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SUPREME COURT
OF GUAM

IN THE SUPREME COURT OF GUAM

GEORGE E. PTACK,
Plaintiff-Appellant,

v.

JOYCE PTACK aka JOYCE GUNDERSON,
Defendant-Appellee.

Supreme Court Case No. CVA14-002
Superior Court Case No. DM0207-10

OPINION

Cite as: 2015 Guam 5

Appeal from the Superior Court of Guam
Argued and submitted August 6, 2014
Hagåtña, Guam

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BEFORE: ROBERT J. TORRES, Chief Justice; F. PHILIP CARBULLIDO, Associate Justice; and KATHERINE A. MARAMAN, Associate Justice.

MARAMAN, J.:

[1] Plaintiff-Appellant George E. Ptack ("George") appeals from the trial court's Interlocutory Judgment of Divorce and Final Decree of Divorce, which dissolved the marriage between George and Defendant-Appellee Joyce Ptack ("Joyce"). In the proceedings below, the parties sought distribution of their properties acquired both separately before marriage and jointly during marriage. Following a bench trial, the trial court granted Joyce ownership of most of the community property based on a finding of extreme cruelty on the part of George. On appeal, George challenges: (1) the distribution of the real property; (2) the $200,000.00 award to Joyce; (3) the finding of extreme cruelty; (4) the distribution of the enhancement of his separate property investments; (5) the accuracy of Joyce's representations of marital expenses; (6) the distribution of a diamond gem; and (7) the award of attorney's fees.

[2] We affirm in part and reverse in part.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] George Ptack and Joyce Ptack (aka Joyce Gunderson), both previously married, met in 2002. At that time, George was a retired corporate pilot living in Arizona, and Joyce was a teacher for the Department of Defense Education Activity ("DoDEA") living in Germany. The parties married in March 2003, in Belund, Denmark. George moved to Germany to live with Joyce for only a few months before the couple moved to Japan for three years. They returned to Germany for one year. In 2007, the parties moved to Guam. George filed a complaint for dissolution of marriage in the Superior Court in March 2010, Joyce answered and counterclaimed, and the parties separated in April 2010.

[4] George testified that during the marriage he worked for eight months, earning $92,000.00 over that period of employment. Outside of these months of employment, George received $72,000.00 per year in retirement income. During the marriage, Joyce earned approximately $50,000.00 per year in salary and allowances.

[5] Prior to marriage, Joyce owned several properties: (1) a home in California; (2) a home in Minnesota; (3) two small houses in Austin, Texas; (4) an empty lot in Florida; (5) an empty lot in Colorado; (6) a Thrift Savings Plan obtained through her employment with DoDEA; (7) a Roth IRA; (8) a safety deposit box in Minnesota; and (9) an MBNA money market account through the National Education Association ("NEA") where rents from her mainland homes were deposited along with all money she had before the marriage.

[6] Prior to marriage, George's properties consisted of: (1) a townhouse in Arizona; (2) an American Century Investment Account: (3) a DWS Investments Account; (4) an E-Trade Account; (5) an ING Direct Account; and (6) two Vanguard Accounts.

[7] Joyce conveyed title to her pre-marital California home to both parties in 2005. At the time of trial, the parties held title as husband and wife in joint tenancy. Joyce estimated the value and debt of the California property to be $310,000.00 and $225,000.00, respectively. The property's monthly mortgage payments were $1,700.00, and it earned $1,300.00 in rent. George testified that he did not contribute to the care, maintenance or mortgage payments of the California property.

[8] Joyce owned a home in Minnesota prior to the marriage, valued at $200,000.00. During the marriage, the parties agreed that Joyce would sell her Minnesota property and George would sell his Arizona Townhouse, and the proceeds would be used to purchase the Arizona Lake House. In reliance on the agreement, Joyce sold her Minnesota property, netting $94,000.00.

George did not sell his Townhouse. The $94,000.00 in proceeds was used as a down payment for the Arizona Lake House. In 2009, Joyce purchased another property in Minnesota, and the parties took title as joint tenants. The approximate value and debt of the second Minnesota property is $170,000.00 and $115,000.00, respectively. The property has never been rented, and Joyce makes the mortgage payments.

[9] George purchased the Arizona Townhouse prior to marriage for $172,000.00, with a current estimated value of $240,000.00. At the date of separation, $90,000.00 remained on the note. Two months after marriage, George conveyed title to the property to both parties, designating the Townhouse as community property with right of survivorship. The mortgage and homeowners' fees equal $1,140.00 per month.

[10] The parties purchased the Arizona Lake House in 2004 for approximately $625,000.00, with $468,000.00 remaining on the note. The property was sold in 2012 for $625,000.00. Approximately $103,000.00 was gained in proceeds and placed in an escrow account. After separation, Joyce is credited with paying for pool care, the homeowners' fees, and maintenance.

[11] During the marriage, the parties purchased timeshares in Lake Tahoe and Phuket, Thailand. Testimony by the parties established that George would receive the Thailand timeshare and Joyce would receive the one in Lake Tahoe.

[12] At trial, the parties gave a detailed account of the expenses incurred during marriage. The parties testified to use of the following credit cards: (1) NEA Members Benefit Credit Card: between June 2003 and July 2004, $13,455.71 in purchases; (2) Citi Advantage World Mastercard: between October 2008 and August 2010, $28,122.04 in purchases; (3) American Express Credit Card: between 2009 to 2010, $7,217.44 in purchases; (4) World Perks Visa

Credit Card: between May 2003 to October 2008, $53,607.86 in purchases; (5) Chase Credit Card: $10,345.67 in purchases.

[13] The parties maintained three bank accounts during the marriage: U.S. Bank, Community Checking Account (Japan Account), and Community Checking Account (Guam Account). Joyce testified that while living in Germany, Japan, and Guam, the parties opened local checking accounts wherein Joyce's separate property income generated by her property rentals were deposited. The trial court found the following in relation to each account.

[14] Between 2003 to 2007, Joyce's contributions to the U.S. Bank account amounted to $240,480.00, while her expenses totaled $136,911.70. The difference between Joyce's contributions and expenses is a surplus of $103,568.30. George's contributions to the account amounted to $427,849.00 while his expenses totaled $579,001.30. The difference between George's contributions and expenses is a deficit of $151,152.30.

[15] Joyce's contributions to the Community Checking Account (Japan Account) amounted to approximately $18,000.00 per year, while her expenses totaled $16,896.00, a net positive of $1,104.00. George's contributions to the account amounted to $75,725.00 while his expenses totaled $106,928.30. The difference between George's contributions and expenditures against this account is a deficit of $31,203.30.

[16] Joyce's contributions to the Community Checking Account (Guam Account) amounted to approximately $18,000.00 per year. George did not contribute to this account. George wrote checks to himself totaling $13,005.00, and other expenditures against this account totaling $9,967.20.

[17] While the parties were married, George maintained several investment accounts. In relation to George's investments, the trial court found: (1) American Century Investment

Account: between 2003 and 2010, accrued $9,194.81; (2) DWS Account: between 2006 and 2011, accrued $135.15; (3) E-Trade Account: between 2006 through 2010, account increased by $256.28; (4) ING Direct Accounts: at the end of 2010, the "TerryJoyce" Account was valued at $0.00, which is a $48,301.24 decrease from the 2006 amount, while the "Townhouse" Account increased by $6,470.28 between 2006 and 2011; (5) Vanguard Account ending in 3820: between 2003 and 2010, increased in value by $26,657.82; and (6) Vanguard Account ending in 7348: between 2003 and 2010, increased by $26,147.21.

[18] Joyce testified the parties agreed that although George managed the joint accounts, any funds spent from Joyce's separate or retirement funds would be reimbursed by George. Joyce was led to believe that these monies were withdrawn and deposited into an account meant for her retirement. After separation, Joyce discovered that no funds were in the accounts she assumed were available for her retirement.

[19] A safety deposit box in George's possession in Arizona contains a sapphire ring with a diamond (approximate value $1,500.00 to $2,000.00), a blue topaz ring with pendant (approximate value $1,500.00 to $2,000.00), and a diamond necklace insured at $12,000.00 to $14,000.00. George testified that the necklace was given to Joyce as a birthday present, but the gem in the necklace was from his grandfather's ring, and George expected his son to inherit the necklace upon Joyce's death. Upon request from George, Joyce returned the diamond necklace.

[20] Joyce testified that since separation, she undergoes therapy because of the events surrounding her marriage to George. Joyce began therapy in 2009 on Andersen Air Force Base and continues therapy.

[21] Following a bench trial, the trial court issued its Findings of Fact and Conclusions of Law ("Findings"). The interlocutory and final divorce decrees, which incorporate the Findings, were issued in January 2014. George timely filed his notice of appeal.

II. JURISDICTION

[22] This court has jurisdiction over an appeal from a final decree of divorce pursuant to 48 U.S.C.A. § 1424–1(a)(2) (Westlaw current through Pub. L. 113–234 (2014)), and 7 GCA §§ 3107 and 3108(a) (2005).

III. STANDARD OF REVIEW

[23] "The trial court's characterization of property in a marital dissolution as community or separate is reviewed *de novo*." *Babauta v. Babauta*, 2011 Guam 15 ¶ 18 (citing *Hart v. Hart*, 2008 Guam 11 ¶ 24).

[24] Findings of fact after a bench trial are reviewed for clear error while conclusions of law are reviewed *de novo*. *Kloppenburg v. Kloppenburg*, 2014 Guam 5 ¶ 17 (citing *Babauta*, 2011 Guam 15 ¶ 19). "A finding of fact is clearly erroneous where it is not supported by substantial evidence, and this court is left with a definite and firm conviction that a mistake has been made." *Id.* This standard is highly deferential to the trial court. *Macris v. Swavely*, 2008 Guam 18 ¶ 9. "When evaluating the trial court's judgment, the appellate court 'must examine the evidence in the light most favorable to the successful party, resolve any controverted fact in favor of the successful party, and give the successful party the benefit of every reasonable inference from the evidence.'" *Id.* (quoting *Fargo Pac., Inc. v. Korando Corp.*, 2006 Guam 22 ¶ 23).

[25] The issue of whether the evidence is sufficient to sustain a finding of extreme cruelty in a divorce action is reviewed for an abuse of discretion. *May v. May*, 79 Cal. Rptr. 622, 625 (Ct. App. 1969).

IV. ANALYSIS

A. Finding of Extreme Cruelty

[26] George argues that the trial court committed clear error in finding him at fault for extreme cruelty. In Guam, dissolution of marriage may be granted on the ground of extreme cruelty. 19 GCA § 8203 (2005). "*Extreme cruelty* is the wrongful infliction of grievous bodily injury, or grievous mental suffering, upon the other by one party to the marriage." 19 GCA § 8205 (2005). If a divorce decree is rendered on the ground of extreme cruelty, "the community property shall be assigned to respective parties in such proportions as the court, from all the facts in the case, and the condition of the parties, may deem just." 19 GCA § 8411(a) (2005). If the divorce decree is rendered on any other ground besides extreme cruelty or adultery, then the court shall equally divide the community property between the parties. *Id.* § 8411(b).

[27] In its Findings, the trial court granted the divorce on the ground of extreme cruelty because it found that Joyce "endured and continues to endure grievous mental suffering due to [George's] actions." Record on Appeal ("RA"), tab 53 at 18 (Finds. Fact & Concl. L., Oct. 2, 2013). The finding of extreme cruelty was largely based on George's mismanagement and depletion of Joyce's finances. *Id.* at 15-18. The trial court found credible Joyce's testimony that she was led to believe that George was managing both the community's and her separate fund for her eventual retirement. *Id.* at 16. After the parties' separation, however, Joyce "discovered that these accounts were depleted or significantly drained of their respective monies." *Id.* The trial court found that between the years 2003-2007, Joyce contributed a net positive of $103,567.00 to the parties' joint U.S. Bank Checking Account, while George's contributions totaled a deficit of $151,152.30. *Id.* at 16-17. The trial court also found that George withdrew about $23,000.00 from a local bank account which contained the rental income from Joyce's separate property. *Id.*

at 17. Further, the court found that Joyce paid for all of the basic community expenses from her salary and separate property. *Id.* Additionally, the court found that prior to the marriage, Joyce "had significant amounts of assets attained for the purpose of retirement." *Id.* However, because of George's depletion of the bank accounts and misrepresentation as to the management of Joyce's retirement assets, the court found that Joyce was not able to retire as planned and must rebuild what was lost during the marriage. *Id.* The court further found that since the parties' separation, Joyce has undergone therapy "to process and cope with the events occurring during the marriage and the aftermath of [George's] extreme and cruel behaviors." *Id.*

[28] George contends the trial court committed reversible error in finding extreme cruelty because his conduct did not affect Joyce's physical or mental health. Appellant's Br. at 18 (Apr. 29, 2014). George argues that other than the evidence that Joyce has undergone therapy, no other evidence was presented to support a finding that Joyce has experienced grievous mental suffering. *Id.* at 17. George notes that Joyce did not assert that: she suffered from a mental illness; she became less successful in her career; she lost time from work; she lost weight; she was unable to sleep; or she had developed a skin rash or any other health problems. *Id.* (citing *Rittmeyer v. Rittmeyer*, 438 N.E.2d 237, 240-41 (Ill. App. Ct. 1982); *In re Marriage of Semmler*, 413 N.E.2d 502, 506 (Ill. App. Ct. 1980)).

[29] Joyce contends that she put forth substantial evidence at trial to support a finding that she endured grievous mental suffering as a result of George's exhaustive spending of her assets and his misrepresentations concerning his investing toward her retirement. Appellee's Br. at 13-14 (May 29, 2014). Specifically, she points to her evidence showing that she was unhappy and devastated at the state of her marriage, that she was suffering from severe depression, and that by the time of trial she had been undergoing counseling for approximately three years. *Id.* at 14-15.

[30] Title 19 GCA § 8205 is derived from former Guam Civil Code section 94, which in turn was derived verbatim from former California Civil Code section 94. *See* 19 GCA § 8205 (2005), SOURCE. *Compare* 19 GCA § 8205 ("*Extreme cruelty* is the wrongful infliction of grievous bodily injury, or grievous mental suffering, upon the other by one party to the marriage."), *with* Cal. Civ. Code § 94 (same). Thus, California case law interpreting section 94, including case law concerning the amount of deference to be given to a trial court's finding of extreme cruelty, is persuasive absent a compelling reason to deviate. *See Isaac v. Isaac*, 2014 Guam 21 ¶ 15 (citing *Cruz v. Cruz*, 2005 Guam 3 ¶ 9 & n.2).

[31] The California courts have consistently held:

> [T]he trial court has broad discretion in determining the relevancy, admissibility, and weight of the evidence, as well as its sufficiency to sustain a finding of extreme cruelty in a divorce action, and the exercise of that discretion will not be disturbed on appeal unless the evidence is so slight as to disclose an abuse of discretion.

May, 79 Cal. Rptr. at 625 (citations omitted). Furthermore,

> it has been repeatedly held that no arbitrary rule of law can be laid down as to what particular fact must be proved to justify a finding that the complaining party has undergone grievous mental suffering; that a correct decision in such cases depends upon the sound sense of justice of the trial court and that in each case it is a pure question of fact to be deduced from all the circumstances of each particular case, keeping in mind always the intelligence, apparent refinement and delicacy of sentiment of the complaining party.

Ungemach v. Ungemach, 142 P.2d 99, 101 (Cal. Ct. App. 1943) (citations omitted); *see also Lipka v. Lipka*, 386 P.2d 671, 673 (Cal. 1963); *Elam v. Elam*, 83 Cal. Rptr. 275, 280 (Ct. App. 1969).

[32] It is clear, therefore, that the question of whether one party to a marriage endured grievous mental suffering as a result of the other party's conduct is a question best left to the trial court to determine from all the facts and circumstances of the case. The trial court cited to

sufficient evidence concerning the states of Joyce's finances both before and after the marriage, and apparently believed that as result of George's mismanagement of Joyce's funds, Joyce endured grievous mental suffering as evident from her years of therapy. Given the highly deferential standard of our review, we must affirm the trial court's finding of extreme cruelty as it is supported by substantial evidence, and we are not left with a definite or firm conviction that a mistake has been made.

B. Distribution of Real Property

1. Applicable Law

[33] At the time George filed for dissolution of the marriage, the parties jointly owned four properties in three different states: a Minnesota home held in joint tenancy; a California home held in joint tenancy; and a Townhouse and Lake House in Arizona, both held as community property with a right to survivorship. RA, tab 53 at 3-6 (Finds. Fact & Concl. L.). Before the issuance of the Findings, the parties sold the Lake House, and $103,000.00 in proceeds from the sale remains in escrow. *Id.* at 4.

[34] George challenges the distribution of each of these properties. Curiously, George argues that the Minnesota and California properties should be distributed in accordance with Guam law, while the Arizona properties should be distributed in accordance with Arizona law. *See* Appellant's Br. at 11-14. Specifically, George argues that notwithstanding the trial court's finding of extreme cruelty, the Arizona properties must be divided equally because under Arizona law, the properties would not be subject to unequal distribution. *Id.* at 13-14 (citing Ariz. Rev. Stat. Ann. § 25-318(A) (Westlaw current through 2014)). In making this argument, George provides no authority to support his position that Guam law applies to the division of the Minnesota and California properties but not to the division of the Arizona properties.

[35] In property division cases considering choice of law issues, "[t]he traditional rule is that ownership of real property is determined under the law of the jurisdiction in which in [sic] is located . . . ."[1] Brett R. Turner, 1 *Equit. Distrib. of Property* § 3:13 (3d ed. 2005). However, "[t]he consistent practice in modern property division cases is to classify and divide all property under the law of the forum." *Id.* A majority of community property states have rejected the traditional rule and enacted the "law of the forum" rule by statute, applying only their own law when dividing property upon divorce. *Id.* & n.2. "The statutes provide that the court may divide upon divorce any property acquired out of state which would have been community property if acquired within the state."[2] *Id.* Guam has such a statute. Title 19 GCA § 6101 provides, in relevant part:

> (c) For purposes of dividing property between the spouses in a proceeding for dissolution of marriage, *community property* includes all real or personal property owned by a married person domiciled in Guam, wherever situated and whenever acquired:
>
> (1) by either spouse while domiciled outside of Guam which would have been community property had the spouse acquiring it been domiciled in Guam at the time of acquisition; or
>
> (2) any property acquired in exchange for property which would have been community property if the spouse acquiring it had been domiciled in Guam at the time of acquisition.

19 GCA § 6101(c) (2005).

[36] In light of 19 GCA § 6101(c) and the modern practice, we hold that for the purpose of dividing out-of-state property upon dissolution of marriage, Guam law applies. We now address the trial court's distribution of each marital property in turn.

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[1] While this rule may control the status of legal title to property, legal title is generally irrelevant to division of property at divorce. 1 *Equit. Distrib. of Property* § 3:13.

[2] A third rule is to apply the law of the state with "most significant relationship" to the case. 1 *Equit. Distrib. of Property* § 3:13. "Several decisions apply the most significant relationship test, but find that the interest of the forum state in applying its own law . . . is generally superior." *Id.* n.4. "[T]he end result has generally been a summary determination that the law of the forum should control." *Id.* § 3:13.

2. Arizona Townhouse

[37] George argues that the trial court erred in denying him reimbursement for his separate property contributions toward the mortgage and homeowners' association fees for the Arizona Townhouse after the parties' separation. Appellant's Br. at 13. George owned the Arizona Townhouse prior to the marriage, and two months after marriage he transferred title to both parties. RA, tab 53 at 3-4 (Finds. Fact & Concl. L.). A warranty deed designates the house as community property with right of survivorship. *Id.* The trial court found that, based on a 2012 valuation, the property had $150,000.00 in equity—the property's estimated value of $240,000.00 minus $90,000.00 in outstanding debt. *Id.* at 19. The trial court further found that each party had a one-half interest in the equity of the house, but due to its finding of extreme cruelty on the part of George, the court granted Joyce all of the equity in the property. *Id.*

[38] We have previously addressed the issue of reimbursement for post-separation separate property contributions to marital property in *Babauta v. Babauta*, 2011 Guam 15. There, we held:

> Income of a spouse while living separate and apart from the other spouse is separate property. 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. 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.

Babauta, 2011 Guam 15 ¶ 32 (citations omitted).[3] We then went on to hold that under 19 GCA § 6104(a)[4] and the well-settled California rule that the community property to be divided upon divorce is that which remains after the satisfaction of community debt,

[3] We recognized that there may be some situations where reimbursement for post-separation separate property contributions toward community obligations may be inappropriate, such as:

> 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 . . . 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.

Id. ¶ 38.

[39] In the present case, the trial court awarded Joyce the entire equity in the Arizona Townhouse on the basis of its finding of extreme cruelty. This was within the trial court's authority under 19 GCA § 8411(a). However, George testified that after the parties separated, he used his retirement funds to pay the mortgage and homeowners' association fees on the Townhouse. Transcript ("Tr.") at 16-17 (Bench Trial, Sept. 26, 2012). After separation, George's retirement income was no longer community property. "In a divorce action, the court does not have the authority to award any of the separate property of one spouse to the other." *Babauta*, 2011 Guam 15 ¶ 41 (citations and internal quotation marks omitted). Therefore, assuming George's testimony is true, by awarding the entire equity in the Townhouse to Joyce

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> 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.

Babauta, 2011 Guam 15 ¶ 33 (citing *In re Marriage of Epstein*, 592 P.2d 1165, 1170 (Cal. 1979)).

[4] Title 19 GCA § 6104(a) provides:

> (a) 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).

while denying George reimbursement for the use of his separate funds to maintain the property after their separation, the trial court essentially awarded Joyce half of those funds. Because the denial of reimbursement is in essence an award of George's separate property to Joyce, the trial court erred. On remand, the trial court shall determine whether and in what amount George contributed his separate funds toward the Townhouse after separation and award him reimbursement accordingly. Joyce is entitled to the equity remaining after reimbursement to George.

3. Minnesota and California Properties

[40] George argues that the trial court erred in awarding the Minnesota and California properties solely to Joyce on the basis of the court's finding of extreme cruelty. George contends that under 19 GCA § 6101(a)(8) and our opinion in *Babauta*, property held by spouses as co-tenants in joint tenancy is separate property, and separate property is not subject to unequal distribution based upon fault. Appellant's Br. at 11-13. George claims that it is undisputed that the parties own the Minnesota and California properties as joint tenants. *Id.* at 12. He also argues that Joyce did not rebut the presumption recognized in *Babauta* that by taking title to the properties as joint tenants, a gift is intended of the source of the funds used to acquire the properties. *See id.* at 12-13. For these reasons, George asserts that both parties have an undivided one-half interest in each of the properties, which remain unaffected by the trial court's finding of extreme cruelty. *See id.* at 13.

[41] Conversely, Joyce argues that Title 19 of the Guam Code should be interpreted to result in equitable distributions of community property. Appellee's Br. at 17-18. Joyce contends the aim of the community property system is to place the spouses on equal footing upon dissolution of the marriage. *Id.* at 18 (citing *In re Holloway's Estate*, 175 F.2d 672 (9th Cir. 1949)).

Because George deprived Joyce of her property, Joyce claims an equitable way to avoid unjust enrichment is to allow the trial court such latitude to divide the properties in the best interest of justice. *Id.* at 19.

[42] In its Findings, the trial court recognized that according to section 6101(a)(8) and our holding in *Babauta*, property held by spouses as co-tenants in joint tenancy is separate property. RA, tab 53 at 21 (Finds. Fact & Concl. L.). Notwithstanding this authority, the trial court granted both the Minnesota and California properties to Joyce, citing to evidence that Joyce alone has borne the responsibility of maintaining the properties and that she brought the California property into the marriage. *Id.* For these reasons, the trial court apparently determined that the properties could be distributed on a less than equal basis according to its authority in extreme cruelty cases to distribute community property in proportions it deems just. *See id.*; 19 GCA § 8411(a). Because such a distribution is contrary to statute and our clear holding in *Babauta*, we find that the trial court erred.

[43] In *Babauta*, we recognized that "while there is a rebuttable statutory presumption that property acquired by either spouse or both spouses during marriage is community property, the Guam Legislature has specifically classified as separate property a spouse's interest in joint tenancy property." 2011 Guam 15 ¶ 24 (citing 19 GCA § 6105(a) (2005)); *see also* 19 GCA § 6108(a)(8) (2005) ("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." (emphasis added)). Additionally, we held that "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." *Id.* ¶ 25 (citations omitted). This holding is "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." *Id.* (omissions in original) (quoting *Siberell v. Siberell*, 7 P.2d 1003, 1005 (Cal. 1932)). Finally, we held that the inference of a gift cannot be rebutted solely by tracing the source of the funds used to acquire the joint tenancy property. *Id.* (citing *Donlon v. Donlon*, 318 P.2d 189, 193 (Cal. Dist. Ct. App. 1957)).

[44] It is undisputed that George and Joyce own the Minnesota and California properties as joint tenants. While it may be true that Joyce's income alone has been used to maintain the properties, RA, tab 53 at 21 (Finds. Fact & Concl. L.), this fact does not shed light on the parties' intent when taking title as joint tenants, and, thus, is insufficient to rebut the presumption of a gift.[5] Thus, the parties each have a separate, undivided one-half interest in each of the properties. Because the trial court does not have the authority to award any of the separate property of one spouse to the other spouse, *Babauta*, 2011 Guam 15 ¶ 41, we hold that the trial court erred in awarding the entirety of the Minnesota and California properties to Joyce despite its finding of extreme cruelty.

[45] Moreover, just as George is entitled to reimbursement for half of any separate property contributions to the Arizona Townhouse after the parties' separation, Joyce is entitled to reimbursement for half of her separate property contributions to maintain the Minnesota and California properties after separation. On remand, the trial court shall determine this amount and enter an award accordingly. The trial court shall also determine how the parties are to satisfy any remaining community debt owing on the Minnesota and California properties, pursuant to 19 GCA § 6104(a).

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[5] Indeed, in its Findings as to these properties, the trial court does not state outright that the presumption of a gift was overcome. *See* RA, tab 53 at 21 (Finds. Fact & Concl. L.). By contrast, the court was explicit in finding the same presumption rebutted when it came to other properties. *See, e.g.*, *id.* at 19-20 (finding that Joyce rebutted the presumption of a gift of her contribution of $94,000.00 toward the purchase of the Arizona Lake House).

4. Arizona Lake House

[46] George appeals the trial court's denial of reimbursement for his post-separation separate property contributions toward the Arizona Lake House. Appellant's Br. at 4, 13. Like the Arizona Townhouse, the Lake House was held as community property with right of survivorship. After the parties' separation, the Lake House was sold for $625,000.00, with approximately $103,000.00 in proceeds from the sale being held in escrow. RA, tab 53 at 4 (Finds. Fact & Concl. L.).

[47] The trial court awarded Joyce $94,000.00 as reimbursement for her separate property contribution to the purchase of the Lake House. *Id.* at 19-20. The court denied reimbursement to George for his contribution to the down payment on the Lake House, but it did not address the issue of reimbursement for his separate property contributions toward the property after the parties' separation. In keeping with our discussion above concerning the parties other properties, George is entitled to reimbursement for half of any separate property contributions toward the Lake House after the parties' separation. Although he testified at trial as to such contributions, we leave it to the trial court to decide in the first instance whether, and in what amount, George contributed to the Lake House after separation. This reimbursement shall be deducted from the $103,000.00 in proceeds being held in escrow. To the extent the proceeds may be insufficient to reimburse both Joyce for her $94,000.00 contribution toward the purchase of the Lake House and George for his post-separation separate property contributions toward the property, the trial court shall determine from which source the balance should be satisfied. If, however, the $103,000.00 in escrow is sufficient to cover reimbursement for both parties, Joyce is entitled to any proceeds remaining after reimbursement, in accordance with the trial court's intent to award her the entirety of the community property due to its finding of extreme cruelty.

5. Additional $200,000.00 Award to Joyce

[48] As discussed above, the trial court found that Joyce contributed $94,000.00 in separate property—the equity from the sale of her Minnesota home, which she owned prior to the marriage—to purchase the Arizona Lake House. RA, tab 53 at 19 (Finds. Fact & Concl. L.). The trial court further found that Joyce successfully rebutted the presumption that these funds were a gift to the community, and thus ruled that she is entitled to reimbursement in the amount of $94,000.00. *Id.* at 19-20. Additionally, the court determined that because of extreme cruelty on the part of George and in order to return Joyce to her pre-marriage position, Joyce was entitled to an additional $200,000.00—the value of her former Minnesota home. *Id.*

[49] George appeals this additional award, arguing that it is superfluous in light of the contemporaneous award of the $94,000.00 in equity realized from the sale of Joyce's former Minnesota home. Appellant's Br. at 21. We agree. If it was the trial court's aim to return Joyce to her pre-marriage status, this was accomplished with the award of $94,000.00. We find no valid basis for an award of an additional $200,000.00 when Joyce was already receiving the entire equity in the Minnesota property. Accordingly, the trial court erred in rendering such award.

C. Enhancement of George's Separate Property Investments

[50] The trial court ruled that Joyce is entitled to all of the gains in George's investment accounts because community property and Joyce's separate property contributions enhanced the value of the investments. RA, tab 53 at 23-24 (Finds. Fact & Concl. L.). Citing New Mexico law, the court stated that the "community is entitled to an equitable lien against separate property to the extent that the community can show that its funds or labor enhanced the value of the property." *Id.* The court found that George enjoyed the benefits of filing joint tax returns

because community property and Joyce's separate property were used to absorb the cost of George's investments. *Id.* As an example, the court pointed to evidence that as a result of income earned from George's separate investments, the community incurred an IRS tax bill, and Joyce's separate rental income was used to pay these taxes. *Id.*

[51] The trial court identified the following gains to George's separate investments during the marriage: "(1) American Century Investment Account increased by $50,180.19; (2) DWS Account increased by $135.15; (3) E-Trade Account increased by $256.28; (4) ING Direct 'Townhouse' Account increased by $6,470.28; (5) Vanguard Account ending in 3820 increased by $26,657.82; and (6) Vanguard Account ending in 7348 increased by $26,147.21." *Id.* at 23-24 (citations omitted). According to the court, the total gains equaled $109,846.93. *Id.* at 24. Because of its finding of extreme cruelty on the part of George, the court granted Joyce the entirety of the gains. *Id.*

[52] George appeals this award, arguing that the trial court's ruling "stands in direct contradiction with the long-standing case precedents out of New Mexico that the community does not acquire an interest in separate property simply by paying taxes on the separate property." Appellant's Br. at 19

[53] In *Martinez v. Block*, the Court of Appeals of New Mexico ruled the "community is entitled to an equitable lien against [a spouse's] separate property only to the extent that the community can show that its funds or labor enhanced the value of the property or increased the equity interest in the property." 858 P.2d 429, 431 (N.M. Ct. App. 1993). The court explained:

> [T]he simple fact that the community has expended funds or labor on a separate asset does not, by itself, give rise to either a community interest in the asset or a right to reimbursement for money spent on the asset. For example, it is well settled that the community has no right to be reimbursed for funds spent paying

> mortgage interest, taxes, or insurance premiums on the asset. Our Supreme Court has explained the policy behind this as follows:
>
>> The value of real property is generally represented by the owner's equity in it. The equity value does not include finance charges or other expenses incurred to maintain the investment. Therefore, taxes, insurance, interest and garbage and sewer expenditures are not to be credited to Defendant.

Id. (quoting *Chance v. Kitchell*, 659 P.2d 895, 897 (N.M. 1983)) (citing *Dorbin v. Dorbin*, 731 P.2d 959, 964 (N.M. Ct. App. 1986)); *see also Trego v. Scott*, 961 P.2d 168, 171 (N.M. Ct. App. 1998) ("[T]he community does not acquire an interest in separate property simply by paying interest, taxes, and other expenses of the separate property, even though those expenses may far exceed principal payments on the property."); *Jurado v. Jurado*, 892 P.2d 969, 973 (N.M. Ct. App. 1995) ("Any increase in the value of separate property is presumed to be separate unless it is rebutted by direct and positive evidence that the increase was due to community funds or labor.").

[54] We agree with the New Mexico cases and hold that the community is entitled to an equitable lien against the separate property of one spouse only to the extent that the community can show that its funds or labor enhanced the value of the property or increased the equity interest in the property. We now consider whether such a showing was made in this case.

[55] George argues that there is no showing Joyce enhanced the value of his separate property investments and thus no basis for an equitable lien. Appellant's Br. at 20. In response, Joyce contends that because George did not pay for any living expenses, all contributions on George's part toward the principal on his separate accounts necessarily stemmed from community property, as "those contributions would not exist but for Joyce covering all his expenses." Appellee's Br. at 21. Because George is challenging findings of fact, we review for clear error.

[56] The trial court found that Joyce proved that most of the community's expenses were paid for by her salary and separate property funds. RA, tab 53 at 23 (Finds. Fact & Concl. L.). The court determined that community property as well as Joyce's separate assets "were used to manage and maintain the growth of [George's] investments and funds," and that Joyce "has proven that the community and her separate asset contributions have enhanced the value of [George's] investment accounts." *Id.* at 23-24.

[57] We find that substantial evidence supports the trial court's finding that the community and Joyce's separate assets enhanced the value of George's separate investments. The record is replete with evidence that Joyce's salary paid for most of the community's expenses, and that she sometimes had to dip into her separate funds to cover community expenses. Indeed, in his reply brief, George does not dispute Joyce's argument that because she covered virtually all the community expenses, his contributions toward his investments during the marriage are attributable to the community. Instead, he questions only the factual accuracy of the account increases, stating the American Century Investment Account increased by $10,476.38 and not $50,180.19 as the trial court suggests. Reply Br. at 6 (June 12, 2014).

[58] In regard to the American Century Investment Account, the trial court made a clerical error in its analysis. The fact section of the court's Findings credits the value of the account at $50,180.19 while stating the account increased by $9,194.81. RA, tab 53 at 10 (Finds. Fact & Concl. L.). The analysis section juxtaposes the two figures and credits an increase of $50,180.19 to the account. *Id.* at 23. Thus, $9,194.81 will be used to reflect the accurate amount in which the account increased.

[59] We have no reason to believe other findings by the trial court were in error. Joyce provided substantial evidence to show that the community and her separate property were used to

enhance the value of George's separate property investments. Both Joyce and the community are entitled to reimbursement for this enhancement. In accordance with the trial court's intent to award Joyce the entirety of the community property because of its finding of extreme cruelty, she is entitled to the enhanced value resulting from the community and her separate property contributions.

[60] Although we affirm the trial court's ruling that Joyce is owed the value of the enhancement to the George's separate investments, the trial court did not credit George for the return on his original investments. On remand, the trial court shall grant Joyce the remaining value of the enhancements after George is given a fair rate of return on his original investments. The trial court shall use the four-step approach adopted by the court in *Jurado* in determining a fair return on investment:

> 1) The value of the separate asset or the separate portion of an asset at the date of marriage is determined.
> 2) That pre-marriage value is treated as though it had been a well-secured, long-term investment and such interest as a well-secured, long-term investment would have earned is added to the separate pre-marriage value. The total is the separate property interest.
> 3) The fair market value of the asset is determined as of the date of divorce.
> 4) The fair market value of the asset as of the date of divorce is apportioned with the separate property owner taking an interest equal to the value found at step 2 while the community receives the balance of the fair market value.

892 P.2d at 974 (quoting *Dorbin*, 731 P.2d at 964).

D. Trial Court's Findings of Fact Regarding the Parties' Expenses

[61] George claims the trial court erred by accepting the accuracy of Joyce's accounting of the parties' expenses during the marriage. Appellant's Br. at 22. He contends that, while on the stand, Joyce admitted to the inaccuracy in her accounting of the parties' expenses. *Id.*

[62] Upon review of the transcript, it is apparent that Joyce does not admit to any inaccuracy. *See* Tr. at 113-126 (Bench Trial, Dec. 3, 2012). George's counsel repeatedly requested that Joyce characterize her accounting of the expenses as separate property expenses, to which she refused. *Id.*

[63] Moreover, our review of the trial court's findings of fact is a highly deferential one. We "must examine the evidence in the light most favorable to the successful party, resolve any controverted fact in favor of the successful party, and give the successful party the benefit of every reasonable inference from the evidence." *Macris*, 2008 Guam 18 ¶ 9 (quoting *Fargo Pac.*, 2006 Guam 22 ¶ 23). The trial court obviously believed Joyce's version of the events, and we find no compelling reason to disturb those findings.

E. Disposition of the Diamond

[64] George argues the diamond pendant he gave to Joyce was a conditional gift, and the trial court erred by awarding her the diamond. Appellant's Br. at 22. He asserts that the record clearly shows the gift was meant to be conditional, *id.*, and that the conditional nature of the gift is further evident from the fact that Joyce returned the diamond to him, Reply Br. at 7.

[65] Joyce claims that under 19 GCA §§ 41301-41303, a gift is irrevocable once delivered by the giver. Appellee's Br. at 23; *see also* 19 GCA § 41301 (2005) ("A gift is a transfer of personal property, made voluntarily, and without consideration."). She states the gift was delivered unconditionally. *Id.* at 24. The diamond was returned, Joyce explains, only after much badgering from George. *Id.*

[66] Regardless of whether George's gift of the diamond was conditional, Joyce's return of the diamond ends our inquiry. By returning the diamond, Joyce either gave it back to George or acknowledged its conditional nature. Thus, the award of the diamond to Joyce is reversed.

F. Reasonable Attorney's Fees

[67] George contends the award of attorney's fees to Joyce was in error because there is no basis for a finding of extreme cruelty. Appellant's Br. at 22. Because we affirm the finding of extreme cruelty, we also affirm the award of attorney's fees. *See generally* 19 GCA § 8402 (2005) (allowing court discretion to require one spouse to pay to the other spouse money to prosecute or defend divorce action); *Stahl v. Stahl*, 2013 Guam 26 ¶¶ 36-45.

V. CONCLUSION

[68] We affirm the trial court's finding of extreme cruelty as it is supported by substantial evidence, and we are not left with a definite or firm conviction that a mistake has been made.

[69] In light of 19 GCA § 6101(c) and the modern practice, we hold that for the purpose of dividing out-of-state property upon dissolution of marriage, Guam law applies. We reverse the trial court's denial of reimbursement to George for his post-separation separate property contributions toward the Arizona Townhouse. We remand to the trial court to determine whether and in what amount George contributed his separate funds toward the Townhouse after separation and to award him reimbursement accordingly.

[70] Because under our clear holding in *Babauta* the trial court does not have the authority to award any of the separate property of one spouse to the other spouse, we reverse the trial court's award of the entire equity in the Minnesota and California properties to Joyce, despite the court's finding of extreme cruelty. Joyce is entitled to reimbursement for half of her separate property contributions to maintain the Minnesota and California properties after separation. We remand to the trial court to determine this amount and to enter an award accordingly. The trial court shall also determine how the parties are to satisfy any remaining community debt owing on the Minnesota and California properties, pursuant to 19 GCA § 6104(a).

[71] George is entitled to reimbursement for half of any separate property contributions toward the Arizona Lake House after the parties' separation. Because the trial court did not address this issue, we remand to the trial court to decide in the first instance whether, and in what amount, George contributed to the Lake House after the parties' separation and to enter an award accordingly.

[72] We reverse the trial court's award of $200,000.00 to Joyce for the purpose of returning her to her pre-marital status by awarding her the value of her former Minnesota home. The trial court's award of reimbursement to Joyce for her separate property contribution of $94,000.00 toward the Arizona Lake House satisfied this purpose, as this amount represented the entire equity in her former Minnesota home.

[73] We hold that in a divorce action, the community is entitled to an equitable lien against the separate property of one spouse only to the extent that the community can show that its funds or labor enhanced the value of the property or increased the equity interest in the property. We partially affirm the trial court's award to Joyce of the enhancement value of George's separate investments because substantial evidence supports the finding that the community and Joyce's separate assets contributed to these enhancements. We remand to the trial court to correct its clerical error regarding the value of the enhancement of the American Century Investment Account and to give George a fair rate of return on his original investments.

[74] We find no clear error in the trial court's findings regarding the accounting of the parties' expenses during the marriage. Thus, we affirm the trial court's findings of fact in this regard.

[75] Because Joyce returned the diamond to George, she either gave the diamond back or acknowledged its conditional nature. Thus, we reverse the award of the diamond to Joyce and grant George ownership of the diamond currently in his possession.

[76] Finally, we affirm the trial court's award of attorney's fees based on its finding of extreme cruelty on the part of George.

[77] For the foregoing reasons, we **AFFIRM** in part, **REVERSE** in part, and **REMAND** for further proceedings not inconsistent 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