

maintained separate accounts. Ms. Coram was then married to, but separated from, Larry M. Snider until 1993. Mr. Mair and Ms. Coram married in May 1996 and continued to maintain separate accounts. They separated in January 2008. During their entire relationship, Mr. Mair and Ms. Coram resided at 2911 West 16th Avenue in Spokane, a residence acquired by Ms. Coram and Mr. Snider in 1984. The home was awarded to Ms. Coram when her dissolution from Mr. Snider became final and remained solely in Ms. Coram's name.

Black Lake Property

In 1992, during her separation from Mr. Snider, Ms. Coram, in her name and without Mr. Mair's participation, purchased property on Black Lake near Colville. Ms. Coram testified she put a \$700 down payment on the property from her individual savings account, provided another \$6,521.90 at closing from a separate credit union loan, and acquired a separate note to the previous owner for \$25,000 requiring monthly payments of \$227 that she separately paid. Mr. Mair and Ms. Coram built a rustic cabin without electricity or plumbing and a boathouse and dock on the Black Lake property between 1993 and 1995. Ms. Coram purchased the materials; Mr. Mair and his father mainly did the work. The parties disputed the value of the improvements. In 2005, Mr. Mair individually took a \$70,000 loan secured by the Black Lake cabin. He primarily used the loan to pay his credit card debt. Some loan funds were used to pay back property taxes. \$20,000 was used to pay an outstanding Internal Revenue Service

(IRS) debt incurred by Ms. Coram during the marriage, apparently due to an early retirement account withdrawal.

During discovery, Ms. Coram was sanctioned for not allowing Mr. Mair's appraiser access to her property; generally, Ms. Coram was not allowed to present certain separate property evidence at trial. Her real estate appraiser, Bill Lewis, assessed the cabin's reconstruction cost at \$17,800 and gave an \$8,900 current value. Mr. Mair estimated \$50,000 to rebuild the cabin. The tax assessed improvement value was \$50,465. The cabin was insured for the amount of the loan against it, \$70,000, as required by the bank. Mr. Mair paid the insurance on the cabin. The purchase price of the land in 1992 was \$32,000. The value of the Black Lake property, including the land and the cabin, was appraised by Mr. Lewis at \$185,000 in 2009.

16th Avenue Home

In 1990, Mr. Mair began repairs, renovations, and improvements to the home built in 1907. The parties disputed the value of this work; Ms. Coram viewing the work, much uncompleted, as reducing the property value. Mr. Lewis testified the cost to finish the work, including labor, was \$60,000 to \$100,000. Ms. Coram refinanced the home several times. In 1993 when she received the property in her dissolution decree, she individually borrowed \$65,000 in a secured loan to pay off the existing debt and pay off Mr. Snider. When Ms. Coram and Mr. Mair separated, the loan balance on the home had risen to \$105,147.90 due to various reasons described to the court. A

second loan and mortgage for \$29,813 apparently concerned Ms. Coram's funding for her son's college expenses. Mr. Mair puts the total home debt around \$135,000, while Ms. Coram puts it at \$105,147.90. The 1984 purchase price was \$82,000. No evidence suggests the 1990 home value, but appraisals increased to \$250,000 by 2006. At the 2009 trial, Mr. Lewis appraised the home at \$180,000 with a \$100,000 reduction for needed repairs.

Other Property Disputes

The trial testimony showed throughout the parties' relationship, each managed their community property earnings and community-like property with substantial independence from one another. The parties maintained separate bank accounts and usually filed separate federal income tax returns. No community or separate property agreements are present. Ms. Coram received a 2007 IRS tax refund postseparation for \$9,782. The husband received a \$2,157 IRS tax refund for 2007 after separation. After separation, Mr. Mair took or received personal property items; the condition, value, and even the existence of this property were disputed at trial.

Procedural History

In August 2009, after a lengthy trial, the court orally reasoned the parties had a relationship beginning in September 1990 and that Ms. Coram had been prevented from arguing separate property issues. When reviewing community and separate property issues and "RCW 26.09.080 relative to disposition of property and liabilities,"

the court stressed it “independently analyzed character and has decided pursuant to the evidence before it.” Clerk’s Papers (CP) at 55-56.

The court characterized the Black Lake and 16th Avenue properties as Ms. Coram’s separate property, ruling Ms. Coram would be liable for the loan Mr. Mair took out against the Black Lake property, and determined his one-half share of the community’s “efforts toward improvements” on the property was \$10,000. CP at 62. The court valued the 16th Avenue home at \$180,000, reasoning both parties were partly responsible for the asset’s low value along with a generally depressed real estate market. It ruled Mr. Mair’s one-half share of the community’s “efforts towards improvements” on the property was \$25,000. CP at 61. The court gave Mr. Mair a \$3,000 interest in Ms. Coram’s 2007 IRS tax refund. The court discussed at length the value of the community personal property.

The court stressed several times its intent to “globally” reach an “equitable distribution” of all property by considering all property evidence and adjusting the effect of the pensions and personal property on the transfer payment. CP at 68, 55. It stressed the need to consider the separate and community interest in making the outcome “more equitable” to Mr. Mair. CP at 68. The court recognized the parties’ combined efforts on the real property despite the “well-disciplined segregation of accounts.” CP at 69.

In December 2009, the court entered consistent findings of fact and conclusions

of law. Mr. Mair was decreed approximately \$46,600 to equitably balance asset and debt distributions. The court decreed Mr. Mair receive a 75 percent share of the community's interest in Ms. Coram's retirement account and all of his retirement account. Ms. Coram moved to reconsider, arguing the court had failed to take into account her share of the community's interest in Mr. Mair's retirement account, failed to properly distribute the community's debts, and failed to consider several debts had been incurred solely by Mr. Mair. She argued the court incorrectly calculated the personal property values and failed to assign value to Mr. Mair's personal property. The court granted partial reconsideration, amending its findings of fact and conclusions of law. The court clarified that the judgment balanced the personal property distributions by allowing Mr. Mair to retain the community's entire portion of his retirement account and an additional transfer payment of \$14,863.15. The final judgment separately reflected Mr. Mair's \$3,000 interest in Ms. Coram's tax refund and the \$750 sanction. In February 2010, the court entered its amended dissolution decree. Ms. Coram appealed. Mr. Mair cross-appealed.

ANALYSIS

A. Black Lake Property Characterization

Mr. Mair's cross-appeal issue is whether the trial court erred in characterizing the Black Lake property as Ms. Coram's separate property. He contends the trial court incorrectly assumed it was separate property, not community property. We disagree.

Initially, Ms. Coram contends Mr. Mair did not preserve this issue for appeal under RAP 2.5(a) because he did not raise it at trial. But, the record shows Mr. Mair did argue the Black Lake property was community property at trial. He relied on that theory in his response to Ms. Coram's reconsideration motion. Mr. Mair counters that because Ms. Coram was precluded from arguing separate property at trial, she should be similarly precluded from arguing separate property here. But the trial court recited its independent evidence review when considering property characterization issues, and we review its decision in that light.

Ms. Coram next contends Mr. Mair failed to properly assign error to the trial court's characterization of the Black Lake property; thus, the court's separate property determinations should be verities on appeal. Mr. Mair acknowledges his cross-appeal was deficient for failing to follow RAP 10.3(a)(4), RAP 10.3(g), and RAP 10.4(c). However, it is clear from Mr. Mair's brief what findings he is challenging. Further, we may excuse a party's failure to assign error to specific findings of fact when the briefing makes the nature of the challenge clear and the challenged finding is argued in the text of the brief. *Noble v. Lubrin*, 114 Wn. App. 812, 817, 60 P.3d 1224 (2003).

We review the trial court's distribution of property for an abuse of discretion. *In re Marriage of Brewer*, 137 Wn.2d 756, 769, 976 P.2d 102 (1999). A court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or reasons. *In re Marriage of Fiorito*, 112 Wn. App. 657, 663-64, 50 P.3d 298 (2002).

In a dissolution action, all property, both community and separate, is before the court for distribution. *Brewer*, 137 Wn.2d at 766. The trial court's distribution of the property and liabilities of the parties must appear "just and equitable" after considering all relevant factors. RCW 26.09.080. Those factors include the nature and extent of the separate and community properties and the duration of the marriage. *Id.* "In applying these factors, the court first must characterize the marital property as either separate or community." *In re Marriage of Griswold*, 112 Wn. App. 333, 339, 48 P.3d 1018 (2002).

The trial court's classification of property as separate or community is a question of law reviewed de novo. *In re Marriage of Skarbek*, 100 Wn. App. 444, 447, 997 P.2d 447 (2000). We find no error in the trial court's characterization reasoning.

"Characterization of property as community or separate is not controlling in division of property between the parties in a dissolution proceeding, but 'the court must have in mind the correct character and status of the property . . . before any theory of division is ordered.'" *Brewer*, 137 Wn.2d at 766 (footnote omitted) (quoting *Blood v. Blood*, 69 Wn.2d 680, 682, 419 P.2d 1006 (1966)). Although all property before the court is capable of division to reach a just and equitable result, where there is mischaracterization, the trial court will not be affirmed unless the reasoning of the court clearly indicates that the court would have divided the property in the same way in the absence of the mischaracterization. *In re Marriage of Shannon*, 55 Wn. App. 137, 142,

No. 28890-1-III
In re Marriage of Coram & Mair

777 P.2d 8 (1989).

Property acquired during an equity relationship is presumed to be community-like, but the presumption is rebuttable. *Soltero v. Wimer*, 159 Wn.2d 428, 434, 150 P.3d 552 (2007). The fact that title is in the name of one of the parties does not, in itself, rebut the presumption of common ownership. *Connell v. Francisco*, 127 Wn.2d 339, 351, 898 P.2d 831 (1995). While the parties seem to agree they lived together beginning in 1990, the court is not bound to agree. The court noted the parties' efforts to maintain separate and independent financial status during both their early relationship and after marriage. The court acted within its discretion in deciding their early relationship did not rise to the level it required for equity relationship status. In a marriage context, a community property presumption must be overcome by clear and convincing evidence. *In re Marriage of Janovich*, 30 Wn. App. 169, 171, 632 P.2d 889 (1981). We find no distinction between Ms. Coram's unchallenged separate acquisition of the home property and her separate acquisition of the Black Lake property.

Even assuming a mistaken characterization for the Black Lake property because it was purchased during the couple's early relationship, and further assuming the property to be community-like, we would have to disregard the trial court's credibility and weight determinations concerning Ms. Coram's testimony and its clear intent to make an equitable distribution based on its global view of the evidence; this we will not do. While the fruit of all labor performed by either party during an equity relationship is

No. 28890-1-III
In re Marriage of Coram & Mair

community-like property, the court did not reason this early relationship before marriage merited equity relationship status. See *In re Meretricious Relationship of Long & Fregeau*, 158 Wn. App. 919, 929, 244 P.3d 26 (2010); *In re Marriage of Lindemann*, 92 Wn. App. 64, 72, 960 P.2d 966 (1998); see also *Soltero*, 159 Wn.2d at 434 n.3 (quoting *Connell*, 127 Wn.2d at 351) (Income acquired during an equity relationship should be characterized in a similar manner as income and property acquired during marriage.). Moreover, it is unlikely the court would have divided the property in any other way even if it mischaracterized the Black Lake property because it clearly stressed its intent to take a global view of the property evidence to reach an equitable distribution of assets and liabilities for Mr. Mair.

B. Black Lake Property Loan

Ms. Coram's first issue is whether the trial court erred in distributing all the Black Lake community debt to her. She contends the evidence clearly shows the loan funds were used to pay off credit card and other financial obligations incurred solely by Mr. Mair and for his benefit alone. As discussed above, the trial court's distribution of property and liabilities is reviewed for an abuse of discretion. *Brewer*, 137 Wn.2d at 769.

Debts incurred during the marriage are presumed community debt. *Sunkidd Venture, Inc. v. Snyder-Entel*, 87 Wn. App. 211, 215, 941 P.2d 16 (1997). The presumption is rebuttable by clear and convincing evidence that the debt was not for

community benefit. *Id.* Here, during the marriage, Mr. Mair took out a \$70,000 loan against the cabin on the Black Lake property. It is presumed community debt. It was used for community benefit because it paid off other community debts. The loan funds were used to pay the back taxes on the Black Lake property and \$20,000 of the community's IRS debt. Furthermore, although the couple generally managed their finances separately, even Mr. Mair's credit card debt was presumably community debt.

In its oral ruling, the trial court reasoned that although Mr. Mair took out the loan and paid debts on his "separate objects," Ms. Coram received benefit because Mr. Mair paid the community's IRS debts. CP at 69. The court elaborated, "The assets are going to carry their own liabilities here, and that would provide a cleaner resolution." CP at 69. We cannot say the court abused its broad discretion in equitably distributing the loan on the Black Lake property to Ms. Coram. Moreover, the court's overall allocation of community debts was nearly equal.

C. Valuations

The issue is whether the trial court erred in its property valuations. First, we consider Ms. Coram's contentions concerning the Black Lake property. Mr. Mair was effectively awarded a \$10,000 right of reimbursement against the Black Lake property. Ms. Coram argues the evidence does not support the court's recognition of a \$20,000 community contribution to the cabin, and the court failed to account for Mr. Mair's beneficial use of the cabin.

When community labor or funds are used to increase the equity or value of one spouse's separate property, the community may be entitled to a right of reimbursement. See *In re Marriage of Pearson-Maines*, 70 Wn. App. 860, 869-70, 855 P.2d 1210 (1993); *In re Marriage of Elam*, 97 Wn.2d 811, 817, 650 P.2d 213 (1982). The right to reimbursement is an equitable remedy, intended to assure the owner of separate property is not unjustly enriched at the expense of the community. *Lindemann*, 92 Wn. App. at 74. The right of reimbursement may be offset if the court finds the community realized a reciprocal benefit for its use and enjoyment of the separately owned property. See *In re Marriage of Miracle*, 101 Wn.2d 137, 139, 675 P.2d 1229 (1984).

At trial, Ms. Coram did not argue Mr. Mair's right of reimbursement should be offset by his use and enjoyment of the property. Rather, she argued the value of the property was not actually increased by the cabin; therefore, the community was not entitled to reimbursement. She makes the same argument when challenging the court's cabin valuation. The property valuation decided in a marital dissolution is a material and ultimate fact that we review for substantial evidence. *In re Marriage of Crosetto*, 101 Wn. App. 89, 96, 1 P.3d 1180 (2000) (quoting *Wold v. Wold*, 7 Wn. App. 872, 878, 503 P.2d 118 (1972)); *In re Marriage of Eklund*, 143 Wn. App. 207, 212, 177 P.3d 189 (2008); *Skarbek*, 100 Wn. App. at 447. "Substantial evidence exists if the record contains evidence of a sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise." *Griswold*, 112 Wn. App. at 339 (quoting

No. 28890-1-III
In re Marriage of Coram & Mair

Bering v. SHARE, 106 Wn.2d 212, 220, 721 P.2d 918 (1986)). The court's valuation findings must be, as here, within the range of credible evidence. *In re Marriage of Sedlock*, 69 Wn. App. 484, 490, 849 P.2d 1243 (1993).

We do not substitute our judgment over the trial court's judgment on a disputed factual issue such as the valuation of property or judge witness credibility. *In re Marriage of Greene*, 97 Wn. App. 708, 714, 986 P.2d 144 (1999). When parties offer conflicting evidence in valuation of property, a trial court considering a property division may adopt the value asserted by either party or any value between the two. *In re Marriage of Rockwell*, 141 Wn. App. 235, 250, 170 P.3d 572 (2007). A trial court does not abuse its discretion by assigning values to property within the scope of evidence. *In re Marriage of Soriano*, 31 Wn. App. 432, 436-37, 643 P.2d 450 (1982).

Here, the trial court found the community contributed at least a \$20,000 effort to improve the Black Lake property. Accordingly, it found Mr. Mair was entitled to a credit of \$10,000, reflecting one-half of the community efforts. The real estate appraiser assessed the reconstruction cost of the cabin was \$17,800. He assessed the current value of the structure was \$8,900. Mr. Mair estimated the cost to rebuild the cabin would be \$50,000. The tax assessed value of the improvements on the property was \$50,465. The cabin was insured for \$70,000. Yet, the court found the best use of the property would be to remove the cabin, implicitly reasoning the cabin had no practical value. Given all, recognizing a \$20,000 cabin value was within the range of credible

evidence. Accordingly, substantial evidence supports the court's findings which in turn support its conclusion of law that Mr. Mair was entitled to a \$10,000 credit. Though the court did not take into account Mr. Mair's use of the cabin, Ms. Coram did not ask the trial court to do so; thus, she waived the issue for appeal. RAP 2.5(a).

Next, Ms. Coram contends the trial court erred in awarding Mr. Mair a \$25,000 right of reimbursement against the 16th Avenue home. Ms. Coram argues the evidence does not support the trial court's recognition of a \$50,000 community improvement to the home, and the court failed to take into account Mr. Mair's reciprocal benefit for his use of the home. We disagree. At trial, Ms. Coram did not argue that Mr. Mair's right of reimbursement should be offset by his use of the home. Accordingly, she waived the issue on appeal. RAP 2.5(a). In any event, Ms. Coram's arguments center on her theory that the value of the home was not increased by Mr. Mair's efforts, but decreased. As discussed above, we do not substitute our judgment for that of the trial court on a disputed factual issue such as the valuation of property. *Greene*, 97 Wn. App. at 714.

Moreover, the trial court decided the factual issue within the range of credible evidence. The trial court found that the community contributed at least a \$50,000 effort to improve the 16th Avenue home. Accordingly, it found Mr. Mair was entitled to a credit of \$25,000, reflecting one-half of the community efforts. And, the court carefully considered the various property valuations showing increases until the final valuation

by Mr. Lewis. The court was well aware of the evidence indicating effect of the uncompleted projects, but chose within its discretion to give it a different weight than desired by Ms. Coram. Notably, the evidence shows, and the court noted, Ms. Coram refused to properly fund the projects.

Given all, the trial court's \$50,000 value of the community's improvements to the home is within the range of credible evidence. Mr. Mair presented direct evidence that the increase in value in Ms. Coram's separate property is attributable to community labor or funds. Accordingly, substantial evidence supports the court's findings, which in turn support its conclusion of law, that Mr. Mair was entitled to a \$25,000 credit.

Finally, Ms. Coram contends the trial court erred in valuing and distributing the parties' personal property. However, the trial court set out a six-page list of its personal property valuations. Mr. Mair argues many of the items were discarded by Ms. Coram and damaged by the elements with no value. Ms. Coram presented a 21-page list of the items she claimed Mr. Mair removed from the home, but she did not assign values to the items; Mr. Mair testified about which items were destroyed and which items he had in his possession.

In sum, given this record, we conclude the trial court did not err in exercising its fact-finding discretion when making its valuations.

D. Tax Refund Distributions

The issue is whether the trial court erred by abusing its discretion in awarding

Mr. Mair an interest in Ms. Coram's tax refund.

We review the court's distribution of property for an abuse of discretion. *Brewer*, 137 Wn.2d at 769. Assets acquired during marriage are presumed community property. *In re Marriage of Short*, 125 Wn.2d 865, 870, 890 P.2d 12 (1995). This presumption is rebuttable by clear and convincing evidence. *Janovich*, 30 Wn. App. at 171.

Ms. Coram argues the parties consistently filed separate tax returns and their practice was not to share their individual refunds. Ms. Coram received a 2007 IRS tax refund postseparation for \$9,782. Mr. Mair received a refund of \$2,157. The parties were married and not separated in 2007. Both refunds are presumably community property. Although the couple generally managed their finances separately, they had on occasion filed joint tax returns. Ms. Coram failed to rebut the presumption that her tax refund should be treated as community property. Mr. Mair requested an equitable distribution of Ms. Coram's refund. And, both separate and community property are before the court. The court ordered Mr. Mair to receive \$3,000 of Ms. Coram's refund in reaching an equitable distribution. We find no abuse of discretion.

E. Judgment

Based on her failed contentions, Ms. Coram argues the court abused its discretion in fashioning its decree. But because we have rejected her underlying contentions and because the judgment accurately embodies the decree, we do not

consider her arguments that the judgment was erroneous.

F. Attorney Fees on Appeal

Mr. Mair requests attorney fees on appeal pursuant to RAP 18.1, RAP 18.9, and RCW 26.09.140.

In a dissolution action, the trial court may consider whether additional legal fees were caused by one party's intransigence and may award attorney fees on that basis. *In re Marriage of Greenlee*, 65 Wn. App. 703, 708, 829 P.2d 1120 (1992). If attorney fees are allowable at trial, the prevailing party may recover fees on appeal. *Landberg v. Carlson*, 108 Wn. App. 749, 758, 33 P.3d 406 (2001) (citing RAP 18.1). RAP 18.9(a) authorizes the appellate court to order a party who files a frivolous appeal "to pay terms or compensatory damages to any other party who has been harmed by the delay or the failure to comply or to pay sanctions to the court." "Appropriate sanctions may include, as compensatory damages, an award of attorney fees and costs to the opposing party." *Yurtis v. Phipps*, 143 Wn. App. 680, 696, 181 P.3d 849 (2008). "An appeal is frivolous if, considering the entire record, the court is convinced that the appeal presents no debatable issues upon which reasonable minds might differ and that it is so devoid of merit that there is no possibility of reversal." *Id.* at 697 (quoting *Lutz Tile, Inc. v. Krech*, 136 Wn. App. 899, 906, 151 P.3d 219 (2007)). Further, all doubts as to whether an appeal is frivolous are resolved in favor of the appellant. *Lutz Tile*, 136 Wn. App. at 906. We conclude Ms. Coram's appeal is not frivolous. "An appeal that is affirmed

merely because the arguments are rejected is not frivolous.” *Halvorsen v. Ferguson*, 46 Wn. App. 708, 723, 735 P.2d 675 (1986).

Under RCW 26.09.140, the court in a dissolution action may, after considering the financial resources of both parties, order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding and for reasonable attorney fees. And “[u]pon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorney’s fees in addition to statutory costs.” *Id.* The trial court did not order attorney fees on this basis. We similarly decline to award attorney fees here.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Brown, J.

WE CONCUR:

Kulik, C.J.

Siddoway, J.