

CN: 201703018170

SN: 326

PC: 9

FILED

AUG 07 2019

**Timothy W. Fitzgerald
SPOKANE COUNTY CLERK**

**SUPERIOR COURT OF WASHINGTON
COUNTY OF SPOKANE**

In re the Marriage of:

SIRINYA SURINA

Petitioner,

And

AARON MICHAEL SURINA

Respondent.

No. 17-3-01817-0

TRIAL BRIEF RE:

**COMMUNITY PROPERTY
CHARACTERIZATION OF SALE
PROCEEDS FROM SALE OF THE
FAMILY RESIDENCE**

COMES NOW the Petitioner, SIRINYA SURINA by and through her attorney of record, KEITH A. GLANZER and hereby submits the following Trial Brief regarding the community property characterization of the sale proceeds from the sale of the Surina family residence located at 1616 S. Rocky Ridge Dr., Spokane Valley, WA 99212.

II. STATEMENT OF FACTS

Aaron and Sirinya Surina were married December 29, 2011 in Winchester Bay, Douglas County Oregon. The marital community ended on August 7, 2017.

The parties executed a Residential Real Estate Purchase and Sale Agreement on April 14, 2015 for the property located at 1616 S. Rocky Ridge Dr., Spokane Valley, WA 99212, Tax parcel No.: 35261.1514. (See Petitioner Exhibit P-9, Page 20)

In re the Marriage of Surina
Trial Brief re Community Property Characterization
Page 1 of 9

KEITH A. GLANZER, P.S.

2024 W. Northwest Blvd.
Spokane, WA 99205
Telephone: 509-326-4526
Facsimile: 509-324-0405

1 The parties executed a Real State Purchase Addendum on April 14, 2015 with a
2 financing contingency, which set a closing date of May 22, 2015. The sale price was
3 \$250,000.00. The parties agreed to apply for a loan in the amount of \$241,250.00 with
4 a cash down payment of \$12,500.00. (See Petitioner Exhibit P-9, Page 7 & 8)

5 In the process of obtaining a mortgage loan from Heritage Home Loans, the
6 parties discovered they could obtain more favorable interest on their mortgage loan if
7 Mrs. Sirinya Surina's name was removed from the purchase agreement and loan
8 documents. The parties decided to remove Mrs. Surina from the purchase and sale
9 agreement and loan documents for the sole purpose of obtaining a more favorable
10 mortgage interest rate. The parties executed an Amendment to the Purchase and Sale
11 Agreement on April 15, 2015 whereby Mrs. Surina agreed to provide a quit claim deed
12 to the closer within 3 days. They further decided to go with a 5% down conventional
13 loan instead of an FHA loan. (See Petitioner Exhibit P-9, Page 1, 2 and 6)

14 Mr. Surina gave his wife assurances that shortly after closing he would add her
15 name onto the title of the property.

16 The \$12,500.00 cash down payment came from the community funds of the
17 parties. All payments on the mortgage came from community funds through Mr. Aaron
18 Surina's income from his employment with Providence Health Services.

19 The court ordered the parties to sell the family residence due to economic need
20 in its order entered on August 10, 2018. The court directed the parties to deposit the
21 net proceeds from the sale of the residence into the trust of Keith A. Glanzer P.S.

22 The house was sold and the monies deposited into Keith A. Glanzer, P.S. Trust
23 Account totaled \$56,493.47. The amount of \$1,000.00, which, according to the court's
24 order should have been paid into Keith A. Glanzer, P.S. Trust was actually diverted
25 directly to Mr. Surina to pay Mr. Surina's real estate attorney Roger Coombs.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

III. ISSUES

- A. Does the court have the jurisdiction to dispose separate and community property in a dissolution of marriage?
- B. Should the court characterize the proceeds from the sale of the real estate located at 1616 S. Rocky Ridge Dr., Spokane Valley, WA 99212 as community property in the present dissolution the Surina marriage?

SHORT ANSWER

- A. Yes, the court has the jurisdiction to dispose separate and community property in a dissolution of marriage pursuant to RCW 26.09.080 as follows:

In a proceeding for dissolution of the marriage. . . the court shall, . . . make such disposition of the property . . . of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors including, but not limited to: (1) The nature and extent of the community property; (2) The nature and extent of the separate property

- B. Yes, the court should characterize the proceeds from the sale of the real estate located at 1616 S. Rocky Ridge Dr., Spokane Valley, WA 99212 as community property.

The law favors characterization of property as community property "unless there is clearly no question of its [separate] character." (*Brewer*)

Harry M. Cross, *The Community Property Law in Washington (Revised 1985)*, 61 WALR 13, 28 (1986)

In re Marriage of Davison, 112 Wn. App. 251, 258, 48 P.3d 358 (2002);

In re Marriage of Brewer, 137 Wn.2d 756, 766, 976 P.2d 102 (1999)

LEGAL ARGUMENT

1. **The court has the jurisdiction to dispose separate and community property in a dissolution of marriage pursuant to RCW 26.09.080.** The trial court must ... exercise its discretion to consider all of the statutory factors set out in RCW 26.09.080 and RCW 26.09.090(1)(c) and reach a just and equitable distribution. See *in re Marriage of Rockwell*, 141 Wn. App. 235, 170 P.3d 572 (2007) at 242, 243. The objective of the trial court is to determine the fair, just, and equitable division of the property.” See also, *In re Marriage of Kaplan*, 4 Wn. App. 2d 466, 475-76, 421 P.3d 1046 (Div. 1 2018)
2. The statutory factors in RCW 26.09.080 are not limiting and the trial court may consider **other factors** such as “the health and ages of the parties, their prospects for future earnings, their education and employment histories, their necessities and financial abilities, their foreseeable future acquisitions and obligations, and whether the property to be divided should be attributed to the inheritance or efforts of one or both of the spouses.” (*Olivares*)

In re Marriage of Urbana, 147 Wn. App. 1, 11, 195 P.3d 959 (2008);

In re Marriage of Zahm, 138 Wn.2d 213, 218, 978 P.2d 498 (1999);

In re Marriage of Olivares, 69 Wn. App. 324, 329, 848 P.2d 1281 (1993)

1 3. Other factors include but are not limited to the following:

- 2 a. "[T]he **economic circumstances** of each spouse upon dissolution [are]
3 of paramount concern." (*Olivares*) (Also applies to maintenance). Here
4 Mrs. Surina has been a stay at home mother.

5 *In re Marriage of Gillespie*, 89 Wn. App. 390, 399, 948 P.2d 1338 (1997);
6 *In re Marriage of Chavez*, 80 Wn. App. 432, 439, 909 P.2d 314, review
7 *denied*, 129 Wn.2d 1016 (1996)
8 *In re Marriage of Olivares*, *Supra*

- 9 b. **Future earning potential** 'is a substantial factor to be considered by the
10 trial court in making a just and equitable property distribution.'" Here, Mrs.
11 Surina has very limited earning potential even following any training.

12 Although Mrs. Surina enrolled in education classes and has completed
13 training to become a CNA, her value in the marketplace is limited. She
14 also needs to complete her GED to increase her economic value and to
15 enter into other educational and vocational programs.

16 *In re Marriage of Rockwell*, 141 Wn. App. 235, 248, 170 P.3d 572 (2007);
17 *In re Marriage of Hall*, 103 Wn.2d 236, 248, 692 P. 2d 175 (1984)

18 In the present case, Petitioner, Sirinya Surina is a foreign national who has
19 earned her United States citizenship. English is her second language. Her economic
20 value should be considered by the court when making its property division ruling.
21 Respondent, Aaron Surina on the other hand earns \$80,000.00 plus per year and over
22 \$110,000.00 during the marriage. He enjoys a far superior financial condition compared
23 to the Petitioner. The court should consider this disparity when dividing the proceeds
24 from the sale of the family residence, which Petitioner contends is a community asset.

1 **The court should characterize the proceeds from the sale of the real estate**
2 **located at 1616 S. Rocky Ridge Dr., Spokane Valley, WA 99212 as community**
3 **property.** The court ordered the parties to sell the family residence due to economic
4 need on August 10, 2018. The court directed the parties to deposit the net proceeds
5 from the sale of the residence into the trust of Keith A. Glanzer P.S.

6 The house has been sold and the funds have been deposited into Keith A.
7 Glanzer, P.S. trust as ordered, except for \$1,000.00, which was paid to Mr. Surina's real
8 estate attorney. The asset sold was a community asset and therefore, the proceeds are
9 community assets.

10 Property *acquired* during marriage is presumptively community property. A party
11 may rebut this presumption by offering clearing and convincing evidence that the
12 property was acquired with separate funds." See Harry M. Cross, *The Community*
13 *Property Law in Washington (Revised 1985)*, 61 Wash. L.Rev. 13, 27-28 (1986); *In re*
14 *Marriage of Schwarz*, 192 Wn. App. 545, 550, ___ P.3d ___ (2016); *In re Marriage of*
15 *Chumbley*, 150 Wn.2d 1, 5, 74 P.3d 129 (2003); *Dean v. Lehman*, 143 Wn.2d 12, 19-
16 20, 18 P.3d 523 (2001); *In re Marriage of Skarbeck*, 100 Wn. App. 444, 449, 997 P.2d
17 447 (2000)

18 In the present case, the parties paid a down payment of \$12,500.00 with
19 community funds and made all subsequent mortgage payments of approximately
20 \$1,600.00 per month with community funds. While the loan for the mortgage was
21 obtained with Respondent, Aaron Surina's separate credit line, Mrs. Surina was aware
22 of the loan, approved the loan and benefited from the loan as a member of the marital
23 community. In fact, the initial purchase agreement was entered into by both members
24 of the marital community.

25 "The qualification to the presumption that all assets acquired during marriage are
community property, exists in respect to an asset acquired by a spouse in a situation
where the statutory mandate requires that both spouses participate in the transaction."

1 See: Kenneth W. Weber, 19 Washington Practice, Family and Community Property
2 Law, §10.3 (1997). RCW 26.16.030 requires that both spouses participate in most real
3 estate transactions involving community property.

4 When one spouse solely engages in these transactions, there is some authority
5 that there should be a presumption that this transaction was engaged in by the spouse
6 acting in the spouse's separate capacity." Kenneth W. Weber, id.

7 According to Colorado National Bank v. Merlino, 35 Wn. App. 610, 616, 668 P.2d
8 1304, 1308 (1983), if a spouse engages in the type of transaction which RCWA
9 26.16.030 requires participation of both spouses, the "community presumption has been
10 reversed." However, if the non-action spouse approves the transaction, the transaction
11 becomes a community transaction; not because it was presumptively community, but
12 because it was adopted by the community. The transaction to purchase the real
13 property at 1616 S. Rocky Ridge Dr., Spokane Valley, WA 99212 was adopted by the
14 marital community due to both parties starting transaction together, but temporarily
15 changing the transaction to benefit from a more favorable mortgage interest rate with no
16 intent to create a separate property estate for Respondent.

17 There are three instances in which transactions are not voidable despite the fact
18 that both spouses did not participate in it. These three instances are:

- 19 1. When there has been a sanction or authorization of the transaction;
- 20 2. When estoppel exists; or
- 21 3. When there has been a waiver (ratification) of the transaction.

22 Sanction or authorization occurs when both spouses discuss the transaction and
23 agree to engage in it. Although one spouse signs the papers that spouse is acting with
24 the knowledge and approval of the other spouse. Kenneth W. Weber, Supra at §12.20;
25 Smith v. Dalton, 58 Wn. App. 876, 881, 795 P.2d 706, 709 (1990)

1 Here, the transaction was sanctioned by Mrs. Surina and further ratified when
2 she executed a Quit Claim Deed allowing the title to be recorded in her husband's name
3 only to allow for a more favorable mortgage interest rate from which she benefited as a
4 member of the community. Therefore, she could not at a later date void the transaction
5 and escape the same liability as her husband.

6 Respondent takes the position that since the title to the property from which the
7 sales proceeds are derived was in his name as his sole and separate property that the
8 property was not and the funds are not subject to the analysis above and is not
9 community property, but his sole and separate property. However, he is mistaken.

10 Property is not characterized by title or the name under which it is held. *Kenneth*
11 *W. Weber, 19 Washington Practice, Family and Community Property Law, §10.7*
12 *(1997); In re Marriage of Skarbek, 100 Wn. App. 444, 448, 997 P.2d 447 (2000).*

13 The property was purchased during the marriage and was paid for with mostly
14 community funds (Down Payment and Monthly Payments). As noted above, property
15 *acquired* during marriage is presumptively community property. Respondent has failed
16 to show by clear and convincing evidence that it was the intent of the parties to acquire
17 the property with strictly separate funds.

18 It clearly was the intent of the parties to acquire the property as community
19 property and the Petitioner's Quit Claim Deed was entered to allow the community to
20 obtain favorable mortgage interest on the loan. The property and subsequent proceeds
21 from the sale are presumptively a community asset. In the alternative, since Mrs.
22 Surina approved the transaction, the transaction becomes a community transaction; not
23 because it was presumptively community, but because it was adopted by the
24 community as noted above. Either by presumption or because the transaction was
25 adopted by the community, the property and subsequent sale proceeds should be
characterized as community property and equitably divided by the court.

1 **CONCLUSION**

2 Ms. Sirinya Surina is a Thai national who has earned her United States
3 Citizenship. English is her second language. Her financial position is far inferior when
4 compared to her husband due to her education and language status. The courts should
5 apply her economic circumstance when awarding a property division and award her a
6 disproportionate share the community assets. This disproportionate share is an
7 equitable distribution based upon her economic circumstances and her future earning
8 potential as noted above.

9 The proceeds currently deposited in trust should be characterized as community
10 funds based upon the presumptions as noted or in the alternative because the purchase
11 and sale of the real estate which is the source of these funds was adopted by the
12 community as community funds.

13 RESPECTFULLY SUBMITTED:

14 Dated: 8-7-2019

15 
16 KEITH A. GLANZER, WSPA# 20424
17 Attorney for Petitioner
18
19
20
21
22
23