IN THE SUPREME COURT OF GUAM

ANTONIO ARTERO SABLAN,
Plaintiff-Appellant/Cross-Appellee,

v.

PATRIA UNTALAN SABLAN,
Defendant-Appellee/Cross-Appellant.

Supreme Court Case No.: CVA15-001
Superior Court Case No.: DM0277-11

OPINION

Cite as: 2017 Guam 3

Appeal from the Superior Court of Guam
Argued and submitted on October 27, 2015
Hagåtña, Guam

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BEFORE: ROBERT J. TORRES, Chief Justice; KATHERINE A. MARAMAN, Associate Justice; ALEXANDRO C. CASTRO, Justice *Pro Tempore*.[1]

TORRES, C.J.:

[1] Plaintiff-Appellant/Cross-Appellee Antonio Artero Sablan ("Antonio") appeals from a final decree of divorce ending the marriage between Antonio and Defendant-Appellee/Cross-Appellant Patria Untalan Sablan ("Patria") and dividing the parties' property. Antonio raises several issues on appeal respecting the trial court's characterization and division of the parties' property and debt, as well as the court's finding that he committed adultery. Similarly, Patria raises several issues on cross-appeal concerning the trial court's characterization and division of property as well as its denial of spousal support and refusal to find Antonio at fault for mental cruelty.

[2] For the reasons set forth below, we affirm in part, reverse in part, and remand for further proceedings.

I. FACTUAL AND PROCEDURAL BACKGROUND

[3] Antonio and Patria married in Reno, Nevada on March 30, 1984. During the next 25 years, they separated (and reunited) on numerous occasions for varying lengths of time, with the longest period of separation lasting 11 months. In addition to these periods of separation, the parties "attempted" to divorce on three occasions before the filing of the divorce proceedings underlying this appeal. Record on Appeal ("RA"), tab 77 at 3-4 (Finds. Fact & Concl. L., Oct. 31, 2014).

[1] Pursuant to 7 GCA § 6106, Associate Justice F. Philip Carbullido recused himself from this matter. On September 2, 2015, pursuant to 7 GCA §§ 6108(a) and 3109(f), then-Chief Justice Robert J. Torres appointed the Honorable Alexandro C. Castro as Justice *Pro Tempore* in this matter. The signatures in this opinion reflect the titles of the Justices at the time this matter was considered and determined.

[4] Prior to the marriage, Antonio owned several pieces of real property in his name alone. During the course of the parties' marriage, Antonio

> sold or otherwise transferred his interest in property which was held in his name only to purchase or obtain [other] property, title to which was held in several ways: in his name only, in both his and [Patria]'s names, in his and [Patria]'s names with [Patria] later quitclaiming her interest in some of these properties and, finally, in [Patria]'s name only.

Id. at 25. The marital residence, which the parties refer to as "the Blue House," was held in Patria's name alone. *Id.*

[5] In March 2009, after what would become the parties' final separation, Patria moved out of the Blue House and into a unit at the Pahong Court apartments in Chalan Pago ("Pahong Court"). The unit is held in Antonio's name alone. Antonio continued to reside in the Blue House after the parties' separation.

[6] On April 7, 2011, Antonio filed for divorce on the grounds of irreconcilable differences. Patria counterclaimed, seeking dissolution on the grounds of extreme mental cruelty, desertion, and adultery. After a bench trial, the trial court granted Antonio a divorce on the grounds of irreconcilable differences, and Patria a divorce on the ground of adultery. The court characterized each of the parties' real and personal properties as either community or separate, and divided the property accordingly.[2] Additionally, the court determined that Patria is entitled to 40.5% of Antonio's net monthly retirement benefits as her half of the community's share of the benefits, while Antonio is entitled to half the value of Patria's retirement plans at the time of separation. The court awarded Patria $73,046.08 as arrears owed on her share of Antonio's retirement benefits.

[2] Each property at issue in this appeal is described in turn below.

[7] The court also found that Antonio "has paid for nearly all of the debts after the parties' final separation." *Id.* at 38. Noting the parties' "fail[ure] to clearly identify the proportion in which each party is obligated for the debts," the court held Antonio solely liable for the community debts on the basis of his being at fault for adultery. *Id.* at 40.

[8] A Final Decree of Divorce was entered on December 9, 2014. Antonio timely filed a notice of appeal, and Patria timely filed a notice of cross-appeal.

II. JURISDICTION

[9] 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 through Pub. L. 115-30 (2017)), and 7 GCA §§ 3107 and 3108(a) (2005).

III. STANDARD OF REVIEW

[10] This court reviews *de novo* the trial court's characterization of property in a marital dissolution action as community or separate. *Kloppenburg v. Kloppenburg*, 2014 Guam 5 ¶ 16 (citing *Babauta v. Babauta*, 2011 Guam 15 ¶ 18 ("*Babauta I*")).

[11] 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*. *Id.* ¶ 17 (citing *Babauta I*, 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.* (citing *Babauta v. Babauta*, 2013 Guam 17 ¶ 17 ("*Babauta II*")).

[12] The trial court's distribution of community property after rendering a divorce on the ground of adultery or extreme cruelty is reviewed for an abuse of discretion. *See* 19 GCA § 8411(a) (2005) (allowing court to make disproportionate assignment of community property where divorce decree rendered on grounds of adultery or extreme cruelty).

IV. ANALYSIS

A. The Trial Court's Grant of Divorce to Patria on the Ground of Adultery

[13] As his first assignment of error, Antonio argues that the trial court erred in granting divorce to Patria on the ground of adultery. Though he concedes that he "admitted to beginning a sexual relationship in 2010 with another woman . . . , after the parties separated in 2009," Appellant's Principal Br. at 6 (May 28, 2015) (citing RA, tab 77 at 4 (Finds. Fact & Concl. L.)), he argues that this admission was not a sufficient basis for the trial court's granting a divorce on the grounds of adultery, *id.* In support of this argument, Antonio cites to 6 GCA § 8206, which provides that "[i]n an action for divorce, on the ground of adultery, a confession of adultery, whether in or out of the pleading is not of itself sufficient to justify a judgment of divorce." *Id.* (quoting 6 GCA § 8206 (2005)).

[14] Title 6 GCA § 8206 was derived from former Guam Code of Civil Procedure section 2079, which in turn was adopted from former California Code of Civil Procedure section 2079. *Compare* Guam Code Civ. P. § 2079 (1970), *with* Cal. Code Civ. P. § 2079 (1933). In *Wilson v. Wilson*, the California First District Court of Appeal explained the purpose of section 2079 and California Civil Code section 130[3]:

> No divorce can be granted upon the uncorroborated statement, admission, or testimony of the parties (Cal. Civ. Code § 130); and in an action for divorce on the ground of adultery a confession of adultery, whether in or out of the pleadings,

[3] Guam's version of section 130 is found in 19 GCA § 8320, which is derived from former Guam Civil Code section 130. *See* 19 GCA § 8320 (2005), SOURCE. Title 19 GCA § 8320 provides:

> **§ 8320. Default, When Allowed.**
>
> No dissolution of marriage can be granted upon the uncorroborated statement, admission or testimony of the parties in any contested action for dissolution of marriage, but the court must require proof of the facts alleged. In the event of uncontested, consent or default divorce actions, the court may grant a divorce based upon the verified complaint of the Plaintiff or Petitioner if it appears to be in the interests of justice. Any corroboration or evidence which the court may require in default, consent, or other uncontested divorces shall be in the form of sworn affidavits.

Id.

> is not of itself sufficient to justify a judgment of divorce (Cal. Code Civ. Proc. § 2079). It has been held, however, that the principal object of the rule requiring corroboration is to prevent collusion; and, where it is clear that there is no collusion, and the defendant's testimony, though conflicting with that of plaintiff in many of its details, in the more important matters was corroborative of the plaintiff's testimony, which was also corroborated in certain respects by other testimony, the corroboration is sufficient. And it has been held that the fact that a defendant has vigorously contested the suit dispels any idea of collusion between the parties in the procurement of the divorce.

13 P.2d 376, 377 (Cal. Dist. Ct. App. 1932) (citations omitted). It appears that the primary purpose of 6 GCA § 8206 and 19 GCA § 8320 is to avoid collusion of the parties. Title 19 GCA § 8304 defines collusion as "an agreement between husband and wife that one of them shall commit, or appear to have committed, or to be represented in court as having committed, acts constituting a cause of dissolution of marriage, for the purpose of enabling the other to obtain a dissolution of marriage." 19 GCA § 8304 (2005).

[15] While collusion between spouses for the purpose of manifesting a cause of action for divorce may have been an issue several decades ago, since the advent of "no fault" divorce, this is no longer a viable concern. Parties no longer have to allege that one party has committed wrongful acts to have grounds for divorce; simply citing to "irreconcilable differences" is sufficient. *See* Guam Pub. L. 24-134:1 ("The Guam Legislature finds that other jurisdictions has [sic] refocused the divorce process from assigning fault to creating a standard referred to as 'irreconcilable differences.' Such a standard should be enacted in Guam . . . ."); Guam Pub. L. 24-134:3 (adding "irreconcilable differences" as a cause for dissolution of marriage); 19 GCA §§ 8203(g), 8219 (2005).

[16] In the present case, collusion of the parties is clearly not an issue. Antonio's admission to being in an intimate relationship with another woman, Karen, clearly was not for the purpose of having a valid ground for divorce. Indeed, he cited irreconcilable differences as grounds for his

complaint for divorce. RA, tab 3 at 2 (Verified Compl. Divorce, Apr. 7, 2011). That basis alone would have been sufficient grounds for divorce. Moreover, Antonio's assignments of error to the trial court's distribution of property and debts on the basis of the court's finding of adultery, discussed below, further demonstrates the lack of collusion on the part of the parties on the issue of adultery. Thus, Antonio's admission to being in an extramarital relationship, which was corroborated by Patria throughout the proceedings below, was sufficient to justify a judgment of divorce.

[17] Antonio further contends that even if his admission to adultery was sufficient to establish divorce on the ground of adultery, the trial court merely found that he was in a "sexual relationship" with another woman, not that he actually engaged in sexual intercourse with another woman. Appellant's Principal Br. at 7. In response, Patria cites to the evidence supporting the finding of adultery. Appellee's Principal & Resp. Br. at 25-27 (June 26, 2015). She points to Antonio's admission to the relationship with Karen, including his admission that he paid her bills. *Id.* at 26. Patria also points to her testimony that she suspected an affair and followed Antonio to Karen's house, and that she would see Antonio at Karen's house at 1:30 a.m. *Id.* Patria contends that this indirect evidence of an affair, coupled with Antonio's confession, was more than sufficient evidence for the trial court's finding of adultery. *Id.* at 26-27.

[18] Adultery is defined as "the voluntary sexual intercourse of a married person with a person other than the offender's husband or wife." 19 GCA § 8204 (2005). "Adultery may be proved by circumstantial evidence as well as by direct evidence; and in divorce actions corroboration of every act sworn to by plaintiff is not required, but evidence, circumstantial or direct, tending to confirm plaintiff's testimony upon a considerable number of material facts, is sufficient."

Wilson, 13 P.2d at 377-78 (citations omitted). "Of practical necessity, the evidence need only be circumstantial by virtue of the fact that because of 'the clandestine nature of the offense, it is rarely possible to obtain evidence of the commission of the act by the testimony of eyewitnesses.'" *Wright v. Phipps*, 712 A.2d 606, 607 (Md. Ct. Spec. App. 1998) (quoting *Laccetti v. Laccetti*, 225 A.2d 266, 269 (Md. 1967)).

[19] In this case, there was not only circumstantial evidence of adultery, but arguably also direct evidence of it. On cross-examination, when being questioned about his relationship with Karen, Antonio was asked, "When you first start[ed] testifying, [your attorney] asked you about your first wife and you mentioned she cheated on you, she -- she had infidelity and how that hurt you, how do you think Patty felt *when it turned out that you were sleeping with another woman*?" Transcript ("Tr.") at 86 (Bench Trial, Aug. 2, 2013) (emphasis added). In response, Antonio replied:

> You know, I -- Patty has never really cared to have any intimate relationship with me and I don't know how she feels. Maybe you should ask her that question because she deprived me of my needs as a human being. I'm a man, and I need a woman and if she's not, you know, she doesn't want to give me or do her wifely duties as a wife of providing sex to her husband, then how would she feel? Ask her. Because I feel miserable and I was in agony for not having sex with her for a long, long, long time.

Id. Although Antonio does not say outright, "I had sexual intercourse with Karen," the evidence seems clear that his relationship with Karen involves sexual intercourse.

[20] Given the circumstantial and direct evidence of the nature of Antonio's extramarital relationship with Karen and the trial court's finding that Antonio "admitted to beginning a *sexual* relationship in 2010 with another woman named Karen," RA, tab 77 at 4 (Finds. Fact & Concl. L.) (emphasis added), the trial court's finding of adultery was not clearly erroneous.

B. The Trial Court's Characterization of Property as Community Property

[21] Antonio next argues that the trial court mischaracterized the Merizo, Yona/Saipan, and Chalan Pago properties as community property.

1. Merizo Property

a. Property was community property at the time of acquisition

[22] The trial court found that on July 3, 1990, Lot 276 NEW-1, Merizo, was transferred to both parties as husband and wife via warranty deed. *Id.* at 14. Two months later, on September 19, 1990, Patria signed a quitclaim deed transferring her interest in the property to Antonio. *Id.* Nine years later, on February 17, 1999, Patria executed a Consent of Mortgagor's Spouse in which she acknowledged that the property is Antonio's separate property and that she claims no interest in it. *Id.* at 14-15. The trial court found that only Antonio has paid and continues to pay for the mortgage. *Id.* at 15.

[23] In its distribution of the parties' property, the trial court held that the Merizo property is community property, finding that Patria's quitclaim of the property was not sufficient to overcome "the presumption of community property when [property is] acquired in the names of both parties during the marriage." *Id.* at 32-33.

[24] On appeal, Antonio argues the Merizo property was never community property to begin with, as it was transferred to the parties as co-tenants in common. Appellant's Principal Br. at 7-8. Antonio quoted the July 3, 1990 warranty deed, which provided, in pertinent part, that the deed was "for the benefit of Antonio Pablo Artero Sablan and Patria Untalan Sablan, husband and wife." *Id.* at 8 (citing RA, tab 51, Ex. 10 (Pl.'s Ex. List (May 28, 2013)) (warranty deed)). Antonio argues that because the warranty deed did not state that the parties were holding the property as joint tenants or as community property, "the ownership interests in the Merizo

property were created in favor of the parties in their own right, [and] the property was transferred to the parties to be held as co-tenants in common and, thus, the separate property of each party." *Id.*

[25] Antonio does not cite to any authority to support his contention that a deed identifying the grantees as "husband and wife," without more, creates a co-tenancy in common. Under former Guam Civil Code section 164, enacted in 1953, where a married woman and her husband acquire property by an instrument in writing, "the presumption is that she takes the part acquired by her, as tenant in common, unless a different intention is expressed in the instrument." Guam Civil Code § 164 (1970). In *Dunn v. Mullan*, the California Supreme Court explained that "deeds naming as grantees both husband and wife presumptively vest property in spouses as tenants in common, the interest conveyed to the wife being presumed under section 164 of the Civil Code to be her separate property and that conveyed to her husband the community property of the marriage."[4] 211 Cal. 583, 588 (1931) (citing *Miller v. Brode*, 186 Cal. 409, 414 (1921); *Estate of Regnart*, 283 P. 860 (Cal. Dist. Ct. App. 1929)).

[26] However, in 1980, the Guam Legislature repealed the entire "Husband and Wife" chapter of the Civil Code, including section 164, and replaced it with a new chapter III, entitled "Community Property." *See* Guam Pub. L. 15-113 (Mar. 20, 1980). Section 159 of the new chapter III created the presumption of community property, providing that "[p]roperty acquired during marriage by either husband or wife, or both, is presumed to be community property." *Id.* (later codified at 19 GCA § 6105(a) (2005)). Thus, while pre-1980 deeds which convey property to grantees as "husband and wife" without specifying the type of tenancy are subject to the

[4] As this court has stated on numerous occasions, where a section of our code is derived from California, California cases interpreting the section are persuasive, absent a compelling reason to deviate. *See, e.g.*, *Isaac v. Isaac*, 2014 Guam 21 ¶ 15 (citing *Cruz v. Cruz*, 2005 Guam 3 ¶ 9 & n.2).

presumption that the spouses hold the property as tenants in common, post-1980 deeds are subject to the presumption of community property. For example, in *In re Marriage of Orchard*, the appellate court found ample evidence to support the trial court's finding that the property at issue in that case was community property, the foremost reason being the grant deed conveying the property to "Joel S. Orchard and Judy Orchard, husband and wife." 273 Cal. Rptr. 499, 502 (Ct. App. 1990). Despite the lack of specific language of the type of tenancy created by the July 3, 1990 warranty deed, it is clear that at the time of conveyance, the parties held the Merizo property as community property.

b. Effect of September 1990 quitclaim from Patria to Antonio

[27] In the alternative, Antonio argues that even if the Merizo property was initially held as community property of the parties, Patria's September 1990 quitclaim transferred her interest to Antonio, so that he has since owned the property as his sole and separate property. Appellant's Principal Br. at 7-9. The trial court held to the contrary, finding that Patria's quitclaim was not sufficient to overcome the presumption of community property.[5] RA, tab 77 at 32-33 (Finds. Fact & Concl. L.). The trial court did not cite to any authority for its implicit holding that a quitclaim deed is not enough to overcome the presumption of community property.

[28] On cross-appeal, Patria argues that the trial court erred in not nullifying all of the quitclaim deeds she executed during the marriage in favor of Antonio, including the September 1990 quitclaim on the Merizo property. Appellee's Principal & Resp. Br. at 17-19. Patria

[5] The heading in the trial court's Findings of Fact and Conclusions of Law specific to the Merizo property states, "Lot No. 276 New-1, Merizo (822 Chalan Canton Tasi, Merizo, Guam is *Plaintiff's Separate Property*." RA, tab 77 at 32 (Finds. Fact & Concl. L.) (emphasis added). However, in the body of the section immediately following the heading, the trial court proceeds to decree the Merizo property to be the community property of the parties – rather than the separate property of Antonio as suggested by the heading – for the reason that the presumption of community property was not overcome by Patria's quitclaim of the property. Reading this section as a whole, it is clear that the trial court found the Merizo property to be the community property of the parties, and the contrary designation in the heading (i.e., that the property is the separate property of Antonio) is a clerical error.

contends that the September 1990 quitclaim should be voided for lack of consideration as well as undue influence. *Id.* at 18-19. At trial, when Antonio's attorney insinuated that she was compensated for the quitclaim by being relieved of any liability on the mortgage on the property, Patria stated that she did not consider it compensation, and that if it were compensation, there was never a conversation about it. Tr. at 59-62 (Bench Trial, Sept. 26, 2013).

[29] At trial, Antonio testified that he purchased the Merizo property in both his and Patria's name. He further testified that because she did not want to deal with the headaches of owning the property, Patria quitclaimed the property to him shortly thereafter. Tr. at 116-18 (Bench Trial, Aug. 2, 2013).

[30] It has long been settled in California that a husband and wife may, by contract, transmute separate property into community property or community property into the separate property of the other spouse. *See Perkins v. Sunset Tel. & Tel. Co.*, 103 P. 190, 193-94 (Cal. 1909); *In re Marriage of Jafeman*, 105 Cal. Rptr. 483, 490 (Ct. App. 1972).

[31] On cross-appeal, Patria argues that under 19 GCA § 6111, spouses have fiduciary duties when entering into real property transactions with one another. Appellee's Principal & Resp. Br. at 7-14. Section 6111(a) provides that "[e]ither husband or wife may enter into any engagement or transaction with the other, respecting property subject, in transaction between themselves, to the general rules which control the actions of persons occupying *confidential relations* with each other." 19 GCA § 6111(a) (2005) (emphasis added).[6] Patria argues that the term "confidential relations" is interchangeable with the term "fiduciary relations." Appellee's Reply Br. at 1 (Aug.

[6] Title 19 GCA § 6111 was recently amended on May 7, 2015, by Public Law 33-026. 19 GCA § 6111, SOURCE. Public Law 33-026:2 amended subsection (b) of the statute, while Public Law 33-026:3 added new subsections (d), (e), and (f). *Id.* As the property transactions in this case predated the 2015 amendments to the statute, the relevant version of the statute is that which existed prior to the May 2015 amendments. In any event, the portion of the statute which is relevant to Patria's argument on appeal, subsection (a), remains unchanged by the 2015 amendments.

11, 2015) (citing *Black's Law Dictionary* 370 (4th ed.)). She cites to California case law recognizing a presumption of undue influence where a transaction between spouses advantages one spouse over the other. Appellee's Principal & Resp. Br. at 10-11 (quoting *In re Marriage of Burkle*, 43 Cal. Rptr. 3d 181 (Ct. App. 2006)) (citing *In re Marriage of Haines*, 39 Cal. Rptr. 2d 673 (Ct. App. 1995)).

[32] Antonio disagrees that Guam law imposes a fiduciary duty between spouses, but appears to agree that transactions between spouses are subject to a presumption of undue influence. *See* Appellant's Resp. & Reply Br. at 11 (July 28, 2015). He asserts that the trial court correctly described the meaning of "confidential relations" when it quoted *In re Cover's Estate*, in which the California Supreme Court stated:

> In every transaction between them by which the superior party obtains a possible benefit, equity raises a presumption against its validity and casts upon the party the burden of proving affirmatively its compliance with equitable requisites and of thereby overcoming the presumption. Of course, the mere existence of the marriage relation alone will not, in and of itself, suffice to initiate and support the presumption of undue influence where the transaction between husband and wife is prima facie, or, from all of the circumstances thereof, shown to be fair and free from any material advantage to the husband from and over the wife.

Id. (quoting *In re Cover's Estate*, 204 P. 583, 590 (Cal. 1922)). Antonio concludes that "a presumption of undue influence does not arise where no material advantage was gained by a spouse." *Id.*

[33] The trial court, citing to *In re Cover's Estate*, agreed that a presumption of undue influence applies in Guam by virtue of the existence of the presumption in California at the time Guam adopted California's domestic statutes as its own. *See* RA, tab 77 at 29 (Finds. Fact & Concl. L.). However, the court declined to go as far as holding that 19 GCA § 6111(a) imposes a fiduciary obligation between spouses, maintaining that while the current version of the California counterpart to section 6111 (i.e., California Family Code section 721) amended the former

language to use the term "fiduciary" rather than just "confidential relations," the Guam statute was never amended to use the term "fiduciary." *See id.* at 29 & nn. 12-13.

[34] Whether or not 19 GCA § 6111(a) imposes on spouses the duties of a fiduciary when dealing with each other, it is clear (and both parties agree) that a presumption of undue influence arises from such transactions where one spouse gains a material advantage over the other. Because the September 1990 quitclaim deed from Patria to Antonio purported to transfer her community interest in the Merizo property and cause the property to become the separate property of Antonio, the presumption of undue influence arose in this case. However, in the trial court's Findings of Fact and Conclusions of Law, the court did not specifically address the issue of undue influence as to Patria's September 1990 quitclaim of the Merizo property, instead only addressing the issue as to quitclaim of the Pahong Court property. Presumably, this is because the evidence at trial did not suggest that Patria was alleging undue influence as to the Merizo quitclaim deed. Because the trial court found no undue influence as to the Pahong Court property despite Patria's contentions to the contrary, the trial court likewise must not have believed there to be any undue influence surrounding the Merizo quitclaim deed.[7]

[7] At pages 26-27 of the trial court's Findings of Fact and Conclusions of Law, the trial court introduced Patria's argument regarding inadequate consideration and undue influence surrounding her quitclaim deeds throughout the marriage:

> During the course of the parties' marriage, [Patria] also executed quitclaim deeds or other documents purportedly transferring any interest she may have in certain real property to [Antonio]. [Patria] contends that for certain real property obtained during the marriage and for which she executed a quitclaim deed, that these were obtained (1) without adequate consideration ("a price which is equal in value for an act or a thing for which it is given"); or, (2) through a [sic] "undue influence" exerted upon her by [Antonio] which violated a purported fiduciary relationship each shares with the other by virtue of their marital status, and that this "presumption" of undue influence must be rebutted by the spouse who was advantaged by the transaction ([Antonio]). *The Court disagrees with both of these claims.*

RA, tab 77 at 26-27 (Finds. Fact & Concl. L.) (emphasis added) (footnotes omitted). Arguably, the last line of this paragraph could mean that the trial court disagreed that Antonio exerted any undue influence upon Patria in obtaining *any* of the quitclaim deeds, including the quitclaim of the Merizo property. When making its finding concerning whether undue influence existed in the case, the court only specifically mentioned the Pahong Court property, finding that "the evidence does not support a finding that [Antonio] exerted any undue influence upon

[35] Reviewing the record in this case, we determine that the trial court's finding that Antonio did not exert any undue influence is supported by substantial evidence. First, there was no evidence or allegation that Patria executed the September 1990 quitclaim deed under duress or that Antonio exerted any force or coercion to secure the quitclaim. Indeed, the trial court found insufficient evidence of mental cruelty on the part of Antonio, which undercuts the argument of undue influence. *See* RA, tab 77 at 22 (Finds. Fact & Concl. L.). Additionally, Antonio testified at length as to what he alleged to be Patria's intent in signing over the property—her desire to avoid the hassles of owning the property. *See supra*. Finally, Patria again disavowed her interest in the property when she executed the Consent of Mortgagor's Spouse in 1999, in which she declared she had no interest in the property and acknowledged that the property is Antonio's separate property. RA, tab 77 at 14-15 (Finds. Fact & Concl. L.). Given the circumstances, Antonio successfully demonstrated that Patria freely and voluntarily relinquished her interest in the Merizo property, on more than one occasion, for the purpose of freeing herself from the obligations of owning the property. "[T]he weight of authority concludes the burden of rebutting the presumption of undue influence is by a preponderance of the evidence." *In re Marriage of Mathews*, 35 Cal. Rptr. 3d 1, 5-6 (Ct. App. 2005) (citations omitted). Antonio clearly met this burden.

[36] Despite the trial court's implied finding that Antonio overcame the presumption of undue influence as to the numerous quitclaim deeds from Patria to Antonio throughout the marriage, the trial court summarily held that the September 1990 quitclaim did not overcome the

[Patria] in order to obtain the Quitclaim Deed or that he enjoyed any advantage over her from the transfer." *Id.* at 30. We determine that although the trial court did not specifically mention the Merizo quitclaim deed when making its finding that Antonio did not exert any undue influence, reading the Findings of Fact and Conclusions of Law as a whole, it is implied that the trial court found no undue influence as to any and all of the quitclaim deeds throughout the marriage.

presumption of community property as to the Merizo property, without providing reasons for this conclusion. *See* RA, tab 77 at 32-33 (Finds. Fact & Concl. L.).

[37] Because Antonio successfully rebutted the presumption of undue influence in obtaining Patria's September 1990 quitclaim of the Merizo property, the trial court should have held that Antonio owns Merizo as his separate property. "It is well recognized that a quitclaim deed is a distinct form of conveyance and operates like any other deed inasmuch as it passes whatever title or interest the grantor has in the property." *In re Marriage of Broderick*, 257 Cal. Rptr. 397, 400 (Ct. App. 1989) (citing *Howard Homes, Inc. v. Guttman*, 12 Cal. Rptr. 244, 246 (Ct. App. 1961); *Buller v. Buller*, 145 P.2d 649, 655 (Cal. Ct. App. 1944)); *see also Taylor v. Opperman*, 79 Cal. 468, 470 (1889) ("Quitclaim deeds are as effectual to pass whatever title the grantor has as any other deeds."). By executing the September 1990 quitclaim deed, Patria transferred her community property interest in the Merizo property to Antonio, and as a result, Antonio owns the entire property as his separate property. The presumption of community property thus overcome, the trial court erred in characterizing the property as community instead of the separate property of Antonio.

2. Yona/Saipan Property

[38] Antonio argues that the trial court also erred in its characterization of the Yona/Saipan properties as community property rather than his sole, separate property. Antonio concedes that at the time of acquisition, Lot 107-3-R2, Yona was community property, the warranty deed conveying the property to the parties as "husband and wife and owners of subject property as community property." Appellant's Principal Br. at 9-10. He argues, however, that like the Merizo property, the character of the property was transmuted to separate property, first by quitclaim deed from Antonio to Patria on August 30, 1997, and then from Patria back to Antonio

on August 10, 1998. *Id*. at 10. In other words, he argues, his 1997 quitclaim deed transferred his community property interest to Patria, who then held the property as her sole, separate property; and Patria's 1998 quitclaim back to Antonio transferred her separate property interest to Antonio, thereby giving Antonio title to the property as his sole, separate property. *Id.*

[39] Patria argues that the quitclaims should be considered void for the same reasons mentioned above regarding the Merizo property, and that the multiple quitclaims on the Yona property did not change the community property character of the property.

[40] Addressing the conveyances between the parties, the trial court found that "[t]his history creates a presumption, not rebutted at trial, that [Yona] was community property." RA, tab 77 at 33 (Finds. Fact & Concl. L.). Recognizing that the Yona property was later exchanged for Lot EA No. 450-2, Saipan, the court held that Patria is entitled to half the Saipan property's value as her community property share. *Id.* at 33-34.

[41] Like the Merizo property, the trial court did not specifically address the issue of whether the presumption of undue influence was overcome as to the Yona property. However, for the same reasons mentioned above regarding the Merizo property, we determine that the trial court impliedly found that Antonio rebutted the presumption of undue influence that arose from Patria's quitclaim of her interest in the Yona property. This finding is supported by substantial evidence. At trial, Antonio testified:

> I bought a house in Yona. I put it under our name, at a later time I -- she, you know, I gave her a quitclaim deed for her own. The house is totally hers, not mine. At a later date she didn't want any part of it, and about a year later she gave me a quitclaim deed giving me the property to be totally mine.
>
> . . . .
>
> So she doesn't want to deal with property ownership, the headache that comes along with it, and she always say, you know, this is your money, this is -- all this investments is your property, I want no part of it, you know.

Tr. at 117 (Bench Trial, Aug. 2, 2013). There was no evidence or allegation that Patria executed the August 1998 quitclaim deed under duress or that Antonio exerted any force or coercion to secure the quitclaim. Furthermore, there is no contention that Patria did not know the significance of quitclaiming her interest in the property to Antonio. Antonio clearly rebutted the presumption of undue influence by a preponderance of the evidence.

[42] Because Antonio rebutted the presumption of undue influence, the 1998 quitclaim deed transferring Patria's interest in the Yona property to Antonio resulted in the property being held by Antonio as his sole, separate property. Thus, the trial court erred in characterizing the property as the community property of the parties, and in awarding Patria half the value of the Saipan property for which the Yona property was exchanged.

3. Chalan Pago Property

[43] Antonio argues that the trial court also erred in characterizing Lot No. 3242-1-3, Chalan Pago, as the community property of the parties. Appellant's Principal Br. at 10. Just like the warranty deed on the Merizo property, the warranty deed conveying the Chalan Pago property to the parties transferred the property to Antonio and Patria as "husband and wife." *Id.* at 10-11. Antonio argues that such a deed creates a tenancy in common, not community property. *Id.* at 11. However, as discussed in section IV.B.1.a. above, since 1980, such deeds have been subject to the presumption of community property, not the former presumption of tenancy in common. Therefore, at the time of acquisition, Antonio and Patria held the property as community property.

[44] Unlike the Merizo and Yona/Saipan properties discussed above, there was no quitclaim of Patria's interest in the Chalan Pago property. There was no evidence at all to suggest that the parties held the property other than as community property, and even the divorce complaint filed

by Antonio acknowledged the property to be owned by the community. *See* RA, tab 3 at 2-3 (Verified Compl. Divorce). Accordingly, the trial court correctly held that Antonio failed to rebut the presumption of community property as to the Chalan Pago property.

C. The Trial Court's Failure to Award Antonio Reimbursement for Using Separate Funds in Obtaining and Maintaining Community Property

[45] In his next set of contentions, Antonio argues that he is entitled to reimbursement for the use of his separate funds for the down payment and mortgage payments on the Blue House, and the use of his separate property to acquire the Chalan Pago property.

[46] The trial court found that the Blue House (the marital home) is the community property of the parties, even though title to the property was taken in Patria's name alone. RA, tab 77 at 30 (Finds. Fact & Concl. L.). Although only Patria's name appears as grantee of the deed conveying the Blue House, this is not conclusive as to what characterization is appropriate for the property. The property, having been acquired during the marriage, is subject to the presumption of community property. *See* 19 GCA § 6105(a). Neither party rebutted this presumption, as they both agreed at trial that the Blue House, where the parties lived together for the longest stretch of their marriage, was community property.[8]

[8] On cross-appeal, Patria argues that because the property is held under her name alone, it can only mean that Antonio meant for the property to be her separate property. *See* Appellee's Principal & Resp. Br. at 23. Patria appears to make this argument for the first time on appeal. The following exchange between Antonio's attorney and Patria is one example of Patria's position at trial that the Blue House is community property, despite the fact that title is in her name alone:

> A I always thought of it as ours.
>
> Q No, so is that what -- are you telling the judge that as far as you're concerned the blue house is community property owned by you and Tony?
>
> A That's what I think, yes.
>
> Q So --
>
> A I've always felt that way from the beginning.
>
> Q -- regardless of what the papers say, are you saying that Tony, you know, owns a one-half interest?

[47] It is undisputed that the funds used to acquire the Blue House, as well as the funds used to pay the mortgage on the property, is the separate property of Antonio. Likewise, it is undisputed that Antonio's separate properties, Lot Nos. 1 and 4, Tract 927, Yigo, were exchanged to acquire the Chalan Pago property. Antonio argues that the trial court should have awarded him reimbursement for the use of his separate funds to pay the $15,000.00 down payment and the $268,603.20 in mortgage payments from the time of acquisition of the Blue House in 1989 to the March 2009 separation of the parties. Appellant's Principal Br. at 11-12. Additionally, he asserts that he is entitled to reimbursement for the value of the Yigo lots that were exchanged for the acquisition of the Chalan Pago property. *Id.* at 12-13.

[48] In response, Patria contends that Antonio failed to show how these separate property contributions were anything more than gifts to the community. Appellee's Principal & Resp. Br. at 28-29. This position is supported by controlling case law.

[49] In *Babauta I*, this court 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." 2011 Guam 15 ¶ 25 ("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

---

A Well, of course. He put my name on it only because I questioned him one time. If I had not questioned him, it would have been like normal. Everything would be in his name.

Q Okay. So your answer is that the blue house, even though it's only in your name and Tony's not, you know, on the title, is that --

A In the --

Q Wait, let finish.

A Okay.

Q Is that Tony owns 50 percent of that?

A Well, if that's community property, then yes, he owns 50 percent.

Tr. at 10 (Bench Trial, Sept. 5, 2013). Because Patria failed to rebut the presumption that the Blue House is the community property of the parties, her cross-appeal of this issue is denied.

community estate or the separate estate of either spouse, to the extent necessary to cause the property to be held in joint tenancy." (quoting *Donovan v. Donovan*, 36 Cal. Rptr. 225, 228 (Dist. Ct. App. 1963))).

[50] California case law long applied a general presumption that separate property used for community purposes during the marriage was a gift to the community. *See In re Marriage of Lucas*, 614 P.2d 285, 289 (Cal. 1980) (citing cases), *superseded by statute*, Cal. Civ. Code §§ 4800.1-.2 (1983) (now Cal. Fam. Code §§ 2580-2581, 2640 (West 2004)).[9] "The basic rule is that the party who uses his separate property for community purposes is entitled to reimbursement from the community or separate property of the other only if there is an agreement between the parties to that effect." *See v. See*, 415 P.2d 776, 781 (Cal. 1966) (en banc).

[51] Because Antonio did not present any evidence of an agreement that he was to be reimbursed for his separate property contributions to the Blue House and to the Chalan Pago property, he failed to rebut the inference that these contributions were gifts to the community. Thus, the trial court did not err in denying him reimbursement.

[9] When Guam enacted its community property laws in 1953, it borrowed from California's then-existing community property statutes. *Babauta I*, 2011 Guam 15 ¶ 25 (comparing Guam Civ. Code §§ 161-164 (1970) with Cal. Civ. Code §§ 161-164 (1941)). Thus, we consider California case law interpreting these borrowed statutes as persuasive authority, and adopt such interpretations absent a compelling reason to deviate. *See Cruz v. Cruz*, 2005 Guam 3 ¶ 9 (citing *People v. Hall*, 2004 Guam 12 ¶ 18; *Fajardo v. Liberty House Guam*, 2000 Guam 4 ¶ 17).

"When enacted in 1983 (as former [California] Civil Code Section 4800.2), [California Family Code] Section 2640 reversed the rule of *In re Marriage of Lucas*, 614 P.2d 285 (Cal. 1980) . . . ." Cal. L. Revision Comm'n cmt., Cal. Fam. Code § 2640. Under section 2640, absent a writing to the contrary, a party making a separate property contribution to the acquisition of community property is no longer presumed to have made a gift to the community, but instead is entitled to reimbursement for the separate property contribution at dissolution of marriage. Cal. Fam. Code § 2640(b) & cmt.

Guam has not similarly amended its community property laws; thus, we will continue to rely on *In re Marriage of Lucas* and other California cases interpreting the borrowed community property statutes still in force in Guam until we find reason to deviate from doing so.

D. The Trial Court's Statement that Patria has an Interest in Urunao and Ritidian

[52] Antonio alleges that the trial court made a clerical error in its Findings of Fact and Conclusions of Law when it stated, "Defendant has an interest in Lot No. 10080 in Urunao (now known as Lot Nos. 7 and 8, Tract 34000) and Lot No. 10081-2 in Ritidian, Guam, having inherited these properties prior to the marriage of the parties." Appellant's Principal Br. at 13 (quoting RA, tab 77 at 8 (Finds. Fact & Concl. L.)). Antonio points out that the evidence at trial showed the exact opposite, that Antonio (the plaintiff), not Patria (the defendant), inherited these properties prior to the parties' marriage. *Id.* Patria does not dispute this, and "agrees that based upon the findings of fact and conclusion of law it looks like that the trial court meant to give Antonio the Urunao and Ritidian properties." Appellee's Principal & Resp. Br. at 29.

[53] Given the shared position of both parties, as well as the evidence presented at trial demonstrating that Antonio inherited the Urunao and Ritidian properties prior to the marriage, it is clear that the trial court made a clerical error when it found that "Defendant" (i.e., Patria), rather than "Plaintiff" (i.e., Antonio), had an interest in these properties. This finding is reversed for clear error.[10]

E. The Trial Court's Award to Patria of a 40.5% Community Interest in Antonio's Retirement Benefits

[54] Antonio next assigns error to the trial court's award to Patria of 40.5% of his retirement benefits as her community share. *See* Appellant's Principal Br. at 13-14. He argues that the trial court should have excluded the numerous periods of separation of the parties throughout the marriage, reasoning that his earnings and retirement contributions during that period were his

[10] In the future, we urge the trial court to be mindful of the confusion that often arises when referring to parties by generic terms such as "Plaintiff" or "Defendant," rather than by their actual names. For precisely this reason, this court makes it a point to refer to parties by their actual names rather than merely their party designations. We encourage the trial court to adopt this practice.

separate property. *Id.* In response, Patria contends that Antonio's argument "that every time a party separates, even if it is a day, that day does not count for purposes of the length of the marriage" is not supported by Guam law. Appellee's Principal & Resp. Br. at 29. Citing to 19 GCA §§ 8209, 8213, and 8218, Patria argues that "these statutes support the proposition that a 'separation' of less than a year apart does not count against the marriage when the parties never go through with a divorce or separation action in court."[11] *Id.* at 30.

[55] The trial court found that during the course of the parties' marriage, they often physically separated, only to reunite within one year. RA, tab 77 at 2 (Finds. Fact & Concl. L.). The court found that the longest period of separation lasted 11 months. *Id.* at 3.

[56] Separate property includes "property and earnings of a spouse and the minor children living with, or in the custody of, the spouse, while living separate and apart from the other spouse." 19 GCA § 6101(a)(2) (2005). The California courts have recognized that, as the phrase is used in their separate property statute, "'living separate and apart' refers to 'that condition

[11] Title 19 GCA § 8209 provides:

> **§ 8209. Absence, Cruelty; Not Desertion.**
>
> Departure or absence of one party from the family dwelling place, caused by cruelty or by threats of bodily harm from which danger would be reasonably apprehended from the other is not desertion by the absent party, but it is desertion by the other party.

19 GCA § 8209 (2005). Title 19 GCA § 8213 provides:

> **§ 8213. Desertion, Cured, Generally.**
>
> If one party deserts the other, and before the expiration of the statutory period required to make the desertion a cause of dissolution of marriage, returns and offers in good faith to fulfill the marriage contract, and solicits condonation, the desertion is cured. If the other party refuses such offer and condonation, the refusal shall be deemed and treated as desertion by such party from the time of refusal.

19 GCA § 8213 (2005). Title 19 GCA § 8218 provides:

> **§ 8218. Same, One Year.**
>
> Willful desertion, willful neglect, or habitual intemperance must continue for one (1) year before any is a ground for dissolution of marriage.

19 GCA § 8218 (2005).

when spouses have come to a parting of the ways with no present intention of resuming marital relations.' That husband and wife may live in separate residences is not determinative. The question is whether the parties' conduct evidences a complete and final break in the marital relationship." *In re Marriage of Marsden*, 181 Cal. Rptr. 910, 914 (Ct. App. 1982) (quoting *In re Marriage of Baragry*, 140 Cal. Rptr. 779, 781 (1977)).

[57] The evidence shows that Antonio and Patria had a tumultuous relationship, and that Patria moved out several times during the first half of the marriage, only to return later. These periods of "separation" ranged from a couple of days, to two months, to the longest period of 11 months. Given the nature of the parties' relationship and their practice of separating for short periods of time and then reconciling, it was not clear error for the trial court to include these "separation" periods in its calculation of the length of the marriage. The parties' conduct of "break[ing] up to make up"[12] dozens of times during their marriage did not clearly evidence intent that any of these "separations" would be "a complete and final break in the marital relationship." *See Marsden*, 181 Cal. Rptr. at 914. Accordingly, the trial court's apportionment of Antonio's retirement benefit based on the total years of the marriage before final separation in March 2009, including all the mini-separation periods in between, is affirmed.

F. The Trial Court's Finding Antonio Solely Liable for the Community Debts

[58] Antonio contends that the trial court erred in holding him solely liable for the community debts, which includes the mortgages on the Blue House (approximately $127,000.00 at time of separation) and the Merizo property, as well as the approximately $230,000.00 in credit card and automobile loan debt outstanding at the time of separation. *See* Appellant's Principal Br. at 15-16. He argues that under this court's holding in *Babauta I*, the trial court was required to deduct

[12] The Stylistics, *Break Up to Make Up*, *on* Round 2 (Avco Records 1972).

these debts from the gross value of the community property, and then distribute any remaining community property to the parties. *Id.*

[59] Patria argues that because Antonio had control over the credit cards under his name and "was the only spouse who contracted the credit card debts[,] . . . it was neither unfair nor inequitable to have Antonio take all debts that are in his name." Appellee's Principal & Resp. Br. at 32 (June 26, 2015).

[60] The trial court recognized the applicability of 19 GCA § 6104(a), which 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). The trial court found that with the exception of the mortgages on the Blue House and the Merizo property,[13] "the parties failed to clearly identify the proportion in which each party is obligated for these debts." RA, tab 77 at 38 (Finds. Fact & Concl. L.). Thus,

[13] It appears that Antonio reads the trial court's Findings of Fact and Conclusions of Law to mean that the court found him liable for the entirety of the mortgages on the Blue House and the Merizo property. We do not agree with this reading. Instead, we believe the trial court determined that the two mortgages are subject to 19 GCA § 6104(a) apportionment, so that essentially the parties are to divide whatever remains of the value of the Blue House and the Merizo property after subtracting the mortgages on the property. *See* RA, tab 77 at 31 (Finds. Fact & Concl. L.) ("Because the Blue House is the community property of the parties and is subject to a mortgage in favor of First Hawaiian Bank which is the obligation of both [Antonio] and [Patria], the provisions of 19 [GCA] § 6104(a) shall apply with regard to the satisfaction of the debt."); *id.* at 38-39 ("The mortgages on the Blue House, . . . and the mortgage for the Merizo property is a community debt because it was incurred by both parties during the marriage. Thus, pursuant to the provisions of 19 [GCA] § 6104(a): Community debts shall be satisfied first from all community property . . . ." (citations omitted)).

Antonio notes that if this court were to agree with him that the Merizo property is his separate property, rather than that of the community, he believes that the mortgage on the property is his separate debt. Appellant's Br. at 15 n.2. Based on this contention and our conclusion in section IV.B.1.b. above that the Merizo property is indeed the separate property of Antonio, we determine that Antonio is solely liable on the mortgage for that property.

as to the credit card debt and automobile loan, the trial court did not make a section 6104(a) apportionment, instead ordering Antonio solely liable on the basis of his adultery:

> However, the parties failed to clearly identify the proportion in which each party is obligated for the debts and as the Court has granted [Antonio] a divorce on the ground of irreconcilable differences and [Patria] a divorce on the ground of adultery, the Court orders [Antonio] solely liable for the debts of the community as listed herein.

Id. at 40.

[61] In *Babauta I*, this court determined that section 6104(a) reflects the "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." 2011 Guam 15 ¶ 36 (citations omitted). Accordingly, the court held:

> [B]efore 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.

Id. ¶ 38.

[62] Based on our holdings above regarding the characterization of the Merizo, Yona/Saipan, and Chalan Pago properties, it appears that aside from the parties' retirement accounts, the primary community assets are the Blue House and the Chalan Pago property. The trial court did not make a specific finding about the value of the Blue House and Chalan Pago properties, instead only mentioning the purchase price of the Blue House (i.e., $130,000.00 in 1999). RA, tab 77 at 17 (Finds. Fact & Concl. L.). The community debts include the Blue House mortgage balance and the approximately $230,000.00 of credit card and automobile loan balances at the time of separation.

[63] Given this court's holding in *Babauta I*, the trial court should have made a clear determination of the value of the community assets so that it could offset the total community debt from this value before distributing the assets. Instead, the trial court simply determined that the parties had equal shares in the community property remaining after offset of the mortgages, without also offsetting the outstanding credit card and automobile debt. Although 19 GCA § 8411 gives the court the discretion to make a disproportionate distribution of the community property upon a finding of adultery, *Babauta I* clearly requires an offset of the community debt in all cases, even those where one party is at fault for either adultery or extreme cruelty. *See Babauta I*, 2011 Guam 15 ¶ 38.

[64] The trial court's basis for not making the offset—the parties' failure to clearly identify the proportion in which each party is obligated for the debts—is misplaced, since the court determined that these debts were all community debt. *See id.* at 39. Indeed, 19 GCA § 6102 defines "community debt" as "a debt contracted or incurred by either or both spouses during marriage which is not a separate debt." 19 GCA § 6102(b) (2005) (emphasis omitted). Patria does not point to which provision in 19 GCA § 6102(a) (defining "separate debt") the credit card and automobile loan debts would fall.

[65] We remand this issue to the trial court to make a clear offset of the community debt against the community property, according to the provisions for the satisfaction of community debts in 19 GCA § 6104(a). This will require the trial court to make specific findings regarding the value of the community real property. The trial court is free to determine whether it will allow the parties to present more proof on the issue, since apparently the court was dissatisfied

with the evidence. The trial court may also adjust its distribution of the community property remaining, if any, after the offset of the community debts, in accordance with 19 GCA § 8411.[14]

G. The Trial Court's Failure to Award Antonio Reimbursement for Post-Separation Payments of Separate Funds toward Community Debts

[66] It is undisputed that after the parties' separation, with the exception of a couple of car payments, Antonio alone has paid the community debts. RA, tab 77 at 38 (Finds. Fact & Concl. L.). Antonio argues that the trial court erred in denying him reimbursement for these payments.[15] Appellant's Principal Br. at 16-17.

[67] Patria finds no error in the trial court's failure to reimburse Antonio for his post-separation payments on community debt, citing to *Babauta I* for support:

> "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."

Appellee's Principal & Resp. Br. at 32 (quoting *Babauta I*, 2011 Guam 15 ¶ 33). Patria contends that because Antonio enjoyed exclusive use of the Blue House after the parties' separation, he is not entitled to credit for any post-separation payments on the mortgage. *Id.* at 32-33. She further contends that Antonio's continued payments on her 2005 Toyota RAV4 "could easily be construed as ongoing spousal support," and that "Antonio in his verified complaint wanted Patria

[14] See also section IV.O. below.

[15] Antonio appears to make two alternative assertions: (1) that all of his post-separation payments toward community debt has been with his separate funds, or (2) that if this court were to affirm that Patria has a 40.5% share of Antonio's retirement benefits, then it should be found that the entire community retirement interest was used toward the post-separation payments on community debt. *See* Appellant's Br. at 19 (May 28, 2015). Antonio's second assertion will be discussed in greater detail in section IV.H. below.

to have the [vehicle]." *Id.* at 33. Finally, she argues that because of the trial court's finding of adultery, it was not error for the court to make Antonio pay more for the community debts. *Id.*

[68] The trial court acknowledged that since the parties' separation, Antonio alone has paid for the mortgage on the Blue House using his separate funds. *See* RA, tab 77 at 31 (Finds. Fact & Concl. L.) ("Using his Urunao and Yigo income and proceeds, [Antonio] alone has paid the $15,000 down payment, the mortgage payments, the improvements to, and the maintenance costs of the Blue house."). The court determined that Antonio was not "entitled to any reimbursement or credit for any post-separation mortgage payments when mortgage payments on the Blue house were 'payment[s] made on account of a debt for an asset which the paying spouse was using.'" *Id.* (citing *Babauta I*, 2011 Guam 15 ¶ 33). The court also acknowledged that Antonio alone has paid the other community debts since the parties' separation, but did not specifically address the issue of reimbursement for these post-separation payments, and instead ordered him solely liable for these debts. *See id.* at 38-40.

[69] In *Babauta I*, this court recognized that

> [a]s 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.

2011 Guam 15 ¶ 32 (citations omitted). The court then provided some examples of situations in which reimbursement may be inappropriate, such as "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." *Id.* ¶ 33 (citation omitted).

[70] In *Babauta I*, the trial court had denied husband reimbursement for his post-separation payments toward the community's mortgage on the marital home on the basis of the court's finding husband at fault for extreme cruelty. *See id.* ¶ 34. This court reversed, finding that the trial court should have deducted the mortgage from the value of the community property. *See id.* ¶ 39. In the alternative (addressing an ambiguity as to whether the mortgage was included in the trial court's order that husband assume all the community debt), this court held that even if the mortgage was not included in the trial court's assignment of all the community debt to husband, it was error for the trial court to deny husband credit or reimbursement, as such denial was essentially an award to wife of husband's separate property. *Id.* ¶¶ 40-41.

[71] As explained in section IV.F. and footnote 13 above, the trial court properly determined that the value of the Blue House was to be offset by the mortgage on the property.[16] The trial court properly relied on *Babauta I* in denying Antonio reimbursement for his post-separation payments on the Blue House mortgage, as he has enjoyed exclusive use of the property since the parties' separation, and the monthly mortgage payments of $1,119.18 is likely not substantially in excess of the value of this use.

[72] As for the other debts, however, the trial court did not order an offset of the debts from the value of the community property, which was improper under *Babauta I* and 19 GCA § 6104(a). On remand, the trial court shall determine the value of the community property and offset from this amount the Blue House mortgage (reduced by Antonio's post-separation payments). The value of the community property in excess of the Blue House mortgage shall be applied to the credit card and automobile loan balances at the time of separation, and Antonio

[16] However, as mentioned earlier, the trial court failed to determine the value of the Blue House at the time of separation, and is directed to make such determination on remand.

shall be entitled to reimbursement for half of his post-separation payments on the credit cards and auto loan using his separate funds.[17]

H. The Trial Court's Award to Patria of $73,046.08 as Arrears Owed on Her Share of Antonio's Retirement Benefits

[73] As stated in footnote 15 above, Antonio makes the alternative argument that if this court were to affirm the trial court's determination that Patria has a 40.5% share of Antonio's retirement benefits, then it should be determined that Antonio used the entire community interest in his retirement benefits toward the post-separation payments on the community debt, and the trial court's award to Patria of arrears on the retirement benefits should be reversed. Appellant's Principal Br. at 18-19. Antonio argues that "a party should not be reimbursed for her community share of a pension post-separation where the pension was used to pay community debts after separation." *Id.* at 19 (citing *Davis v. Davis*, 2014 Guam 4 ¶ 26).

[74] In response, Patria argues that because Antonio had exclusive use of the community property after the parties' separation, he should not be credited for the payments on the debt on the property. Appellee's Principal & Resp. Br. at 33. Patria does not address the payments on the other debts, i.e, the credit card debt and automobile loan.

[75] The trial court found that since the parties' separation, Antonio alone has paid for the mortgage on the Blue House *using his separate funds*. *See* RA, tab 77 at 31 (Finds. Fact & Concl. L.) ("Using his Urunao and Yigo income and proceeds, [Antonio] alone has paid the $15,000 down payment, the mortgage payments, the improvements to, and the maintenance costs of the Blue house."). Antonio does not directly challenge this finding. In considering his

[17] "Should [the community] property be insufficient [to satisfy the community debts], 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).

alternative argument about using the community share of his monthly retirement benefits to make the post-separation payments on the community debts, the Blue House mortgage is excluded.

[76] As for the credit card debt and automobile loan, the trial court, while acknowledging that Antonio has made the post-separation payments on these debts, did not explicitly find that he made these payments out of his separate funds. *See, e.g.*, *id.* at 21 ("Navy Federal Credit Union auto loan for the 2005 Toyota RAV4, . . . which was paid entirely by Antonio after separation except for three monthly installment payments of $462.04 made by Patria."); *id.* at 38 ("[Antonio] has paid for nearly all of the debts after the parties' final separation."). Arguably, it is implied that Antonio used his separate funds to make these payments.

[77] Because we do not know the true value of the community property at the time of separation, we cannot determine whether the community property (excluding the community interest in Antonio's retirement benefits) was sufficient to satisfy the community debts. As instructed above, the trial court on remand shall determine the value of the community property at the time of separation and offset from this amount the Blue House mortgage (reduced by Antonio's post-separation payments) and the credit card and automobile loan balances at the time of separation. If it turns out that without the community interest in Antonio's retirement benefits, the community property is insufficient to satisfy the community debts, the trial court shall include the retirement assets in its calculations and adjust its award of arrears accordingly. *See* 19 GCA § 6104(a) ("Community debts shall be satisfied first from *all* community property . . . ." (emphasis added)). Should the community property (even including the community interest in Antonio's retirement benefits) be insufficient to satisfy the community debts, the trial court shall look to other assets of the parties in accordance with the provisions of 19 GCA § 6104(a).

I. The Trial Court's Failure to Award Rent Income to Antonio for Patria's Use of His Pahong Court Apartment

[78] As his last issue on appeal, Antonio argues that the trial court erred in failing to award him rent for Patria's use of his Pahong Court apartment—which the court found to be his separate property—since the parties' separation. Appellant's Principal Br. at 19-20. Antonio argues that if the trial court was correct in denying him reimbursement for his post-separation payments on the Blue House mortgage on the basis of his exclusive use of that property since separation, then the court should have also determined that Patria likewise owed Antonio rent for her exclusive use of the Pahong Court apartment since separation. *Id.* at 20.

[79] The trial court acknowledged that Antonio typically charged renters $850.00 per month for this unit. RA, tab 77 at 13-14 (Finds. Fact & Concl. L.). Despite the loss of rental income to Antonio by virtue of Patria's occupation of the unit, the trial court held:

> Although [Patria] has stayed in the Pahong Court property since the parties' separation making minimal rental payments, the Court will not order [Patria] reimburse [Antonio]. [Patria] did not have possession of the marital residence, which was titled in her sole name. Equity and [Patria's] need to live somewhere during the pendency of this action determine that she is not required to reimburse [Antonio] for back rent.

Id. at 33.

[80] Based on this language from the trial court, Patria asserts that the trial court impliedly found that allowing Patria to live in Pahong Court has been a form of spousal support. *See* Appellee's Principal & Resp. Br. at 34. Patria suggests that the trial court's statement, "Equity and [Patria's] need to live somewhere during the pendency of this action determine that she is not required to reimburse [Antonio] for back rent," sounds very similar to the language in 19 GCA § 8405. *Id.* at 34-35 (quoting RA, tab 77 at 33 (Finds. Fact & Concl. L.)). Section 8405 provides: "When a dissolution of marriage is granted, the tribunal shall . . . make such suitable

allowance to the other spouse for that person's support, during that person's life or for a shorter period, as the Court may deem just, having regard to the circumstances of the parties respectively; . . . ." 19 GCA § 8405 (2005). Patria argues that in essence, "the Court awarded Patria the rent that Antonio imputed to her for the period that he allowed Patria to stay in his apartment instead of at the marital home." Appellee's Principal & Resp. Br. at 35. Patria characterizes the parties' conduct as the parties' "implicit support agreement during the period of separation." *Id.* She then cites to 19 GCA § 8402 as support for this implied spousal support award. *Id.* Section 8402 provides, in pertinent part:

> When an action for dissolution of marriage is pending, the court may, in its discretion, require the husband or wife, as the case may be, to pay as alimony any money necessary to enable the wife, or husband, to support herself and her children, or to support himself and his children, or prosecute or defend the action.

19 GCA § 8402 (2005).

[81] While we find some merit in Antonio's argument that Patria should pay rent for her use of his Pahong Court apartment after their separation, given the trial court's language about equity and Patria's need for a place to live, the court's denial of reimbursement to Antonio for Patria's use of Pahong Court was in essence a form of spousal support to Patria. It was within the trial court's discretion to require Antonio to provide for Patria's support during the pendency of the action—which in this case was in the form of allowing Patria to live in Pahong Court rent free—while at the same time charging Antonio for his exclusive use of the Blue House. We cannot say that the trial court abused its discretion in making its decision to treat the parties differently.

J. The Trial Court's Failure to Find Antonio was in a Fiduciary Relationship with Patria

[82] As discussed in section IV.B.1.b. above, on cross-appeal, Patria argues that the trial court erred in not finding that the parties were in a fiduciary relationship. She argues that 19 GCA §

6111(a),[18] which provides that property transactions between spouses are subject "to the general rules which control the actions of persons occupying confidential relations with each other," 19 GCA § 6111(a) (2005), imposes fiduciary obligations on spouses. Appellee's Principal & Resp. Br. at 8-10. Furthermore, she contends that the trial court misinterpreted 19 GCA § 6111(c) (regarding mutual consent being sufficient consideration) as applying to these property transactions, arguing that subsection (c) applies to the separation agreements contemplated by subsection (b). *Id.* at 8-9. She argues that a presumption of undue influence arises where a property transaction between spouses advantages one spouse over the other. *Id.* at 10 ("A presumption of undue influence does not arise in an interspousal transaction unless one spouse obtains an unfair advantage or obtains property for which no or clearly inadequate consideration has been given." (quoting *In re Marriage of Burkle*, 43 Cal. Rptr. 3d at 184)). She contends that because she did not receive adequate compensation for her quitclaims, it is presumed that Antonio obtained an unfair advantage. *Id.* at 12-14.

[83] We agree with Patria that there really is no distinction between "confidential relations" and "fiduciary relations." Although the trial court was correct that the California version of

[18] As mentioned in footnote 6 above, the version of 19 GCA § 6111 relevant to this appeal is the version that predates the amendments made by Public Law 33-026 on May 7, 2015. Thus, our discussion regarding this statute concerns the version which existed prior to the 2015 amendments. The prior version of section 6111 provided, in whole:

> **§ 6111. Property Relations.**
>
> (a) Either husband or wife may enter into any engagement or transaction with the other, respecting property subject, in transaction between themselves, to the general rules which control the actions of persons occupying confidential relations with each other.
>
> (b) A husband and wife cannot, by any contract with each other, alter their legal relations, except as to property, and except that they may agree, in writing, to an immediate separation, and may make provision for the support of either of them and of their children during such separation.
>
> (c) The mutual consent of the parties is a sufficient consideration for such an agreement.

19 GCA § 6111 (2005). Subsections (a) and (c) were not altered by the 2015 amendments.

section 6111 was amended to use the word "fiduciary" while the Guam statute still only uses "confidential relations," it appears that California courts equate "confidential relations" with "fiduciary relations" when discussing cases that pre-date the amendments to the California statute. *See In re Marriage of Haines*, 39 Cal. Rptr. 2d 673, 683 (Ct. App. 1995) ("[T]he competence of spouses to engage in transactions with each other is subject to the circumstances being pleasing to the fiduciary standard." (citing *Locke Paddon v. Locke Paddon*, 227 P. 715, 717 (Cal. 1924))); *see also In re Cover's Estate*, 204 P. 583, 588-90 (Cal. 1922) (applying presumption of undue influence as applicable standard in "confidential relations" transactions).

[84] In any event, as discussed earlier, while the trial court may have declined to expressly find that spouses are subject to fiduciary obligations in transactions between themselves, ultimately the trial court applied the presumption of undue influence as articulated in *In re Cover's Estate*. The trial court made a specific finding that Antonio overcame the presumption as to the Pahong Court quitclaim, and impliedly found he overcame the presumption as to the other quitclaims, *see* IV.B., *supra*. Substantial evidence supports these findings.

[85] As to the issue of whether "mutual consent of the parties" constitutes sufficient consideration for property transactions between the parties, Patria argues that the "mutual consent" language found in subsection (c) of 19 GCA § 6111 applies only to the separation agreements provided by subsection (b). Patria's reading of 19 GCA § 6111 is supported by the statute's history. It appears that subsections (a), (b), and (c) of section 6111 used to be separated into three separate sections of the 1953 Civil Code:

> **§ 158. Either may make contract.** Either husband or wife may enter into any engagement or transaction with the other or with any other person, respecting property, which either might if unmarried; subject, in transactions between themselves, to the general rules which control the action of persons occupying confidential relations with each other, as defined by the Title on trusts.

> **§ 159. Property relations.** A husband and wife cannot, by any contract with each other, alter their legal relations, except as to property, and except that they may agree, in writing, to an immediate separation, and may make provision for the support of either of them and of their children during such separation.
>
> **§ 160. Separation agreement.** The mutual consent of the parties is a sufficient consideration for such an agreement as is mentioned in the last section.

Guam Civ. Code §§ 158-160 (1953). Sections 158, 159, and 160 of the former Civil Code correspond with subsections (a), (b), and (c), respectively, of the 2005 version of 19 GCA § 6111. Thus, it appears that as the statutes were originally written, the "mutual consent of the parties" language of former section 160 (current section 6111(c)) applied to the separation agreement mentioned in former section 159 (section 6111(b) of 2005 statute). For whatever reason, in 1980, the Legislature decided to combine the three sections into one section with three subparts, repealing sections 158-160 and replacing them with Civil Code section 165(a)-(c). *See* Guam Civ. Code § 165 (enacted by Pub. L. 15-113:2, Mar. 20, 1980) (recodified as 19 GCA § 6111). However, while 19 GCA § 6111 is arguably ambiguous as to what "agreement" is referred to by subsection (c), the statutory history of section 6111 demonstrates that the "agreement" mentioned in subsection (c) is the separation agreement mentioned in subsection (b).

[86] Even though subsection (c)'s language regarding mutual consent being sufficient consideration does not apply to the property transactions contemplated by subsection (a), this does not necessarily mean that a quitclaim of property from one spouse to another is invalid without consideration. Citing to California Civil Code section 1040, a California court of appeals has held that "[u]nder well-settled statutory and case law inadequacy of consideration does not defeat the validity of a deed in the absence of fraud." *In re Marriage of Broderick*, 257 Cal. Rptr. 397, 403 (Ct. App. 1989) (citing Cal. Civil Code § 1040; *Odone v. Marzocchi*, 212

P.2d 297, 300 (Cal. 1949); *Generes v. Justice Court*, 165 Cal. Rptr. 222, 225 (Ct. App. 1980); *Taylor v. Taylor*, 152 P.2d 480, 484-85 (Dist. Ct. App. 1944)). California Civil Code section 1040 was adopted verbatim by Guam in 1953 as Guam Civil Code section 1040. *Compare* Cal. Civil Code § 1040 (1933), *with* Guam Civil Code § 1040 (1953). Guam Civil Code section 1040 is now found, unchanged, in 19 GCA § 40102.[19] Section 40102 provides: "A voluntary transfer is an executed contract, subject to all rules of law concerning contracts in general, except that a consideration is not necessary to its validity."[20] 19 GCA § 40102 (2005).

[87] Given the evidence concerning the various quitclaim deeds in this case and the discussions regarding undue influence above, there does not appear to be any evidence of fraud. Accordingly, we deem these deeds to be voluntary transfers from Patria to Antonio of whatever interest she had in the properties, and her arguments regarding inadequate consideration fail.

K. The Trial Court's Finding that Antonio Met His Burden of Proof for Asserting that Property Acquired During the Marriage was his Separate Property

[88] On cross-appeal, Patria argues that the trial court erred in finding that Antonio adequately traced the source of funds used to acquire the properties purchased during the marriage to his separate property. Appellee's Principal & Resp. Br at 15-17. She asserts that "Antonio provided incomplete proof of income during the marriage and failed to provide an accounting on how the funds were spent." *Id.* at 16. She points to her testimony that "she had to use her income on the most basic of necessities for the household (food, tuition for their son, feminine hygiene products, etc.) and indicated that at times during the marriage that Antonio was so over extended that she had to help him out once in awhile [sic]." *Id.*

[19] The California provision continues to exist, unchanged from its 1872 enactment, as California Civil Code section 1040.

[20] "*Transfer* is an act of the parties, or of the law, by which the title to property is conveyed from one living person to another." 19 GCA § 40101 (2005).

[89] Antonio responds that Patria failed to identify which properties were inadequately traced to a separate source, but he assumes she refers to the Merizo property and Lot 1 in Yigo (the only properties acquired during the marriage for which she provided argument in her brief). Appellant's Resp. & Reply Br. at 12. Antonio argues that the trial court correctly found that Lot 1 in Yigo is his "separate property based on his acquisition of the larger, undivided Lot 7079-3, Yigo, through exchange of his Portland, Oregon, home purchased before the marriage, and $75,000 proceeds from the sale of Lot 2306-3-R7, Mangilao, which [he] received as a gift from his sister." *Id.* As for the Merizo property, Antonio argues that the property was properly conveyed by Patria to Antonio via quitclaim deed, and that he alone has paid the mortgage on the property. *Id.* at 12-13.

[90] Substantial evidence supports the trial court's findings that those properties were the separate property of Antonio. The evidence showed that Antonio owned several properties prior to marriage, inherited or was gifted properties during the marriage, and sold or exchanged some of these separate properties to acquire new properties. The parties kept separate bank accounts throughout the marriage, and it was undisputed that Antonio alone paid for the mortgages on the properties, including the residence of the parties. Additionally, Patria admitted that Antonio paid all of the utility bills and the automobile loans throughout the marriage. Antonio also contributed his income to the community, not just to his separate properties. While it may be true that Patria used her income to purchase household necessities and to pay for their son's tuition, and that from time to time Antonio was short on cash and asked her for money, this does not necessarily mean that he was using community funds to acquire property. Indeed, Patria's income was community property, and it appears from the conduct of the parties that the arrangement was that he would pay the major expenses of the community, such as the mortgage,

utilities, and auto loans, while she paid for the household necessities and their son's tuition. Because the trial court's findings concerning Antonio's separate property are not clearly erroneous, these findings are affirmed.

L. The Trial Court's Failure to Nullify All of the Quitclaims Made During the Marriage by Patria in Favor of Antonio

[91] Patria's next contention on cross-appeal is that the trial court erred in failing to void all of the quitclaims during the marriage. First, she argues that the quitclaims she made in November 1986—concerning Pahong Court, Urunao, Ritidian, and a lot in Mangilao—should have been voided since they were a part of settlement negotiations in the parties' 1986 divorce case (which they later dropped). *See* Appellee's Principal & Resp. Br. at 17-18. However, the trial court was correct that these quitclaims are of no consequence, as Patria did not have any interest in these properties to disclaim. *See, e.g.*, RA, tab 77 at 33 (Finds. Fact & Concl. L.) ("[Patria] claims the Pahong Court Quit Claim 'fails for want of consideration and as the parties got back together after filing for [d]ivorce in 1985;' however, the Court finds that [Patria] never held any legal interest in the Pahong Court property to quit claim; therefore, the Court awards this property to [Antonio] as his sole and separate property."). Thus, the trial court's findings as to these properties are affirmed.

[92] Patria also argues that her quitclaims on Lot 1, Tract 927, Yigo, and Lot 276 NEW-1, Merizo, should be voided due to undue influence and for lack of consideration. Appellee's Principal & Resp. Br. at 19-20. These properties were addressed in section IV.B. above. The Yigo property was exchanged for the Chalan Pago property, which, as discussed above, is the community property of the parties. Thus, Patria's argument concerning this quitclaim deed need not be addressed. As for Merizo, as discussed above, substantial evidence supports the trial court's implied finding that there was no undue influence surrounding this quitclaim deed, and as

there was no evidence of fraud in the procurement of the deed, it is not void for lack of consideration.

M. The Trial Court's Failure to Grant Patria Spousal Support

[93] Patria next argues that the trial court erred in denying her spousal support on the theory that she did not provide sufficient evidence of need. Appellee's Principal & Resp. Br. at 20. Patria argues that the trial court should have considered spousal support not only in the context of her need for support, but also in the context of it being a part of the distribution of assets of the marriage and to pay for her attorney's fees and cost of the divorce action. *Id.* at 20-21. She asserts that the trial court should have awarded her spousal support as part of the granting her a divorce on the ground of adultery on the part of Antonio. *Id.* at 21.

[94] The decision of whether or not to award spousal support is clearly within the discretion of the trial court.[21] *See* 19 GCA § 8402(a) (2005) ("[T]he court may, in its discretion, require the husband or wife, as the case may be, to pay as alimony any money necessary to enable the wife, or husband, to support herself and her children, or to support himself and his children, or prosecute or defend the action."). Essentially, Patria argues that the trial court *could have* awarded her spousal support, but she does not articulate reasons why the trial court's declining to award spousal support was an abuse of discretion. Given the deferential standard used in reviewing spousal support decisions, the trial court's denial of spousal support is affirmed.

N. The Trial Court's Failure to Find Antonio at Fault for Extreme Cruelty

[95] Patria also contends that the trial court erred in finding that she did not meet her burden of proving extreme mental cruelty on the part of Antonio. Appellee's Principal & Resp. Br. at

[21] Although the trial court did not enter a formal award of spousal support, the court arguably did grant Patria some form of spousal support. As discussed in section IV.I. above, the court's denial of reimbursement to Antonio for Patria's use of Pahong Court was in essence a form of spousal support to Patria.

21. She asserts that she "showed a pattern of financial control and mental cruelty based upon the adulterous behavior of Antonio." *Id.*

[96] Based on the record in this case, we cannot say that the trial court clearly erred in determining that there was insufficient evidence of extreme cruelty on the part of Antonio. As the trier of fact, the trial court was in the best position to assess the evidence and determine whether it supported a finding of extreme cruelty. We are not convinced that a mistake has been made by the trial court, and we affirm as to this issue.

O. Whether the Trial Court should have Awarded Additional Property to Patria

[97] As her final contention on cross-appeal, Patria argues that the trial court should have awarded her a greater share of the community property on the basis of its finding that Antonio committed adultery. Appellee's Principal & Resp. Br. at 23. She complains that she "was not awarded any of the community property as her separate property," and asserts that "[i]t would be just and equitable to have awarded some of the community property as separate do [sic] to the finding of adultery." *Id.*

[98] In response, Antonio argues that "Patria admitted numerous times that the Blue House is community property and that Antonio has 50% interest in it." Appellant's Resp. & Reply Br. at 15. Additionally, he contends that the trial court's decision not to award the Blue House to Patria was proper considering that she has not paid any community debts since separation, including the mortgage on the Blue House. *Id.* at 15-16. He argues that it was within the trial court's discretion to decline to award Patria a greater share of the community property notwithstanding the finding of adultery. *Id.* at 16.

[99] Patria seemingly admits that it was within the trial court's discretion to award her a greater share of the community property based on the finding of adultery, while at the same time

faults the trial court for not awarding her a greater share. *See* Appellee's Principal & Resp. Br. at 23. While Patria does not outright say that the trial court was required to make a disproportionate distribution in her favor, we construe her argument as suggesting such a requirement. To the extent that Patria does make such argument, we admonish her for not citing to any legal authority for support. While ordinarily we would not entertain an argument for which no citation to authority is provided, we are unable to ignore the relevant case law on the issue. Title 19 GCA § 8411(a) provides that "[i]f the [divorce] decree be rendered on the ground of adultery or 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) (emphasis added). In *Gorman v. Gorman*, 66 P. 313 (Cal. 1901), the Supreme Court of California, in construing California Civil Code section 146, from which 19 GCA § 8411 is derived, held that the statute impliedly requires the trial court to award more than one-half of the community property to the innocent spouse where there has been a finding of adultery or extreme cruelty. The court held:

> Where the divorce is granted on the ground of adultery or extreme cruelty, section 146, Civ. Code, leaves the disposition of the community property in the first instance to the discretion of the trial court, with, perhaps, the qualification, inferred from a reading of the entire section, that as a general rule more than one-half of such property must be decreed to the innocent spouse in such a case.

Gorman, 66 P. at 314 (citing *Eslinger v. Eslinger*, 47 Cal. 62 (1873); *Brown v. Brown*, 60 Cal. 579 (1882)).

[100] Later, in *Crouch v. Crouch*, the court further articulated the extent of the trial court's discretion (and the appellate court's review of the exercise of that discretion) where a divorce is rendered on the grounds of adultery or extreme cruelty:

> In an action for divorce upon the grounds of extreme cruelty, the trial court has the legal right to award such portion of the community property to the offending

> spouse as it deems reasonable under the circumstances. It may even deny such party any award whatever if, from all the facts and circumstances of the case and conditions of the parties, it may deem such action just. In an action for divorce on the ground of extreme cruelty, subdivision 1 of section 146 of the Civil Code confers upon the trial court a wide latitude for the exercise of its judgment and discretion in assigning the community property to the respective parties and in every case it will be presumed that such discretion has been wisely and properly exercised, and though impliedly requiring that more than one-half of the community property shall be awarded to the innocent party, it does not otherwise limit the discretion of the trial court in making the award. The proportion should depend upon the particular circumstances of each case, and where the trial court has exercised a legal discretion this court, though clothed with the power of revision under the statute, will be slow to interfere with that discretion.

147 P.2d 678, 682 (Cal. 1944) (citations omitted).

[101] Citing to *Gorman* and *Crouch*, the court in *Harrold v. Harrold* rejected an innocent spouse's argument that section 146 required that she be awarded a "substantially greater" share of the community property. 271 P.2d 489, 492 (Cal. 1954) (en banc). Recognizing the wide latitude given to the trial court in making such distributions, the court found no abuse of discretion in the trial court's award of 51.13% of the community property to the innocent spouse. *Id.* at 492-93.

[102] Based on the aforementioned case law, we hold that where there is a finding of adultery or extreme cruelty, the innocent spouse is entitled to a greater share of the community property. In making such distribution, the trial court has wide latitude in apportionment. As directed above, we are remanding this case for the trial court to make a proper valuation of all of the community assets and all of the community debts at the time of separation, with the community debts to be satisfied in accordance with 19 GCA § 6104(a). Should any community property remain after satisfaction of the community debts, the trial court has wide latitude in distributing such property between the parties, with the caveat that Patria is entitled to a greater share than Antonio given the finding of adultery.

P. Request for Attorney's Fees

[103] Both parties request costs and attorney's fees for prosecuting and defending this appeal. *See* Appellee's Principal & Resp. Br. at 41; Appellant's Resp. & Reply Br. at 18. Both parties cite 19 GCA § 8402 as the basis for their requests. Section 8402 provides:

> When an action for dissolution of marriage is pending, the court may, in its discretion, require the husband or wife, as the case may be, to pay as alimony any money necessary to enable the wife, or husband, to support herself and her children, or to support himself and his children, or prosecute or defend the action.

19 GCA § 8402(a).

[104] While this court may award attorney's fees and costs associated with this appeal, we determine that the trial court is in a better position to determine what fees, if any, are necessary for either Antonio or Patria to prosecute or defend this appeal. *See Cruz v. Cruz*, 2005 Guam 3 ¶¶ 22-23, 25.

V. CONCLUSION

[105] For the foregoing reasons, we find no clear error in the trial court's finding that Antonio committed adultery. The trial court, however, did err in characterizing the Merizo and Yona/Saipan properties as community property rather than the separate property of Antonio. The trial court correctly characterized the Chalan Pago property as community property. The trial court made a clear clerical error when it found that "Defendant" (i.e., Patria), rather than "Plaintiff" (i.e., Antonio), had an interest in the Urunao and Ritidian properties.

[106] Because Antonio failed to rebut the inference that his separate property contributions to the Blue House and the Chalan Pago property during the marriage were gifts to the community, the trial court did not err in denying him reimbursement for such contributions.

[107] Given the nature of the parties' relationship and their practice of frequently separating and reconciling during the marriage, we find no clear error in the trial court's inclusion of the

periods of separation in its calculation of Patria's community interest in Antonio's retirement benefits.

[108] The trial court erred in failing to make a clear determination of the value of the community assets at the time of separation and offsetting from this amount the community debts before distribution of the assets. The trial court properly relied on *Babauta I* in denying Antonio reimbursement for his post-separation payments on the Blue House mortgage, but the court erred in denying him reimbursement for his post-separation payments using his separate funds on the credit card and automobile loan debts. On remand, the trial court shall determine the value of the community property at the time of separation and offset from this amount the community debts (with the Blue House mortgage reduced by Antonio's post-separation payments). The trial court shall include the community interest in Antonio's retirement benefits in its calculations if necessary and adjust its award of arrears to Patria accordingly. The trial court shall look to 19 GCA § 6104(a)'s provisions regarding the priority of assets used to satisfy community debts. Antonio is entitled to reimbursement for half of any of his post-separation separate property contributions toward the credit card and automobile loan debts.

[109] We find no abuse of discretion in the trial court's denial of reimbursement to Antonio for Patria's use of Antonio's Pahong Court apartment after separation. Given the trial court's reasons for denying reimbursement, Patria's use of Pahong Court was in essence a form of spousal support.

[110] We find no error in the trial court's determination that there was no undue influence on the part of Antonio in obtaining the numerous quitclaim deeds from Patria during the marriage. Moreover, as there is no evidence of fraud in procuring these deeds, Patria's argument

concerning inadequate consideration for these transfers fails in light of the language in 19 GCA § 40102 that a consideration is not necessary to the validity of a voluntary transfer.

[111] We find no clear error in the trial court's findings that Antonio adequately traced the source of funds used to acquire various properties during the marriage to his separate property, as substantial evidence supports these findings.

[112] We find no abuse of discretion in the trial court's decision not to award spousal support to Patria. Additionally, we find no clear error in the court's determination that the evidence did not sufficiently prove extreme cruelty on the part of Antonio.

[113] We hold that where there is a finding of adultery or extreme cruelty, the innocent spouse is entitled to a greater share of the community property. On remand, should any community property remain after satisfaction of the community debts, the trial court has wide latitude to distribute such property between the parties, with the caveat that it must award a greater share to Patria, the innocent spouse.

[114] Finally, the trial court on remand shall determine whether either party should be awarded attorney's fees and costs for prosecuting or defending this appeal, pursuant to 19 GCA § 8402(a) and relevant case law.

[115] Accordingly, we **AFFIRM** in part, **REVERSE** in part, and **REMAND** for further proceedings not inconsistent with this opinion.

/s/
KATHERINE A. MARAMAN
Associate Justice

/s/
ALEXANDRO C. CASTRO
Justice *Pro Tempore*

/s/
ROBERT J. TORRES
Chief Justice