Christopher], but the court assessed the credibility of the witnesses, and the court finds by clear, cogent and convincing evidence that *[Christopher's] intent was to convert his separate property into community property when he signed the Quit Claim deed with the verbiage "intent to create community property".*
>
> k. The court considered the following when assessing [Christopher's] intent:
>
> 1. The parties were married for quite some time when the Quit Claim Deed was signed.
>
> 2. The parties had comingled funds, an[d] [Denise's] financial resources helped to contribute to the mortgage payments.
>
> 3. [Christopher] had prior experience in his first marriage, in terms of converting separate interest to community interest by Quit Claim Deed, and the Court finds [Christopher's] testimony not very credible that he did not understand what he was signing when he signed the Quit Claim Deed to the marital community with [Denise].

> 4. [Christopher's] prior actions, and his meticulous handling of financial affairs make it clear to the Court that he intended to create community property when he signed the 2020 Quit Claim Deed.

Clerk's Papers (CP) at 203 (emphasis added).

The trial court ruled that the house was community property. The court awarded the house to Christopher, but ordered Christopher to make an equalization payment of $128,709 to Denise.

Christopher appeals the trial court's characterization of the house as community property.

ANALYSIS

A. STANDARD OF REVIEW

A trial court's characterization of property as separate or community is a mixed question of fact and law. *In re Marriage of Watanabe*, 199 Wn.2d 342, 348, 506 P.3d 630 (2022). We review for substantial evidence the trial court's factual findings regarding the characterization, such as time of acquisition, method of acquisition, and intent of the donor. *Id.* Substantial evidence is the amount of evidence sufficient to convince a rational, fair-minded person that a premise is true. *Real Carriage Door Co., ex rel. Rees v. Rees*, 17 Wn. App. 2d 449, 457, 486 P.3d 955 (2021). All evidence and reasonable inferences are viewed in the light most favorable to the prevailing party. *Id.* Findings of fact that are unchallenged are treated as verities on appeal. *Id.*

As discussed below, the standard for proving intent to convert separate property to community property is clear and convincing evidence. *In re Estate of Borghi*, 167 Wn.2d 480, 484-85 & n.4, 219 P.3d 932 (2009). Clear and convincing evidence exists when the ultimate facts are shown to be highly probable. *In re Marriage of Bresnahan*, 21 Wn. App. 2d 385, 406, 505 P.3d 1218 (2022).

The characterization of property as separate or community is a question of law that we review de novo. *Watanabe*, 199 Wn.2d at 348-49.

B. CHARACTERIZATION OF PROPERTY

Christopher argues that the trial court erred in finding that he intended to convert his house from separate property to community property. We disagree.

1. Legal Principles

A property's character is determined at the date of acquisition. *Borghi*, 167 Wn.2d at 484. Once property is established as separate, "a presumption arises that it remained separate property in the absence of sufficient evidence to show an intent to transmute the property from separate to community property." *Id.* The character of separate property can be changed to community property only if clear and convincing evidence shows that the spouse intended to make such a change. *Id.* at 484-85 & n.4.

Intent to change the character of property from separate to community can be shown through a quitclaim deed to the community. *Id.* at 485. However, merely putting a "name on a deed or title does not determine the separate or community character of the property, or even provide much evidence." *Id.* at 488. Specifically, no presumption that community property has been established arises when title to property is changed from one spouse to both spouses. *Id.*

> Allowing a presumption to arise from a change in the form of title inappropriately shifts attention away from the relevant question of whether a gift of separate property to the community is intended and asks instead the irrelevant question of whether there was an intent to make a conveyance into joint title.

Id. at 489.

When a quitclaim deed states that the purpose of putting both spouses on the title is to establish community property, the trial court can consider extrinsic evidence to determine the grantor's intent. *Watanabe*, 199 Wn.2d at 355.

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).

2. Application of Legal Standard

Christopher argues that the trial court applied the wrong legal standard in determining the character of the house. We disagree.

As noted above, the legal standard is that a spouse's separate property remains separate unless the other spouse shows by clear and convincing evidence that the spouse intended to convert the separate property to community property. *Borghi*, 167 W.2d at 484-85 & n.4. Here, the trial court applied this standard. The court found by clear and convincing evidence that Christopher intended to convert his separate property to community property.

Christopher argues that the trial court failed to apply the presumption that separate property remains separate unless a contrary intent is shown. He notes that the trial court's ruling did not acknowledge the presumption.

However, in its oral ruling the court stated that "the house started as a separate asset of [Christopher]." Rep. of Proc. (RP) at 554. The court then stated that Christopher's "intent was to turn that separate property into community property." RP at 554. There is no indication in the record that the trial court failed to recognize the separate property presumption.

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.

We conclude that the trial court applied the proper legal standards in assessing the character of the house.

3. Challenged Findings of Fact

Christopher attempts to undermine the trial court's finding that he intended to convert the house from separate property to community property by challenging several of the trial court's findings of fact that support the court's intent finding. We conclude that substantial evidence supports these findings.

a. Findings of Fact 22(f) and (k)(2)

Christopher challenges the sentences in finding of fact 22(f) stating that "the parties' money and financial resources were intentionally comingled, with the exception of a few accounts," and finding of fact (k)(2) stating that "[t]he parties had comingled funds." CP at 202-03.

Of the Milles' six bank accounts, three were joint accounts. The Milles' also had a joint tenancy investment account. And Denise testified that during their marriage, she added Christopher to her rollover IRA account. She initially funded the account with money she earned before marrying Christopher, but after marriage, Christopher transferred money from their joint TwinStar account into the IRA account.

In addition, Christopher testified that he paid debts – including the mortgage on the house – using money from his paycheck, Denise's paycheck, and child support Denise received. And during cross-examination, Denise asked Christopher whether "from pretty early on [during their] marriage the two of [them] had decided to consolidate and comingle [their] financial accounts." RP at 78. Christopher responded, "Yes," because it was the best way to pay off their debts. RP at 78.

We conclude that this evidence is sufficient to support the trial court's findings of fact 22(f) and (k)(2).

b. Finding of Fact 22(g)

Christopher challenges the sentence in finding of fact 22(g) stating that he "primarily managed the family's financial affairs." CP at 202.

Although Christopher testified that Denise was included in everything and made debit/credit card transactions, he stated that he would actually write the checks and make the transfers in order to pay the bills. He primarily made the payments to the creditors and kept track of their debt and finances.

Denise testified that she gave Christopher access to all of her accounts and that he managed paying the bills. They would discuss what they were spending their money on, but because Christopher managed the finances, Denise never felt the need to look at their bank records or transaction history.

We conclude that this evidence is sufficient to support the trial court's finding of fact 22(g).

c. Finding of Fact 22(k)(1)

Christopher challenges finding of fact 22(k)(1), which states that he and Denise "were married for quite some time when the Quit Claim Deed was signed." CP at 203.

Christopher and Denise were married for almost nine years when they both signed the quitclaim deed in 2020. A rational, fair-minded person would consider nine years as "quite some time." Therefore, we conclude that substantial evidence supports finding of fact 22(k)(1).

d. Finding of Fact 22(k)(3)

Christopher challenges finding of fact 22(k)(3), which states that he had prior experience in his first marriage with converting separate interest to community interest by quitclaim deed and that "the Court finds [Christopher's] testimony not very credible that he did not understand what he was signing when he signed the Quit Claim Deed to the marital community with [Denise]." CP at 203.

Christopher testified that during his first marriage, he put Cara's name on the title of the house when they refinanced the house in order to take cash out. This was done by quitclaim deed. He testified that his intent was to create community property. This evidence is sufficient to support the trial court's finding that during his first marriage, Christopher had experience with converting separate interest to community interest by quitclaim deed.

As for whether Christopher understood what he was signing when he signed the quitclaim deed, the trial court found that Christopher's testimony that he did not understand the effect of the quitclaim deed was not credible. We "will not 'substitute [our] judgment for the trial court's, weigh the evidence, or adjudge witness credibility.' " *In re Marriage of Kaplan*, 4 Wn. App. 2d 466, 479, 421 P.3d 1046 (2018) (quoting *In re Marriage of Rockwell*, 141 Wn. App. 235, 242, 170 P.3d 572 (2007)).

Therefore, we conclude that substantial evidence supports finding of fact 22(k)(3).

e. Finding of Fact 22(k)(4)

Christopher challenges finding of fact 22(k)(4), which states, Christopher's "prior actions, and his meticulous handling of financial affairs make it clear to the Court that he intended to create community property when he signed the 2020 Quit Claim Deed." CP at 203.

Christopher's prior actions consisted of refinancing the house twice before in 2005 and 2010. During his first marriage in 2005, he testified to intentionally converting the house to community property when he added his wife to the deed. This showed that he understood the process of refinancing and that a quitclaim deed could convert separate property to community property.

In addition, Denise testified that Christopher spent a lot of time on the couple's financial affairs.

> Q. What is your opinion of his level of financial responsibility during the marriage?
>
> A. Well, . . . [h]e spent a lot of time in our finances. He spent a lot of time at night going over things, researching. Every time I walked through the kitchen, he was on the computer looking at his TwinStar -- this or that, and very, very focused on the money.

RP at 243. Denise also stated that Christopher frequently questioned her about expenses that she had incurred.

We conclude that this evidence is sufficient to support the trial court's finding of fact 22(k)(4).

4. Sufficiency of Evidence – Intent Finding

At its core, Christopher's argument is that clear and convincing evidence does not support the trial court's finding that he intended to convert the house from separate property to community property. He challenges finding of fact 22(j), which states,

> The home located [in] Tacoma, WA started as a separate asset of [Christopher], but the court assessed the credibility of the witnesses, and the court finds by clear, cogent and convincing evidence that [Christopher's] intent was to convert his separate property into community property when he signed the Quit Claim deed with the verbiage "intent to create community property".

CP at 203. We conclude that substantial evidence supports the trial court's finding of intent.

First, Christopher repeatedly argues that the trial court could not rely on the language in the quitclaim deed as evidence of intent. *Borghi* stated that "the name on a deed or title does not determine the separate or community character of the property, or even provide much evidence." 167 Wn.2d at 488. *Watanabe* repeated this language. 199 Wn.2d at 349.

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.

Third, Christopher argues that there was no "direct" evidence that he intended to convert the house to community property. He apparently relies on the statement in *Borghi*, derived from an earlier case, that separate property is presumed to remain separate "until some direct and positive evidence to the contrary is made to appear." 167 Wn.2d at 484. However, the court clarified in a footnote that "direct and positive evidence" should be understood as reflecting a clear and convincing evidence standard. *Id.* at 485 n.4.

In any event, the quitclaim deed does present direct evidence of intent. The deed that Christopher signed expressly stated that the purpose of the deed was to "establish community property." That is direct and positive evidence.

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.

Finally, Christopher argues that the additional evidence besides the quitclaim deed, on which the trial court relied, do not provide clear and convincing evidence of his intent. However, the fact that Christopher previously had executed a quitclaim deed with the intent to convert the house to community property was evidence that he had the same intent when executing a quitclaim deed to "establish community property." Ex. 105, at 1. In addition, the facts that the couple had commingled their funds and that Denise's financial resources contributed to paying the house's mortgage constituted evidence that the Milles' prior actions were consistent with Christopher converting the house to community property. And the fact that Christopher was meticulous in handling the couple's financial affairs was evidence that he would not have overlooked the language in the quitclaim deed.

Taken together, these factors – along with the language of the quitclaim deed – are sufficient for the trial court to find that it was highly probable that Christopher intended to convert the house to community property.

We conclude that substantial evidence supports the trial court's factual finding that Christopher intended to convert the house from separate property to community property. Therefore, we hold that the trial court did not err in characterizing the house as community property.[2]

C. ATTORNEY FEES ON APPEAL

Christopher requests attorney fees pursuant to RCW 26.09.140. Denise also requests attorney fees under RAP 18.9. We deny fees on appeal.

RCW 26.09.140 provides,

[2] Christopher also challenges finding of fact 22(q), which states that Christopher owes Denise an equalization payment of $128,709. Because we hold that the trial court properly found that the house had been converted to community property, substantial evidence supports this finding.

> 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 and for reasonable attorneys' fees or other professional fees in connection therewith, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or enforcement or modification proceedings after entry of judgment.

Christopher claims that he does not have the financial resources to pay for attorney fees, but Denise has the ability to pay. However, the trial court found that both parties have a need for attorney fees and so each would be responsible for their respective fees. Therefore, we deny Christopher's attorney fee request.

In the alternative, Christopher requests attorney fees on the basis of intransigence. "Determining intransigence is necessarily factual, but may involve foot-dragging, obstructing, filing unnecessary or frivolous motions, refusing to cooperate with the opposing party, noncompliance with discovery requests, and any other conduct that makes the proceeding unduly difficult or costly." *Wixom v. Wixom*, 190 Wn. App. 719, 725, 360 P.3d 960 (2015). There is no evidence here that Denise was intransigent.

Denise also requests fees on appeal, claiming that Christopher repeatedly failed to follow the Rules of Appellate Procedure. RAP 18.9(a) authorizes the appellate court to award compensatory damages if the failure harms a party. Although Christopher repeatedly failed to timely submit appellate court findings, the court clerk ordered its own sanctions for each untimely filing. Therefore, we deny Denise's attorney fee request.

CONCLUSION

We affirm the trial court's characterization of the house as community property.

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:

CRUSER, C.J.

LEE, J.

CARLSEN LAW OFFICES

October 10, 2024 - 2:42 PM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	57644-9
Appellate Court Case Title:	Christopher Milles, Appellant v. Denise Maxine Milles, Respondent
Superior Court Case Number:	21-3-03038-1

The following documents have been uploaded:

- 576449_Petition_for_Review_20241010144117D2966810_8452.pdf
  This File Contains:
  Petition for Review
  The Original File Name was Petition for Review Milles.pdf

A copy of the uploaded files will be sent to:

- kristen@sophiampalmerlaw.com
- stacey@sophiampalmerlaw.com

Comments:

Sender Name: Laura Carlsen - Email: lcarlsen@carlsenlawoffices.com
Address:
PO BOX 7728
COVINGTON, WA, 98042-0046
Phone: 253-215-1849

Note: The Filing Id is 20241010144117D2966810