IN THE SUPREME COURT OF GUAM

ANTONETTE L. BABAUTA,
Plaintiff-Appellee,

v.

EVANGELIS J. BABAUTA,
Defendant-Appellant.

OPINION

Cite as: 2011 Guam 15

Supreme Court Case No.: CVA10-008
Superior Court Case No.: DM0498-06

Appeal from the Superior Court of Guam
Argued and submitted on December 6, 2010
Hagåtña, Guam

Appearing for Defendant-Appellant:
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BEFORE: ROBERT J. TORRES, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; KATHERINE A. MARAMAN, Associate Justice.[1]

MARAMAN, J.:

[1] Defendant-Appellant Evangelis J. Babauta ("Evangelis") appeals from an Interlocutory Decree of Divorce from Plaintiff-Appellee Antonette L. Babauta ("Antonette"). Evangelis argues that the trial court's division of the marital property was in error because the court failed to give him due credit for his separate property contributions used to purchase and maintain the marital residence. Evangelis also argues that the trial court erred when it disclosed in its Amended Findings of Fact and Conclusions of Law the details of an expunged criminal case against Evangelis. Finally, Evangelis contends the trial court abused its discretion in finding him at fault for extreme cruelty in light of the evidence that Evangelis suffers from post-traumatic stress disorder.

[2] For the reasons set forth below, we affirm in part and reverse in part the judgment of the trial court.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] Evangelis and Antonette were married in Guam on December 18, 1998. They were in a relationship with each other for seven years prior to the marriage.

[4] The parties separated on or about June 11, 2006. There are no children of the marriage, although both parties have children from prior marriages.

[1] On January 18, 2011, Justice F. Philip Carbullido was sworn in as Chief Justice of the Supreme Court of Guam. The signatures in this Opinion reflect the titles of the justices at the time this matter was considered and determined.

[5] Both parties sought a divorce based on extreme cruelty and grievous mental suffering. Antonette sued on the additional ground of bodily harm, while Evangelis sued on the additional ground of adultery.

[6] Evangelis is a United States Marine Corps veteran who the Veterans Administration ("VA") determined to be 100% disabled due to Post-Traumatic Stress Disorder ("PTSD"). He was granted a disability separation from active service in 2002, and given $50,000.00 in separation compensation retroactive to 2000. Evangelis deposited this amount into his checking account. At the time of trial, Evangelis received approximately $2,600.00 per month from the VA and $1,400.00 per month from the Social Security Administration. He also earned income from his separate property rental units. Evangelis testified that he deposited approximately $2,500.00 per month from his separate property rental units into his checking account for use by the community.

[7] Antonette is employed with the Navy Legal Services Department having more than 28 years of federal civil service. In 2008, she was earning approximately $42,000.00 per annum. She is vested with Civil Service retirement benefits.

[8] The trial court found that both Evangelis and Antonette equally managed the financial affairs of the marriage irrespective of the source of income.

[9] In October 2003, the parties purchased a house for $220,000.00. The parties made a down payment of $75,000.00 towards the purchase price and executed a five-year mortgage for the balance. The house served as the marital residence and was held in joint tenancy with the right of survivorship by Evangelis and Antonette.

[10] At trial, Evangelis claimed that the source of the $75,000.00 down payment and the $69,580.26 worth of furnishings and improvements to the home was the liquidation of his separate property, namely:

United States Marine Corps separation pay 9/9/02	$18,304.58
Veterans disability back pay 9/11/02	$50,859.00
GovGuam Retirement Fund cash withdrawal 11/12/02	$25,348.52
IRA withdrawal 3/19/03	$23,231.67
Home equity loan secured by separate property 10/9/03	$39,852.49

Appellant's Excerpts of Record ("ER"), tab A at 4 (Am. Finds. Fact & Concl. L., Jan. 7, 2010); Appellant's Br. at 4 (Oct. 14, 2010); *see also* Appellee's Br. at 3 (Nov. 15, 2010) ("The down payment was made with Mr. Babauta's separate funds . . . .").

[11] On July 14, 2006, Antonette applied for and was granted an Order of Protection against Evangelis, which, among other things, ordered him to vacate the marital residence. Antonette has continued to reside in the marital home with her minor children since the Order of Protection.

[12] The trial court found that since separation, Evangelis significantly reduced the amount of community debts, keeping the community solvent and responsible. In particular, since the date of separation, Evangelis paid $86,900.75 in monthly mortgage payments, $4,899.00 in yearly homeowners insurance, and $1,724.28 in real property taxes, for a total of $93,524.03. ER, tab A at 4 (Am. Finds. Fact & Concl. L.); Appellant's Br. at 4-5. After separation, all amounts Evangelis paid towards the residence came from his separate funds. Appellant's Br. at 5;

Appellee's Br. at 3 ("[A]fter separation Mr. Babauta continued paying down the mortgage; again with his separate funds.").

[13] At trial, Antonette sought a fifty percent share of the marital residence, requesting that the court order the parties to sell the residence and that the proceeds of the sale be distributed equally between the parties. Meanwhile, Evangelis sought full award of the marital residence or, alternatively, reimbursement from the community for his separate funds used for its down payment, improvements, furnishings, and the mortgage payments and other expenses he paid after the couple separated.

[14] The trial court issued its Findings of Fact and Conclusions of Law on August 19, 2009, absent a finding with respect to disposition of the marital residence. Following a request by the parties, the trial court issued its Amended Findings of Fact and Conclusion of Law on January 7, 2010. Finding no evidence of an understanding or agreement between the parties that Evangelis was to be reimbursed for his separate funds used to acquire the residence, the trial court rejected his claim. The court also rejected Evangelis' request for reimbursement for his separate funds used to pay the mortgage and other residential expenses after the parties separated. Finding Evangelis at fault for extreme cruelty due to numerous incidents of domestic violence during the marriage, the trial court held he was not entitled to such credit and instead ordered him to assume all of the community's debts. The court awarded Evangelis and Antonette equal shares in the marital residence. Further, the residence was ordered sold and the proceeds divided.

[15] An Interlocutory Decree of Divorce incorporating the trial court's Amended Findings of Fact and Conclusions of Law was filed on March 24, 2010. A Final Decree of Divorce incorporating the terms of the Interlocutory Decree was filed the same day. On April 9, 2010,

the trial court issued its Notice of Entry on Docket for both the Interlocutory and Final Decrees of Divorce.

[16] On April 13, 2010, Evangelis filed a Motion to Stay Judgment, requesting that the trial court stay entry of the Final Decree of Divorce. On April 29, 2010, the trial court granted Evangelis' Motion to Stay Judgment, finding that "[i]f no appeal [from the Interlocutory Decree] is filed by May 10, 2010, the Final Decree and Judgment will automatically take effect on May 11, 2010. However, if an appeal is filed, the court finds that the appellate process will control the continued proceedings of this matter." ER, tab E at 15 (Order After Hr'g, Apr. 29, 2010). Evangelis timely filed his Notice of Appeal on May 7, 2010.

II. JURISDICTION

[17] This court has jurisdiction over an appeal from an Interlocutory Decree of Divorce pursuant to 48 U.S.C.A. § 1424-1(a)(2) (Westlaw current through Pub. L. 112-28 (2011)); 7 GCA § 3108(a) (2005); and 7 GCA § 25102(j) (2005).

III. STANDARD OF REVIEW

[18] The trial court's characterization of property in a marital dissolution as community or separate is reviewed *de novo*. *Hart v. Hart*, 2008 Guam 11 ¶ 24 (citing *Sattler v. Mathis*, 2006 MP 6, 2006 WL 897140, at *5; *In re Marriage of Chumbley*, 74 P.3d 129, 131 (Wash. 2003); *In re Marriage of Lehman*, 955 P.2d 451, 459-60 (Cal. 1998)).

[19] The trial court's findings of fact after a bench trial are reviewed for clear error while its conclusions of law are reviewed *de novo*. *Mendiola v. Bell*, 2009 Guam 15 ¶ 11.

IV. ANALYSIS

A. Use of Separate Funds for Down Payment, Improvements and Furniture.

[20] Evangelis appeals the trial court's denial of his request for reimbursement or credit for the use of his separate property for the down payment, improvements and furnishings for the marital residence.

1. Down payment on marital residence

[21] Property acquired by either spouse before marriage is the separate property of the acquiring spouse. 19 GCA § 6101(a)(1) (2005). In the instant case, there does not appear to be a conflict as to the character of the funds used for the down payment on the residence; both parties agree that the source of these funds was the pre-marital separate property of Evangelis. At issue is the proper characterization of the marital residence itself as either separate or community.

[22] In deciding that Evangelis was not entitled to reimbursement for the use of his separate funds to purchase the home, the trial court relied upon the California Supreme Court's decision in *In re Marriage of Lucas*, 614 P.2d 285 (Cal. 1980), *superseded by statute*, Cal. Civ. Code §§ 4800.1-.2 (1983) (now Cal. Fam. Code §§ 2580-2581, 2640 (West 2004)). *See* ER, tab A at 8-9 (Am. Finds. Fact & Concl. L.). Evangelis argues that the holding in *Lucas* has neither a persuasive nor binding effect in Guam because it interprets an amendment to the California community property laws that was never adopted in Guam and is not otherwise the law of this jurisdiction. We agree.

[23] The *Lucas* court interpreted the following provision added in 1965 to California Civil Code section 164:

> [W]hen a single family residence of a husband and wife is acquired by them during marriage as joint tenants, for the purpose of the division of such property

> upon divorce or separate maintenance only, the presumption is that such single family residence is the community property of said husband and wife.

Lucas, 614 P.2d at 288 (citing Cal. Civ. Code § 164 (1965) (repealed and reenacted as Cal. Civ. Code § 5110, now Cal. Fam. Code §§ 700, 760, and 803 (West 2004))).

[24] Although in 1953 Guam enacted its community property laws borrowing from California's then-existing community property statutes, *compare* Guam Civ. Code §§ 161-164 (1970) *with* Cal. Civ. Code §§ 161-164 (1941), several amendments have since been made to the California statutes that have not been adopted in Guam. This includes the 1965 provision added to California Civil Code section 164 that treats joint tenancy property as community property for purposes of dividing such property upon divorce. Instead, in 1980, the Guam Legislature through Public Law 15-113 repealed its community property statutes and reenacted them with several changes, including the addition of the language now found in 19 GCA § 6101(a)(8), which states: "Separate property means: . . . each spouses's undivided interest in property owned in whole or in part by the spouses *as co-tenants in joint tenancy* or as co-tenants in tenancy in common." 19 GCA § 6101(a)(8) (emphasis added). Thus, while there is a rebuttable statutory presumption that property acquired by either spouse or both spouses during marriage is community property, 19 GCA § 6105(a) (2005), the Guam Legislature has specifically classified as separate property a spouse's interest in joint tenancy property.

[25] Furthermore, the fact that title to property is taken by spouses as joint tenants raises an inference of a gift of the funds used to acquire the property. *See Donovan v. Donovan*, 36 Cal. Rptr. 225, 228 (Dist. Ct. App. 1963) ("Where title to property is taken in joint tenancy by the husband and wife, a gift is presumed from whatever estate furnished the consideration for the property, whether the community estate or the separate estate of either spouse, to the extent

necessary to cause the property to be held in joint tenancy." (citation omitted)); *Donlon v. Donlon*, 318 P.2d 189, 193 (Cal. Dist. Ct. App. 1957) (citing *Fitzgerald v. Fitzgerald*, 250 P.2d 328 (Cal. Dist. Ct. App. 1952); *Borgerding v. Mumolo*, 315 P.2d 347, 349 (Cal. Dist. Ct. App. 1957)). These holdings are grounded upon the more general principal that "a joint tenancy . . . is of necessity an expression of the intention to hold the property otherwise than as community property, and . . . the equal interest of the spouses must therefore be classed as their separate but joint estate in the property." *Siberell v. Siberell*, 7 P.2d 1003, 1005 (Cal. 1932). The inference of a gift arising from the joint tenancy deed cannot be rebutted solely by tracing the source of the funds used to acquire the property. *Donlon*, 318 P.2d at 193.

[26] We need not undergo a more detailed analysis of *Lucas* given the clear language in 19 GCA § 6101(a)(8) that property held by spouses as co-tenants in joint tenancy is separate property. In the instant case, title to the marital residence was taken as joint tenants.[2] Although the parties do not dispute that the source of the down payment was the separate funds of Evangelis, we presume that by taking title to the residence as joint tenants, Evangelis intended a gift of the down payment to Antonette. Because Evangelis does not go beyond a mere tracing of the down payment to his separate property in order to rebut the presumption of gift, we find that the presumption was not overcome and that Evangelis and Antonette each have a separate property interest in the residence.

[27] Although the trial court incorrectly applied authority that is inapposite in our jurisdiction, we affirm the trial court's ruling denying Evangelis reimbursement for the down payment

[2] *See* Record on Appeal ("RA"), Trial Ex. 16 at 1 (Warranty Deed, Oct. 24, 2003) ("GUAM LAND AND REALTY DEVELOPMENT, LTD., . . . do hereby grant, bargain, sell and convey unto EVANGELIS J. BABAUTA and ANTONETTE L. BABAUTA, husband and wife, and their heirs, executors, administrators and assigns, *as joint tenants with right of survivorship*, . . . the following real property situated within Guam . . . ." (emphasis added)).

because a plain reading of Guam's community property laws produces the same result. *See Hart*, 2008 Guam 11 ¶ 15 ("[T]his court 'may affirm the judgment of a lower court on any ground supported by the record." (quoting *Ceasar v. QBE Ins. (Int'l), Ltd.*, 2001 Guam 6 ¶ 8)). Having taken the property as joint tenants, Evangelis and Antonette each has an undivided one-half separate property interest in the residence. *See* 19 GCA § 6101(a)(8). Accordingly, Evangelis is not entitled to reimbursement for any of his separate property contributed as the down payment on the residence.

2. Improvements and furniture

[28] With regard to the improvements and furnishings for the marital residence, there was conflicting testimony at trial as to the source of the funds used to make those purchases. Antonette claimed that the improvements were paid through the parties' credit cards and line of credit, and that most of the furniture was financed through a credit account with Genghis Khan on which she made the monthly payments. Transcripts ("Tr."), vol. 1 at 12, 28-33 (Bench Trial, Feb. 19, 2009). Meanwhile, Evangelis conceded that the parties' credit cards and line of credit were used to make the purchases, but only after he used his separate funds to pay down those accounts in order to free them up for such use. Tr., vol. 2 at 78-83 (Cont. Bench Trial, Feb. 23, 2009). Evangelis did not address the credit account with Genghis Khan.

[29] It is a well-settled rule that, with respect to transactions prior to separation, a spouse who uses his or her separate property to make improvements to marital property is entitled to reimbursement only if there is an agreement between the parties to that effect. *In re Marriage of Smith*, 145 Cal. Rptr. 205, 213 (Ct. App. 1978) (citing *Weinberg v. Weinberg*, 432 P.2d 709, 716 (Cal. 1967) (en banc); *See v. See*, 415 P.2d 776, 780-81 (Cal. 1966) (en banc); *In re Marriage of*

Cosgrove, 103 Cal. Rptr. 733, 737-38 (Ct. App. 1972)). In its Amended Findings of Fact and Conclusions of Law, the trial court found that the improvements and furniture were the community property of the parties rather than the separate property of Evangelis because there was no evidence that he intended to be reimbursed when he made these contributions. ER, tab A at 8 (Am. Finds. Fact & Concl. L.). Our review of the record leads us to the same conclusion.

[30] The trial court's finding is further supported by the fact that there was conflicting testimony from the parties as to the source of the funds used to pay for the improvements and furniture, as well as no direct documentary evidence in the record to support Evangelis' claim that the purchases were paid out of his separate funds. Evangelis had the burden of proving that the improvements and furniture purchased during the marriage were not community property. *See See*, 415 P.2d at 779 ("Property acquired by purchase during a marriage is presumed to be community property, and the burden is on the spouse asserting its separate character to overcome the presumption"). It is clear the trial court was not convinced that Evangelis met this burden, and we decline to find otherwise. Accordingly, Evangelis is not entitled to reimbursement or credit for the improvements and furniture.

B. Use of Separate Funds to Maintain Marital Residence after Separation of Parties.

[31] We next address the issue of the trial court's denial of reimbursement for the use of Evangelis' separate funds to maintain the marital residence and keep the community solvent after the parties separated.

[32] Income of a spouse while living separate and apart from the other spouse is separate property. 19 GCA § 6101(a)(2). As a general rule, a spouse who, after separation of the parties, uses his or her separate funds to pay preexisting community obligations should be reimbursed

upon divorce. *In re Marriage of Epstein*, 592 P.2d 1165, 1170 (Cal. 1979), *superseded by statute on other grounds*, Cal. Civ. Code § 4800.2 (1983) (now Cal. Fam. Code § 2640 (West 2004)); *see also Vides v. Vides*, 30 Cal. Rptr. 447, 447 (Ct. App. 1963). Otherwise, parties would be discouraged from making payments on community obligations after separation for fear that they would receive no credit for such payments while the other spouse is awarded a windfall. *Epstein*, 592 P.2d at 1170 ("[A]pplication of the no-reimbursement rule will discourage payment of community debts after separation, exacerbate the financial and emotional disruption which all too frequently accompanies the breakup of a marriage and, perhaps, result in impairing the credit reputations of both spouses."); *see also Vides*, 30 Cal. Rptr. at 448 (finding that the effect of dividing the property equally between the spouses without permitting wife to recoup the sums she had paid after the parties had separated is to award her separate property to the husband to the extent of half the payments by which she enhanced the asset).

[33] In some situations, however, reimbursement may be inappropriate, such as: where there was an agreement between the parties that the payment would not be reimbursed; where the paying spouse truly intended the payment to constitute a gift; where the payment was made on account of a debt for an asset which the paying spouse was using and the amount paid was not substantially in excess of the value of the use; or where the payment constituted in reality a discharge of the paying spouse's duty to support the other spouse or a dependent child of the parties. *Epstein*, 592 P.2d at 1170.

[34] In the instant case, Antonette concedes that Evangelis used his separate funds to pay off the mortgage after the parties had separated. Appellee's Br. at 3. There being no evidence of an agreement that the payments would not be reimbursed or that they constituted a gift, and likewise

no evidence or allegation that the payments were in reality a discharge of Evangelis' duty to support Antonette, under *Epstein* Evangelis was entitled to credit or reimbursement for half of the payments he made on the residence after separation of the parties. Evangelis is only entitled to a reimbursement of one-half of the amount paid from his separate property, because one-half of the community debt was his obligation stemming from the marriage. The trial court, however, denied him such relief, stating, "As the Court finds Husband at fault[,] all expenditures to preserve the marital residence from diminution and foreclosure will not be charged against the Wife." ER, tab A at 9 (Am. Finds. Fact & Concl. L.). The question now is whether the trial court may deny Evangelis credit or reimbursement for his post-separation contributions on the basis of its finding Evangelis at fault due to extreme cruelty.

[35] Generally, upon divorce, community property is divided equally between the parties. 19 GCA § 8411(b) (2005). However, if a divorce decree is rendered on the ground of adultery or extreme cruelty, the trial court has the discretion to distribute the community property to the parties in such proportions as the court may deem just. 19 GCA § 8411(a). In the instant case, although the trial court found Evangelis at fault for extreme cruelty, it did not award Antonette a greater share of the community property outright. Instead, the court denied Evangelis reimbursement or credit for the mortgage payments or other payments he made to maintain the marital residence after separation, thus allowing Antonette the benefit of not having to pay her share of those obligations. We find the trial court's ruling in this regard to be reversible error.

[36] It is a well-settled rule in California that the community property to be divided upon dissolution of marriage is the residue which remains after the discharge of the community obligations. *Wong v. Super. Ct. (Wong)*, 54 Cal. Rptr. 782, 784 (Ct. App. 1966); *see also Hill v.*

Hill, 309 P.2d 44, 47 (Cal. Dist. Ct. App. 1957) ([T]he community property, . . . in reality consists of the net after payment of community debts."); *McKannay v. McKannay*, 230 P. 214, 217 (Cal. Dist. Ct. App. 1924) ("Before a division of the community property can be made legally, the nature of [any] debts must be definitely ascertained. If it be determined as a fact that they are community debts, then they should be deducted from the gross value of the community property, before a division thereof is made."). This rule is reflected in Guam's community property laws. Title 19 GCA § 6104(a) provides:

> Community debts shall be satisfied first from all community property and all property in which the spouses own an undivided equal interest as joint tenants or tenants in common, excluding the residence of the spouses. Should such property be insufficient, community debts shall then be satisfied from the residence of the spouses. Should such property be insufficient, only the separate property of the spouse who contracted or incurred the debt shall be liable for its satisfaction. If both spouses contracted or incurred the debt, the separate property of both spouses is jointly and severally liable for its satisfaction.

19 GCA § 6104(a) (2005).

[37] "Community debt" is defined as "a debt contracted or incurred by either or both spouses during marriage which is not a separate debt." 19 GCA § 6102(b) (2005). Section 6102(a) defines "separate debt" as:

> (1) a debt contracted or incurred by a spouse before marriage or after entry of a decree of dissolution of marriage;
>
> (2) a debt contracted or incurred by a spouse after entry of a decree entered pursuant to §8401 of this Title unless the decree provides otherwise;
>
> (3) a debt designated as a separate debt of a spouse by a judgment or decree of any court having jurisdiction;
>
> (4) a debt contracted by a spouse during marriage which is identified by a spouse to the creditor in writing at the time of its creation as the separate debt of the contracting spouse; or

> (5) a debt which arises from a tort committed by a spouse before marriage or after entry of a decree of dissolution of marriage, a tort committed by one spouse against the other spouse or a separate tort committed during marriage.

19 GCA § 6102(a).

[38] In light of 19 GCA § 6104(a) and the long-standing California rule that the community property to be divided upon divorce is that which remains after the satisfaction of community debt, we hold that before a disposition of community property can be made under 19 GCA § 8411, the nature of any debts must be definitely ascertained. Should there be any community debts, those debts shall be deducted from the gross value of any community property before such property is divided between the parties. Any disproportionate distribution due to a finding of adultery or extreme cruelty shall only be made on the community property remaining after all community debts have either been satisfied or otherwise accounted for in the valuation of the net community property.

[39] In the instant case, the mortgage on the residence is a community debt because it was incurred by both parties during the marriage and did not otherwise meet one of the five types of separate debt under section 6102(a). Thus, although title to the residence was taken in joint tenancy and therefore the separate property of the parties, the mortgage and other obligations on the residence were community obligations subject to satisfaction according to 19 GCA § 6104. Rather than the outright assignment to Evangelis of all community debt, the trial court instead should have deducted the debt from the gross value of the community property and then divided the remaining community property as it deemed just under 19 GCA § 8411(a).[3] If the

[3] Although the trial court ordered Evangelis to pay all community debts, he does not argue on appeal that he should be relieved of paying any of these debts and instead only argues that he should be reimbursed or otherwise compensated for his post-separation payments on the residence. Thus, we will not require the trial court to

community property is insufficient to satisfy the community debt, then the court should deduct it from the parties' separate property pursuant to 19 GCA § 6104(a).

[40] It is important to note that the trial court did not make a specific finding as to whether its order requiring Evangelis "to pay all community debts," ER, tab A at 9 (Am. Finds. Fact & Concl. L.), contemplated the mortgage as one of those debts. Indeed, it appears from the record that at the time of trial, the entire mortgage obligation had been paid off. Tr., vol. 2 at 83 (Cont. Bench Trial). Thus, it is quite likely that the trial court's reference to "community debts" did not include the mortgage.

[41] Even if the mortgage was not included under the court's order that Evangelis pay all the community debt, it was nonetheless error for the court to deny Evangelis credit or reimbursement on the basis of his extreme cruelty. As conceded by Antonette, the post-separation payments on the mortgage were made from Evangelis' separate property. Appellee's Br. at 3. "In a divorce action, the court does not have the authority to award any of the separate property of one spouse to the other." *Machado v. Machado*, 58 Cal. 2d 501, 507 (1962); *Miller v. Miller*, 38 Cal. Rptr. 571, 573 (Ct. App. 1964); *see also Hart*, 2008 Guam 11 ¶ 24 n.16 ("[T]he court generally has jurisdiction to divide only the community estate . . . ." (quoting 33 Cal. Jur. 3d *Family Law* § 754)). Title 19 GCA § 8411 reflects this rule, as it authorizes the trial court to divide the *community* property and makes no mention of the division of the parties' *separate* property except to require that a homestead selected from the separate property of one spouse be assigned to that spouse. 19 GCA § 8411. By denying Evangelis credit or reimbursement for the post-separation payments, the trial court in effect awarded Antonette half of those payments. Because

reconsider, in light of our holding that community debts must first be satisfied from community property, its order requiring Evangelis to pay all community debts insofar as those debts are not part of his prayer for relief on appeal.

the denial of reimbursement or credit was in essence an award of Evangelis' separate property to Antonette, the trial court erred.

C. Other Issues on Appeal.

[42] We need not reach Evangelis' remaining issues regarding the trial court's consideration of an expunged matter and its failure to consider his post-traumatic stress disorder in its finding of extreme cruelty because our holdings regarding the division of property are not predicated on fault and no other property that was divided based on fault is at issue in this appeal.

V. CONCLUSION

[43] We hold that under the plain language of 19 GCA § 6101(a)(8), a spouse's undivided interest in property owned by the spouses as joint tenants is the separate property of such spouse. The spouses' act of taking title to property as joint tenants raises an inference of a gift of the funds used to acquire the property, which cannot be rebutted solely by tracing the source of the funds. Thus, here, where the marital residence is held by the parties as joint tenants and tracing is the only means by which Evangelis challenges the inference of a gift, we find that Evangelis and Antonette each has an undivided one-half separate property interest in the residence. Evangelis is therefore not entitled to reimbursement for his separate funds used to acquire the residence. Accordingly, we **AFFIRM** albeit on different grounds the trial court's denial of reimbursement to Evangelis in this regard.

[44] We also **AFFIRM** the trial court's denial of reimbursement or credit to Evangelis for any separate property contributions he may have made toward the improvements and furniture for the residence. There was no evidence that Evangelis expected to be reimbursed for these

contributions, and in any event, he failed to adequately trace the purchases to his separate property.

[45] Evangelis used his separate funds to make payments on the residence after the separation of the parties and was entitled to credit or reimbursement notwithstanding the trial court's finding that he was at fault due to extreme cruelty. The separate property nature of the payments placed them outside the realm of the trial court's authority to make a disproportionate division based on fault. As the trial court premised its denial of Evangelis' right to reimbursement or credit for these payments on its finding of extreme cruelty, the trial court erred. Accordingly, that part of the judgment is **REVERSED**. We **REMAND** to the trial court to apply to those payments at issue in this appeal the general rule that a spouse who, after separation of the parties, uses his or her separate funds to pay preexisting community obligations is entitled to reimbursement upon divorce, and to make any other findings consistent with this opinion.

Original Signed By: F. Philip Carbullido
F. PHILIP CARBULLIDO
Associate Justice

Original Signed By: Katherine A. Maraman
KATHERINE A. MARAMAN
Associate Justice

Original Signed By: Robert J. Torres
ROBERT J. TORRES
Chief Justice