

**IN THE COURT OF APPEALS OF THE STATE OF IDAHO**

**Docket No. 51825**

**ROBERT J. KIMBELL,** )  
Petitioner-Respondent, ) Filed: January 9, 2026  
v. )  
Melanie Gagnepain, Clerk  
TRICIA J. KIMBELL, nka TRICIA J. )  
THOMPSON, ) THIS IS AN UNPUBLISHED  
Respondent-Appellant. ) OPINION AND SHALL NOT  
 ) BE CITED AS AUTHORITY  
 )  
 )

Appeal from the District Court of the Sixth Judicial District, State of Idaho, Bannock County. Hon. Robert C. Naftz, District Judge. Hon. Scott E. Axline, Magistrate Judge.

Decision of the district court, on intermediate appeal from the magistrate court, affirming judgment and decree of divorce, affirmed in part, reversed in part, and remanded.

Patrick J. Davis, Pocatello, for appellant.

Robert J. Kimbell, Pocatello, respondent, did not participate on appeal.

TRIBE, Chief Judge

Tricia J. Kimbell appeals from the district court's decision, on intermediate appeal from the magistrate court, affirming the judgment and decree of divorce regarding the division of property, filing of taxes, and attorney fees. We affirm in part, reverse in part, and remand.

I.

## FACTUAL AND PROCEDURAL BACKGROUND

Robert J. Kimbell and Tricia married in November 2016. At that time, Robert separately owned a home. The parties jointly refinanced the home in July 2019. The parties then borrowed approximately \$30,000 more than the home was worth and used those proceeds to repay the mortgage and community debts. Subsequently, Robert petitioned for divorce. At the conclusion of the trial, the magistrate court made several oral findings after the parties waived entry of written

findings of fact and conclusions of law. After trial, the magistrate court entered a judgment and decree of divorce, which included the division of property and debt between the parties. Robert was awarded the home as his separate property. Tricia appealed to the district court challenging the award of both real and personal property. The district court remanded the case and ordered the magistrate court to make specific written findings of fact and conclusions of law, which the magistrate court did. Based on the magistrate court's findings of fact and conclusions of law, Tricia again appealed to the district court. The district court affirmed the magistrate court's judgment. Tricia again appeals.

## II.

### STANDARD OF REVIEW

For an appeal from the district court, sitting in its appellate capacity over a case from the magistrate court, we review the record to determine whether there is substantial and competent evidence to support the magistrate court's findings of fact and whether the magistrate court's conclusions of law follow from those findings. *Pelayo v. Pelayo*, 154 Idaho 855, 858-59, 303 P.3d 214, 217-18 (2013). However, as a matter of appellate procedure, our disposition of the appeal will affirm or reverse the decision of the district court. *Id.* Thus, we review the magistrate court's findings and conclusions, whether the district court affirmed or reversed the magistrate court and the basis therefor, and either affirm or reverse the district court.

## III.

### ANALYSIS

Preliminarily, we note that Robert has declined to participate in this appeal. Tricia argues the district court erred in affirming the judgment of the magistrate court and in finding that she pursued a portion of her intermediate appeal frivolously and awarding attorney fees for that portion of the appeal. Tricia also argues the magistrate court erred in its analysis of the characterization of the home and in its valuations of the personal property. Tricia next argues the magistrate court erred in requiring the parties to file their taxes jointly as it would be unduly burdensome.

#### A. Characterization of Property

Tricia argues the magistrate court erred in finding that the home was separate property because Robert failed to rebut the presumption of community property. Tricia does not dispute that the home was separate property when the parties married but argues the evidence presented at

trial demonstrated the property transmuted into community property once the parties refinanced the home, at which point both parties were then obligated to repay the mortgage. In support of her argument, Tricia points to a stipulation at trial by Robert's counsel that the home was community property. The magistrate court found that the parties failed to present a deed showing the home was in both parties' names, which would create the presumption of community property. The magistrate court found that, while no deed was presented, the uncontested testimony shows that the home was purchased by Robert as a single person prior to marriage and, because the home is his separate property, the burden was on Tricia to prove what interest the community has in that property and that she failed to meet that burden. On appeal, the district court concluded that the magistrate court was correct in its determination that Tricia "failed to provide substantial and competent evidence that would lead to any conclusion that the real property was transmuted into community property."

The characterization of property as either community or separate presents a mixed question of law and fact. *Kawamura v. Kawamura*, 159 Idaho 1, 3, 355 P.3d 630, 632 (2015). Although the manner and method of acquisition of property are questions of fact for the trial court, the characterization of an asset in light of the facts found is a question of law over which we exercise free review. *Id.* The character of property vests at the time the property is acquired. *Id.* at 4, 355 P.3d at 633. "[A]ll property owned by a spouse before marriage and property acquired after marriage with the proceeds of separate property remain that spouse's separate property." *Baruch v. Clark*, 154 Idaho 732, 737, 302 P.3d 357, 362 (2013). "However, all other property acquired after marriage--including income on separate property--is community property." *Id.* "[A] party wishing to show that assets acquired during marriage are separate property bears the burden of proving with reasonable certainty and particularity that the property is separate." *Id.*

Tricia argues that the magistrate court erred in "not acknowledging the stipulation" where Robert conceded the home was community property. During closing argument at trial, Robert's counsel stated:

And so--[Robert] has to be reimbursed unless they can show specific intent on his part to gift that to the community. There's no question the transmutation occurred when he said, okay, I'm going to have your name on the deed; right? We agree. So anything after that, community property. But he's entitled to reimbursement, and that's pretty clear from the law.

We agree the magistrate court erred by not acknowledging the concession. *See Baruch*, 154 Idaho at 737, 302 P.3d at 362 (holding that oral stipulations of the parties in the presence of the trial court are generally held to be binding, especially when acted on or entered in the court records). In *Baruch*, the magistrate court asked the husband whether he was claiming “any interest in that IRA,” to which he responded, “No, I don’t claim any interest in it.” *Id.* at 737-38, 302 P.3d at 362-363. The husband then claimed the magistrate court misunderstood which IRA he was referencing. *Id.* at 738, 302 P.3d at 363. Both the district court and the Idaho Supreme Court affirmed the magistrate court. *Id.* at 740, 302 P.3d at 365. Here, the analysis is the same. Robert’s counsel stated that, with respect to the real property, transmutation occurred, and the only issue was the amount of potential reimbursement.

Because of Robert’s concession that the home was community property after it was refinanced and Tricia’s name was included on the deed, the magistrate court erred in finding that a deed was required to prove that fact. Therefore, the district court erred in affirming the magistrate court on appeal. The matter is therefore remanded to the magistrate court to characterize the home as community property, determine any reimbursements owed to Robert by the community, and order the home be sold or for Robert to refinance the home and provide Tricia her community share.

Even absent Robert’s concession, the issue regarding the characterization of real property would need to be remanded based on the magistrate court’s focus on the necessity of a deed to establish community property. At the hearing on the motion to reconsider, the magistrate court stated that “the law is very clear that you start with the deeds to determine which party has to make which arguments relative to whether there was transmutation or not transmutation, commingling or not commingling, and that’s the starting point that the Court has to have.” This statement appears to influence the magistrate court’s findings of fact and conclusions of law, wherein the magistrate court drew a distinction between deeds and an obligation for debt in terms of their weight regarding ownership of real property. The magistrate court distinguished the facts from *Kawamura* by pointing out that the parties in *Kawamura* “executed a Deed for the purchase of real property with both of their names on it while they were married, thus triggering the presumption that the property was community.” The magistrate court then referred to this case and stated the parties “did present documents showing that the refinance was done in both of their names, but no

evidence, and no testimony, that the house was put in both names.” The magistrate court’s discussion and subsequent analysis appear to place, as a matter of law, more weight on whose name the home is in versus who is liable for repayment of the loan the home secures. That is not the law.

*Kawamura* illustrates that deeds are not dispositive regarding evidence of the character of property. Based on its decision in *Winn v. Winn*, 105 Idaho 811, 673 P.2d 411 (1983), the Court set forth, in part, the following factors for determining the character of property: the liability for payment on the loan; the source of payments toward the loan; the basis of credit upon which the lender relies in making the loan; and the names on the deed. *Kawamura*, 159 Idaho at 4, 355 P.3d at 633. The Court then stated that the “presence or absence of any or all of the above listed factors is relevant in determining the character of the credit by which a loan is obtained. None is conclusive. We deliberately refrain from selecting one item as dispositive.” *Id.* (quoting *Winn*, 105 Idaho at 815, 673 P.2d at 415). Given the foregoing, the magistrate court erred in holding that deeds are the starting point for the characterization of property. A deed is one factor a trial court may consider, and the magistrate court erred by placing more weight on a deed than on an obligation for repayment of a loan secured by the home. Because the magistrate court imposed its own bright-line rule to “start with the deeds,” it did not evaluate the case on its own circumstances, as required by *Winn*.

It is also important to point out that the magistrate court made findings of fact that the parties presented documents showing that the refinance was done in both of their names and that “they were both liable on the refinance.” These two factors--the source of the refinance and the liability on the new loan--make it clear that the home is community property. Therefore, even absent Robert’s concession discussed above, the erroneous evaluation of the home would require remand. Tricia has met her burden of showing that the magistrate court lacked substantial and competent evidence to find that the home was Robert’s separate property and did not transmute into community property when the home was refinanced.

## **B. Valuation**

Tricia next argues the magistrate court made findings favoring Robert regarding the value of personal property despite Robert not presenting supporting evidence. Tricia specifically argues that the magistrate court erred in its findings with respect to the value of the tools, hot tub,

and vehicle. The magistrate court found that Tricia testified to the tools being worth between \$8,000 and \$10,000 but “did not give any basis for why she would come to that valuation.” The magistrate court found “there was no testimony of exactly what tools [Tricia] was present for when purchased, how much they were purchased for, or when those purchases took place.” The magistrate court found that Robert’s testimony regarding the tools being “just broken down old things” was “credible and Tricia has failed to rebut that testimony.”<sup>1</sup>

Tricia testified, without contradiction, as to both the value of the tools and the hot tub at the time of purchase. The magistrate court found that Robert testified that the hot tub was worth \$3,500, when the transcript is devoid of Robert testifying about the hot tub. Robert, in response to Tricia’s testimony about the tools, claimed that many of the tools were broken but never specified what was broken. Robert presented no evidence of the broken tools and did not contradict Tricia’s testimony as to the value of the tools when they were purchased. We agree that the magistrate court’s findings are not supported by substantial and competent evidence. The only party who testified as to the value of the tools at the time of purchase was Tricia. The only party who testified as to the value of the hot tub was Tricia. The only evidence on which to base a decision was submitted by Tricia. Therefore, the district court’s decision affirming the magistrate court’s judgment on the personal property portion is reversed as there is not substantial and competent evidence to support the magistrate court’s findings of fact.

As to the vehicle, Robert testified as to the value of the vehicle. In the magistrate court’s findings of fact and conclusions of law, the magistrate court did not explicitly address the valuation of the vehicle. Therefore, on remand, the magistrate court must make an explicit determination of the valuation of the vehicle and what the value is.

### **C. Taxes**

Finally, Tricia argues that the judgment should be reversed because it would be unduly burdensome for both parties to file taxes jointly. However, Tricia cites no legal authority explaining an undue burden standard nor does Tricia provide a standard for reviewing such a judgment. A party waives an issue on appeal if either argument or authority is lacking. *Powell v.*

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<sup>1</sup> The magistrate court noted that neither party presented any evidence to support their testimony and that no photographs or receipts of the tools were presented, nor was any evidence presented as to what tools could be purchased or sold or even a list of all the tools in question.

*Sellers*, 130 Idaho 122, 128, 937 P.2d 434, 440 (Ct. App. 1997). Tricia has failed to show that the magistrate court erred in requiring the parties to file their taxes jointly.

#### **D. Attorney Fees on Intermediate Appeal**

Awarding attorney fees is within the discretion of the trial court and is subject to the abuse of discretion standard of review. *Treasure Valley Homes Sols., LLC v. Chason*, 171 Idaho 655, 660, 524 P.3d 1272, 1277 (2023). The burden is on the party opposing the award to demonstrate that the trial court abused its discretion. *Id.* Under I.C. § 12-121, a judge may award reasonable attorney fees to the prevailing party or parties when the judge finds that the case was brought, pursued or defended frivolously, unreasonably or without foundation. *Severinsen v. Tueller*, 174 Idaho 669, 679, 559 P.3d 771, 781 (2024).

On intermediate appeal, the district court found that Tricia pursued her appeal frivolously. Specifically, the district court stated that Tricia “pursued the issues of the valuation of personal property and the joint filing of taxes frivolously, unreasonably, and without foundation. [Tricia] did not provide proper legal foundation or logical arguments regarding those issues.” Tricia argues that this finding is belied by the record and, therefore, the finding of frivolousness and award of fees should be reversed.

Tricia argued on intermediate appeal that the magistrate court erred by assigning specific values for personal property, particularly the hot tub, because the values were not supported by admissible evidence. She argued the magistrate court’s “findings are not only not supported by ‘substantial and competent evidence,’ they are not supported by any evidence at all.” In her brief, Tricia pointed to the transcript to show the exact place where the magistrate court stated that Exhibit S, which was a worksheet Robert used to list items of personal property and his estimation of their values, “will be admitted for illustrative purposes only, and not as evidence.” Tricia pointed to the portion of the record where the magistrate court stated that Robert testified that the hot tub was worth \$3,500. On appeal to the district court, Tricia identified that there was no reference to the value of the hot tub anywhere in Robert’s testimony. Tricia pointed out that, because Robert never mentioned the hot tub and the exhibit was not admitted as evidence, there was no evidence other than her testimony regarding the value of the hot tub.

We agree with Tricia that it is difficult to understand how the district court concluded that this portion of the appeal regarding personal property was brought frivolously and without

foundation. Even assuming the magistrate court was correct in its ultimate conclusion and the district court was proper in affirming the magistrate court’s conclusion as to the valuations, we disagree with the district court that Tricia’s argument was unsupported by legal argument because she argued that the magistrate court’s conclusion fell short of the actual applicable legal standard: whether there is substantial and competent evidence to support the magistrate court’s findings of fact. Because Tricia pointed out that the magistrate court did not admit any evidence from Robert on the value of personal property, the magistrate court’s conclusion in his favor could not be based on substantial and competent evidence; thus, Tricia’s argument was not frivolous.

As to the joint filing of taxes, Tricia argued in her reply brief on intermediate appeal that the magistrate court made no findings of fact regarding the parties’ taxes. The magistrate court “merely acknowledged that [Robert] asked for taxes to be filed jointly, but made no findings of fact on the issue at all. Therefore, that portion of the judgment cannot come from findings based on substantial and competent evidence because it is not based on any finding at all.” This Court agrees with Tricia that this portion of the intermediate appeal was not brought frivolously, such as to merit attorney fees pursuant to I.C. § 12-121.

The standard for an award of attorney fees was not satisfied regarding the personal property valuation or the filing of taxes portions of the judgment. Therefore, the district court erred in awarding attorney fees and that portion of the decision is reversed.

#### **E. Attorney Fees and Costs on Appeal**

Tricia requests attorney fees and costs on appeal. She does not cite authority for her request, rather, her request for attorney fees is based on the claim that the decisions of the magistrate court and the district court are “contrary to settled Idaho law inasmuch as the facts of the case are unremarkable and the outcome based on the presentation of evidence should have been, and was, clear to the court and the parties, and [Tricia] should never have had to bear the expense of this appeal.”

A party seeking attorney fees must assert the specific statute on which the award is based, and a trial court is not empowered to award fees on a basis not asserted by the moving party. *Kelly v. Kelly*, 171 Idaho 27, 37, 518 P.3d 326, 336 (2022). Because Tricia has not pointed to a statutory basis to award attorney fees on appeal, we do not award attorney fees. As the prevailing party, Tricia is entitled to costs on appeal.

**IV.**  
**CONCLUSION**

The magistrate court lacked substantial and competent evidence to find that the home was Robert's separate property in light of his concession that the home was transmuted into community property. The magistrate court erred in its findings of the value of the parties' personal property. Tricia has not met her burden of showing that the magistrate court erred in requiring the parties to file their taxes jointly. The district court erred in awarding attorney fees for a portion of Tricia's intermediate appeal. Finally, Tricia is not entitled to attorney fees on appeal. The decision of the district court, on intermediate appeal from the magistrate court, affirming the judgment and decree of divorce is affirmed in part, reversed in part, and remanded for further proceedings consistent with this opinion. Tricia is awarded costs on appeal.

Judge HUSKEY and Judge LORELLO, **CONCUR.**