No. 44289-2

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

In re the Domestic Partnership of:

JEAN M. WALSH,

Appellant/Cross-Respondent,

and

KATHRYN L. REYNOLDS,

Respondent/Cross-Appellant.

APPEAL FROM THE SUPERIOR COURT
FOR PIERCE COUNTY
THE HONORABLE STEPHANIE AREND

BRIEF OF RESPONDENT/CROSS-APPELLANT

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I. INTRODUCTION

Two women lived together for 22 years, raising three children in a "traditional" family. Appellant Jean Walsh was the wage-earner and respondent Kathryn Reynolds was the stay-at-home mom. The trial court acknowledged that "if the two people in this case were a heterosexual couple," it "would not hesitate to find that a meretricious or equity relationship existed for the 20 plus years prior to the date of marriage." (CP 412) But solely because, as soon as society gave them the opportunity, these two women twice legally formalized their relationship, the trial court held that the first 17 years of their relationship did not "count" toward the equitable division of property when their relationship ended, putting the vast majority of the assets they had acquired "off limits" for distribution to Reynolds. It did so not because these women had not been in a committed intimate relationship, but because the trial court wrongly concluded it could not as a matter of law "retroactively" apply the domestic partnership laws.

"Equitable claims are not dependent on the 'legality' of the relationship between the parties, nor are they limited by the gender or sexual orientation of the parties." *Vasquez v. Hawthorne*, 145 Wn.2d 103, 107, 33 P.3d 735 (2001). Same-sex couples who legally

formalize their relationship by marrying or registering as domestic partners do not waive their equitable rights in a committed intimate relationship, RCW 26.60.060(2), and the committed intimate relationship doctrine does not require "retroactive application" of domestic partnership law any more than it does for heterosexual couples who cohabit before marriage. Reynolds in her cross-appeal therefore asks this court to reverse and remand with directions to the trial court to consider all the property accumulated during the parties' relationship in making a just and equitable distribution.

Appellant Walsh, who earns over $400,000 annually, asks this court to leave respondent Reynolds with virtually nothing from the $2 million-plus estate accumulated over their 22-year relationship. This court must reject Walsh's appeal, which is based on the proposition that only property acquired after the parties registered as domestic partners in Washington in 2009, less than a year before they separated, is available for distribution. This court should dismiss Walsh's appeal and award Reynolds her attorney fees on appeal.

II. CROSS-APPEAL ASSIGNMENT OF ERRORS

1. Reynolds assigns error to Finding of Fact 2.8 and to the underlined portions of Finding of Fact 2.20 (4), (5), (7), (8), (9), (10), (13), ((19), (21), (22), (23), (44), (45), (46) in Appendix A, which reflect the trial court's erroneous characterization of assets accumulated before January 2005 and its erroneous conclusion that Walsh "paid" Reynolds for services from earnings that should have been characterized as joint. (CP 360-62, 365-66, 368, 371)

2. Reynolds assigns error to the underlined portions of Conclusions of Law 4, 5, 6, 7, 9, 10, 11, 12 and 13, which reflect the trial court's erroneous conclusion that the parties' committed intimate relationship could not have commenced as a matter of law prior to January 2005. (CP 373-76)

3. Reynolds assigns error to the Conclusions of Law 15 and 16 that although the parties titled the family residence as "joint tenants with right of survivorship," they held the property as tenants in common. (CP 375-76)

4. The trial court erred in entering its Decree of Dissolution, attached as Appendix B. (CP 435-45)

III. CROSS-APPEAL STATEMENT OF ISSUES

1. Under established case law, the court treats property acquired during a committed intimate relationship as though it

were jointly owned, regardless whether the parties are in a heterosexual or same-sex relationship. RCW 26.60.060 provides that nothing in the recently-enacted statutes governing domestic partnerships "affects any remedy available in common law." Did the trial court err in concluding that because the parties had registered as domestic partners, it could not apply the committed intimate relationship doctrine to property acquired before the statutes granting community property rights to domestic partners took effect?

2. The parties registered as domestic partners in California in 2000 and in Washington in 2009. RCW 26.60.090 provides that a domestic partnership formed in another jurisdiction shall be recognized as a valid domestic partnership in this state. Did the trial court err in concluding that the parties' domestic partnership did not begin until they registered in Washington?

3. The parties acquired real property in both their names as "joint tenants with rights of survivorship, and not as community property or tenants in common" (Ex. 32), and the trial court found that title was an "expression of their intent" to own the property as joint tenants with right of survivorship. (CP 420) Did the trial court err in then concluding that ownership of the property was as

tenants in common because the primary wage-earner was solely responsible for the mortgage?

4. The appellant, who was awarded the vast majority of the parties' $2 million-plus estate, makes more in a month than the respondent does in a year. Should this court award attorney fees to the respondent?

IV. RESTATEMENT OF ISSUES ON APPEAL

1. The parties lived together for 22 years. They committed to each other in a private ceremony in 1988; registered as domestic partners in California in 2000; married (when it was briefly legal) in 2004 in Oregon; and registered again as domestic partners in Washington in 2009. The parties raised three children together, filling traditional roles in their family. Notwithstanding the trial court's error in failing to consider the entire period of the parties' relationship, did it err in finding that the parties were in a committed intimate relationship for 4-½ years before they registered as domestic partners in Washington?

2. The statute allowing a trial court to award attorney fees based on need and ability to pay was in effect when the trial court dissolved the parties' domestic partnership. Did the trial court err in awarding attorney fees to respondent?

V. RESTATEMENT OF FACTS

A. Walsh And Reynolds Committed To One Other As Life Partners In November 1988.

Appellant Jean Walsh, then age 33, and respondent Kathryn Reynolds, then age 27, met in June 1988, when Reynolds became a patient in Walsh's private medical practice. (RP 48; CP 92) By August 1988, the parties had terminated their doctor/patient relationship and begun dating. (RP 48) Two months later, Reynolds moved out of her apartment into Walsh's home in Fresno, California, which Walsh had purchased two years earlier using her earnings and savings as a down payment. (RP 39, 49, 215) Walsh continued to pay the mortgage with her earnings after the parties began cohabiting. (RP 51)

In November 1988, Walsh and Reynolds exchanged rings and committed to one another. (RP 216-17) At that time, there was no legal way for them to marry or to enter into a civil union or domestic partnership. (RP 217) If the parties could have legally married in 1988, they would have. (RP 229) Reynolds testified that from the moment she and Walsh exchanged rings,[1] Reynolds

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[1] Walsh also apparently viewed the exchange of rings as a commitment. She testified that when Reynolds removed her ring in March 2010, 22 years later, it was a "significant event" that marked the end of their relationship. (RP 436)

viewed the parties as married; Walsh was her "lifetime partner," and Reynolds was "devoted and dedicated to her." (RP 229)

B. Walsh, A Surgeon, Was The Primary Wage-Earner. Reynolds Cared For Their Home.

Walsh, an orthopedic surgeon, graduated from medical school in 1978. (RP 38) When the parties met, Walsh owned her Fresno home, a medical practice, SEP-IRA, and 2 vehicles. (RP 41) Reynolds had not graduated from college, was working at a hardware store, and owned a car and other personal items. (RP 52, 215-16, 218)

Shortly after the parties began living together, Reynolds quit her job at the hardware store. (RP 214) She worked as a "gofer" for a custom homebuilder until she was laid off. (RP 218) Reynolds and Walsh discussed career options, and Reynolds decided she wanted to teach. (RP 52-53, 213-14) Reynolds had taken some college classes, but had to quit when she ran out of money. (RP 213-14) She needed to earn her Bachelor's degree to qualify as even a substitute teacher. (RP 52, 213) Reynolds started school at Fresno State in 1989 or 1990, and graduated in 1993. (RP 53, 213-14) Walsh supported Reynolds by paying her tuition and other expenses. (RP 53, 228)

Walsh had a housekeeper when Reynolds first moved in with her. (RP 49-50) Reynolds suggested that Walsh let the housekeeper go, because Reynolds could take care of the house instead. (RP 50, 227) At trial, Walsh testified that Reynolds intended to replace the housekeeper so that she could be paid for those services. (RP 50) Reynolds testified that she offered to take care of the parties' home not as a paid "employee," but because she believed "keeping a good home" was part of her role in their relationship:

> [My] personal feelings were I would take care of the house. I would make dinner and do the laundry and pick up the house, and do what - prune the trees, do all what I could do to the best of my ability to make our home a home and Jean comfortable when she came home from work.

(RP 228)

Because Reynolds was in school and not earning income, Walsh had already been giving Reynolds a monthly "allowance" to meet daily personal and household expenses. (RP 227-28) Reynolds could not recall whether her allowance increased after the housekeeper was let go. (RP 227) From 1992 until 1999, Reynolds

declared her "allowance" as business income on her tax returns.[2] (RP 58; Exs. 51-58) Reynolds "did what [she] was told with the taxes," and signed the tax returns prepared for her by an accountant paid by Walsh. (RP 240-41) Reynolds testified that she was uncertain why her allowance was declared as income, but Walsh testified this allowed Reynolds to contribute to Social Security and her own SEP-IRA. (RP 56-58, 240-43)

The trial court found that the sums paid by Walsh to Reynolds "were essentially [Reynolds]' discretionary income, as [Walsh] paid all household expenses and essentially all expenses for the children" (FF 2.20(36), (46), CP 366, 371), and that this "arrangement" continued until entry of temporary orders in the dissolution action. (FF 2.20(5), CP 365) Walsh testified that between 1990 and 2011, she "gave" Reynolds over $500,000 ($22,727, annualized) in "discretionary income" for her "household services," including child care for the parties' three children. (RP

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[2] This reported "business" income coincided with the birth of their oldest child. (RP 58) It is unclear from the record whether Walsh claimed these payments to Reynolds as a childcare credit. Starting in 2000, however, when the parties first registered as domestic partners in California, Walsh began claiming Reynolds as a dependent on her tax returns (RP 71, 200) – thus allowing Walsh to reduce her own tax liability.

70) Over these same years, Walsh was earning an average of over $322,000 annually. (*See* Ex. 3)

C. The Parties Have Three Children, Born In 1992, 1996, And 1998. Filling "Traditional Roles" In The Family, Reynolds Was The Stay-At-Home Mom And Walsh Was The Wage-Earner.

After the parties committed to each other in November 1988, they decided to start a family. (RP 217-19) The parties originally planned for Reynolds to carry their first child. (RP 55, 219) Reynolds researched fertility treatments, doctors, and sperm donors (RP 219-20), and Walsh consulted with lawyers about second-parent adoption, wills, and durable powers of attorney. (RP 53-55) For two years, Reynolds underwent "many tests, ultrasounds, biopsies, all sorts of ovarian harvests," but she could not become pregnant. (RP 220)

Walsh then offered to "give it a go," and was pregnant with the parties' oldest child within a month. (RP 220) Reynolds was involved "for every single second" of the pregnancy; she chose the sperm, was present for the insemination, and attended every prenatal appointment. (RP 220-21) It was a difficult pregnancy for Walsh, who was put on semi-bed rest for nearly two months before their daughter Julia was born in August 1992, five weeks premature

and with heart problems. (RP 55, 222-23) Reynolds adopted Julia in December 1993. (RP 57)

Walsh returned to work immediately after Julia was born. (RP 223) Reynolds, who was just completing her degree at Fresno State, was largely in charge of Julia's care. (RP 223-25) When Reynolds was called to substitute teach, the parties placed Julia at a daycare center at the hospital where Walsh had privileges. (RP 225) Eventually, the parties became unhappy with Julia's care at the daycare center, and decided that it was better for Reynolds to stay home and care for Julia full-time. (RP 57, 225-26) This was a reasonable decision; because of Walsh's significant earnings, the parties did not need the limited income Reynolds earned from substitute teaching. (*See* RP 225-26)

In the mid-1990s, the parties decided to expand their family, but Reynolds once again could not conceive. (RP 60) Walsh then tried, and after a miscarriage, conceived the parties' second child, Joe. (RP 60, 233) As with Walsh's pregnancy with Julia, Reynolds was involved from the start. (RP 272-73) The parties' son Joe was born in July 1996. (RP 60) Reynolds adopted Joe in 1997. (RP 64)

During her pregnancy with Joe, Walsh sold her medical practice, and deposited the net proceeds of approximately $150,000

in a California tax exempt money market fund. (RP 61-63) With these funds, the parties purchased 20 acres in Fresno, titled in both their names as joint tenants. (RP 73-74, 252; Ex. 96) Reynolds worked with an architect to design a home for their growing family, but their plans to build a house on the Fresno property were abandoned when the family moved to Washington in 2000. (RP 252-53) When the parties sold the Fresno property in 2001, both Walsh and Reynolds were listed as "sellers." (*See* Ex. 97)

In 1998, Reynolds finally succeeded in conceiving their youngest child, Emily. (RP 83, 225) Walsh adopted Emily after she was born in September 1998. (RP 83)

Except to volunteer at the children's school and to help out at Walsh's office by filing, Reynolds did not work outside the home after the parties decided that she should be the stay-at-home mom. (RP 232) Reynolds' days were filled with "being a mom," while Walsh also worked hard as the primary wage-earner. (RP 236-38) The parties did not have joint financial accounts; Walsh paid the family's bills, including the mortgage, from an account in her name (RP 80-81), and continued to give Reynolds an "allowance." (RP 238) Reynolds was an authorized user on the credit card in Walsh's name, to make larger purchases for the household. (RP 238-39)

The trial court described the family's financial practice as the parties "maintain[ing] separate financial lives." (FF 2.20(4), CP 365) Reynolds saw them as a "traditional" family; Walsh took care of the money and Reynolds took care of the home. (RP 275) Despite what Walsh would now like the court to believe, Reynolds clearly was more than a "nanny" or "housekeeper." In 1990, Walsh executed a General Power of Attorney naming Reynolds as her attorney-in-fact. (RP 164, Ex. 39) In 1996, Walsh executed a Will referring to Reynolds as her "(domestic) life partner," and bequeathed all personal and real property to her, and provided that Reynolds would hold the residue of her estate in trust for their children if she died while they were minors. (RP 164; Ex. 39)

D. In 2000, The Family Moved To Washington, Where They Bought A Home As "Joint Tenants with Rights of Survivorship."

The parties moved to Washington in July 2000, having decided that Fresno was not an ideal place to raise their children, then ages 8, 4, and 2. (RP 72, 253) Walsh, who after selling her medical practice had been splitting time between two local hospitals, wanted to work for a larger medical group. (RP 253) She accepted a position at Group Health, where she is currently Chief of

South Region Orthopedic Surgery, taking home $22,000 net per month. (RP 75-76)

The parties used the proceeds from the sale of the Fresno home, where they had been living for the past 12 years, and the sale of 20 acres in Fresno, where they had contemplated building another home, to purchase a home in Tacoma. (RP 73-74) Reynolds worked with several contractors to prepare for the family's move into their new home, and did most of the landscaping herself. (RP 253-55) Even though Walsh identified herself as "married" with 3 children on the loan application to purchase the Tacoma house, only she is listed as the borrower; the application states, however, that title would be held as "joint tenants." (Ex. 95)

The parties lived in Tacoma for three years. (RP 256) They used $345,000 from the sale of the Tacoma home to purchase three acres in Federal Way, as "joint tenants with right of survivorship, and not as community property or tenants in common." (RP 195-96, 257, 259; Ex. 33) The house on the property had "lots of different quirks," so the parties decided to rebuild rather than remodel. (RP 258)

By the time the family moved to Federal Way in 2004, Emily was in preschool; Joe was in 2nd grade; and Julia was in 6th grade.

(RP 259) Walsh was still working at Group Health, and Reynolds was still a stay-at-home mom, getting the children dressed, fed, and transported to and from school, and managing the parties' home and three-acre homestead. (RP 75, 259-60) While Reynolds readily admitted that she did not make any significant financial contributions, she did contribute her "love, care, and warmth" to the family. (RP 255-56) As Reynolds described, "[t]hat was my role. That is what I did. That is what I contributed." (RP 256)

E. The Parties Formalized Their Relationship Whenever They Could – Registering As Domestic Partners In California In 2000, Marrying In Oregon In 2004, And Registering As Domestic Partners Again In Washington In 2009.

On March 6, 2000, as soon as the law was enacted,[3] the parties registered as domestic partners in California, after already being together more than 12 years. (RP 71, 245; Ex. 41) The California Domestic Partnership registration, at the time the only means available for the parties to formalize their relationship, allowed them to be each other's next of kin, granted hospital visitation rights, and provided them with some healthcare benefits.

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[3] Both parties acknowledged that they would have legally formalized their relationship sooner if it had been possible. (*See* RP 71-72, 246)

But it did not create any interest in property. CA Assembly Bill no. 26, ch. 588, Article 9 (RP 71; FF 2.20(16), CP 367)

Walsh testified that she wanted to register as domestic partners to be recognized as a couple, because she no longer wanted to be "invisible" simply because they could not legally marry:

> Now, when Kathy and I started living together, we were technically in the closet like most gay people that we knew and gradually people became more visible. But this was the best opportunity that I had seen in a long time to stop being invisible. These were going to be kept somewhere and recorded so someone would know that there were 10,000 or 100,000 or I don't know some number of gay couples that would no longer be invisible.

(RP 71-72) Reynolds testified that she wanted to register to make the couple's "union stronger and more like a marriage," and to make their "family stronger:"

> We wanted to make the family stronger. [ ] It was a way to make our union stronger and more like a marriage or whatever it would take to make our relationship stronger in the eyes of the law.

(RP 246)[4] Reynolds testified that, in any event, because the parties had already exchanged rings 12 years earlier, Reynolds considered them practically married. (*See* RP 246)

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[4] This testimony refutes the trial court's conclusion that during trial Reynolds "never stated the registration was to commit to a relationship with" Walsh. (CL 11B, CP 374)

Walsh told Reynolds that the California Domestic Partnership registration would "carry over" to Washington when the parties moved to Washington in 2000. (RP 247) At that time, the Washington Legislature had not yet established a means for same-sex couples to marry or establish domestic partnerships.

In 2004, Oregon (briefly) made it legal for same-sex couples to marry. (RP 106; Ex. 60) Even though they were aware that there was a risk that the law would be overturned, Walsh and Reynolds decided to travel to Oregon to marry. (RP 248-50) Walsh testified that she married Reynolds as a "political statement." (RP 110) Reynolds viewed the Oregon law as a "legitimate window of opportunity" to legally marry Walsh. (RP 249)[5] On May 6, 2005, the Oregon Supreme Court determined that their marriage, solemnized on March 19, 2004, was invalid. (RP 106-07)

In the meantime, California had amended its domestic partnership law, effective January 1, 2005, to provide that registered domestic partners would have the same protections and rights as married spouses, including property rights. (FF 2.20(26), CP 368-69) The law required that notices be sent to domestic

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[5] The couple's friends gave them a wedding gift in honor of the event. (RP 249) No one has suggested that Walsh and Reynolds, then together for 16 years, married for the presents.

partners who registered under the prior law to give them an opportunity to terminate their domestic partnership before the expanded rights become effective. (FF 2.20(27), CP 368-69) Both parties denied receiving any notice of the changed law; neither party ever sought to terminate their registration in California. (FF 2.20(28), CP 369; RP 72, 246-47)

In 2007, the Washington Legislature passed its own domestic partnership law, which allowed same-sex couples to register as domestic partners. SSB 5336, ch. 156, Laws of 2007. Similar to the 2000 version of the California law, the Washington law in 2007 granted limited rights to same-sex couples to "hospital visitation, health care decision-making, organ donation decisions, and other issues related to illness, incapacity, and death." RCW 26.60.010. In 2009, the Legislature amended the statute to state its intent to ensure that domestic partners are "treated the same as married spouses." E2SSB 5688, ch. 521, Laws of 2009; RCW 26.60.015. Soon after the amended law went into effect, on August 20, 2009, Walsh and Reynolds registered as domestic partners in Washington State. (FF 2.20(28), CP 369; Ex. 40)

F. After 22 Years Living Together Raising A Family And Accumulating Property, The Parties Separated. The Trial Court Held That The Parties Had Only Been In A Committed Intimate Relationship For 4 Years.

The trial court found that the parties separated on March 14, 2010, when Reynolds briefly left the parties' home with their younger daughter, returning a few hours later. (FF 2.20(35), CP 370) On March 11, 2011, nearly a year later, Walsh petitioned to dissolve their domestic partnership. (FF 2.20(36), CP 370; Ex. 109)

The parties appeared before Pierce County Superior Court Judge Stephanie Arend for trial on July 9, 2012. The parties had agreed on a parenting plan and child support order for their children, then ages 19, 16, and 13. (CP 81, 91) The issues at trial were property distribution – in particular, what property was available for distribution – and attorney fees.

The parties had amassed over $2 million in real property, retirement, and investment accounts. (*See* CP 4, 31) Walsh took the position that the only property available for distribution was that acquired after the parties registered their domestic partnership in Washington on August 20, 2009, less than two years before trial. (*See* CP 152-69) Reynolds asked the court to consider all property

acquired during their 22-year relationship in making a just and equitable distribution. (*See* CP 106-14)

After a three-day trial, the trial court recognized that "if the two people in this case were a heterosexual couple that had been cohabiting since 1988, bore three children and had married on August 20, 2009, this Court would not hesitate to find that a meretricious or equity relationship existed for the 20 years plus prior to the date of marriage." (CP 412) However, the trial court concluded that because "there was no ability for domestic partners to accumulate or create community property in California until January 1, 2005, and in Washington until the 2008 amendment to the Domestic Partnership statute (RCW 26.16 et sq), [then] prior to those dates there is no legal basis for finding an equitable relationship to exist without violating the constitutional rights of the parties." (Conclusion of Law (CL) 4, CP 373)

The trial court concluded that "[a]pplication of the equitable relationship doctrine prior to the January 1, 2005 effective date of California's expanded domestic partnership law would deprive these individuals of vested property rights without due process law. Retroactive application of a statute is unconstitutional if it deprives an individual of a vested right without due process of law." (CL 5,

CP 373) The trial court held as a "matter of law that an equitable relationship [only] existed between Dr. Walsh and Ms. Reynolds during the time from January 1, 2005 to August 20, 2009." (CL 6, CP 373)

With regard to the family residence in Federal Way, which had been acquired in 2003, the trial court found that although it was titled in the parties' names as "joint tenants with right of survivorship," because only Walsh was liable on the mortgage it was held as "tenants in common." (CL 15, CP 375-76) The trial court ordered the residence sold, allowed an offset of approximately $40,000 to Walsh for her contribution of an inheritance from her father toward the down payment and for mortgage payments made prior to January 1, 2005, and divided the remaining proceeds 52% to Walsh and 48% to Reynolds. (CP 378) In denying Walsh's motion for reconsideration, which asked the court to divide the proceeds based on each party's financial contributions to the property's acquisition (and which would have left Reynolds with no interest in the family home), the trial court explained that it chose to award Reynolds nearly half the proceeds in light of the fact that Reynolds would not be receiving maintenance. (CP 495-96)

The trial court equally divided the assets acquired between January 1, 2005 and March 14, 2010, and awarded the remaining assets to the party in whose name the property was held. (CL 12, 13, CP 375) The trial court acknowledged that it did not know the exact property distribution, because it did not know "exactly what it is that was acquired subsequent to January 1, 2005." (CP 414) But of the parties' $2 million-plus estate, Reynolds was awarded only half of the parties "joint retirement" (approximately $81,532); $46,000 in retirement in her name; $43,046 from an investment account; personal property; and 48% of the sale proceeds from the Federal Way home, after the $40,000 offset to Walsh. (CP 443-45) Walsh walked away with all of the remaining assets from the $2 million-plus estate – at least three times the assets awarded Reynolds.

The trial court awarded attorney fees of $35,000 to Reynolds based on her need and Walsh's ability to pay. (CP 437-38)

Walsh appealed. (CP 446) Reynolds cross-appealed. (CP 492)

VI. CROSS-APPEAL ARGUMENT

A. The Trial Court's Refusal To Consider The Parties' Entire 22-Year Relationship When Dissolving Their Domestic Partnership Is Contrary To Both Statutory And Case Law. (Cross-Appeal and Response to Appeal at 14-26)

The underlying flaw in both the trial court's decision and Walsh's appeal is the premise that applying the committed intimate relationship doctrine[6] to the 17 years before the parties could (and did) formalize their relationship under Washington statutes would constitute an impermissible "retroactive application" of the domestic partnership law, and that because the parties were only granted statutory rights in 2005 they lost all equitable rights under the common law established by our Supreme Court almost thirty years ago in *Marriage of Lindsey,* 101 Wn.2d 299, 678 P.2d 328 (1984). This court must reject this analysis because it undermines three decades of case law and is contrary to the Legislature's intent when it enacted the statutes governing domestic partnerships.

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[6] The trial court used the term "equity relationship;" it has been described in other decisions as a "meretricious" or "committed intimate relationship." *See Relationship of Long,* 158 Wn. App. 919, 925, ¶ 14, 244 P.3d 26 (2010) ("an equity relationship is a 'stable marital-like relationship where both parties cohabit with knowledge that a lawful marriage between them does not exist.'") This brief adopts the term most recently used by our Supreme Court – "committed intimate relationship." *Olver v. Fowler,* 161 Wn.2d 655, 168 P.3d 348, 352 (2007).

The rule urged by Walsh would punish same-sex couples who have chosen to legalize their relationship, forcing them to give up all equitable rights that they would have otherwise had available under *Vasquez v. Hawthorne*, 145 Wn.2d 103, 107, 33 P.3d 735 (2001), which held that the committed intimate relationship doctrine applied to same-sex couples regardless of the fact that they could not marry. This is clearly not what the Legislature intended when it enacted the domestic partnership laws, as the statute expressly provides that it does not affect "any remedy available in common law." RCW 26.60.060(2). Because the trial court erred as a matter of law by concluding that the committed intimate relationship doctrine could not be applied when same-sex couples register as domestic partners, this court must reverse on Reynolds' cross-appeal, and reject Walsh's appeal.

1. The Committed Intimate Relationship Doctrine Required The Trial Court To Treat All Property Acquired During The Parties' Relationship As Joint Property.

As early as 1949, our Supreme Court held that "when a [committed intimate] relationship terminates in a valid marriage and that marriage terminates in divorce, the trial judge may be [ ] justified in treating such property [acquired during the committed intimate relationship] as though it belonged to the community."

Bodine v. Bodine, 34 Wn.2d 33, 36, 207 P.2d 1213 (1949). Thirty-five years later, in *Marriage of Lindsey,* 101 Wn.2d 299, 304, 678 P.2d 328 (1984), the Court held that the court *must* consider property accumulated during the parties' committed intimate relationship when dividing the assets at the end of the parties' subsequent marriage.

"Income and property accumulated during [a committed intimate] relationship should be characterized in a similar manner as income and property acquired during marriage. Therefore, all property acquired during a [committed intimate] relationship is presumed to be owned by both parties." *Connell v. Francisco,* 127 Wn.2d 339, 351, 898 P.2d 831 (1995). Fifty years after the *Bodine* decision, our Supreme Court went on to hold that "equitable claims are not dependent on the 'legality' of the relationship between the parties, nor are they limited by the gender or sexual orientation of the parties." *Vasquez,* 145 Wn.2d at 107; *see also Relationship of Long,* 158 Wn. App. 919, 244 P.3d 26 (2010) (applying committed intimate relationship doctrine to a relationship between two men); *Gormley v. Robertson,* 120 Wn. App. 31, 83 P.3d 1042 (2004) (applying committed intimate relationship doctrine to a relationship between two women). Under all of these cases, the

trial court should have held that all of the property acquired during the parties' relationship, starting in 1988, was jointly owned property available for distribution.

2. The Legislature Intended That Registered Domestic Partners Be Able To Exercise Both Their Common Law Rights And Any Rights Made Available To Them Under The Newly Enacted Statute.

The trial court ignored the first 17 years of the parties' 22-year relationship even though it would have found the "20 plus" years before the parties registered as domestic partners to be a committed intimate relationship had the parties been heterosexual. (CP 412) The trial court wrongly concluded that no committed intimate relationship could have existed prior to January 1, 2005, because "there was no ability for domestic partners to accumulate or create community property" under the laws of California or Washington, where the parties were registered as domestic partners. (CL 4, CP 373) It then improperly reasoned that somehow treating the property as "community-like" at the end of their relationship was akin to "retroactive application" of the domestic partnership laws. (CL 5, CP 373)

Acknowledging the parties' relationship before they could (and did) formalize their relationship does not require a

"retroactive application" of the laws governing marriage or domestic partnerships. This case is no different than other cases where heterosexual couples cohabit prior to marrying, and the property accumulated during the period of cohabitation is treated as "community-like" and available for distribution. *Bodine,* 34 Wn.2d at 33; *Lindsey,* 101 Wn.2d at 306-07; *Marriage of Hilt,* 41 Wn. App. 434, 704 P.2d 672 (1985). The dissolution of marriage statute is not applied *per se,* but by "analogy" when considering property acquired during the committed intimate relationship. *See Connell,* 127 Wn.2d at 351 ("for the purpose of dividing property at the end of [a committed intimate] relationship, the definitions of 'separate' and 'community' property found in RCW 26.16.010-.030 are useful and we apply them by analogy"); *Vasquez,* 145 Wn.2d at 107 ("use of the term 'marital-like' in prior [committed intimate] relationship cases is a mere analogy because defining these relationships as related to marriage would create a de facto common-law marriage, which this court has refused to do").

In *Bodine*, the Supreme Court affirmed the trial court's decision to treat a home that was acquired while the parties cohabited but before they married as joint property. 34 Wn.2d at 36-37. In *Lindsey,* the Supreme Court reversed the trial court's

decision finding that a barn/shop built by the parties during cohabitation, but prior to marriage, was the husband's separate property. 101 Wn.2d at 304. Finally, this court in *Hilt* affirmed the trial court's decision treating real property acquired by the husband during the parties' cohabitation prior to the marriage as joint property available for distribution when the parties divorced. 41 Wn. App. at 439-40.

That the parties' committed intimate relationship in this case terminated in a domestic partnership rather than a marriage is no reason to treat this case any differently. Prohibiting a party from seeking equitable relief based on a committed intimate relationship that existed before the couple registered as domestic partners would undermine the Legislature's intent in creating domestic partnerships, which was to ensure "equal treatment" between registered domestic partners and married spouses. RCW 26.60.015. It would also be contrary to RCW 26.60.060(2), which provides that "nothing in chapter 156, Laws of 2007 [Domestic Partnerships] affects any remedy available in common law." *See also* RCW 26.60.010 ("Chapter 156, Laws of 2007 does not affect marriage or any other ways in which legal rights and

responsibilities between two adults may be created, recognized, or given effect in Washington.")[7]

The common law committed intimate relationship doctrine continues to protect parties in a same-sex relationship if they subsequently register as domestic partners. To hold otherwise would punish same-sex couples who choose to formalize their relationship by entering into a domestic partnership. There is no question that had the parties not registered as domestic partners, and simply sought an equitable distribution of property at the end of their committed intimate relationship, the trial court would have been required to consider the property acquired during the entire relationship. *Vasquez,* 145 Wn.2d at 107.

3. The Committed Intimate Relationship Doctrine Does Not Deprive One Party Of A Vested Right, Because Both Have A Right In Property Acquired During The Relationship.

Finally, there is no basis for the trial court's expressed concern that allowing a party in a same-sex relationship to pursue her right to property that was accumulated during the parties'

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[7] RCW 26.60.010 and RCW 26.60.060(2) also counter appellant's claim that the "legislature established that community property does not exist in a domestic partnership before 2009" (App. Br. 26), because the committed intimate relationship doctrine established by common law directs the trial court to treat property acquired during a committed intimate relationship as " community-like," not as community property. *Connell v. Francisco,* 127 Wn.2d 339, 351, 898 P.2d 831 (1995).

committed intimate relationship would somehow deprive the other party of some "vested property right." (CL 5, CP 373) Under the committed intimate relationship doctrine, *both* parties have rights in the property acquired during their cohabitation. *See Olver v. Fowler,* 161 Wn.2d 655, 168 P.3d 348 (2007); *Witt v. Young,* 168 Wn. App. 211, 275 P.3d 1218, *rev. denied,* 175 Wn.2d 1026 (2012).

In *Olver,* a couple's committed intimate relationship ended when they were both killed in a car accident. Nearly all of their property was held in the name of the male cohabitant. Our Supreme Court rejected the claim by a creditor of the male cohabitant's estate that the female cohabitant lost any equitable interest in the joint property titled in the male cohabitant's name upon her death, holding that the creditor's claim "ignores the property rights of the deceased partner." *Olver,* 161 Wn.2d at 670, ¶ 30. The Court held that because community property law is applied by analogy to committed intimate relationships, the female cohabitant had an undivided interest in the couple's jointly acquired property even though it was titled in the male cohabitant's name. *Olver,* 161 Wn.2d at 670, ¶ 30.

Similarly, this court acknowledged in *Witt* that a party to a committed intimate relationship has her own interest in property

accumulated during their relationship. In *Witt,* the male cohabitant died intestate. This court held that the female cohabitant was not a creditor, but was asserting her existing interest in property held by the male cohabitant's estate and thus not making a "claim against the decedent" to which the time limits in the non-claim statute applied. *Witt,* 168 Wn. App. at 221, ¶ 22.

Here, Reynolds had an interest, with Walsh, in property acquired during their relationship. The court could not have "deprived" either party of her rights by equitably dividing the property at the end of their committed intimate relationship, because they both had rights in the property.

B. The Trial Court Erred In Failing To Recognize The Parties' Domestic Partnership Commenced No Later Than 2000, When The Parties Registered As Domestic Partners In California.

RCW 26.60.090 grants reciprocity to domestic partnerships registered in other states, providing that substantially similar legal unions validly formed in another jurisdiction "shall be recognized as a valid domestic partnership in this state." The parties here originally registered as domestic partners in California on March 6, 2000. (Ex. 41) Accordingly, under the theory adopted by the trial court, it should have found that the parties' domestic relationship

commenced in March 2000, when the parties validly registered as domestic partners in California.

The trial court was apparently concerned that in 2000, the California Legislature had not yet granted the expanded property rights that become available to domestic partners in 2005 in California and in 2009 in Washington. (CL 1, CP 371) But while the parties' rights were significantly more limited in 2000 than when California expanded those rights in 2005, the expanded rights applied to their previously-registered partnership. *See Velez v. Smith,* 142 Cal. App.4th 1154, 1170, 48 Cal. Rptr. 3d 642, 654 (2006) ("if appellant and respondent had registered their domestic relationship with the Secretary of State before January 1, 2005 [ ], we would have no difficulty in applying the new law to their previously existing and registered partnership, as the Domestic Partner Act intends").

This court need only address this argument if it does not agree that the parties' committed intimate relationship started in 1988, and that their registration as domestic partners did not affect their equitable claim. If, however, this court accepts the trial court's reasoning that the "starting point" for the parties' property interests is when the parties could have gained statutory rights similar to

married spouses, then the trial court erred in finding that the parties' interests did not vest until January 1, 2005, when California expanded domestic partners' property rights. (CL 5, CP 373)

C. The Trial Court Erred In Concluding That The Parties' Home, Intentionally Titled As Joint Tenants With Right Of Survivorship, Was Held As Tenants In Common. (Cross-Appeal and Response to Appeal at 33-35)

The trial court should have held that the parties jointly owned the Federal Way property because it was acquired in 2003, during their committed intimate relationship.[8] But even if this court affirms the trial court's decision that the committed intimate relationship did not commence until January 1, 2005, the trial court should have upheld the parties' intent by concluding that the property was owned by the parties as joint tenants with right of survivorship, not as tenants in common.

When the parties purchased the home in Federal Way, they agreed to title it in both of their names as "joint tenants with right of survivorship, and not as community property or tenants in

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[8] Although the trial court found that the Federal Way home was purchased in part from proceeds from the sale of the Tacoma home, which it referred to as Walsh's "separate property" (FF 2.20(21), CP 368), that determination is based on the trial court's erroneous ruling that the parties could not have had any joint property prior to January 1, 2005. (*See* Cross-Appeal VI §§ A, B)

common." (Ex. 33; RP 262) The trial court acknowledged that the title was an "expression of their intent" to hold the property as joint tenants with right of survivorship. (CP 420) The trial court then erred by ignoring the parties' expressed intent and concluding that the property was held as "tenants in common" because only Walsh was liable on the mortgage. (CL 15, CP 375-76)

That Walsh obligated herself on the mortgage did not terminate the joint tenancy. A party can only terminate a joint tenancy by a subsequent agreement "inconsistent with the common law survivorship under a joint tenancy." *Reilly v. Sageser,* 2 Wn. App. 6, 9, 467 P.2d 358 (1970) (parties terminated joint tenancy by executing a subsequent agreement "specifically destroying" the right of survivorship). Refinancing the property and placing the obligation only in Walsh's name is not inconsistent with the property being held as a joint tenancy. Nor does it show any intent by either Walsh or Reynolds to sever the joint tenancy. *See Estate of Phillips v. Nyhus,* 124 Wn.2d 80, 89, 874 P.2d 154 (1994) (parties did not sever joint tenancy by entering an earnest money agreement that failed to indicate the property was held in joint tenancy, when the original deed "clearly expressed" their intent to hold the property as joint tenants).

It was clearly the parties' intent to hold their Federal Way home as joint tenants. In accepting title, the parties specifically agreed that it would be held as joint tenants, and *not* as tenants in common:

> By their signatures below, Grantees evidence their intention to acquire all interest granted them hereunder as joint tenants with right of survivorship, and not as community property or as tenants in common.

(Ex. 33)[9] When they acquired the Federal Way property, only Walsh had employment income, and any direct contribution by Reynolds would be "sweat equity." If the parties intended to own the property in proportion to their purported "separate" contributions, they would not have titled their family home as "joint tenants with right of survivorship, and not as community property or as tenants in common." (Ex. 33) Walsh's decision to obligate only herself on the refinance was not inconsistent with the parties' decision to hold the property as joint tenants. The trial court erred in concluding that the Federal Way home was held by the parties as

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[9] Walsh puts too much weight on the fact that the parties had also agreed that they would not hold the property as "community property." (*See* App Br. 10) When the deed was executed in 2003, the parties could not have held *any* property as "community property." (*See* Cross-Appeal VI § E)

"tenants in common," contrary to their expressed intent to own it as joint tenants.

D. This Court Should Award Reynolds Attorney Fees On Appeal.

Reynolds asks this court to award attorney fees and costs on appeal based on her need and Walsh's ability to pay. RCW 26.09.140. This court has discretion to award attorney fees after considering the relative resources of the parties and the merits of the appeal. *Leslie v. Verhey*, 90 Wn. App. 796, 807, 954 P.2d 330 (1998), *rev. denied*, 137 Wn.2d 1003 (1999). Reynolds will comply with RAP 18.1(c).

VII. RESPONSE ARGUMENT

As a result of the trial court's decision, Reynolds leaves the parties' 22-year relationship, after raising the parties' three children, with only a small fraction of the assets accumulated during their relationship – less than a third of the assets awarded Walsh. Reynolds received less than $200,000, plus less than half the proceeds from the sale of the Federal Way home (after an offset of over $40,000 to Walsh). Walsh received the remainder of the estate, worth over $2 million. Unsatisfied with this decision, which the trial court acknowledged it would never have made were the parties heterosexual (CP 412), Walsh appeals, demanding that

Reynolds receive even less property, on the grounds the trial court should have acknowledged only the last 7 *months* of the parties' 22-year relationship.

The committed intimate relationship doctrine was established to avoid the exact result that Walsh urges – a presumption that property acquired in her name and with her earnings is solely her property, and that she can therefore leave her partner of two decades with nothing. As our Supreme Court recognized in promulgating the committed intimate relationship doctrine 30 years ago, this presumption "often operates to the great advantage of the cunning and the shrewd, who wind up with possession of the property, or title to it in their names, at the end of a [committed intimate] relationship." *Marriage of Lindsey,* 101 Wn.2d 299, 303, 678 P.2d 328 (1984). As a matter of law, and as a matter of equity, this court must reject Walsh's fact-based appeal for such an inequitable and unjust result.

A. The Trial Court Did Not Abuse Its Discretion In Finding That Property Accumulated After The Parties Formed A Committed Intimate Relationship, But Before They Registered As Domestic Partners, Was Joint Property Available For Distribution.

(Response to Appeal at 27-33)

The trial court properly found that the parties had a committed intimate relationship that warranted treatment of

property acquired prior to their registration as domestic partners in Washington as community-like in nature and available for distribution. As argued *supra* in Reynolds' cross-appeal at Cross-Appeal VI. § A, its only error in this regard was in failing to recognize the entire period of their relationship prior to registration.

A committed intimate relationship "is a stable, marital-like relationship where both parties cohabit with knowledge that a lawful marriage between them does not exist." *Connell v. Francisco*, 127 Wn.2d 339, 346, 898 P.2d 831 (1995). "Relevant factors establishing a [committed intimate] relationship include, but are not limited to: continuous cohabitation, duration of the relationship, purpose of the relationship, pooling of resources and services for joint projects, and the intent of the parties." *Connell*, 127 Wn.2d at 346. "These factors are neither exclusive nor hypertechnical but rather a means to examine all relevant evidence. No factor is more important than another." *Relationship of Long*, 158 Wn. App. 919, 926, ¶ 18, 244 P.3d 26 (2010) (citations omitted). Whether a committed intimate relationship exists is a question of fact, and subject to the deferential "substantial

evidence" standard of review. *In re Sutton & Widner*, 85 Wn. App. 487, 490-91, 933 P.2d 1069, *rev. denied*, 133 Wn.2d 1006 (1997).

Walsh's appeal of the trial court's findings that the parties were in a committed intimate relationship is an insult to the evidence. Like the parties in *Sutton & Widner*, 85 Wn. App. at 491, the parties here "generally supported each other in both work and leisure activities. Although both maintained separate identities and accounts, the length of cohabitation, the contribution to the house, and their joint efforts on behalf of their relationship" amply support the court's conclusion that this was a committed intimate relationship requiring a just and equitable distribution of property based on the *Connell* factors:

Continuous cohabitation and duration of the relationship: Walsh does not dispute that substantial evidence supports the trial court's finding that "except for a few brief interruptions, the parties cohabited from 1988 until 2010." (CL 11A, CP 374) While both the trial court and Walsh comment on the limited physical intimacy between the parties over the years (CL 11A, CP 374; App. Br. 28, 30), a continuing sexual relationship is not one of the factors the court must consider in determining whether a committed intimate relationship exists. Our courts have

expressly rejected a cohabitant's claim that lack of sex between the parties, or the sexual infidelity of a cohabitant, is a basis for not finding a committed intimate relationship. *Long,* 158 Wn. App. at 924, 927, ¶¶ 9, 21 ("given the no-fault principles applied to marriage dissolutions and noting that infidelities can occur during a marriage, [ ] reliance on [ ] infidelities to argue against a shared purpose is unpersuasive").

Pooling of resources and intent of the parties: Walsh focuses exclusively on the fact that (through her efforts) the parties "never joined" accounts, and on the trial court's finding that the parties had "separate financial identities." (App. Br. 31) But joint accounts are not required to prove a committed intimate relationship. As the court recognized in *Sutton & Widner,* 85 Wn. App. at 491, that parties maintain "separate identities and accounts" does not preclude finding a committed intimate relationship when other factors, such as "joint efforts on behalf of the relationship" exist. In this case, the trial court found, and substantial evidence supports, that the parties "contributed their time and energy to the raising of their family" and "jointly remodeled the Federal Way home." (CL 11C, CP 374)

Further, although the trial court found the parties "intended to maintain separate assets and liabilities," it also found that they "intended to live together as a family." (CL 11D, CP 374) To the extent there was any "intent" to maintain separate assets, it was solely on the part of Walsh, whose earnings procured the assets and who controlled what name she placed those assets. To hold that the parties intended to dispose of their property based on the names in which property was held would return to the "*Creasman* presumption" overruled in *Lindsey*, 101 Wn.2d at 304 (rejecting the holding in *Creasman v. Boyle,* 31 Wn.2d 345, 196 P.2d 835 (1948), that property acquired during a committed intimate relationship is presumed to belong to the person in whose name title to the property was placed).

Purpose of the relationship: The trial court acknowledged that the purpose of the parties' relationship was "to create a family." (CL 11B, CP 374)[10] Both parties testified they registered as domestic partners not just for their children, but (in

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[10] Our Supreme Court acknowledged that one of the public policies supporting marriage is to encourage procreation and childrearing. *Andersen v. King County,* 158 Wn.2d 1, 38, ¶ 72, 138 P.3d 963 (2006). Surely this purpose should validate the parties' committed intimate relationship before Washington finally allowed them to have it validated by statute.

Walsh's terms) to become "visible" as a "couple," and (as Reynolds testified) to make their "union stronger" and "more like a marriage." (RP 71-72, 246) Contrary to the trial court's reasoning, there could be no more compelling reason to apply the committed intimate relationship doctrine.

After exchanging rings and committing to one another as life partners, the parties agreed to fill traditional roles, with Walsh as the breadwinner and Reynolds as the homemaker. They raised three children together as a family. The committed intimate relationship doctrine was created to prevent precisely the sort of injustice to the economically less powerful partner that Walsh urges on this court here.

B. Even If The Trial Court Properly Concluded That The Federal Way Home Was Owned By The Parties As Tenants In Common, It Could Award The Proceeds To The Parties Based On The Equities. (Response to Appeal at 35-38)

Even if the trial court properly concluded that the held the property as tenants in common and not as joint tenants, it had discretion to divide the proceeds in any manner it found equitable. To the extent that Walsh adequately rebutted the presumption that the property was owned equally by the parties (which Reynolds does not concede), Walsh fails to cite any authority to support her

claim that the trial court was mandated to divide the proceeds based on each party's financial contribution.

The trial court has discretion to equitably divide the assets of the parties – separate and community – in a manner that it determines is just and equitable under RCW 26.09.080.[11] In this case, the trial court intended to exercise its discretion to award Reynolds "close to a 50% share in the equity in the Federal Way home" regardless of Walsh's claims of her separate property contributions. (CP 495) The trial court acknowledged that its decision was based in part on the fact that it did not award Reynolds any maintenance. (CP 495-96) "The trial court may properly consider the property division when determining maintenance, and may consider maintenance in making an equitable division of the property." *Marriage of Estes*, 84 Wn. App. 586, 593, 929 P.2d 500 (1997).

None of the pre-*Lindsey* cases cited by Walsh limits a trial court's discretion in dividing the proceeds from the sale of an asset

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[11] The court must have the proper character of the property in mind. That is why remand is necessary on Reynolds' cross-appeal, as the trial court mischaracterized the property accumulated before 2005 as Walsh's separate property.

held as tenants in common to a proportion reflecting the parties' financial contributions. In *Iredell v. Iredell,* 49 Wn.2d 627, 305 P.2d 805 (1957) (App. Br. 36), the issue was whether a former wife could execute a judgment on half the interest in real property owned by her former husband as tenants in common with his new wife. The Court held that because the new wife rebutted the presumption that the property was owned equally, proving that she in fact contributed more money to the down payment and purchase of the real property, the former wife could only execute against the husband's interest in the property, which was less than half. *Iredell,* 49 Wn.2d at 631.

In *West v. Knowles,* 50 Wn.2d 311, 311 P.2d 689 (1957) (App. Br. 26), an unmarried man and woman acquired real property in both their names. The woman traced the acquisition to her separate property, and the trial court awarded the property to her. The Court stated that "in meretricious relationship cases, the court will award the properties before it to the party determined to be the owner thereof. It will not go back to the beginning of the relationship and take an accounting of the earnings and disbursements as if a trust relationship existed." *West,* 50 Wn.2d at 315. That simply is no longer the law after *Lindsey. See also Shull*

v. Shepherd, 63 Wn.2d 503, 506-07, 387 P.2d 767 (1963) (App. Br. 36) (pre-*Lindsey* case affirming award to each party percentage interest in real property, based on their contributions, at the end of their meretricious relationship).

Here, even if the parties held the Federal Way property as tenants in common, and Walsh proved her separate property contributions to its acquisition, the trial court had the discretion to award the proceeds from the sale of the property in a different proportion than the parties' financial contributions.

C. The Trial Court Did Not Abuse Its Discretion In Awarding Reynolds Attorney Fees Based On Her Need And Walsh's Ability To Pay. (Response to Appeal at 38-46)

It is undisputed that when Walsh sought to dissolve the parties' domestic partnership, the trial court had statutory authority to award attorney fees to Reynolds based on need and ability to pay. RCW 26.09.140. (App. Br. 38) RCW 26.60.015 provides that "for all purposes under state law, state registered domestic partners shall be treated the same as married spouses" and that "the provisions of chapter 521, Laws of 2009 shall be liberally construed to achieve equal treatment, to the extent not in conflict with federal law, of state registered domestic partners and married spouses." This includes providing for an award of attorney fees under RCW

26.09.140 if the trial court finds that one partner has the need and the other has the ability to pay.

Walsh's complaint on appeal that this statute does not authorize an award of fees because it was not in effect when the parties registered their domestic partnership is wrong as a matter of fact and of law. RCW 26.60.015 became effective on July 26, 2009 – before the parties registered their Washington domestic partnership on August 20, 2009. RCW 26.60.015 (Laws of 2009 c. 521 § 1, eff. July 26, 2009). It was indisputably in effect when Walsh filed her petition for dissolution in 2011.

A "statute operates prospectively when the *precipitating event* for operation of the statute occurs after enactment, even when the precipitating event originated in a situation existing prior to enactment." *State v. Pillatos*, 159 Wn.2d 459, 471, ¶ 18, 150 P.3d 1130 (2007) (emphasis in original) (quoting *Estate of Burns,* 131 Wn.2d 104, 110, 928 P.2d 1094 (1997). Here, the "precipitating event" is the filing of the petition – not the registration of the partnership. Viewing Walsh's argument in the context of marriage shows its absurdity. According to Walsh, when parties divorce the trial court must apply the statute governing divorce when the parties married. If that were the case, the trial court would be

compelled to use fault principles in dividing the property of spouses married before 1973. *Former* RCW 26.08.110, *repealed by* Laws 1973, 1st Ex. Sess., ch. 157, § 30.

The trial court's authority to award attorney fees under RCW 26.09.140 is also not limited because the parties litigated claims related to their committed intimate relationship. Walsh cites no authority (because there is none) that requires a trial court to segregate an award of attorney fees incurred in the dissolution and in equitable claims that arise in the same action. The law is to the contrary. In *Seals v. Seals,* 22 Wn. App. 652, 657-58, 590 P.2d 1301 (1979), for instance, the court held that attorney fees under RCW 26.09.140 could be awarded to a former wife who brought an independent partition action to divide undistributed property, because it would be "manifestly unjust" not to do so.

The trial court also did not abuse its discretion in awarding Reynolds almost all the fees she incurred below. A party challenging a fee decision bears the burden of proving the trial court exercised its discretion in a way that was clearly untenable or manifestly unreasonable. *Marriage of Crosetto,* 82 Wn. App. 545, 563, 918 P.2d 954 (1996). Walsh has gross income of over $400,000 annually as an orthopedic surgeon, and she was awarded

the vast majority of the parties' over $2 million estate. Reynolds has annual income of $23,000 from the garden maintenance business she started after the parties separated, and was awarded less than $200,000 in liquid assets and less than half the proceeds from the (still pending) sale of their family home. Substantial evidence supports the trial court's finding that Reynolds has the need for her attorney fees to be paid and that Walsh has the ability to pay.

Absurdly, and without citing any authority, Walsh also argues that Reynolds is not entitled to an award of fees because on cross-examination she could not recite exactly how much she owed in fees, or her trial counsel's hourly rate. (App. Br. 45) But it is undisputed that substantial evidence supports the amount of attorney fees awarded – Reynolds' trial counsel presented her own affidavit with attached backup to show the court the number of hours expended, the hourly rate, and the services provided. (CP 389-401)

Finally, while Walsh complains about specific line items in Reynolds' fee request, such as the cost of preparing a brief that was not filed and for her counsel familiarizing herself with local rules (App. Br.43-44), the trial court in fact reduced the award based on

these complaints. (*See* CP 474: "attorney fees requested were reduced by [ ] trial brief never submitted ($1,445) [and] attorney's time to familiarize herself with PCLR ($845)"). The trial court's award of attorney fees to Reynolds was well within its discretion and supported by substantial evidence.

VIII. CONCLUSION

At every opportunity, over two decades, these women sought to validate their relationship. They exchanged rings and committed to each in a ceremony in 1988; gave birth and adopted each other's children between 1992 and 1998; registered as domestic partners in California in 2000; married (futilely) in Oregon in 2004; and registered as domestic partners in Washington in 2009. Because of these public commitments to one another, the trial court inexplicably refused to acknowledge the nature of the parties' relationship – wrongly holding that by legally formalizing their relationship, the parties somehow waived equitable property rights that they would have had they done nothing – or had they been heterosexual. This court should reverse and remand to the trial court with directions to reconsider its property distribution in light of the proper characterization of all assets accumulated during the parties' committed intimate relationship, starting in 1988. This

court should reject Walsh's appeal, and award attorney fees to Reynolds.

Dated this 14th day of August, 2013.

SMITH GOODFRIEND, P.S.

By: _____

Valerie A. Villacin, WSBA No. 34515
Catherine W. Smith, WSBA No. 9542

Attorneys for Respondent/ Cross-Appellant

DECLARATION OF SERVICE

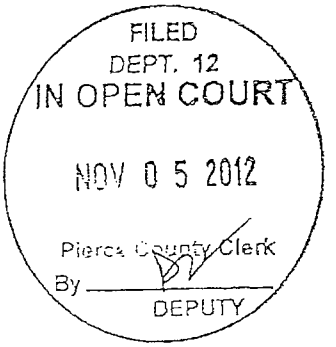
The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on August 14, 2013, I arranged for service of the foregoing Brief of Respondent/Cross-Appellant, to the court and to the parties to this action as follows:

Office of Clerk Court of Appeals - Division II 950 Broadway, Suite 300 Tacoma, WA 98402	___ Facsimile ___ Messenger X U.S. Mail ___ E-Mail
Janis M. Dyer Attorney at Law 503 12th Ave E Seattle, WA 98102-5103	___ Facsimile ___ Messenger ___ U.S. Mail X E-Mail
Barbara A. Henderson Smith Alling Lane 1102 Broadway Plaza, #403 Tacoma, WA 98402	___ Facsimile ___ Messenger X U.S. Mail X E-Mail

DATED at Seattle, Washington this 14th day of August, 2013.

Victoria K. Isaksen



SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

In Re the Domestic Partnership of: JEAN M. WALSH, Petitioner, and KATHRYN L. REYNOLDS, Respondent.	No. 11-3-00924-5 FINDINGS OF FACT AND CONCLUSIONS OF LAW (REGISTERED DOMESTIC PARTNERSHIP) PROPOSED BY PETITIONER

I. Basis for Findings

The findings are based on: trial on July 9, 10 and 11, 2012. ~~The Court admitted exhibits 1 through 104 and 109 to 111~~. The following people attended:

Petitioner, Jean M. Walsh, testified;
Petitioner's Lawyer, Barbara A. Henderson;
Respondent, Kathryn L. Reynolds, testified;
Respondent's Lawyer, Jan M. Dyer;
Other: Richard Torosian, CPA, testified telephonically.

The Court admitted Exhibits 1 through 102; 104 and 108-110. The Court received and reviewed supplemental briefing from counsel for both parties.

II. Findings of Fact

Upon the basis of the court records, the court *finds*:

2.1 Residency of Parties

The Petitioner is a resident of the State of Washington, and resides in the county of Pierce.

SMITH ALLIED
1102 Broadway Plaza, #403
Tacoma, Washington 98402
Telephone: (253) 627-1091
Facsimile: (253) 627-0123

The Respondent is a resident of the State of Washington, and resides in the county of King.

2.2 Notice to the Respondent

The Respondent appeared, responded or joined in the petition.

2.3 Basis of Personal Jurisdiction Over the Respondent

The facts below establish personal jurisdiction over the respondent.

The Respondent is currently residing in Washington.

2.4 Date of Registration of Domestic Partnership and Parties' Residence

The parties registered as Domestic Partners in the State of California in 2000 when they resided in California. They registered ~~their domestic partnership~~ as domestic partners in Washington State on August 20, 2009, ~~under the 2008 statute then in effect but not under any subsequent amendment to that statute.~~ On that date, the parties resided at Federal Way, Washington.

2.5 Status of the Parties

Petitioner and Respondent separated on March 14, 2010.

2.6 Status of Domestic Partnership

The domestic partnership is irretrievably broken and at least 90 days have elapsed since the date the petition was filed and since the date the summons was served or the Respondent joined.

2.7 Separation Contract or Domestic Partnership Agreement

There is no written separation contract or domestic partnership agreement. ~~The Domestic Partnership Registration application, signed by both parties states: "any rights conferred by this registration may be superseded by a will, deed, or other instrument signed by either party to this domestic partnership registration."~~

2.8 Community Property

The parties have the following real or personal community or quasi-community property:

A. 2007 Sprinter Van, titled in both names.
B. Eagle Trailer titled in name of Respondent;

SMITH ALLING
1102 Broadway Plaza, #403
Tacoma, Washington 98402
Telephone: (253) 627-1091
Facsimile: (253) 627-0123

① Inheritance funds ($30,000.00) invested in the Federal Way Property, and Principal Mortgage reduction From date of refinance (5/10/04) to 1/1/05 in the amount of $10,834.42.

C. 2007 Fleetwood Tent Trailer;

D. Kubota Tractor

E. Group Health retirement assets accumulated between January 1, 2005 and March 14, 2010;

F. Funds deposited to USAA Investment account between January 1, 2005 and March 14, 2010, except for funds inherited by Dr. Walsh.

Separate Property

The Petitioner has the following real or personal separate property:

A. Real property legally described as, Section 25 Township 21 Range 02 Quarter 13 MARCH-MCCANDLESS L 11 & 12 B 7, and commonly known as 3917 N. 37th St., Tacoma, WA 98407 ("Tacoma Property");

* Each party holds an interest, as tenant in common with the other party to the

B. ~~Funds invested in the purchase of real property and reconstruction of the home located at on said~~ real property legally described as, the south 390 feet of the north 938 feet of the west 330 feet of the east 457.875 feet of the southwest quarter of the southeast quarter of Section 1, Township 21 North, Range 3 East, W.M, in King County, Washington Except any portion thereof with the west 15 feet of the east 142.875 feet of the south 500 feet of said southwest quarter of the southeast quarter; and common known as 30210 – 23rd Ave. SW, Federal Way, WA 98023 ("Federal Way Property") ~~prior to January 1, 2005 and after March 14, 2010.~~ ②

③

C. USAA SEP account in her sole name;

D. Funds deposited in USAA Managed Investment account in her sole name prior to January 1, 2005 and after March 14, 2010. including gains and losses;

E. Group Health retirement assets acquired prior to January 1, 2005 and after March 14, 2010, including gains and losses;

~~F. Steinway piano purchased and restored entirely by Petitioner in 1991;~~

G. Union Bank checking account in her sole name; and

~~H. USAA checking account in her name and in the name of the parties' daughter, Julia Walsh.~~

The Respondent has the following real or personal separate property:

A. The 2010 Nissan Truck titled in her sole name;

B. USAA retirement accounts in her sole name;

* [As if fully repeated here re: FEDERAL WAY PROPERTY.]

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C. All right, title and interest in and to James Reynolds Family Trust, including the proceeds of the sale of real property held by the trust; and

D. All right title and interest in and to the business known as Les Scoop Too, including all business equipment and all liabilities thereof.

E. Any personal checking or savings accounts in her sole name.

F. Steinway piano, gifted to her from Petitioner.

2.9 Community Liabilities

There are no known community liabilities.

2.10 Separate Liabilities

The Petitioner has incurred the following separate liabilities~~except for Petitioner's reimbursement of separate funds used to purchase the Federal Way property and to tear down the house on the property and construct the existing house.~~

Creditor	Amount
USAA Federal Mortgage on the property commonly known as 3917 N. 37th St., Tacoma, WA 98407 *(See Exhibit 34)*	$259,663 (original loan amount)
JPMorgan Chase Bank paying $30,000.00 from inheritance on March 1, 2010 on the mortgage obligation for the property at 30210 23rd Ave SW, Federal Way WA	$256,729.23. – Prior to Petitioner

A. All liabilities incurred by her since March 14, 2010;

B. All credit card debt in her sole name.

The Respondent has incurred the following separate liabilities:

Creditor	Amount
Loan for purchase of Nissan truck *(See Exhibit 46)*	$8,000.00 (orig. loan amt.)

A. All credit card debt in her sole name;

B. $2,000.00 owed to petitioner (business loan); *(See Exhibit 42)*

C. All liabilities incurred by her since March 14, 2010;

D. All liabilities incurred for or by the business known as Les Scoop Too.

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2.11 Maintenance

Maintenance should not be ordered.

Other: The respondent did not provide any factual basis or analysis of the statutory factors to support an award maintenance as required under RCW 26.09.090. She stated in general terms that she needed money for an education, but Dr. Walsh has already paid for Ms. Reynolds to obtain her undergraduate degree. Respondent did not provide any evidence of the cost of additional education or of the time necessary to complete the same. She has started a business and invested time, money, and effort to establish the same. She has the ability to be self reliant and has been awarded sufficient assets as well. Furthermore, Ms. Reynolds provided no credible evidence of any other plan, other than to continue operating her business. She had only a vague and unspecified request for a lump sum that bore no relationship to her financial need or future plans.

2.12 Continuing Restraining Order

Does not apply.

2.13 Protection Order

Does not apply.

2.14 Fees and Costs

The Court is applying RCW 26.09.140 to the dissolution of this domestic partnership. The legislature was not required to specifically amend RCW 26.09.140 in 2008 when it expanded Washington's Domestic Partnership law effective June 2008 because the statue does not use the term "spouses" but refers to parties to a dissolution. Therefore, the Court has considered Dr. Walsh's ability to pay attorney's fees and has determined that Ms. Reynolds has a need for the same. The disparity in their incomes leads the Court to award 100% of the fees incurred by Ms. Reynolds to be paid by Dr. Walsh. The amount of said fees shall be determined by reference to the factors enumerated in Marriage of Knight, 75 Wn.App. 721, 880, P.2d, 71 (1994) and in Marriage of Irwin, 64 App. 38, 822, P.2d 790 (1992).

2.15 Pregnancy

No party is pregnant.

2.16 Dependent Children

~~The petitioner and respondent have alleged that they are the parents of these children.~~

~~Name of Child: Julia Walsh Age: 20~~

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~~Name of Child: Joseph Reynolds-Walsh Age: 16~~
~~Name of Child: Emily Reynolds-Walsh Age: 14~~

The court finds the following:

Other: The Petitioner and Respondent are legal parents of all three (3) children. Julia and Joseph are Petitioner's birth children and were adopted by Respondent. Emily is Respondent's birth child and was adopted by Petitioner.

The children listed below are dependent upon both domestic partners.

Name of Child:	Julia Walsh	Age: 20
(post secondary support only)		
Name of Child:	Joseph Reynolds-Walsh	Age: 16
Name of Child:	Emily Reynolds-Walsh	Age: 14

2.17 Jurisdiction Over the Children

This court has jurisdiction over the children for the reasons set forth below.

This court has exclusive continuing jurisdiction. The court has previously made a child custody, parenting plan, residential schedule or visitation determination in this matter and retains jurisdiction under RCW 26.27.211.

This state is the home state of the children because:

The children lived in Washington with a parent or a person acting as a parent for at least six consecutive months immediately preceding the commencement of this proceeding.

2.18 Parenting Plan

The parenting plan signed by the court dated July 9, 2012, is approved and incorporated as part of these findings.

2.19 Child Support

There are children in need of support and child support should be set pursuant to the Washington State child support statutes. The Order of Child Support signed by the court dated July 9, 2012, and the child support worksheet, which has been approved by the court, are incorporated by reference in these findings.

2.20 Other

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1. The parties first cohabitated in October 1988, when Respondent moved into Petitioner's home in Fresno, California. Petitioner purchased the Fresno home in 1986, prior to ~~their~~ meeting Respondent.

2. When the parties first began to cohabit, Petitioner owned her own private medical practice in Fresno. She also had a SEP-IRA account at Glendale Federal Savings that was later consolidated with other retirement funds in a USAA SEP account. Petitioner also owned her own automobile and a full complement of household goods and furnishings.

3. When the parties began to cohabit, Respondent owned an automobile, her clothing and household goods. She was employed at a hardware store and continued to work at other jobs for a period of time.

4. During the entire relationship the parties had no joint accounts of any type. Petitioner did not add Respondent to any checking, savings or brokerage accounts, nor did Respondent add Petitioner to any of her checking, savings or retirement accounts. During the entire time that the parties resided together, neither party entered into any joint debt to any third party. The parties had no joint credit accounts. At one point the respondent was added as an authorized user to two (2) of the Petitioner's credit card accounts so that she could charge household expenses. They maintained separate financial lives through the duration of their relationship. For example, throughout the majority of their relationship, Petitioner had a vehicle titled in her name, Respondent had a vehicle titled in her name, and there was also a jointly titled vehicle. Each party considered the vehicle titled in her name to be her separate property. At the time of separation, Petitioner had a 2006 Subaru and Respondent had a 1990 Porsche Carrerra 911 in their respective names.

5. When the parties began to cohabit, Petitioner had a housekeeper, whom she paid for various household chores, including laundry and housekeeping. Eventually, Respondent took over the same tasks as had been performed by the housekeeper and was paid as much or more as the prior housekeeper had been paid. Respondent suggested this arrangement. This arrangement continued until entry of temporary orders in September 2011.

6. The parties decided to have children and make a family. In December 1991, Petitioner became pregnant with Julia through artificial insemination. Julia was born in August 1992. Petitioner became pregnant again in 1994, but suffered a miscarriage. She became pregnant with Joe in 1995 and he was born in 1996. Respondent had difficulty conceiving but eventually became pregnant with Emily and she was born in 1998. Both parties adopted the biological children of the other through second parent adoptions. Emily's adoption was completed in 2000. ~~As had been the case with both earlier adoptions, Petitioner paid all fees and costs associated with the same.~~

7. In 1992, Julia was born. Respondent's reported income that year, included payment for child care services relating to Julia, paid to her by Petitioner. In 1994 the

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Respondent and accountant Richard Torosion created an entity called Management Services, as a result of which she was able to make contributions to a SEP IRA. From 1992 through 1999 while the parties lived in the State of California, Respondent filed tax returns on which she reported income she had received from Petitioner. *(See Exhibits 50-58).* Respondent continued to be paid during the time that Petitioner was earning less or no income because of pregnancies. The respondent was paid regardless of the petitioner's income or work status. Respondent referred to these payments as a monthly allowance.

8. After the parties moved to the State of Washington, Petitioner continued to pay Respondent on a monthly basis. As shown on *Exhibit 3* and as testified to by Petitioner, Petitioner established that she paid over $500,000.00 to Respondent during the years they resided in the same household. The sums paid by Petitioner to Respondent were essentially Respondent's discretionary income, as Petitioner paid all household expenses, including automobile related expenses, and essentially all expenses for the children. Thus, Respondent was free to use her income as she saw fit.

9. In 1993, while Julia was an infant, Respondent moved out of Petitioner's home and entered into a relationship which she categorized as "an affair." Respondent continued to care for Julia during the day, for which she was paid. Several months later, she moved back into Petitioner's home where she resided in a separate wing. She subsequently resumed cohabitating with Petitioner.

10. In May 1993, Respondent graduated from Fresno State University with a B.S. degree in construction management. Petitioner paid all of the expenses (including tuition, books and fees) for Respondent to obtain her undergraduate degree.

11. The parties stopped being intimate with one another following Petitioner's miscarriage in 1994, a situation which continued throughout the rest of the time they resided with one another except for a brief period in 2007. They continued to reside in the same house and to maintain the family unit.

12. Having experienced two (2) previous difficult pregnancies, Petitioner decided to sell her private medical practice in Fresno when she became pregnant again. She completed the sale of her private practice in March 1996, prior to the birth of Joe in July 1996, and never established another private medical practice thereafter. Petitioner returned to work doing things such as independent medical examinations and she was later employed at two local hospitals.

13. Petitioner made no additional contributions to her individual SEP-IRA after tax year 1999 (before the parties moved to the State of Washington in 2000). Over the years, various accounts which had been established prior to 1999, were consolidated and the balances transferred into the current USAA SEP IRA. Petitioner was able to trace all deposits made to her USAA SEP IRA to dates pre-dating the California registered domestic partnership. *(See Exhibits 21-23).*

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14. On March 6, 2000, Petitioner and Respondent registered as a domestic partnership in the State of California. Their registration was pursuant to a statute which provided only limited, enumerated benefits to registered domestic partners including hospital visitation rights and rights to health insurance benefits if one partner was an employee of certain local governments. *(See Exhibit 41).*

15. The California Domestic Partnership certificate states in relevant part, "We agree to be jointly responsible for each other's basic living expenses incurred during our domestic partnership." *(See Exhibit 65).*

16. The primary benefit conferred by California Domestic Partnership law at the time of the parties' registration was related to healthcare and specifically excluded property rights. The law in effect at that time stated:

> "The filing of a Declaration of Domestic Partnership pursuant to this division shall not, in and of itself, create any interest in, or rights to, any property, real or personal owned by one partner in the other partner including, but not limited to, rights similar to community property of quasi-community property.
>
> Any property or interest acquired by the parties during the domestic partnership where title is shared shall be held by the partners in proportion or interest assigned to each partner at the time the property or interest was acquired unless otherwise expressly agreed in writing by both parties. Upon termination of the domestic partnership, this subdivision shall govern the division of any property jointly acquired by the partners."

(AB 26, Part 4, Sections (d) and (e).

17. In March, 2000, Petitioner accepted a position with Group Health in Tacoma. Petitioner, Respondent and the three (3) children moved to Tacoma in June 2000. Washington had no domestic partnership laws in effect at that times and did not recognize domestic partnerships registered in other states.

18. When the parties relocated to Washington in June 2000, Petitioner sold the home she had owned in Fresno, and the proceeds from that sale were used as the down payment on the home Petitioner purchased at 2202 Davis Court Northeast, Tacoma, WA 98422 ("Davis Court property"). *(See Exhibits 30-31).*

19. Exhibit 4, prepared by CPA Richard Torosian, accurately traces the proceeds of the sale of Petitioner's Fresno home to the purchase of the Davis Court property. Petitioner was solely liable on the mortgage for the Davis Court property. The Davis Court home was refinanced and again, Petitioner was solely liable on that obligation.

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20. In 2003, the parties purchased, as joint tenants with right of survivorship, a 3-acre property in Federal Way. The Statutory Warranty Deed states: By their signature below, Grantees evidence their intention to acquire all interest granted them hereunder as joint tenants with right of survivorship, and not as community property or as tenants in common. *(See Exhibit 32).*

21. Petitioner was able to trace the proceeds from the sale of the Davis Court home (her separate property) to the purchase of the Federal Way property. Again, Exhibit 4, prepared by the parties' CPA, accurately traces this transaction. *(See Exhibit 30-33).*

22. Although the deed to the Federal Way property lists both parties as joint tenants with right of survivorship, only Petitioner was liable on the purchase money mortgage obtained for the purchase of the Federal Way property. *(See Exhibit 32).*

23. The Federal Way property was subsequently refinanced in 2004 with Washington Mutual. Again, Petitioner is solely liable on that obligation. Petitioner made all payments on the mortgage from her income. The Washington Mutual mortgage is now with Chase Bank. *(See Exhibit 33).*

24. In March, 2004, the parties made a day trip to Portland, Oregon, where they participated in a marriage ceremony and received a marriage license in Multnomah County. They did not take their children or invite other guests. Petitioner knew that the marriage was not legal and intended her participation as a political statement and as a way to stop remaining "invisible" in society. By letter dated May 6, 2005, they were informed that the Oregon Supreme Court ruled that the license was not valid and that Oregon's marriage laws do not allow them to wed. The parties were informed, in writing, that the Oregon marriage was invalid and had no legal force or effect. The parties never married in a jurisdiction where same sex marriage was legal. *(See Exhibit 60).*

25. The Federal Way property, purchased in 2003, contained a house that required a complete tear down and reconstruction. Petitioner's father contributed approximately $180,000.00 to the cost thereof. Petitioner considered this a pre-inheritance or gift from her father. *(See Exhibit 59).*

26. In 2003, the California legislature amended its domestic partnership laws with an effective date of January 1, 2005. As of that date, California Domestic Partnership statutes provided community property rights to registered domestic partners, although earned income was not treated as community property for state income tax purposes. In relevant party, the statute provided:

> "Registered domestic partners shall have the same rights, protections and benefits and shall be subject to the same responsibilities, obligations and duties under law, whether they derive from statutes, administrative regulations, court rules, government policies, common

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law, or other provisions or sources of law, as are granted to or imposed upon spouses."

27. The 2003 California legislation required notices to be sent to registered domestic partners at their address of record to provide them with an opportunity to terminate their domestic partnership prior to January 1, 2005, when expended rights would become effective.

28. Neither Dr. Walsh nor Ms. Reynolds received notice pursuant to the notice provisions of the California domestic partnership statute. Neither party took action to terminate their California Domestic Partnership at any time prior to their separation.

29. The parties registered as a domestic partnership in the State of Washington on August 20, 2009. Although Respondent testified that they registered as soon as registration became available, in fact, domestic partnership registration became available in the State of Washington in 2007. *(See Exhibit 40).*

30. The Washington Declaration of Registered Domestic Partnership states in relevant part:

> "Any rights conferred by this registration may be superseded by a will, deed or other instrument signed by either party to this domestic registration."

It also states that the parties' registration is made pursuant to Ch.156 Law of 2007. *(See Exhibit 40)*

31. Petitioner's father, Gerald Walsh, died in November 2009. Petitioner received all of the cash he had in bank accounts and was also the beneficiary of his life insurance policy. In total, Petitioner inherited approximately $124,000.00 from her father. *(See Exhibit 15-17).*

32. Respondent received an interest in The Reynolds Family Trust upon the death of her Father. The major asset of the Trust was the home owned by her Father. That home has been sold and she has received a share of the sale proceeds.

33. Petitioner deposited $90,000.00 of the money she inherited from her father into her USAA managed investment account. These deposits occurred after the parties registered as a domestic partnership in the State of Washington and prior to their separation. These deposits are Petitioner's separate property. *(See Exhibit 27).*

34. Petitioner made an additional principal payment on the mortgage of the Federal Way home in the amount of $30,000.00 on March 1, 2010. This $30,000.00 was inherited from her father. Just prior to paying that amount on the mortgage, the mortgage balance was $256,729.23. This $30,000.00 payment's Petitioner's separate property. *(See Exhibit 36).*

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35. On March 14, 2010, Respondent packed a bag for herself and Emily and left the family home taking Emily with her. Although she and Emily returned several hours later, the parties subsequently confirmed, in writing, that they terminated their relationship on March 14, 2010. Respondent did not deny the separation date in her Response to the Petition and in fact, confirmed it by pre-trial submissions. The parties date of separation is March 14, 2010. *(See Exhibit 43).*

36. On March 11, 2011, Petitioner filed a petition for dissolution of domestic partnership. She continued to pay the mortgage on the family home and the vast majority of expenses associated therewith through the date of trial, which commenced July 9, 2012, and continuing post trial.

37. The parties entered into an agreed parenting plan for their two (2) minor children, Joseph and Emily. Subsequently, the parties entered into an agreed order of child support for their two minor children, Joseph and Emily and entered into an agreement regarding post secondary support for their oldest daughter, Julia. *(See Exhibit 2).*

38. Petitioner paid child support of $2,584.00 per month to Respondent through July 2012 for the support of two children. Only Emily resided primarily with Respondent during that time and Joseph resided with Petitioner.

39. The focus and intent of the parties' continuing relationship was on raising and co-parenting their children. Both parties testified regarding their commitment to their children.

40. Petitioner loaned Respondent $2,000.00 during the pendency of this dissolution proceeding and that amount should be repaid by Respondent.

41. The Petitioner purchased a Steinway piano from Respondent's Aunt in 1991 and paid to restore it that year. It was subsequently appraised at $25,000.00.

42. The parties acquired vehicles during the years they cohabitated. At the time of separation, the Petitioner had a 2006 Subaru titled to her while Respondent owned a 1990 Porsche Carrera. In January 2010, Respondent traded the Porsche for a 2010 Nissan truck after separation. Petitioner received the 2003 Toyota Camry from her Father.

43. The following vehicles/assets were acquired after January 1, 2005 and before March 14, 2010:

A. 2007 Sprinter Van – acquired August 2007;
B. 2007 Fleetwood tent trailer – acquired July 2006;
C. Kubota tractor – acquired in December 2005;
D. Eagle trailer – acquired in June 2007.

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44. At the time of separation, on March 14, 2010 Respondent owned a 1990 Porsche Carrera 911, which had been purchased during the domestic partnership in January of 2010. She sold that vehicle and purchased a 2010 Nissan Frontier, which she titled in her sole name. This transaction illustrates the way in which these parties operated financially throughout their relationship. *(See Exhibit 46).*

45. Another example of the parties' intent to remain separate financial entities is that when Petitioner paid a significant portion of a debt Respondent had incurred on a Farm Bureau credit card, that amount was repaid to Petitioner by Respondent via a deduction from the amount Petitioner paid to Respondent on a monthly basis. In fact, Respondent testified that she repaid Petitioner, in full as agreed between the parties.

46. After the parties moved to the State of Washington, Petitioner continued to pay Respondent on a monthly basis. Respondent characterizes this sum as "her allowance." As shown on Exhibit 3 and as testified to by Petitioner, Petitioner established that she paid over $500,000.00 to Respondent during the years they cohabited. The sums paid by Petitioner to Respondent were essentially Respondent's discretionary income, as Petitioner paid all household expenses and essentially all expenses for the children.

III. Conclusions of Law

The court makes the following conclusions of law from the foregoing findings of fact:

3.1 Jurisdiction

The court has jurisdiction to enter a decree in this matter.

3.2 Granting a Decree

The parties should be granted a Decree of Dissolution of Domestic Partnership.

3.3 De Facto Parent

Does not apply. The parties are the legal (biological and adopted) parents of all three (3) children.

3.4 Pregnancy

Does not apply.

3.5 Disposition

The court should determine the status of the parties' domestic partnership, make provision for a parenting plan for any minor or dependent children of the domestic

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partnership, make provision for the support of any minor child of the domestic partnership entitled to support, consider or approve provision for maintenance of either domestic partner, make provision for the disposition of property and liabilities of the parties, make provision for the allocation of the children as federal tax exemptions, make provision for any necessary continuing restraining orders, and make provision for the change of name of any party. The distribution of property and liabilities as set forth in the decree is fair and equitable.

3.6 Continuing Restraining Order

Does not apply.

3.7 Protection Order

Does not apply.

3.8 Attorney Fees and Costs

There is a need for Respondent to be awarded attorney's fees and Petitioner has the ability to pay the same. Respondent is awarded reasonable attorney's fees.

3.9 Other

From the findings of fact set forth in sections 2.1 through 2.21 hereof, the Court makes the following:

CONCLUSIONS OF LAW

1. Under the 2000 California domestic partnership registration, the parties enjoyed only limited rights relating to hospital visitation rights, and the ability for certain local governmental employers to offer health care coverage. Neither party acquired any community property rights or quasi community property interest in the property or income of the other party pursuant to their initial registration.

2. When the parties moved to Washington in June 2000, no registered domestic partnership rights from California were recognized in Washington. Washington did not recognize reciprocal registered domestic partnerships until June 12, 2008 with the passage of RCW 26.60.090. The parties received no notification of the California expansion of domestic partnership law effective on January 1, 2005. Thus, they had no opportunity to opt out as provided by California law.

3. Neither Dr. Walsh nor Ms. Reynolds took any action to terminate their California Domestic Partnership at any time. Therefore, the 2003 expansion of California's Domestic Partnership statutes, with an effective date of January 1, 2005, applies to

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these parties even though neither party actually received the notices required by the statute prior to its effective date.

4. Prior to the effective date of the expansion of California Domestic Partnership law (January 1, 2005), each party had vested property rights in all assets and income acquired by that party prior to that date. Prior to the amendment of California's Domestic Partnership laws and the 2008 amendment to Washington's domestic partnership act, neither Dr. Walsh nor Ms. Reynolds could have had notice or any reasonable expectation that the property each was accumulating would be characterized in any manner other than how they chose to characterize it. There was no ability for domestic partners to accumulate or create community property in California until January 1, 2005, and in Washington until the 2008 amendment to the Domestic Partnership statute (RCW 26.16 et sq). Accordingly, prior to those dates there is no legal basis for finding an equitable relationship to exist without violating the constitutional rights of the parties.

5. The Washington State Constitution, Article I, Section 23 prohibits the State from application of any ex post facto laws. Application of the equitable relationship doctrine prior to the January 1, 2005 effective date of California's expanded domestic partnership law would deprive these individuals of vested property rights without due process of law. Retroactive application of a statute is unconstitutional if it deprives an individual of a vested right without due process of law. A right is vested when it is already processed or legitimately required. It would be unconstitutional to divest these parties of vested property interests in existence prior to the January 1, 2005 effective date.

6. Notwithstanding, the Court has broad equitable powers to carry out the legislative intent behind the domestic partnership statute (RCW 26.60.15), which is to treat Washington's domestic partners the same as if they were spouses. The Court therefore holds as a matter of law that an equitable relationship existed between Dr. Walsh and Ms. Reynolds during the time from January 1, 2005 to August 20, 2009.

7. The equity relationship doctrine allows the Court to make a just and equitable division of property "that would have been characterized as community property had the parties been married." Connell v. Francisco, 127 Wn.2d. 339, 350, 898, P2d 831 (1995). Unlike the division of property upon dissolution of a marriage, where both community and separate property are before the Court for equitable division, a Court dividing property acquired during an equity relationship has discretion to equitably divide only that property that would have been characterized as community if the parties had been married. Olver v. Fowler, 131 Wn.App. 135, 140; 126 P.3d 69, 72-73 (2006). Therefore only property that was acquired or accumulated between January 1, 2005 and August 20, 2009 (the date of the Washington domestic partnership registration) is before the Court for equitable distribution.

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8. Petitioner and Respondent registered as domestic partners under RCW 26.60, on August 20, 2009, thereby creating a valid Washington Domestic Partnership. *(See Exhibit 40).*

9. Property obtained after the date of registration, August 20, 2009, but before the date of separation on March 14, 2010, is community in character and is subject to RCW 26.60.080.

10. The Court finds that an equitable distribution of property acquired by the parties between January 1, 2005 and March 14, 2010 is 50/50.

11. An "equity relationship" is a stable marital-like relationship where both parties cohabitate with the knowledge that a lawful marriage between them does not exist. Equitable claims are not limited by the gender or sexual orientation of the parties (In Re: Long and Fregeau, 158Wn.App.919, 244 P.3d 26 (2010). Applying the factors of the equity relationship doctrine, the Court concludes as follows:

A. Continuous cohabitation: Except for a few brief interruptions, the parties cohabitated from 1988 until 2010. Their intimate relationship ceased in 1994, except for a brief time in 2007.

B. The purpose of the relationship: the purpose of the relationship was to create a family. The commitment of the parties was to the children, not to each other. Respondent stated at trial that her purpose for entering the Domestic Partnership was to "make the family stronger." Respondent never stated the registration was to commit to a relationship with Petitioner. The parties conceived, gave birth to and cross-adopted three children and held themselves out to the world as a family.

C. Pooling of resources and services for joint projects: Dr. Walsh was the sole financial support of the family. While Dr. Walsh was the principal earner, the parties contributed their time and energy to the raising of their family. They jointly remodeled the Federal Way home, although it was Dr. Walsh who paid for the remodel from earnings prior to January 1, 2005.

D. Intent of the parties: The parties clearly intended to maintain separate assets and liabilities, with limited exceptions such as the Federal Way property and the Sprinter Van. The also intended to live together as a family.

Weighing these factors, the equity relationship doctrine applies as of January 1, 2005; the date upon which California's expanded domestic partnership law became effective. Prior to January 1, 2005, there was no ability for domestic partners to accumulate or create community property and no legal basis for finding an equitable relationship to exist without violating the constitutional rights of the

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parties. As a matter of law, an equity relationship existed between Dr. Walsh and Ms. Reynolds during the time from January 1, 2005 until August 20, 2009.

12 6. The Court lacks jurisdiction over the parties separate property during the term of the equity relationship, which is defined as all property acquired prior to January 1, 2005. All separate property shall be awarded to the party who holds the separate property in accordance with RCW 26.16.010.

13 7. Any community property that was acquired or accumulated between January 1, 2005 and March 14, 2010 is before the Court for equitable distribution. An equitable distribution is a 50/50 distribution of community property acquired during that time period. The property distribution should be made as follows:

A. Respondent should be awarded the 2010 Nissan Frontier truck and petitioner shall be awarded the 2006 Subaru and the 2003 Toyota.

B. The GroupHealth Pension, 401k Salary Deferral Plan and Profit Sharing Plan acquired between January 1, 2005 and March 14, 2010 is community property subject to equal division and should be divided between the parties evenly. Petitioner shall retain all amounts acquired before January 1, 2005 and after March 14, 2010. *(See Exhibits 18-19).*

C. Each party should be awarded the household goods, furniture, furnishings and their personal effects in her possession, except that Petitioner should be awarded the following personal belongings currently in the possession of Respondent if the parties can agree upon a specific list, such as: gifts to Petitioner from her relatives, art from Petitioner's office and photos/pictures of the children currently in Respondent's possession, plus other separate property owned by her prior to January 1, 2005. If either party has photographs of the children they shall make them available to the other party for copying.

14 8. When the parties executed the deed to the Federal Way property, legally described as , the south 390 feet of the north 938 feet of the west 330 feet of the east 457.875 feet of the southwest quarter of the southeast quarter of Section 1, Township 21 North, Range 3 East, W.M, in King County, Washington Except any portion thereof with the west 15 feet of the east 142.875 feet of the south 500 feet of said southwest quarter of the southeast quarter; and commonly known as 30210 23rd Ave. SW, Federal Way, WA, it did not convert the home to community property. *(See Exhibit 32).*

15 9. The Federal Way property is not held as joint tenants with right of survivorship, but as tenants in common between Petitioner and Respondent. The joint tenancy never came into being because Petitioner financed the property in her sole name and therefore there were not the requisite unities of title legally required for a

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joint tenancy. Therefore, each party has an interest in the property consistent with financial contributions of each. All funds Petitioner expended to purchase and remodel the property prior to January 1, 2005 shall be returned to her. *(See Exhibit 33).*

16 ~~10.~~ The Federal Way property was acquired before January 1, 2005 and as such has both separate and community property interest. All contributions to the acquisition and construction of the Federal Way property are traceable to Petitioner's separate property, and Petitioner made all subsequent contributions to the mortgage, utilities, and other costs associated with the home. Petitioner's father's contributions of $180,000 are allocable to Petitioner. She also contributed $30,000 from inherited funds to pay down the mortgage obligation just prior to separation in March 2010. These amounts shall be awarded to Petitioner prior to determining the net proceeds available for equal division between the parties.

17 ~~11.~~ No maintenance should be awarded to Respondent for the following reasons:

A. The Respondent has not provided sufficient facts required for analysis of the statutory factors necessary for the Court to award maintenance pursuant to RCW 26.09.090.

B. Dr. Walsh has already paid for Ms. Reynolds to obtain an undergraduate college degree. Her request for unspecified additional money for education does not provide the Court with sufficient factual or legal basis for the award of maintenance.

C. Ms. Reynolds has already started a business and has the ability to become self reliant. To the extent she has been awarded assets accumulated from the effective date of January 1, 2005 and her own separate assets she does not need maintenance.

D. Dr. Walsh has made significant contributions to Ms. Reynolds since separation. Pursuant to the Temporary Orders entered in September 2011 Petitioner has paid $2589/month in child support for two children until July 2012, while only one child actually resided with Respondent. Petitioner will continue to pay child support for the child residing with Respondent until September 2017.

E. Since 1988 the respondent has received over $500,000.00 from Petitioner, nearly all discretionary.

F. The Court finds that Respondent is able to meet her reasonable monthly living expenses based upon earnings/assets, including the child support transfer payment.

18 ~~13.~~ An award of attorney's fees in a dissolution proceeding is based on need and ability to pay. RCW 26.09.140 applies to the dissolution of domestic partnerships even though it was not among the statutes specifically amended by the legislature. The statute refers to parties to a dissolution proceeding and not to spouses, so a specific amendment was not required. The Court holds the statute applicable in this case in which the parties' registered domestic partnership lasted for seven months.

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The disparity in the income of the parties requires the Court to award Ms. Reynolds 100% of her attorney's fees to be paid by Dr. Walsh. This Court finds $39,117.50 reasonable in fees and $2402.75 in costs to be reasonable.

19. ~~14.~~ Each party should promptly sign all deeds, excise tax affidavits and other documents necessary to transfer assets as set out herein.

20. ~~15.~~ The domestic partnership should be dissolved and a decree of dissolution of the parties' registered Domestic Partnership should be entered.

21. ~~16.~~ Final distribution of funds awarded to the parties below cannot be determined until the house is sold and the net distribution of all assets can be calculated.

The Petitioner should be awarded the following:

A. Petitioner's USAA SEP IRA (100% acquired prior to January 1, 2005) is awarded to Petitioner as her separate property;

B. The 2006 Subaru automobile is awarded to Petitioner;

C. The 2003 Toyota Camry is awarded to Petitioner

D. 50% of Group Health Permanente Pension and 401k Salary Deferral Plan and Group Health Cash Balance Pension Plan accumulated between January 1, 2005 and March 14, 2010 subject to gains and losses thereon, as follows:

Employee 401(k):	$106,554.41
Retirement:	$49,391.83
Profit Sharing:	$4,984.94
Cash Balance Pension Plan:	$2,143.76
TOTAL:	$163,064.39

E. Petitioner is awarded 100% of Group Health Permanente Pension and 401k Salary Deferral Plan and Group Health Cash Balance Pension Plan accumulated prior to January 1, 2005 and After March 14, 2010, subject to gains and losses thereon;

F. Petitioner is awarded her USAA Investment account in her name except for ~~$43,169.42~~ $43,046.42 which is awarded to Respondent (subject to gains/losses)

Balance as of March 14, 2010:	$500,890.72
Petitioner's Inheritance from Gerald Walsh:	($90,000.00) ~~$410,000.72~~ $410,890.72
Balance as of January 1, 2005	($324,797.87) ~~$86,392.85~~ $86,092.85

43,046.42
~~$43,196.43~~ to each party.

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G. Petitioner is awarded $2,000.00 from Respondent to re-pay the loan from Petitioner. This amount may be deducted from sums awarded to Respondent;

H. Petitioner is awarded all right, title and interest to the home and real property commonly known as 3917 N. 37th St., Tacoma, WA. Subject to mortgage thereon in her sole name and legally described as:

Lots 11 and 12 in Block 7 of March-McCandless Addition to Tacoma, as per plat recorded in book 8 of plat B page 50 records of Pierce County Auditor; situated in the City of Tacoma, County of Pierce, State of Washington.;

I. 50% of the net proceeds from the sale of the following assets:

1) 2007 Sprinter Van;
2) 2007 Fleetwood Tent Trailer
3) Kubota Tractor
4) Eagle Trailer

Her share

Respondent shall be responsible for selling these items. The parties shall use best efforts to reach agreement on all terms of sale. If agreement cannot be reached, the dispute shall be submitted to Christopher Keay to resolve. Costs of resolving any dispute resolution shall be part of the costs of sale.

J. ~~One half~~ of the net proceeds from the sale of the home and real property commonly known as 30210-23rd Avenue SW, Federal Way, WA. Net proceeds shall be determined as follows:

Sale Price: TBD
Less: Costs of sale, commissions, closings costs/fees, pro-rated taxes
Less: Mortgage balance at separation: $256,729.23 (prior to Dr. Walsh's principal payment of $30,000.00 on February 2, 2010)

Less: Principal mortgage reduction from date of refinance (5/10/04) to 1/1/05:	$10,834.42
Subtotal:	$267,653.65
~~Less Dr. Walsh's Down payment and finance charges:~~	~~$320,840.32~~

Net Proceeds: 51.89% to Dr Walsh
48.11% to Ms Reynolds

~~Half to each party:~~ Sale price less $ 49,834.42 to Dr. Walsh

**Subject to conditions of sale set out herein.

L. Each party should be awarded the household goods, furniture, furnishings and their personal effects in her possession, except that Petitioner should be awarded the following personal belongings currently in the possession of Respondent: gifts to Petitioner from her relatives, art from Petitioner's office and photos/pictures of the children currently in Respondent's possession, plus other separate property owned by her prior to January 1, 2005.

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¼ 50% of net proceeds of sale of personal property, as set forth in PFI, page 20.

Respondent should be awarded the following:

A. 2010 Nissan Frontier Truck, subject to indebtedness thereon;

B. 50% of Petitioner's Group Health Permanente Pension and 401k Salary Deferral Plan and Group Health Cash Balance Pension Plan accumulated between January 1, 2005 and March 14, 2010, subject to gains and losses thereon as follows:

Employee 401(k):	$106,554.41	
Retirement:	$49,381.83	$2,143.76
Profit Sharing Cash Balance Pension Plan	$4,984.31	
TOTAL:	~~$160,920.55~~	$163,064.39

C. USAA Retirement accounts in Respondent's sole name including:

S/D SEP:	$35,111.23
SEP IRA:	$10,176.18
	$43,046.42

D. Respondent is awarded the sum of ~~$43,169.42~~ from Petitioner's USAA Federal Savings Bank Investment account, subject to gains and losses thereon;

E. All right, title and interest in and to the James Reynolds Family Trust, including the proceeds of the sale of real property held by the trust;

F. All right, title and interest in and to the business known as Les Scoop Too, including all business equipment and all liabilities thereof;

GF. (1) Steinway Piano;

HG. Her share ~~One half of~~ the net proceeds from the sale of the home and real property commonly known as 30210-23rd Avenue SW, Federal Way, WA. Net proceeds shall be determined as follows:

Sale Price: TBD
Less: Costs of sale, commissions, closings costs/fees, pro-rated taxes
Less: Mortgage balance at separation: $256,729.23 (prior to Dr. Walsh's principal payment of $30,000.00 on February 2, 2010)

Less: Principal mortgage reduction from date of refinance (5/10/04) to 1/1/05:	$10,834.42
Subtotal:	$267,653.65

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Net Proceeds: 51.89% to Dr. Walsh
48.11% to Ms. Reynolds

~~Less Dr. Walsh's Down payment and finance charges: $320,840.32~~

~~One half to each party~~: Sale price less $ 40,834.42 to Dr. Walsh

IX. Each party should be awarded the household goods, furniture, furnishings and their personal effects in her possession, except that Respondent should be awarded the following personal belongings currently in the possession of Petitioner: gifts to Petitioner from her relatives and photos/pictures of the children currently in Petitioner's possession, plus other separate property owned by her prior to January 1, 2005.

Conditions of Sale:

A. The Federal Way home will be sold. It shall be listed forthwith by a listing agent chosen by agreement of the parties. If they are unable to agree, they will utilize the USAA Mover's Advantage Program;
B. The parties shall continue to own the property as tenants in common, pending sale closing;
C. The parties shall cooperate fully in the sale process; and unless they agree otherwise, they shall follow all recommendations of the agent in connection with the listing and sale; provided that if either party objects to a particular recommendation, Christopher Keay will arbitrate and the costs of arbitration shall become part of the cost of sale (RCW 7.04);
D. If any agreed upon recommendation of the agent, requires an out of pocket expenditure, the one paying it shall be reimbursed fully, dollar for dollar, from the sale proceeds as though it were a cost of sale;
E. Pending a sale closing, Ms. Reynolds may continue to reside on the property and shall be responsible for paying ~~$1,500.00 per month to Dr. Walsh, plus~~ utilities and all normal expenses of upkeep and maintenance. Dr. Walsh will continue to pay the mortgage payments (including taxes/insurance) until the sale closes.

Liabilities to Respondent:

1. All liabilities associated with the business known as Les Scoop Too including all equipment and debts;
2. 2010 Nissan Frontier Truck loan;
3. All credit card accounts in Respondent's name only;
4. All liabilities incurred since separation ($2,000.00 payable to Petitioner)

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Dated: November 5, 2012.

Judge Stephanie Arend

FILED
DEPT 12
IN OPEN COURT
NOV 05 2012
Pierce County Clerk
By DEPUTY

Presented by:

Barbara A. Henderson, WSBA #16175
Attorney for Petitioner

Jean Walsh, Petitioner

Approved for entry:
Notice of presentation waived:

Jan M. Dyer, WSBA #20355
Attorney for Respondent

Kathryn Reynolds, Respondent

Any accounts held jointly in the name of either Petitioner or Respondent, or both of them, and any child of theirs, shall be held for the sole benefit of that child.

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11-3-00924-5 39488292 DCD 11-07-12

FILED
DEPT. 12
IN OPEN COURT
NOV 05 2012
Pierce County Clerk
By DEPUTY

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

In Re the Domestic Partnership of: JEAN M. WALSH, Petitioner, and KATHRYN L. REYNOLDS, Respondent.	No. 11-3-00924-5 DECREE OF DISSOLUTION (DCD) [ ] Clerk's action required [ ] Law Enforcement Notification. ¶ 3.8 *PROPOSED*

I. Judgment/Summaries

1.1 Real Property Judgment Summary:

Real Property Judgment Summary is set forth below:

Name of Grantor: Kathryn Reynolds	Name of Grantee: Jean Walsh
Assessor's property tax parcel or account number: 5515000270	

1.2 Money Judgment Summary:

Does not apply.

End of Summaries

II. Basis

Findings of Fact and Conclusions of Law have been entered in this case.

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ORIGINAL

III. Decree

It is decreed that:

3.1 Status of the Domestic Partnership

The parties' domestic partnership is dissolved.

3.2 Property to be Awarded the Petitioner

The petitioner is awarded as her separate property the property set forth in *Exhibit A*. This exhibit is attached or filed and incorporated by reference as part of this decree.

3.3 Property to be Awarded to the Respondent

The respondent is awarded as her separate property the property set forth in *Exhibit B*. This exhibit is attached or filed and incorporated by reference as part of this decree.

3.4 Liabilities to be Paid by the Petitioner

The petitioner shall pay the community or separate liabilities set forth in *Exhibit A*. This exhibit is attached or filed and incorporated by reference as part of this decree.

Unless otherwise provided herein, the petitioner shall pay all liabilities incurred by her since the date of separation.

3.5 Liabilities to be Paid by the Respondent

The respondent shall pay the community or separate liabilities set forth in *Exhibit B*. This exhibit is attached or filed and incorporated by reference as part of this decree.

Unless otherwise provided herein, the respondent shall pay all liabilities incurred by her since the date of separation.

3.6 Hold Harmless Provision

Each party shall hold the other party harmless from any collection action relating to separate or community liabilities set forth above, including reasonable attorney's fees and costs incurred in defending against any attempts to collect an obligation of the other party.

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3.7 Maintenance

Does not apply – Respondent's request for maintenance is denied.

3.8 Restraining Order

No temporary personal restraining orders have been entered under this cause number. No restraining order is entered now.

3.9 Protection Order

Does not apply.

3.10 Jurisdiction Over the Children

The court has jurisdiction over the children as set forth in the Findings of Fact and Conclusions of Law.

3.11 De Facto Parent

Does not apply- The parties are the legal parents of the following children:

Julia Walsh
Joseph Reynolds-Walsh
Emily Reynolds-Walsh

3.12 Parenting Plan

The parties shall comply with the Parenting Plan signed by the court on July 9, 2012. The Parenting Plan signed by the court is approved and incorporated as part of this decree.

3.13 Child Support

Child support shall be paid in accordance with the order of child support signed by the court on July 9, 2012. This order is incorporated as part of this decree.

3.14 Attorney Fees, Other Professional Fees and Costs

Attorney fees, other professional fees and costs shall be paid as follows:

The Petitioner shall pay Respondent's attorney's fees in the amount of $35,117.50 and costs in the amount of $ 2,400.75.

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* ~~The petitioner has already paid attorney's fees of $6,050.00 and costs of $1,462.50 (mediation with Christopher Keay) on behalf of Respondent and this amount shall be deducted from the award for a net award of $29,067.50 in attorney's fees and $938.25 in costs.~~ To be paid by Dr. Walsh - $5000.00 w/in 30 days of this date, $2000.00 per month thereafter. The remainder to be paid from Dr. Walsh's share of the sale of personal property or the house - whichever comes first.

3.15 Name Changes

Does not apply.

3.16 Other

Either party may provide a copy of this decree to the State of California for the purpose of dissolving the parties California Registered Domestic Partnership.

All temporary orders entered herein are terminated.

Dated: November 5, 2012.

FILED
DEPT. 12
IN OPEN COURT
NOV 05 2012
Pierce County Clerk
By DEPUTY

Judge Stephanie Arend

Presented by:

Barbara A. Henderson, WSBA #16175
Attorney for Petitioner

Jean Walsh, Petitioner

Approved for entry:
Notice of presentation waived:

Jan M. Dyer, WSBA #20355
Attorney for Respondent

Kathryn Reynolds, Respondent

* Attorney fees requested were reduced by (1) amounts already ordered ($6050.00); (2) trial brief never submitted ($1,445.00); (3) attorney's time to familiarize herself with PCLR ($845.00); and (4) discovery not in compliance w/ PCLR ($345.00).
* Costs requested were reduced by (1) amount already reimbursed to Mr Keay ($900.00); and (2) special messenger fees ($424.95)

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EXHIBIT A
To Decree of Dissolution
Walsh/Reynolds
Pierce County Superior Court Cause No. 11-3-00924-5

A. Petitioner's USAA SEP IRA (100% acquired prior to January 1, 2005) is Petitioner's separate property and is awarded to her;

B. The 2006 Subaru automobile is awarded to Petitioner;

C. The 2003 Toyota Camry is awarded to Petitioner

D. 50% of Petitioner's Group Health Permanente Pension and 401k Salary Deferral Plan; Group Health Cash Balance Pension Plan; and Group Health Profit Sharing Plan accumulated between January 1, 2005 and March 14, 2010 subject to gains and losses thereon, as follows:

Employee 401(k):	$106,554.41
Retirement:	$49,391.83
Profit Sharing:	$4,984.94
Cash Balance Pension Plan:	$2,143.76
TOTAL:	$163,064.39

E. Petitioner is awarded 100% of her Group Health Permanente Pension and 401k Salary Deferral Plan; Group Health Cash Balance Pension Plan; and Group Health Profit Sharing Plan accumulated prior to January 1, 2005 and after March 14, 2010, subject to gains and losses thereon;

F. Petitioner is awarded her USAA Investment account in her name except for $43,169.42 representing one-half of the amount accumulated between January 1, 2005 and March 14, 2010 as follows (subject to gains/losses):

Balance as of March 14, 2010:	$500,890.72
Petitioner's Inheritance from Gerald Walsh	($90,000.00)
deposited to USSA Invest. Acct.	$410,890.72
Balance as of January 1, 2005	($324,797.87)
	$86,092.85
	(Quasi community portion)

One-half quasi community portion: $43,046.42 awarded to each party.

G. Petitioner is awarded $2,000.00 from Respondent to re-pay the loan from Petitioner. This amount shall be deducted from sums awarded to Respondent;

H. Petitioner is awarded all right, title and interest in and to the home and real property commonly known as 3917 N. 37th St., Tacoma, WA. Subject to mortgage thereon in her sole name and legally described as:

> Lots 11 and 12 in Block 7 of March-McCandless Addition to Tacoma, as per plat recorded in book 8 of plat B page 50 records of Pierce County Auditor; situated in the City of Tacoma, County of Pierce, State of Washington.;

I. 50% of the net proceeds from the immediate sale of the following assets: Pursuant to the terms of Sale as set out in the Findings of Fact/Conclusions of Law at p. 20, paragraph (I)

1) 2007 Sprinter Van;
2) 2007 Fleetwood Tent Trailer
3) Kubota Tractor
4) Eagle Trailer

J. HER SHARE ~~One-half~~ of the net proceeds from the sale of the home and real property commonly known as 30210-23rd Avenue SW, Federal Way, WA. Net proceeds shall be determined as follows:

Sale Price: **TBD**
Less: Costs of sale, commissions, closings costs/fees, pro-rated taxes
Less: Mortgage balance at separation: $256,729.23 (prior to Dr. Walsh's principal payment of $30,000.00 on February 2, 2010)

Less:

(1)	Principal mortgage reduction from date of refinance (5/10/04) to 1/1/05:	$10,834.42
(2)	Inherited funds invested in the Fed. Way property:	$30,000.00
Subtotal:	NET PROCEEDS: 51.89% to PETITIONER 48.11% to RESPONDENT	$40.834.42
~~Credit for Down Payment made at purchase~~		$_____

~~Half to each party less $_____~~ to Dr. Walsh.

Final distribution of funds awarded to the parties cannot be determined until the house is sold and the net distribution of all assets can be calculated.

Sale price after payments specified above, subject to the following conditions of sale:

a. The Federal Way home will be sold. It shall be listed forthwith by a listing agent chosen by agreement of the parties. If they are unable to agree, they will utilize the USAA Mover's Advantage Program;

b. The parties shall continue to own the property as tenants in common, pending sale closing;
c. The parties shall cooperate fully in the sale process; and unless they agree otherwise, they shall follow all recommendations of the agent in connection with the listing and sale; provided that if either party objects to a particular recommendation, Christopher Keay will arbitrate and the costs of arbitration shall become part of the cost of sale (RCW 7.04);
d. If any agreed upon recommendation of the agent requires an out of pocket expenditure, the one paying it shall be reimbursed fully, dollar for dollar, from the sale proceeds as though it were a cost of sale;
e. Pending a sale closing, Ms. Reynolds may continue to reside on the property and shall be responsible for paying utilities and all normal expenses of upkeep and maintenance. Dr. Walsh will continue to pay the mortgage payments (including taxes/insurance), until the sale closes.

K. Petitioner is awarded the household goods, furniture, furnishings and personal effects in her possession. Petitioner is also awarded the following personal belongings currently in the possession of Respondent if the parties can agree upon a specific list, such as: gifts to Petitioner from her relatives, art from Petitioner's office and photos/pictures of the children currently in Respondent's possession, plus other separate property owned by her prior to January 1, 2005. If either party has photographs of the children, they should make them available to the other party for copying;

L. Petitioner is awarded one-half of balance in Union Back Account in her name as of March 14, 2010, subject to gains and losses thereon between January 1, 2005 and March 14, 2010.

Petitioner's Liabilities:

The Petitioner shall pay the following:

Creditor	Amount
USAA Federal Mortgage on the property commonly known as 3917 N. 37th St., Tacoma, WA 98407 *(See Exhibit 34)*	$259,663.00 (original loan amount) $226,729.23
JPMorgan Chase Bank	~~$256,729.23 – Prior to Petitioner paying $30,000.00 from inheritance on March 1, 2010 on the mortgage obligation for the property at 30210 23rd Ave SW, Federal Way WA,~~ Petitioner shall pay the obligation as scheduled until the sale of the house closes. Any difference between the existing mortgage balance and ~~$256,729.23~~ $226,729.23 shall be paid directly to Petitioner from the gross sale proceeds.

(1) All liabilities incurred by her since March 14, 2010;

(2) All credit card debt in her sole name.

EXHIBIT B

To Decree of Dissolution
Walsh/Reynolds
Pierce County Superior Court Cause No. 11-3-00924-5

A. 2010 Nissan Frontier Truck, subject to indebtedness thereon;

B. 50% of Petitioner's Group Health Permanente Pension and 401k Salary Deferral Plan and Group Health Cash Balance Pension Plan; and Group Health Profit Sharing Plan accumulated between January 1, 2005 and March 14, 2010, subject to gains and losses thereon as follows:

Employee 401(k):	$106,554.41
Retirement:	$49,391.83
Profit Sharing:	$4,984.94
Cash Balance Pension Plan:	$2,143.76
TOTAL:	$163,064.39

C. USAA Retirement accounts in Respondent's sole name including:

S/D SEP:	$35,111.23
SEP IRA:	$10,176.18

D. Respondent is awarded the sum of $43,046.42 from Petitioner's USAA Federal Savings Bank Investment account, subject to gains and losses thereon;

E. HER SHARE ~~One-half~~ of the net proceeds from the sale of the home and real property commonly known as 30210-23rd Avenue SW, Federal Way, WA. Net proceeds shall be determined as follows:

Sale Price: **TBD**
Less: Costs of sale, commissions, closings costs/fees, pro-rated taxes
Less: Mortgage balance at separation: $256,729.23 (prior to Dr. Walsh's principal payment of $30,000.00 on February 2, 2010)

Less:

(1)	Principal mortgage reduction from date of refinance (5/10/04) to 1/1/05:	$10,834.42
(2)	Inherited funds invested in the Fed. Way property:	$30,000.00
Subtotal:	NET PROCEEDS: 51.89% to PETITIONER 48.11% to RESPONDENT	$40,834.42
~~Credit for Down Payment made at purc~~hase		$_____

~~Half to each party less $_____ to Dr. Walsh.~~

Final distribution of funds awarded to the parties cannot be determined until the house is sold and the net distribution of all assets can be calculated.

Sale price after payments specified above, subject to the following conditions of sale:

a. The Federal Way home will be sold. It shall be listed forthwith by a listing agent chosen by agreement of the parties. If they are unable to agree, they will utilize the USAA Mover's Advantage Program;
b. The parties shall continue to own the property as tenants in common, pending sale closing;
c. The parties shall cooperate fully in the sale process; and unless they agree otherwise, they shall follow all recommendations of the agent in connection with the listing and sale; provided that if either party objects to a particular recommendation, Christopher Keay will arbitrate and the costs of arbitration shall become part of the cost of sale (RCW 7.04);
d. If any agreed upon recommendation of the agent requires an out of pocket expenditure, the one paying it shall be reimbursed fully, dollar for dollar, from the sale proceeds as though it were a cost of sale;
e. Pending a sale closing, Ms. Reynolds may continue to reside on the property and shall be responsible for paying utilities and all normal expenses of upkeep and maintenance. Dr. Walsh will continue to pay the mortgage payments (including taxes/insurance), until the sale closes.

F. The Steinway piano is gifted to Respondent by Petitioner;

G. Respondent ~~should~~ is be awarded the household goods, furniture, furnishings and her personal effects in her possession. Petitioner should also be awarded the following personal belongings currently in the possession of Respondent: gifts to Petitioner from her relatives and photos/pictures of the children currently in Respondent's possession, plus other separate property owned by her prior to January 1, 2005. *Christopher Keay will arbitrate any disagreements and the costs of all arbitration shall be part of the cost of sale (RCW 7.04);*

H. Respondent is awarded one-half of balance in Union Back Account in her name as of March 14, 2010, subject to gains and losses thereon between January 1, 2005 and March 14, 2010;

I. Respondent is awarded all right, title and interest in and to the James Reynolds Family Trust, including the proceeds of the sale of real property held by the trust;

J. Respondent is awarded all right, title and interest in and to the business known as Les Scoop Too, including all business equipment and all liabilities thereof.

K. Respondent is awarded 50% of the net proceeds of sale of the personal property assets set out in Ex. A, paragraph (I) hereof.

Liabilities to Respondent:

1. The business known as Les Scoop II including all equipment and debts;
2. 2010 Nissan Frontier Truck loan;
3. All credit card accounts in Respondent's name only;
4. All liabilities incurred since separations;
5. $2,000.00 payable to petitioner.