IN THE
ARIZONA COURT OF APPEALS
DIVISION TWO

IN RE THE MARRIAGE OF

DENISE SKYRIOTIS,
Petitioner/Appellee,

and

STEVE SKYRIOTIS,
Respondent/Appellant.

No. 2 CA-CV 2015-0226
Filed February 7, 2017

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NOT FOR PUBLICATION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 Pinal County
No. DO201500228
The Honorable Stephen F. McCarville, Judge

AFFIRMED

COUNSEL

Denise Skyriotis, Queen Creek
In Propria Persona

Kirk Smith, Chandler
Counsel for Respondent/Appellant

MEMORANDUM DECISION

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

M I L L E R, Judge:

¶1 Appellant Steve Skyriotis challenges the trial court's dissolution decree insofar as it characterizes certain real estate as Denise Skyriotis's sole and separate property and deems unenforceable a putative loan to the community from Steve's mother. For the following reasons, we affirm the decree.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to upholding the decree. *In re Marriage of Foster*, 240 Ariz. 99, ¶ 2, 376 P.3d 702, 703 (App. 2016). Steve and Denise were married in Pennsylvania in 1994, and moved to Arizona ten years later. They have four children, two of whom were minors at the time of trial. Denise filed a petition for dissolution of marriage in February 2015.

¶3 After a one-day trial, the trial court determined that a $100,000 down payment on the marital home in Queen Creek had been Denise's separate property, and a significant portion of that home retained its character as sole and separate property because Steve had signed a disclaimer deed at the time of purchase. The court awarded Steve $18,380, reflecting community payments on the mortgage. The court also awarded Denise a house in Coolidge, finding that the community had no interest in the property. Finally, the court ruled that an ostensible $70,000 loan to the community from Steve's mother was not enforceable, due to a lack of evidence regarding the amount, duration, interest rate, and repayment schedule, and the fact that the community had never made any

payments. Steve filed a timely appeal. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1).

Real Property

¶4 Steve first argues the trial court should not have awarded Denise a separate property interest in the Queen Creek home because it was acquired during the marriage. We review de novo the court's characterization of property as separate or community property. *Bell-Kilbourn v. Bell-Kilbourn*, 216 Ariz. 521, ¶ 4, 169 P.3d 111, 113 (App. 2007). There is a strong presumption that property acquired during a marriage is community property, but a party may overcome that presumption by establishing the separate character of the property by clear and convincing evidence. *Marriage of Foster*, 240 Ariz. 99, ¶ 9, 376 P.3d at 704.

¶5 At trial, Denise testified she had been awarded $100,000 in a settlement after being injured in an automobile accident in Pennsylvania, and the money was for her pain and suffering only. She acknowledged, however, that her injuries had caused lost wages and medical expenses. She also acknowledged that both spouses had been named as plaintiffs. Although Denise was apparently cross-examined with a copy of the suit, neither it nor the settlement was admitted into the record.

¶6 The trial court found Denise's testimony to be the most credible and concluded the settlement funds were for pain and suffering only, and therefore constituted separate property. *See, e.g.*, *Jurek v. Jurek*, 124 Ariz. 596, 598, 606 P.2d 812, 814 (1980) (medical care and lost wages belong to community; pain and suffering awards are separate property). The court further found the funds retained their separate character even when used to make a down payment on the marital home because Steve had signed a disclaimer deed, which stated the property was "the sole and separate property of [Denise]" and he had "no past or present right, title, interest, claim or lien of any kind" against the property.

¶7 On appeal, Steve argues the settlement proceeds belonged to the community and the home should be presumed to be community property despite the disclaimer deed. We need not

consider the nature of the settlement proceeds, however, because the disclaimer deed is dispositive even if the home had been purchased with community funds.

¶8 When the funds used to purchase a home are originally separate property of one party, an enforceable disclaimer deed signed by the other party constitutes clear and convincing evidence to rebut the community property presumption regarding the real property. *Bell-Kilbourn*, 216 Ariz. 521, ¶ 11, 169 P.3d at 114; *Bender v. Bender*, 123 Ariz. 90, 92-93, 597 P.2d 993, 995-96 (App. 1979). When funds used to make the purchase originally belonged to the community, the intention to change the character of the property can be demonstrated by a written instrument coupled with contemporaneous conduct indicating an intention that the other spouse have the property. *See Bender*, 123 Ariz. at 93, 597 P.2d at 996; *In re Sims' Estate*, 13 Ariz. App. 215, 217, 475 P.2d 505, 507 (1970). A recorded disclaimer deed like the one Steve signed meets that test.[1] *Bender*, 123 Ariz. at 93 & n.1, 597 P.2d at 996 & n.1. It is in writing, clearly states the property was to be Denise's sole and separate property, and was recorded with the Pinal County Recorder. *Id.*; *accord Sims' Estate*, 13 Ariz. App. at 217, 475 P.2d at 507.

¶9 Steve appears to argue for the first time on appeal that A.R.S. § 25-214(C) requires that both Steve and Denise sign an agreement—separate from the disclaimer deed—regarding the changed character of the property. We generally do not consider arguments raised for the first time on appeal. *Hannosh v. Segal*, 235 Ariz. 108, ¶ 25, 328 P.3d 1049, 1056 (App. 2014). Moreover, § 25-214(C)(1) requires joinder of spouses in transactions for the acquisition, disposition, or encumbrance of an interest in real property that bind the community; it does not require both signatures for a spouse to disclaim his or her community interest in property. The trial court did not err by awarding a significant

[1]The disclaimer deed in this case is essentially identical to the one at issue in *Bender*. *See* 123 Ariz. at 93, 597 P.2d at 996.

interest in the marital home to Denise as her sole and separate property.[2]

Family Loan

¶10 Steve argues the trial court erred by refusing to allocate to the community a debt owed to his mother, determining instead that there was insufficient evidence to establish essential components of the loan. We review the court's allocation of community assets and liabilities for an abuse of discretion. *In re Marriage of Flower*, 223 Ariz. 531, ¶ 14, 225 P.3d 588, 592 (App. 2010).

¶11 For a contract to be enforceable there must be an offer, acceptance, and consideration, and "sufficient specification of terms so that obligations involved can be ascertained." *K-Line Builders, Inc. v. First Fed. Sav. & Loan Ass'n*, 139 Ariz. 209, 212, 677 P.2d 1317, 1320 (App. 1983). "[A] court's role is not that of contract maker." *Savoca Masonry Co. v. Homes & Son Constr. Co.*, 112 Ariz. 392, 395, 542 P.2d 817, 820 (1975). Steve testified that his mother had loaned the community $73,000 during the marriage. He provided no paperwork indicating the funds were a loan rather than a gift, and did not provide any evidence to verify the amount or terms.[3] No other witness testified about the putative loan. The trial court concluded Steve's testimony was uncontroverted, but also found there was no written contract, no evidence supporting the amount of the loan, no details about the loan, and no evidence the parties had ever made a payment on the loan. Thus, the trial court did not err in

[2]Steve also argues the trial court erred by awarding a second home in Coolidge to Denise as her sole and separate property. His argument appears to assume the trial court relied on the separate character of the settlement funds to make this determination. The court, however, did not link the settlement funds to that property, and determined there was no evidence that community funds had been used to purchase the property, which was purchased jointly with Denise's mother. Steve does not dispute this finding on appeal.

[3]Although Steve testified that he had copies of checks in the amount of $53,000, he did not seek to admit them at trial.

concluding it was unnecessary to allocate the purported debt in the dissolution proceeding where there was no evidence of loan terms.[4] *See Savoca Masonry*, 112 Ariz. at 395, 542 P.2d at 820 (finding no contractual relationship where no sufficient mutual understanding of terms existed).

Disposition

¶12 For the foregoing reasons, we affirm. Steve requests attorney fees on appeal "if Denise takes an unreasonable position in these proceedings," citing *Magee v. Magee*, 206 Ariz. 589, 81 P.3d 1048 (App. 2004). We deny the request.

[4] A trial court's allocation of community debts does not, however, affect the rights of a third-party creditor. *Cmty. Guardian Bank v. Hamlin*, 182 Ariz. 627, 631, 898 P.2d 1005, 1009 (App. 1995).