IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

TRENA L. GRANTHAM, A SINGLE WOMAN,
Plaintiff/Appellee,

v.

PHILLIP K. SIMS, A SINGLE MAN,
Defendant/Appellant.

No. 2 CA-CV 2015-0107
Filed September 13, 2016

THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
NOT FOR PUBLICATION
See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).

Appeal from the Superior Court in Gila County
No. CV201300143
The Honorable Gary V. Scales, Judge

AFFIRMED

COUNSEL

Law Offices of Thomson, Montgomery & DeRose, Globe
By Jerry B. DeRose
Counsel for Plaintiff/Appellee

Mandel Young PLC, Phoenix
By Taylor C. Young and Erin Ford Faulhaber
Counsel for Defendant/Appellant

MEMORANDUM DECISION

Presiding Judge Howard authored the decision of the Court, in which Judge Espinosa and Judge Staring concurred.

H O W A R D, Presiding Judge:

¶1 Following a bench trial, the trial court found in favor of Trena Grantham on her claims for conversion, breach of fiduciary duty, and constructive trust against her former husband, Phillip Sims, and awarded her damages. On appeal, Sims contends the court erred because Grantham's claims were barred by various statutes of limitation, their dissolution decree did not grant Grantham an interest in the stocks at issue, the award of damages was excessive, and the court improperly calculated the accrual date for the calculation of prejudgment interest. Because the court did not err, we affirm.

Factual and Procedural Background

¶2 Following a bench trial, "[w]e view the facts in the light most favorable to sustaining the trial court's judgment." *Sw. Soil Remediation, Inc. v. City of Tucson*, 201 Ariz. 438, ¶ 2, 36 P.3d 1208, 1210 (App. 2001). Grantham and Sims were married in September 1988. Between 2000 and 2001, Sims's employer granted him two sets of stock options and an award of restricted stock (collectively, the "disputed stock rights").

¶3 In February 2002, Grantham filed a petition for dissolution of the marriage and, that November, a domestic relations court entered the decree of dissolution. The decree states Grantham and Sims "agreed during the trial to equally divide the stock options," and orders an attorney to prepare an agreement "to equally divide the stock options." For unknown reasons, that agreement was never prepared.

¶4 Between July 2005 and March 2007, the award of restricted stocks vested[1] and Sims exercised most of the stock options on three different dates.[2] In June 2009, Sims sent Grantham an e-mail telling her he had accepted a new job. He exercised the remaining stock options when he began working for his new employer. The net proceeds from the transfer of all the disputed stock rights totaled $402,334.30.

¶5 Sims did not tell Grantham when the restricted stock award vested or when he had exercised the stock options, nor did he send her any of the proceeds. In April 2012, Sims informed Grantham for the first time about the July 2005 exercise of stock options and offered to give her half the proceeds from that transaction. He did not tell her about the subsequent exercising of the options or vesting of the restricted stock.

¶6 In June 2013, Grantham sued Sims, alleging claims of conversion, breach of fiduciary duty, breach of contract, constructive trust, declaratory relief, and requesting a partition. As noted above, the trial court found in Grantham's favor on the conversion, breach of fiduciary duty, and constructive trust claims. It awarded her a total of $201,312.14, representing approximately one-half of the net profit of the transfer of stocks, plus prejudgment interest from the

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[1]The award of restricted stocks vested, by its terms, in January 2006 and those stocks were therefore automatically transferred to Sims and considered income. *See* Gregg Polsky & Kathleen DeLaney Thomas, *Taxing Compensatory Stock Rights Transferred in Divorce*, 93 N.C. L. Rev. 741, 746 (2015). Restricted stock awards are generally taxed at the time of vesting, and the fair market value of the stock at that time is considered ordinary income. *Id.*; *see also* 26 U.S.C. § 83.

[2]When an employee exercises stock options, he purchases stocks from the company at the price set in the options agreement. *See* Kevin Wiggins, *Capital Gain v. Ordinary Income and the FICA Tax Treatment of Employee Stock Purchase Plans*, 53 Tax Law. 703, 704 (2000). The difference between the exercise price and the fair market value at the time of purchase is considered ordinary income and taxed at that time. 26 U.S.C. § 83.

date of each transaction. We have jurisdiction over Sims's appeal pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1).

Statutes of Limitation

¶7 Sims first argues the trial court erred by failing to find that Grantham's claims were time-barred pursuant to the five-year limitation set forth in A.R.S. § 12-1551. Sims contends that Grantham's claims accrued when the dissolution decree was entered in 2002, making her 2013 complaint untimely.

¶8 Section 12-1551(B) provides, "An execution or other process shall not be issued on a judgment after the expiration of five years from the date of its entry unless the judgment is renewed." "Whether [§ 12-1551] applies is a question of law which we determine de novo." *Johnson v. Johnson*, 195 Ariz. 389, ¶ 9, 988 P.2d 621, 623 (App. 1999). We will affirm the trial court if it is correct for any reason. *Forszt v. Rodriguez*, 212 Ariz. 263, ¶ 9, 130 P.3d 538, 540 (App. 2006).

¶9 Sims first notes that the trial court stated "it is clear that [Grantham] is suing on the Decree itself" and contends § 12-1551 therefore must apply. But the court made that statement in explaining why Grantham could not recover under a contract theory. The court stated many times that it was adjudicating Grantham's property rights. For example, it stated Grantham "acquired a separate and distinct one half interest in those options," Sims's actions "seriously interfere[d] with [Grantham's] rights to the property," Sims "unjustly held [Grantham's] property," and "[t]he Decree . . . declared one half of the stocks to be Property of [Grantham] but left such property in the exclusive control of [Sims]."

¶10 The trial court here properly dealt with this case as an adjudication of property rights, rather than an "execution" upon the decree. § 12-1551. Grantham's interest in the stocks initially arose by virtue of Arizona's community property laws. *See* A.R.S. § 25-211; *see also Brebaugh v. Deane*, 211 Ariz. 95, ¶ 6, 118 P.3d 43, 45-46 (App. 2005) (stock options granted by employer during marriage presumptively community property); *cf.* A.R.S. § 25-318(D) (property "for which no provision is made in the decree" is held as tenants in common). As the court here noted, the trial court in the

dissolution proceedings "adjudicated the rights and interests of the parties."

¶11 Moreover, Grantham did not file a petition to enforce the decree, which might have constituted an "execution . . . on a judgment." § 12-1551(B); *see Johnson*, 195 Ariz. 389, ¶ 11, 988 P.2d at 623-24. She instead initiated a civil action against Sims for several causes sounding in contract, tort, and equity. Although Sims insists that Grantham's lawsuit was, effectively, a petition to enforce the decree, the proceedings are different and, accordingly, governed by different rules of procedure. *See* Ariz. R. Fam. Law P. 91(A) (delineating procedural requirements for post-decree petitions to enforce); *see also* Ariz. R. Civ. P. 1 (proscribing that rules of civil procedure govern "all suits of a civil nature"); *see also Kline v. Kline*, 221 Ariz. 564, ¶¶ 13, 25-27, 212 P.3d 902, 906, 909 (App. 2009) (noting that family court and civil actions governed by different rules of procedure).

¶12 And claims for a constructive trust, conversion, and breach of fiduciary duty each have separate and distinct elements requiring different proof from that required to support a petition to enforce. *Compare, e.g., Turley v. Ethington*, 213 Ariz. 640, ¶ 9, 146 P.3d 1282, 1285 (App. 2006) ("courts will impose constructive trusts if there has been a breach of fiduciary duty"), *and Miller v. Hehlen*, 209 Ariz. 462, ¶ 34, 104 P.3d 193, 203 (App. 2005) (elements of conversion), *and* Restatement § 874 & cmt. a (describing breach of fiduciary duty), *and* Ariz. R. Civ. P. 3 (civil action commences "by filing a complaint with the court") *with* Ariz. R. Fam. Law P. 91(A) (party "shall file a petition" indicating, "at a minimum, the nature of the proceeding, the estimated time for the entire hearing, and the relief sought").

¶13 Additionally, the relief and damages available to a claimant differs depending upon the nature of the action she brings. *See* Ariz. R. Fam. Law P. 91(A), (S) (party may request relief necessary to enforce judgment; attorney fees may be awarded); *see also Acheson v. Shafter*, 107 Ariz. 576, 578, 490 P.2d 832, 834 (1971) (exemplary, punitive damages available in conversion action); *Dooley v. O'Brien*, 226 Ariz. 149, ¶¶ 18-19, 244 P.3d 586, 591 (App. 2010) (attorney fees not available in breach of fiduciary duty action unless duty "expressly created by contract"); *Deutsche Credit*

Corp. v. Case Power & Equip. Co., 179 Ariz. 155, 163, 876 P.2d 1190, 1198 (App. 1994) (attorney fees available in conversion action only if arising out of breach of contract claim). Sims's attempts to conflate the different actions are unavailing. And despite Sims's discussion of the various agreements under which Grantham's rights did not arise, we agree with the trial court that Grantham simply sought an adjudication of her property rights in this action. Therefore, § 12-1551 is inapplicable.

¶14 Sims also relies on *Johnson* for the proposition that Grantham's action here is subject to § 12-1551's limitation period. In that case, the wife filed a petition to enforce a dissolution decree because her former husband failed to pay her the portion of his monthly retirement the decree awarded her. *Johnson*, 195 Ariz. 389, ¶¶ 2-3, 9, 988 P.2d at 622-23. We found the wife entitled only to the arrearages accrued within five years before she filed the latest petition to enforce the decree pursuant to § 12-1551(B). *Id.* ¶ 10. But the wife there brought a "petition to enforce the decree." *Id.* ¶ 5. And the payments in *Johnson* were immediately due upon entry of the decree and the husband's subsequent reception of each retirement payment. *Id.* ¶ 2. The court in *Johnson* was not presented with the question of whether property rights resulting from a decree could be enforced in an independent action and that decision is thus not instructive in resolving our case.

¶15 Sims additionally relies on three cases from other states in which former spouses were barred by their state's dormant judgment statute from enforcing a dissolution decree to support his position. In *Larimore v. Larimore*, the wife filed a motion to compel the preparation of a qualified domestic relation order (QDRO) twelve years after the dissolution decree granted her an interest in her former husband's retirement account. 362 P.3d 843, 852 (Kan. Ct. App. 2015). In *Blomdahl v. Blomdahl*, the wife filed a motion to find her former husband in contempt for failing to comply with their dissolution decree, entered sixteen years earlier, awarding her an interest in his retirement account. 796 N.W.2d 649, ¶¶ 2-3 (N.D. 2011). These cases are distinguishable for the same reason *Johnson* is distinguishable. Grantham did not file a petition to enforce the decree, a motion to compel the preparation of an agreement to enforce the decree, or a motion to find Sims in

contempt of violating the decree. She instead filed a civil suit seeking the adjudication of property granted in the decree. Sims's reliance on these cases is unavailing.

¶16 Last, Sims cites to *Brown v. Benston*, 945 P.2d 563 (Or. Ct. App. 1997). There, the dissolution decree ordered the husband to receive one-half of the proceeds from the sale of the community home, which the parties agreed would not be sold until their child no longer lived in it with the wife. *Id.* at 564. The wife did not sell the home after the child moved out and, nineteen years later, the husband sought a declaratory judgment that he was one-half owner of the home, a partition, and accounting for rents. *Id.* at 565. Because the decree effectively granted the husband a judgment lien on the property, the court found it expired ten years later pursuant to Oregon's dormant judgment statute and the husband was no longer able to enforce that judgment. *Id.* at 566. Grantham, however, was not granted a judgment lien in the decree here but an ownership interest, which did not expire. We again find this case distinguishable and not persuasive.

¶17 The result in each of the cases Sims cites was driven by the facts and procedure of that particular case. *See Johnson*, 195 Ariz. 389, ¶¶ 9-11, 988 P.2d at 623-24 (petition to enforce decree which ordered monthly payments); *Larimore*, 362 P.3d at 851 (federal laws governing retirement accounts required wife to "execute upon the judgment by filing a QDRO in order to enforce her right to receive benefits under [husband's] retirement accounts"); *Blomdahl*, 796 N.W.2d 649, ¶¶ 8, 14 (contempt proceeding not "action upon a judgment" under dormant judgment statute; husband cannot be in contempt of violating expired judgment); *Brown*, 945 P.2d at 680 (finding award of interest in community home a judgment lien thus barring enforcement after statutorily prescribed period). The four cases do not support Sims's suggestion of a nationwide trend that any enforcement action or adjudication of property rights based on a dissolution decree must be filed within the statute of limitations for judgments.

¶18 The trial court here was not entering an order directly related to the enforcement, or lack of adherence to, the decree. It was instead adjudicating property rights which were allocated in the decree. Thus, whether the decree had expired as a "judgment" is

immaterial to the court's ability to hear this action and make its ruling. Accordingly, we need not decide when Grantham's causes of action accrued for the purposes of § 12-1551. We reject Sims's argument that § 12-1551 is applicable and bars Grantham's entire action.

¶19 Sims next argues the trial court erred by finding that Grantham's claims accrued under A.R.S. § 12-542 in April 2012, thus making her complaint timely.[3] That statute of limitation would apply to Grantham's claims for conversion and breach of fiduciary duty. *See Crook v. Anderson*, 115 Ariz. 402, 402-03, 565 P.2d 908, 908-09 (App. 1977). The court, however, also found in Grantham's favor on her claim for a constructive trust. Although Sims appears to contend that claim is also time-barred under § 12-542, a constructive trust is an equitable claim, not a tort, and thus not controlled by § 12-542. *See Warren v. Whitehall Income Fund 86*, 170 Ariz. 241, 244, 823 P.2d 689, 692 (App. 1991) (constructive trustee of land "cannot take advantage of the statute of limitations" applicable to recovery of property held in adverse possession). Sims has not identified the relevant statute of limitations, if any, for that claim. He has therefore waived any argument that Grantham's constructive trust claim was barred by another statute of limitation. *See* Ariz. R. Civ. App. P. 13(a)(7) ("An 'argument' . . . must contain . . . [a]ppellant's contentions concerning each issue presented for

[3]In a footnote, Sims states, "for the same reasons, [Grantham's] claims are independently barred under the doctrines of laches and estoppel." The defense of laches is not, however, governed by the same legal standards as determining when a claim accrued to begin running a statutory limitation period. *See Harris v. Purcell*, 193 Ariz. 409, n.2, 973 P.2d 1166, 1167 n.2 (1998) (laches bars claim where, under totality of circumstances, delay in prosecuting claim "would produce an unjust result"); *see also In re Indenture of Trust Dated Jan. 13, 1964*, 235 Ariz. 40, ¶ 22, 326 P.3d 307, 315 (App. 2014) (laches can bar claim "even where the applicable statute of limitations has not yet expired"). Because Sims has failed to make any further argument or cite any legal authority related to this issue, we decline to address it. *See* Ariz. R. Civ. App. P. 13(a)(7); *see also Polanco v. Indus. Comm'n*, 214 Ariz. 489, n.2, 154 P.3d 391, 393 n.2 (App. 2007).

review, with supporting reasons for each contention, and with citations of legal authorities."); *Polanco v. Indus. Comm'n*, 214 Ariz. 489, n.2, 154 P.3d 391, 393 n.2 (App. 2007) (appellant's failure to develop and support argument waives issue on appeal). Because we may affirm the court's ruling for any reason, *Forszt*, 212 Ariz. 263, ¶ 9, 130 P.3d at 540, and the court's judgment does not turn on either the conversion or breach of fiduciary duty claim, we decline to address Sims's argument that two of the three claims on which the court found in Grantham's favor were barred by § 12-542 or were unfounded.

Constructive Trust

¶20 Sims additionally argues the trial court erred by imposing a constructive trust because it wrongly concluded the decree granted Grantham an interest in the disputed stock rights. He contends the decree granted Grantham only "the right to compel preparation of a stock option division agreement," and not any interest in the stocks themselves. Because Sims does not discuss the requirements for a constructive trust or provide any other authority to support this argument, it is waived. *See* Ariz. R. Civ. App. P. 13(a)(7); *Polanco*, 214 Ariz. 489, n.2, 154 P.3d at 393 n.2.

¶21 Furthermore, even if it were not waived, his argument is unavailing. We review de novo a court's interpretation of an existing dissolution decree. *Cohen v. Frey*, 215 Ariz. 62, ¶ 10, 157 P.3d 482, 486 (App. 2007). Sims and Grantham's decree states that they "agreed during trial to equally divide the stock options." Sims appears to contend that, because the decree ordered the preparation of an agreement related to the disputed stock rights, it did not, in and of itself, award Grantham an interest in the stocks. He thus appears to reason that because Grantham had no interest in the stocks, he could not have "unjustly" held the proceeds from their transfer. *See Cal X-Tra v. W.V.S.V. Holdings, L.L.C.*, 229 Ariz. 377, ¶ 107, 276 P.3d 11, 43 (App. 2012) (constructive trust "will be imposed when circumstances resulting, or likely to result, in unjust enrichment make it inequitable that the property should be retained by the one who holds the legal title").

¶22 Sims is correct that, without the formal agreement and subsequent steps ensuring the disputed stock rights were

transferred to Grantham's name and ownership, she did not have a *possessory* interest over the disputed stock rights or the ability to control when they were exercised. *See Funderberg v. Superior Energy Servs., Inc.*, 83 So. 3d 1148, 1153-54 (La. Ct. App. 2011) (failure to take steps ensuring stocks transferred to former wife's name left her with no "right to exercise them," and thus no possessory interest required to sustain conversion action); *see also* 4A Robert A. Jensen, Ariz. Legal Forms, Domestic Relations § 9:1 (Catherine A. Creighton ed., 3d ed. 2015) ("further steps" beyond decree's award of interest in stock options necessary to ensure effective transfer of ownership interest); *but see In re Marriage of Langham and Kolde*, 106 P.3d 212, 218-19 (Wash. 2005) (wife had sufficient possessory interest in former husband's stock options to sustain conversion action despite not being transferred into her name). That does not, however, change the fact that Grantham was entitled to an interest in the disputed stock rights granted to Sims during their marriage as awarded by the decree. *See* § 25-211; *see also Brebaugh*, 211 Ariz. 95, ¶ 6, 118 P.3d at 45-46. "Corporate regulations cannot interfere with the operation of laws that establish community ownership rights." *Funderberg*, 83 So. 3d at 1152.

¶23 Furthermore, Sims's interpretation of the decree would effectively mean the trial court in the dissolution proceeding did not dispose of certain community property; namely, the disputed stock rights. However, A.R.S. § 25-318(A) states the court "shall assign each spouse's sole and separate property to such spouse" and "shall . . . divide the community . . . property."[4] Consequently, the court was required to dispose of the disputed stock rights and effectively did so by asserting Grantham and Sims would divide them equally. Sims's interpretation would mean the court violated its statutory duty, and we will not interpret a decree in such a way. *See Cohen*, 215 Ariz. 62, ¶ 14, 157 P.3d at 487 (courts much construe decree "in the context of the [trial] court's statutory duty").

[4] We cite to the current version of the applicable statute because no revisions material to this decision have since occurred. *See* 2000 Ariz. Sess. Laws, ch. 13, § 1; *see also* 2016 Ariz. Sess. Laws, ch. 159, § 1.

¶24 And even if we considered the decree's language an effective omission of an award of the disputed stock rights, the stocks "acquired during marriage and held as community property transmuted by operation of law to separate property, with each party holding a one-half interest . . . upon entry of the dissolution decree." *See Thomas v. Thomas*, 220 Ariz. 290, ¶ 10, 205 P.3d 1137, 1139-40 (App. 2009). We thus reject Sims's argument that Grantham has no interest whatsoever in the disputed stock rights.

¶25 Additionally, whether the trial court in this case was or was not correct that the decree awarded Grantham a one-half interest in all of the disputed stock rights is immaterial to whether Grantham had any interest at all. The extent of Grantham's interest, as discussed below, is relevant to determining the amount she may recover from Sims, but not to whether Sims unjustly held property belonging to her in the first instance. *See Cal X-Tra*, 229 Ariz. 377, ¶ 107, 276 P.3d at 43. Thus, even had Sims not waived this argument, the court correctly found Grantham had an interest in the disputed stock rights under the decree.

Damages

¶26 Sims next argues the trial court's award of damages was excessive. He contends the damages award included a portion of his sole and separate property because the decree did not award Grantham an interest in the disputed stock rights granted as an incentive for his post-dissolution performance. We review this issue de novo. *Cohen*, 215 Ariz. 62, ¶ 10, 157 P.3d at 486.

¶27 As with any written document, we interpret a decree following the general rules of construction. *Id.* ¶ 11. The first step is to determine whether the language used in the decree could reasonably have more than one meaning, and, therefore, is ambiguous. *Id.* Whether an ambiguity exists is a question of law. *Id.* "The language in a decree 'should be construed according to [its] natural and legal import,' and with reference to related provisions in the decree." *Id.*, *quoting Lopez v. Lopez*, 125 Ariz. 309, 310, 609 P.2d 579, 580 (App. 1980). Unlike other written documents, however,

"we may not consider extrinsic evidence to determine the trial court's intent."[5] *Id.* ¶ 14.

¶28 The decree states that "[t]he parties agreed during trial to equally divide the stock options." On its face, the decree thus awards Grantham a one-half interest in all of the disputed stock rights.[6] The provision does not contain any words of limitation on the phrase "the stock options" which would indicate the court intended to limit the stocks awarded to Grantham in some way. *See In re Marriage of Zale*, 193 Ariz. 246, ¶¶ 16-17, 972 P.2d 230, 250 (1999). Although Sims contends that the decree "can only be understood as directing equal division of the community's interest in the stock options," we will not read words or terms into the decree which are not present on its face. *See id*.

¶29 Additionally, other provisions of the decree clearly delineate property belonging to the community and to Grantham and Sims separately. For example, the decree awarded Grantham her retirement account as "her sole and separate property," and dictated a formula by which to determine her interest in Sims's retirement account. Similarly, the decree specifies that "each of the

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[5]Sims additionally argues the trial court erroneously relied on Grantham's testimony as to a purported agreement between herself and Sims during the dissolution trial. Our review here, however, is de novo and her testimony may not be properly considered when interpreting the decree. *See Cohen*, 215 Ariz. 62, ¶¶ 10, 14, 157 P.3d at 486-87.

[6]We note that the "stock options" are distinct from an award of restricted stocks and the decree could be interpreted as awarding Grantham an interest only in the stock options, and not the restricted stock award. *See* Polsky & DeLaney Thomas, *supra*, at 746. Sims, however, has not made any argument that we should distinguish between the two types of stock grants, and instead continually refers to the disputed stock rights collectively as one piece of property. We similarly consider all the disputed stock rights as a whole. And, in any event, Sims and Grantham would be co-owners of the restricted stock under § 25-318(A) if the decree did not divide it.

parties is awarded [one-half] of the retirement benefits earned by the other for that period of time that the other party worked for [the employer] during the marriage." The decree also awards pieces of disputed personal property as the "sole and separate property" of either Grantham or Sims.

¶30 When read as a whole, the decree's failure to dictate that only certain stocks were to be considered community property, or otherwise provide some guidance on how to divide the disputed stock rights, supports the interpretation that the trial court intended all the disputed stock rights to be considered community property. *See Cohen*, 215 Ariz. 62, ¶ 12, 157 P.3d at 486. Had the court intended to divide the disputed stock rights between the community and Sims's sole and separate property, it presumably would have done so. *See State ex rel. Goddard v. R.J. Reynolds Tobacco Co.*, 206 Ariz. 117, ¶¶ 19-21, 75 P.3d 1075, 1079 (App. 2003) (declining to find phrase had single meaning when used in different parts of contract because drafters "knew how to create and define words and phrases that were to be given a single meaning" but did not define phrase at issue); *cf. Estate of Braden ex rel. Gabaldon v. State*, 228 Ariz. 323, ¶ 15, 266 P.3d 349, 353 (2011) (legislature's "consistent pattern" of specifically naming public actors when their inclusion intended shows that had legislature "intended to include the state within its definition of 'enterprise' in [A.R.S.] § 46–455(Q), it would have expressly done so").

¶31 Furthermore, "[p]roperty acquired by either spouse during marriage is presumed to be community property, and the spouse seeking to overcome the presumption has the burden of establishing a separate character of the property by clear and convincing evidence." *Thomas v. Thomas*, 142 Ariz. 386, 392, 690 P.2d 105, 111 (App. 1984). The disputed stock rights were granted to Sims during his marriage to Grantham and thus are presumptively community property. *See id.* Sims argues, however, that any stocks which did not vest during the marriage were intended for post-dissolution efforts and thus his sole and separate property. *See Brebaugh*, 211 Ariz. 95, ¶ 7, 118 P.3d at 46. But a property's character can change by agreement of the parties or operation of law. *Potthoff v. Potthoff*, 128 Ariz. 557, 561, 627 P.2d 708, 712 (App. 1981). The decree explicitly acknowledges the equal division

of the stocks is pursuant to the parties' agreement. Sims did not appeal from the decree. Consequently, the decree unambiguously granted Grantham a one-half interest in the net profit Sims received from the exercise and vesting of the disputed stock rights and the trial court did not err in calculating the damages. *See Cohen*, 215 Ariz. 62, ¶ 11, 157 P.3d at 486.

Prejudgment Interest

¶32 Sims lastly argues the trial court erroneously concluded the prejudgment interest accrued from the dates the disputed stock rights were transferred and not from the date Grantham filed her complaint. We review a court's award of prejudgment interest de novo. *Alta Vista Plaza, Ltd. v. Insulation Specialists Co.*, 186 Ariz. 81, 82, 919 P.2d 176, 177 (App. 1995).

¶33 "[P]rejudgment interest on a liquidated claim is a matter of right." *Gemstar Ltd. v. Ernst & Young*, 185 Ariz. 493, 508, 917 P.2d 222, 237 (1996). "[It] generally accrues from the date of demand, not from the date of loss." *Alta Vista*, 186 Ariz. at 83, 919 P.2d at 178. If, however, a definite due date has been set, interest is measured from the date the money becomes due. *Gemstar*, 185 Ariz. at 508, 917 P.2d at 237; *see also Fairway Builders, Inc. v. Malouf Towers Rental Co.*, 124 Ariz. 242, 265, 603 P.2d 513, 536 (App. 1979) (rule that prejudgment interest accrues from demand date applies "in cases where no definite time for payment is stated").

¶34 Sims relies on the rule set forth in *Alta Vista* and argues that Grantham made no demand for payment prior to filing her complaint. Grantham does not dispute that she did not make a demand for payment prior to filing her complaint, but instead argues the accrual of interest began when the disputed stock rights were transferred to Sims, analogizing this case to *Gemstar*.

¶35 In *Gemstar*, the plaintiffs sued the defendants for breach of contract and fiduciary duties after they had retained the profits from a sale of real estate, despite their agreement with plaintiffs to "share and share alike." 185 Ariz. at 497-98, 917 P.2d at 226-27. The plaintiffs did not discover the defendant's actions until years after it occurred and then filed suit. *Id.* Finding the profits "were due at the time [defendants] diverted them under the shareholders' . . .

agreement," the court found interest began accruing at the time of diversion, not the date of demand. *Id.* at 509, 917 P.2d at 238. Grantham argues *Gemstar* is controlling and dictates that prejudgment interest "should accrue from the dates the funds were diverted."

¶36 In *Alta Vista*, the plaintiff sustained a fire loss and sued the negligent contractor. 186 Ariz. at 82, 919 P.2d at 177. The plaintiff had sent the contractor a letter demanding payment, but did not itemize the claimed damages. *Id.* We stated "that prejudgment interest does not accrue until 'sufficient information and supporting data [is provided] so as to enable the debtor to ascertain the amount owed.'" *Id.* at 83, 919 P.2d at 177, *quoting Homes & Son Constr. Co. v. Bolo Corp*., 22 Ariz. App. 303, 306, 526 P.2d 1258, 1261 (1974). Such a rule "enables the debtor 'to stop interest accruing on the amount he contends is due by making and keeping good an unconditional tender of the amount he contends is owing.'" *Id.*, *quoting Homes & Son Constr. Co.*, 22 Ariz. App. at 306, 526 P.2d at 1261. The court then found that prejudgment interest accrued from the dates on which the plaintiffs had provided defendants with the itemized claims. *Id.*

¶37 Here, Sims alone had "sufficient information and supporting data" enabling him to pay Grantham her share of the proceeds from each time he received the stocks. *Id.*, *quoting Homes & Son Constr. Co.*, 22 Ariz. App. at 306, 526 P.2d at 1261. His 2012 letter to Grantham offering her one-half the proceeds from the first exercise shows he was aware of the amount due. Even if Sims contested the amount he owed Grantham, he could have stopped the accrual of interest by paying her what he believed she was owed. *Id.* And, like the plaintiffs in *Gemstar*, Grantham brought suit once she discovered Sims had kept the proceeds from the transfers. 185 Ariz. at 498, 917 P.2d at 227. Because the proceeds from the disputed stock rights "were due at the time" Sims unjustly retained them, this case is more like *Gemstar*. *Id.* at 509, 917 P.2d at 238.

¶38 Moreover, a constructive trust is a "flexible, equitable remedy," *Cal X-Tra*, 229 Ariz. 377, ¶ 107, 276 P.3d at 43, which the trial court may tailor to right the wrong and "promote equity between the parties," *City of Tucson v. Clear Channel Outdoor, Inc.*, 218 Ariz. 172, ¶ 51, 181 P.3d 219, 234 (App. 2008), *quoting Scholten v.*

Blackhawk Partners, 184 Ariz. 326, 331, 909 P.2d 393, 398 (App. 1995). The court did not err in calculating the interest as accruing on the dates Sims received the stocks.

Disposition

¶39 For the foregoing reasons, we affirm the trial court's judgment.