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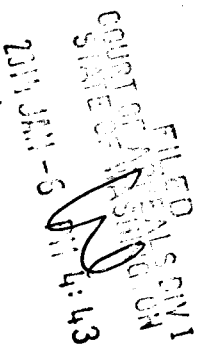
NO. 67255-0-1
(Consolidated with No. 67659-8-1)

COURT OF APPEALS, DIVISION 1
OF THE STATE OF WASHINGTON



In Re The Matter of The Estate of Randle J. Langeland

SHARON DROWN,

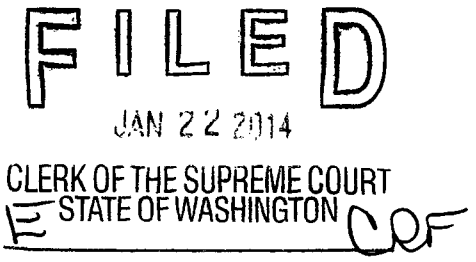
Appellant,

vs.

JANELL BOONE as Personal Representative of THE ESTATE OF RANDAL J. LANGELAND,

Respondent/Cross Appellant.

PETITION FOR REVIEW



Michael L. Olver, WSBA #7031
Christopher C. Lee, WSBA #26516
Kameron L. Kirkevold, WSBA #40829
Attorneys for Appellant
Helsell Fetterman LLP
1001 4th Avenue, Suite 4200
Seattle, WA 98154
(206) 292-1144

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I. IDENTITY OF PETITIONER

Janell Boone is the petitioner in this Court and was the Respondent in the Court of Appeals.

II. DECISION BELOW

The Court of Appeals' published opinion was filed on October, 28, 2013. Appendix, A-1 to A-18. The court denied a motion for reconsideration on December 5, 2013. Appendix, A-19.

III. ISSUES PRESENTED FOR REVIEW

A. Does the ruling of the Court of Appeals conflict with Supreme Court Precedent by failing to recognize a second means by which individuals in a Committed Intimate Relationship may maintain the separate character of property, besides tracing, to wit, by written and oral agreements acted upon that all property acquired during the relationship will remain the separate property of the individual who acquires it?

B. Does the ruling of the Court of Appeals conflict with prior case law from a different division of the Court of Appeals, to wit *Estates of Palmer*, 145 Wn. App. 249, 187 P.3d 758 (2008) (Div. II), by analyzing the change of an Individual Retirement Account beneficiary designation as a testamentary gift similar to a term life insurance policy purchased with community funds rather than an inter vivos transfer similar to a pay on

death account as in *Palmer*?

IV. STATEMENT OF THE CASE

A. Separation Of Assets

Mr. Langeland and Ms. Drown originally met in Chico, California in 1983. RP 68-69. In 1991, while still residing in Chico, Ms. Drown moved into Mr. Langeland's home, and they continued to co-habitate in a Committed Intimate Relationship ("CIR") until the time of Mr. Langeland's death on January 9, 2009. CP 274; RP 52. The existence of the CIR is not in dispute as the Estate stipulated to the existence of such a relationship months before trial. CP 274.

Beginning in 1991, and throughout the duration of their relationship, Mr. Langeland and Ms. Drown were exceedingly careful to split all expenses equally, and never comingled or pooled their separate assets. RP 216-220; Exhibit 23. In order to maintain the complete separation of their assets, they would meticulously determine each other's proportionate share of all the normal household expenses for each week of each of the 216 months that they lived together, including the requirement that Ms. Drown pay her portion of "rent." RP 216-220; RP 177-179; Exhibit 23; Exhibit 27 (interrogatory no. 23).

Throughout the 18 years of their relationship, Ms. Drown's check registers show the high degree of precision they employed to keep their

assets separated and to divide to the penny each month's expenses. Exhibit 23. Ms. Drown testified that she would make a list of all of the expenses of the household such as groceries, appliances, meals, and all other expenses. RP 216-220; Exhibit 23. Ms. Drown would then determine whether she or Mr. Langeland had initially paid for each individual such expense out of his or her separate account, and credit either herself or Mr. Langeland half of the value of the item in order to ensure that they split all cost precisely in half. *Id.* At the end of each month, Ms. Drown would calculate the difference between her contributions to the mutual expenses, and the credits she received for paying for items with her separate assets. *Id.* Ms. Drown would then subtract what she had already paid from what she owed to the community, and write a check to Mr. Langeland to cover the remainder of her share of expenses. *Id.* In addition, pursuant to a written agreement (Exhibit 30), she would pay "rent" to Mr. Langeland each and every month (see also check register Exhibit 23.) The process was very meticulous and precise, and Ms. Drown and Mr. Langeland followed this same formula each month for the duration of their relationship. *Id.*

This separation of living expenses by Mr. Langeland and Ms. Drown went beyond a simple equal division of all bills. Mr. Langeland and Ms. Drown were also very careful to prevent any co-mingling of

assets and made it a point to never share a common bank account. RP 216-220; RP 328. Ms. Drown testified that she and Mr. Langeland maintained separate bank accounts throughout their relationship. RP 328. The only document which was in both of their names was a short term home equity line of credit used to pay off Mr. Langeland's boat loan. However, Ms. Drown testified that all of the money to repay that loan came out of Mr. Langeland's separate bank account. RP 328. Mr. Langeland did not name Ms. Drown as co-owner or pay on death beneficiary on any accounts, instead naming his mother or daughter as residual beneficiaries. RP182; Exhibit 1; Exhibit 2. Mr. Langeland did not execute a durable power of attorney naming Ms. Drown as his attorney-in-fact, thus preventing her from having any access to his finances. RP 243-244. And he declined to marry her.

B. Disposition Of Separate Property.

1. J. Randle and Associates, Inc.

Mr. Langeland owned a small business known as J. Randall and Associates, Inc. that he ran out of his home. Ex. 1; Ex. 3. When he was able to work full time, tax returns admitted at trial showed business income ranging from $13,059 (2004) to $26,275 (2006) per year. Exhibit 21. The estate inventory, which was not challenged under RCW 11.44.035, valued minor cash and receivables and valued the physical

assets and the good will at zero. No other evidence of value was introduced at trial. This business represented his source of income, which as described above, was kept meticulously separated from Ms. Drown's income. RP 216-220. The court found (FF 18) that Ms. Drown and decedent had conducted their affairs, by agreement (in writing as to the house, Exhibit 30) and by their acts, such that, the court concluded that any claim by Ms. Drown to his (decedent's) own income or assets exclusively is substantially rebutted by his careful and meticulous conduct described in Finding 18. (COL 8).

2. Mr. Langeland's Sailboat.

In 1998 Mr. Langeland purchased a sail boat in Oregon. RP 79. Ms. Drown testified that Mr. Langeland purchased the boat using his own separate assets, and that the boat was registered in his name only. RP 245; RP 79. Notably, he named the boat "Janell" after his only child, Respondent herein. RP 245. Ms. Drown further testified that, after the couple took out a home equity line of credit to pay off the original boat loan, Mr. Langeland repaid the entire home equity line of credit using his own separate assets. RP 328.

3. Bellingham Property.

When the couple moved to Washington in 1999, Mr. Langeland purchased the home located at 3946 Lakemont Street in Bellingham for

$158,500, cash. RP 177-179; Exhibit 30. The couple did not contribute equal assets to the purchase of the property. *Id.* Ms. Drown agreed to contribute $50,000 by a promissory note payable over 15 years to acquire up to a 31.7% interest in the property. Mr. Langeland paid all cash from the sale proceeds of his house in California, which they anticipated would over time be paid down by Ms. Drown to 68.3% interest in the property. *Id.* To fulfill her obligation, Ms. Drown paid $10,000 cash and borrowed the additional $40,000 from Mr. Langeland. *Id.* The loan was memorialized in a promissory note requiring her to pay Mr. Langeland $40,000 over 15 years at 7% interest with a monthly payment of $359.54. *Id.* Exhibit 30. Three documents in Exhibit 30 evidence this contractual intent.

After borrowing the money from Mr. Langeland, Ms. Drown's monthly payments previously classified as "rent," were replaced with her monthly payments on the promissory note. RP 177-179. These payments were made by Ms. Drown out of her separate assets to pay her contractual loan obligation to Mr. Langeland, and did not result in any comingling of assets or acquisition of property rights over and above those specifically allowed by the loan contract. *Id.* Ms. Drown testified that she continued to make payments until December 2008, which was just prior to Mr. Langeland's death. At the time of trial, she had made payments totaling

$17,565.29 in interest and $29,144.71 in principal. RP 325; RP 316; Exhibit 33. As explained by Certified Professional Accountant Bernadette Holiday at trial, Ms. Drown's ownership interest in the home as a result of the payments made pursuant to the Note resulted in a 24.7% ownership interest for Ms. Drown and a 75.3% ownership by the estate at the time of Mr. Langeland's death. RP 316; Ex. 33.

C. Drown Changes The Beneficiary On His IRA

During the last few years of his life, Mr. Langeland's health began to deteriorate due to complex medical problems. RP 54; RP 108. Mr. Langeland suffered from multiple ailments including decreased vision which required him to use a magnifying glass to read. RP 244. According to Ms. Drown, his eyesight was so poor that she would write checks for him because he was not capable of doing so himself. RP 244.

In May of 2008 Mr. Langeland's Enloe Medical Center IRA was transferred to Fidelity by Ms. Drown and she named herself as beneficiary. RP 250-252. Ms. Drown testified that she filled out the form required to transfer the account from Enloe to Fidelity. RP 252. She further testified that she went online to set up the new Fidelity account into which the Enloe funds were transferred. *Id.* Ms. Drown testified that she entered all of the information, including her name as residual beneficiary, into the computer to set up the Fidelity account. *Id.* The

documents purporting to effect the change were full of mistakes and misspellings regarding the names of Mr. Langeland's family members. Exhibit 31. No admissible document or testimony was admitted at trial to prove any involvement by Mr. Langeland in these changes or to prove any intent to make a gift.

However, unrebutted, expert testimony provided by David Sterling, a handwriting expert, demonstrated that Mr. Langeland did not even sign the critical beneficiary change documents which purported to make Ms. Drown the beneficiary of the Fidelity account. RP 385. Mr. Sterling stated the following:

> In my professional opinion, we determined that the signatures were not the signatures of Randal Langeland. The up strokes, the down strokes, the connective strokes, specific letter formations, connected strokes between various letters inside the name Langeland, the final stroke of the small letter "d" in the last name Langeland, various comparisons of capital letters all were inconsistent in size, alignment, formation, length, with other indications that were quite specific as to quality of line, suspect documents signatures represented and displayed a significant amount of tremor, pen pooling, ink transfer to the documents that were highly identifiable and, therefore, it was reduced to a finding that it was highly probable that those indications led to the determination that we have established. RP 385 (emphasis added).

Mr. Langeland did not sign the documents making Ms. Drown the beneficiary of the Fidelity account. The purported signatures were

forgeries, leaving her purported transfers to herself invalid. The Court of Appeals failed to include this asset with the remand for tracing purposes.

D. Procedural History

This is a review of a decision by the honorable Judge Ira J. Uhrig of the Whatcom County Superior Court after a three day trial. Ms. Drown filed various claims that were dismissed before trial. During trial the Court limited her claims against the Estate with regard to the issues of (1) the status of estate assets as either jointly or individually acquired and the respective interests of the parties in said assets; (2) a determination of the Estate and Ms. Drown's interests in the property located at 3946 Lakemont Street, Bellingham, WA; (3) whether the alleged gift of the IRA from Mr. Langeland to Ms. Drown was a valid transfer; and (4) whether the estate should properly deny Ms. Drown's creditor's claim in the amount of $500,000+.

Following trial, the Trial Court made the following Findings of Fact and Conclusions of Law, attached hereto as **Appendix B**, pertinent to this Petition for Review:

> Findings of Fact
>
> 6. Decedent and Sharon Drown shared equally in all household expenses.
>
> 7. Decedent and Sharon Drown maintained separate bank accounts at all times.

8. Decedent and Sharon Drown did not comingle assets, except for 3 checks totaling $6,650 described in Exhibit 29 which Sharon Drown deposited in decedent's account by accident.

9. Decedent and Sharon Drown maintained the separate character of all property except property which was intentionally purchased jointly as described in the Estate Inventory and Appraisement.

18. The parties received their earnings in their own name; they scrupulously deposited their own earnings into their own accounts titled in their own names; they carefully did not jointly acquire any assets of significance; they meticulously divided, to the penny, all expenses equally; and decedent did not add Sharon Drown to any of his bank accounts; and only allowed her to acquire an interest in the residence by making payments with interest as provided in Exhibit 30. Decedent did not marry Sharon Drown nor did he execute a will in her favor.

Conclusions of Law

8. Any claim that decedent intended or did jointly acquire assets with Sharon Drown that were titled in his own name through the use of his own income or assets exclusively is substantially rebutted by his careful and meticulous conduct described in Finding 18.

With regard to the IRA, the trial court made the following Findings of Fact and Conclusions of Law relevant to this Petition for Review:

Findings of Fact

15. Ms. Drown filled out Exhibit 31 [the beneficiary transfer form] to transfer Mr. Langeland's Fidelity IRA (formerly Enloe Medical Center IRA) on 8-24-08 to a Fidelity account that she created online that named herself as beneficiary. The signatures on Exhibit 31 are deemed to be those of Mr. Langeland.

Conclusions of Law

5. Ms. Drown is entitled to the funds in the Fidelity IRA.

The Court of Appeals, in an 18 page published decision upheld much of the trial court rulings, but remanded the case for further proceedings. The Court of Appeals held that the trial court improperly placed the burden on Ms. Drown to prove that the assets were community assets, and that the only way to show the separate character of assets was through tracing of assets, which did not occur at the trial. *Estate of Langeland*, No. 67255-0-1 at pg. 13; *see also Id.* at pg. 15. The Court of Appeals remanded the case for further proceedings to determine the character of property as either jointly owned or separate with the burden on the Estate to show that income and assets acquired during the relationship were not jointly owned "community" assets. *Id.* As will be demonstrated below, such tracing is unnecessary because of the party's written agreement on the house and "oral agreement acted upon" to keep their respective income assets and expenses separate. The Trial Court listed the actions by the couple that manifested their interest. FF 18.

The Trial Court concluded that even if a presumption of community like assets existed it was "substantially rebutted by his [decedent's] careful and meticulous conduct described in Finding 18." COL 8.

The Court of Appeals also erroneously affirmed the trial court decision with regard to the IRA. The Court of Appeals determined that the IRA was analogous to a life insurance policy and applied the ruling in the case of *Francis v. Francis*, 89 Wn.2d 511, 514, 573 P.2d 369 (1978), which held that life insurance policies are not inter vivos transfers of assets, and therefore not held to the higher degree of scrutiny afforded transfers such as pay on death beneficiary designations in the Division II case of *Estates of Palmer*, 145 Wn. App. 249. A Motion for Reconsideration was denied by the Court of Appeals on December 5, 2013.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

A. The Court Erred by Refusing To Allow Unmarried Persons in a CIR to Make Agreements (Both Written and Orally) Just as Married Persons Might.

The ruling of the Court of Appeals erroneously establishes a legal precedent that individuals in an Committed Intimate Relationship cannot form an agreement to maintain the separate character of their property but must upon death resort to tracing. The Court of Appeals first ruled that Boone and the Estate had the burden of proving that any assets described as Mr. Langeland's separate assets in the Estate inventory were not community assets acquired during the course of his Committed Intimate Relationship with Ms. Drown. The court further held that the only way to

establish the separate character of assets at the conclusion of a Committed Intimate Relationship is through tracing of assets to assets owned or acquired prior to the establishment of the relationship. *Estate of Langeland* at 13.

The Court of Appeals then remanded the case to the trial court for a redetermination of the character of those assets based on the proper burden of proof. *Estate of Langeland* at 15.

The Court of Appeals decision fails to recognize that parties to an committed intimate relationship may maintain the separate character of income and assets acquired during the course of the relationship by agreement between the parties. This is analogous to the right of a married couple to enter into an agreement regarding the status of their property under RCW 26.16.120. While the burden may be on the one attempting to show such an agreement, if such an agreement is proven to exist, income and assets should remain separate in accordance with the terms of the agreement.

The right of parties to Committed Intimate Relationships to enter into such agreements is established by long standing legal authority. The Washington State Supreme Court addressed the issue in *Humphries v. Riveland*, 67 Wn.2d 376, 386, 407 P.2d 967 (1965). In *Humphries*, the court was faced with the issue of determining ownership of property after

the death of one party to a Committed Intimate Relationship. The surviving party asserted that the couple had an agreement regarding the ownership of real and personal property acquired during the relationship, and that she was thereby entitled to receive one half of the decedent's estate. *Id.* at 380. While the court denied the claim because it could find no evidence of such a contract, the Supreme Court ruled in favor of the right of parties to such a relationship to form a contract, stating, "Persons in such relationships have the same right to contract with each other as domestic strangers..." *Id.* at 386. Like married couples or even those who have no personal relationship at all, parties to a Committed Intimate Relationship are permitted to form agreements concerning the disposition and ownership of property acquired during the relationship.

The Supreme Court upheld the existence of an agreement concerning the disposition of property acquired during a Committed Intimate Relationship in another earlier case of *Hynes v. Hynes*, 28 Wn.2d 660, 184 P.2d 68 (1947). In *Hynes*, Jack and Frances Hynes were in a Committed Intimate Relationship and moved to Washington State from Alaska. *Id.* at 669. In Washington, they lived together for several years acquiring both real and personal property. *Id.* At the conclusion of the relationship there was a dispute about the division of the assets acquired during the relationship. *Id.* at 661. The trial court found that the parties

had an oral agreement to own all property acquired during the relationship as jointly owned property. *Id.* at 669. Based on this agreement, the Supreme Court upheld the decision of the trial court, holding that a couple in a Committed Intimate Relationship can form an agreement regarding the ownership of property acquired during marriage. *Id.* at 672.

In determining whether an agreement exists, the court should consider manifestations of intent at various points in time in a couple's life to determine if an agreement exists. *Bay v Estate of Bay*, 125 WnApp. 468, 476, 105 P.3d 434 (2005). In *Bay* a widow vested with a presumption that she should receive a full interstate share, saw that presumption rebutted by just two acts performed by the decedent 13 years apart. Similarly here, any presumption of community income or community assets was rebutted by the thousands of daily acts described in Finding of Fact 18 by the trial judge that lead to Conclusion of Law 8 that the presumption was rebutted.

The Honorable Ira Urhig found that the parties had entered into an agreement to maintain the separate nature of all assets acquired during the relationship. Judge Uhrig applied the correct burden of proof, placing the burden on Boone to show that the division of assets described in the Estate Inventory was correct. In finding number 18, written down in full *supra*, Judge Uhrig describes the agreement between Mr. Langeland and Ms.

Drown. From the very beginning of their 18 year relationship the couple was meticulous in their efforts to maintain the separate character of their assets. They never shared bank accounts; they split every expense equally; and they kept a meticulous record of the maintenance of these separate assets which was presented at trial. In Conclusion of Law number 8, Judge Uhrig states that any claim that there were joint assets is "substantially rebutted" (underline added) by the careful and meticulous conduct described in Finding 18. The reference to "substantially rebutted" shows that Judge Uhrig found that the couple actively prevented the accumulation of jointly held assets.

In rendering its decision on this matter, the Court of Appeals ruling contradicted prior Supreme Court decisions holding that couples in Committed Intimate Relationships could form agreements to control the disposition of property acquired during the relationship. Like a married couple who enters into a marital agreement under RCW 26.16.120 to control the disposition of assets acquired during marriage, Mr. Langeland and Ms. Drown had an agreement which prevented the accumulation of any jointly owned assets. This Supreme Court should accept review of this matter to confirm that parties to an Committed intimate Relationship may enter into an agreement to control the disposition of assets acquired during the relationship.

B. The Decision Of The Court Of Appeals Conflicts With Prior Case Law From Division II Which Required Beneficiary Designation Changes on Pay On Death Accounts To Be Treated As Inter Vivos Transfers Subject To Higher Scrutiny.

In *Estates of Palmer*, Division II of the Court of Appeals held that the change of beneficiary on a pay on death account was an inter vivos transfer of assets that required the recipient to prove valid by evidence which was clear, cogent, and convincing. *Estates of Palmer* involved a dispute between siblings Dawn Golden and Donald Palmer over funds Golden transferred using a durable power of attorney from an account in her mother's name to a joint account with right of survivorship for her mother and herself. *Palmer*, 145 Wn. App. at 253. Golden transferred over four hundred thousand dollars in assets into a bank account which named Golden as the pay on death beneficiary. *Palmer* at 255. The major issue at trial was whether the funds were converted or were authorized by the decedent by a pay on death beneficiary change document. The trial court applied an intervivos gift analysis and based upon the facts held that a conversion had occurred. *Palmer* at 255-56.

On appeal, Golden argued that the trial court should have placed the burden on Palmer to prove the invalidity of the transfer into the JTWROS account rather than herself to prove it was valid. The Court of Appeals rejected this argument at page 261:

> Golden's argument lacks merit. She relies on the presumption of testamentary capacity, which refers to the mental capacity to make a valid will. But this presumption does not apply when an agent claims that certain inter vivos transfers to him from the principal were gifts. Rather, the common law of gifts applies. First the agent must prove by clear, convincing, strong, and satisfactory evidence that the transaction was actually a gift. Second, where the parties were in a confidential relationship (here, a durable power of attorney relationship), the agent also has to prove by clear, cogent, and convincing evidence that she did not exert undue influence on the principal. Golden is incorrect that Palmer had to prove that Sarah did not approve the transfers of her property to Golden.

Palmer, 145 Wn. App. at 261 (emphasis added; internal citations omitted).

The Court of Appeals in the present case, however, declined to adopt the ruling in *Palmer*, instead comparing the beneficiary designation change on the IRA to a life insurance policy, such as the one in *Francis*, 89 Wn.2d 511. An IRA is a form of pay on death account, and the decision of the Division I Court of Appeals in this matter, to treat the IRA as a post death transfer of assets, is in conflict with the decision in *Palmer*. This conflict between the divisions of the court of appeals must be addressed by the Supreme Court in this case to determine who has the burden of proof to show the validity or invalidity of a beneficiary designation change on an IRA.

The Court of Appeals also ignored a long line of cases that

analyzed Joint Tenancy With Right Of Survivorship and Pay On Death cases based upon the intent of the testator to make an inter vivos gift at the time of the event (not like a life insurance policy.) Decision at 16:

Placing another person's name on *a stock certificate* or bank account is analyzed under the "intent to make a gift" analysis in *Stringfellow v. Stringfellow*, 53 Wash.2d 639, 335 P.2d 825 (1959) (stocks); *In re Patton's Estate*, 6 Wn. App 464, 494 P.2d 238 (1972), Rev. Den. 80 Wash 2d 1009 (stocks);

Placing another person's name on *a bank account* is analyzed based upon "intent to make a gift" analysis in *Daly v. Pacific Savings and Loan Assn.*, 154 Wash 249, 251-252, 282 P. 60 (1929) Savings account in title only—no JTWROS. Same: *Wolfe v. Hoefke*, 124 Wash. 495, 214 P.1047 (1923) and *Meyers v. Albert*, 76 Wash 218, 135 P. 1003 (1913).

VI. CONCLUSION

Unmarried seniors; gay partners, and people like Randy and Sharon live their lives according to their own rules and terms of engagement, some in writing, but mostly not.

They think that the written agreement and their oral terms of engagement, manifested by every act ever done, will protect them from a de jure common law marriage. If the decision below continues as the law in this division, agreements will have no weight, and presumptions will

only be able to be overcome by tracing.

In addition, all precedent analyzing the ownership of accounts use inter vivos gift principles, so how did the IRA beneficiary change done by Sharon now default to a term life insurance analysis?

There needs to be a consistency in legal analysis so that people can chart their lives, much as Randy tried to do. This court needs to accept this Petition for Review to homogenize the law and protect unmarried persons from a discriminatory analysis.

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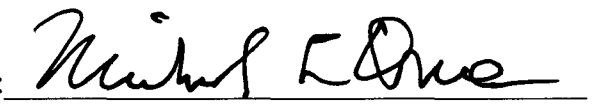
HELSELL FETTERMAN LLP

By: 

Michael L. Olver, WSBA No. 7031
Christopher C. Lee, WSBA No. 26516
Kameron L. Kirkevold, WSBA No. 408291

CERTIFICATE OF SERVICE

I, NIKKI FALLIS, hereby declare and state as follows:

1. I am over the age of majority, competent to testify and make the following statements based upon my own personal knowledge and belief.

2. I am now and at all times herein mentioned employed by the offices of Helsell Fetterman LLP, 1001 4th Avenue, Suite 4200, Seattle, WA 98154.

3. In the matter of Estate of Randle J. Langeland, Sharon Drown, Appellant vs. Janell Boone as Personal Representative of the Estate of Randal J. Langeland, Respondent/Cross Appellant, No. 67255-0-1 (Consolidated with No. 67659-8-1) I did on the date listed below (1) cause to be filed with this Court the Respondent/Cross Appellant's Petition For Review and (2) caused the same to be delivered via email to attorney, Douglas Ross Shepherd, Shepherd & Abbott, attorney for Sharon Drown.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

DATED: January 6, 2014

NIKKI FALLIS

APPENDIX "A"

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Estate of RANDALL J. LANGELAND. SHARON DROWN, Appellant, v. JANELL BOONE, Respondent.	NO. 67255-0-I (Consolidated with No. 67659-8-I) DIVISION ONE PUBLISHED OPINION FILED: October 28, 2013

LEACH, C.J. — This case involves competing claims to the estate of Randall J. Langeland asserted by his daughter, Janell Boone, and the woman with whom he lived from 1991 until his death in 2009, Sharon Drown. Drown appeals several pretrial orders, a posttrial order memorializing an evidentiary ruling made during trial, and the findings of fact and conclusions of law entered after trial on her petition for accounting, determination of ownership, fair and equitable division of assets, and other relief. She alleges that the court erroneously classified assets acquired during her committed intimate relationship with Langeland as his separate property and inequitably divided those assets.

She also challenges the court's determination that the dead man's statute[1] prevented her from testifying to conversations with Langeland about the character of certain property and its decision that the statute governing intestate succession did not apply by analogy. Finally, Drown asserts that the trial court should not have awarded attorney fees to Boone because this case involves novel issues of law.

In a cross appeal, Boone contests the trial court's rejection of her challenge to Langeland's designation of Drown as the beneficiary of his Fidelity IRA (individual retirement account) and its denial of her request for attorney fees on this claim.

We affirm the trial court's decisions about the laws for intestate succession and the IRA beneficiary designations but do not reach the dead man's statute challenge. From our examination of the history and nature of the conflicting presumptions invoked by the parties before the trial court, viewed in the context of this case, we conclude that the presumption that property acquired during a committed intimate relationship is jointly owned should prevail over a presumption of correctness for an estate inventory. Therefore, we reverse the trial court's division of probate assets and remand to the trial court for further proceedings consistent with this opinion. To allow the trial court full discretion to

[1] RCW 5.60.030.

make an equitable award following a correct characterization, we also vacate the fee award to Boone.

FACTS

Randall Langeland and Sharon Drown met and began dating in 1983. In 1991, they began living together. Boone has stipulated that they lived in a committed intimate relationship. Beginning in 1999 and throughout the rest of his life, Langeland suffered from numerous undiagnosable and untreatable ailments. In 2009, he died from complications relating to an autoimmune disorder of unknown etiology. Langeland did not have a will.

Throughout Langeland's many illnesses, Drown served as his primary caregiver. She traveled with him and assisted him with his business affairs; she cared for his personal hygiene needs and administered his medications; she attended all his medical appointments and was very involved with his treatment.

The probate assets itemized in the personal representative's inventory as Langeland's property, and now disputed on appeal, include the proceeds from a software company Langeland founded in 1994, a house that he purchased with Drown in 1999, and a 36-foot sailboat purchased in 1998. The court, relying on the presumption of correctness for this inventory, required Drown to prove her ownership interest. It rejected Drown's claim that the court should presume joint

ownership of assets acquired while she and Langeland cohabited and applied the dead man's statute to limit Drown's testimony.

When Drown failed to meet the burden of proving that she owned any interest in the contested assets, the court awarded nearly all of the assets to Langeland's only heir, Boone. It found that Drown proved her rights to the Fidelity IRA, on which she was named as beneficiary, and 24.7 percent ownership of the couple's Bellingham home, based upon a promissory note executed by Drown and Langeland. Characterizing Drown's claims as baseless, the court awarded attorney fees to the estate for defending against Drown's claims. It denied Boone's request for fees relating to the IRA award. Drown appeals the award of property and fees to Boone; Boone cross appeals the award of the IRA to Drown and the court's denial of fees related to that claim.

STANDARD OF REVIEW

Resolution of conflicting presumptions presents a question of law, which we review de novo. When reviewing challenged findings of fact and conclusions of law, we determine if substantial evidence supports the findings and if the findings of fact, in turn, support the conclusions of law.[2] Substantial evidence is

[2] Douglas v. Visser, 173 Wn. App. 823, 829, 295 P.3d 800 (2013).

evidence sufficient to persuade a fair-minded, rational person that the finding is true.[3] Unchallenged findings of fact become verities on appeal.[4]

ANALYSIS

We first address resolution of the conflicting presumptions invoked by the parties before the trial court. Drown contends that all property acquired while she and Langeland lived together is presumed to be owned by both of them because Boone stipulated that Drown and Langeland lived in a committed intimate relationship. She further contends that Boone has the burden of proving otherwise by clear and convincing evidence. Boone contends that the personal representative's inventory is presumed to be correct and that Drown has the burden of proving the contrary. Pretrial, the trial court adopted Boone's position. We disagree.

When parties invoke conflicting presumptions, two viewpoints exist about how to resolve the conflict.[5] Under the first approach conflicting presumptions cancel each other, while the second requires that the court determine which

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[3] Recreational Equip., Inc. v. World Wrapps Nw., Inc., 165 Wn. App. 553, 558, 266 P.3d 924 (2011).

[4] In re Estate of Freeberg, 130 Wn. App. 202, 205, 122 P.3d 741 (2005). Drown makes 39 assignments of error, challenging the court's refusal to apply a community property-like presumption; its characterization of the house, the boat, and the business as Langeland's separate property; and the conclusions of law awarding a substantial majority of the property to Boone.

[5] 1 CLIFFORD S. FISHMAN, JONES ON EVIDENCE CIVIL AND CRIMINAL § 4:59 (7th ed. 1992).

presumption should prevail, based upon a variety of factors, which may include public policy, logic, and an assessment of probabilities.[6] Logically, jurisdictions that adhere to the Thayer "bursting bubble" theory of presumptions[7] should follow the first approach, while jurisdictions giving different weight to different presumptions[8] should follow the second one.[9]

Washington cases provide little guidance about how to resolve conflicting presumptions. This lack of clarity exists, at least in part, because Washington cases apply the Thayer theory to some, but not all, presumptions and provide no general rule about when it applies.[10] Other cases identify presumptions that shift the burden of proof.[11] To further complicate the problem, the quantum of evidence required to overcome a burden-shifting presumption varies, and Washington cases do not provide any general guidelines or standards.[12] As a result, "the subject of presumptions is one of impossible difficulty for lawyers, and trial judges as well."[13]

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[6] 1 FISHMAN, § 4:59.

[7] Under the Thayer theory, a presumption places the burden of production of evidence upon the party against whom it operates but disappears if that party produces contrary evidence. 5 KARL B. TEGLAND, WASHINGTON PRACTICE: EVIDENCE LAW AND PRACTICE § 301.14, at 238 (5th ed. 2007).

[8] Often called the Morgan theory, under this approach a presumption shifts the burden of proof as to the presumed fact. 5 TEGLAND, § 301.15, at 241.

[9] 1 FISHMAN, § 4:59.

[10] 5 TEGLAND, §§ 301.15-301.16.

[11] See 5 TEGLAND, §301.14, for a collection of these cases.

[12] 5 TEGLAND, § 301.15, at 244.

[13] 5 TEGLAND, § 301.14, at 238.

A leading commentator on Washington evidence law suggests that Parker v. Parker,[14] provides "some indication that if a choice is necessary[,] the 'stronger' presumption should be applied"[15] and that conflicting presumptions of equal weight cancel each other.[16] We do not find this indication in the Parker opinion.

In Parker, the assignee of two promissory notes sued the deceased maker's estate for payment.[17] The executrix presented evidence of the decedent's delivery of cash and bonds in the same amount as the notes to the original note holder. She relied upon the presumption that money transferred from one person to another is presumed to be in payment of the obligation between them.[18] The noteholder and assignee presented evidence that these payments were gifts and sought to offset this presumption with another—that since the notes remained in their possession, they were presumed to be unpaid.[19] The court did not resolve the conflict between these two presumptions.

Instead, it decided the case using a third presumption not asserted by any party. The court noted that the decedent had been married a number of years

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[14] 121 Wash. 24, 207 P. 1062 (1922).
[15] 5 TEGLAND, § 301.17, at 249.
[16] 5 TEGLAND, § 301.17, at 250 (citing Prall v. Great N. Ry., 105 Wash. 24, 177 P. 637 (1919)).
[17] Parker, 121 Wash. at 25.
[18] Parker, 121 Wash. at 26.
[19] Parker, 121 Wash. at 26-27.

and had acquired the cash and bonds after his marriage, raising the presumption that they were community property.[20] After observing that "[t]his presumption is not overcome in any way by any proof on behalf of the appellant," the court noted that the decedent lacked the required consent of his wife to make a gift of community property and held that any alleged gift of the cash and bonds was void.[21] The court's opinion does not purport to provide any rule for resolving conflicting presumptions or identify any of the three described presumptions as being stronger than the others.

A number of states require that the trial court assess the comparative weight of conflicting presumptions and apply the stronger one.[22] Some states have adopted this approach through judicial decision,[23] and many others have done so through evidence rule.[24] A number of the evidence rules adopt the approach of Rule 301(b) of the Uniform Rules of Evidence:

> **(b) Inconsistent Presumptions.** If presumptions are inconsistent, the presumption applies that is founded upon weightier considerations of policy. If considerations of policy are of equal weight neither presumption applies.

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[20] Parker, 121 Wash. at 27.
[21] Parker, 121 Wash. at 27-28.
[22] 1 FISHMAN, § 4:61.
[23] See, e.g., Schmeizl v. Schmeizl, 184 Md. 584, 594-95, 42 A.2d 106 (1945); Palmer v. Palmer, 162 N.Y. 130, 56 N.E. 501 (1900); Young v. State, 111 Tex. Crim. 17, 10 S.W.2d 1008 (1928).
[24] See, e.g., ARK. R. EVID. 301(b); DEL. UNIF. R. EVID. 301(b); MONT. R. EVID. 301(c); OR. R. EVID. 310 (O.R.S. § 40.130).

The Federal Rule of Evidence 301 addresses presumptions but does not include any provision for resolving inconsistent presumptions:

> In a civil case, unless a federal statute or these rules provide otherwise, the party against whom a presumption is directed has the burden of producing evidence to rebut the presumption. But this rule does not shift the burden of persuasion, which remains on the party who had it originally.

Washington has not adopted an evidence rule addressing presumptions.

Washington cases have adopted individual presumptions for different reasons with policies of varying strength behind them. Some shift the burden of production, while others shift the burden of persuasion. Some are intertwined with pertinent substantive law. As a result, we are skeptical of the wisdom of attempting to provide a single rule to resolve all presumption conflicts. Instead, from an examination of the history and nature of the two presumptions before us, viewed in the context of this case, we conclude that the presumption that property acquired during a committed intimate relationship is jointly owned should prevail over a presumption of correctness for an estate inventory.

In 1984, the Washington Supreme Court adopted a general rule requiring a just and equitable division of property after the end of what we now call a committed intimate relationship.[25] In 1995, the court held that "income and property acquired during a meretricious relationship should be characterized in a

[25] In re Marriage of Lindsey, 101 Wn.2d 299, 304, 678 P.2d 328 (1984).

similar manner as income and property acquired during marriage. Therefore, all property acquired during a meretricious relationship is presumed to be owned by both parties."[26] A party may overcome this rebuttable presumption "by establishing by 'clear and convincing proof' that the property is separate, i.e., by tracing with some degree of particularity the separate source of funds used for the acquisition."[27]

> In the same case where it recognized this presumption, the court also
>
> established a three-prong analysis for disposing of property when a meretricious relationship terminates. First, the trial court must determine whether a meretricious relationship exists. Second, if such a relationship exists, the trial court evaluates the interest each party has in the property acquired during the relationship. Third, the trial court then makes a just and equitable distribution of such property.[28]

This analysis applies when the relationship ends through the death of one partner and the deceased partner's heirs have no greater rights than the decedent would have, if living.[29]

Thus, a party to a committed intimate relationship enjoys the benefit of a burden of persuasion-shifting presumption that all income and property acquired during the relationship are jointly owned and does not lose the benefit of that

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[26] Connell v. Francisco, 127 Wn.2d 339, 351, 898 P.2d 831 (1995).

[27] Chesterfield v. Nash, 96 Wn. App. 103, 111, 978 P.2d 551 (1999) (citing Connell, 127 Wn.2d at 350-51), rev'd on other grounds, In re Marriage of Pennington, 142 Wn.2d 592, 14 P.3d 764 (2000).

[28] Pennington, 142 Wn.2d at 602 (citing Connell, 127 Wn.2d at 349).

[29] Olver v. Fowler, 161 Wn.2d 655, 670-71, 168 P.3d 348 (2007).

presumption through the death of the other partner. This presumption replaced an earlier presumption that the court abandoned because its constricting dictates "made the law unpredictable and at times onerous."[30]

The presumption of an estate inventory's correctness appears to have been recognized in Washington for the first and only time in In re Estate of Shaner: "The burden of proof rested with respondent not only because she was the plaintiff in the separate action which was brought, but also because she challenges, in the estate proceeding, the inventory, which is presumed to be correct."[31] The Shaner opinion provides no discussion of this presumption and does not apply it in its analysis. Instead, it analyzes the application of an entirely different presumption, that of continued ownership.[32] Nothing in Shaner suggests that the presumption of correctness shifts the burden of proof or survives after the production of contrary evidence. Shaner cites In re Estate of Hamilton[33] as its sole authority for this presumption.[34]

Hamilton contains no reference to such a presumption. Instead, in an action where a surviving husband petitioned for an order striking four parcels from the inventory he filed in his wife's estate on the basis that they were his

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[30] Lindsey, 101 Wn.2d at 304.
[31] 41 Wn.2d 236, 242, 248 P.2d 560 (1952).
[32] Shaner, 41 Wn.2d at 242-45.
[33] 182 Wash. 81, 89, 45 P.2d 36 (1935).
[34] Shaner, 41 Wn.2d at 242.

separate property erroneously inventoried, the court stated, "The burden rests upon appellant to prove by a preponderance of the testimony the allegations of his petition, which allegations are inconsistent with practically all of his prior actions and statements."[35] This unremarkable observation appears to reflect nothing more than a statement of the general proposition that a party seeking judicial relief must establish those facts entitling that party to relief.

In contrast to the joint property presumption, the inventory presumption does not shift the burden of persuasion and does not appear to reflect any significant particularized policy decision. Generally, a presumption shifting the burden of persuasion should outweigh one that only shifts the burden of production because the same factors that justify giving one presumption greater impact also justify giving it greater weight than a presumption having less procedural impact.[36] Here, giving precedence to the inventory presumption does not further any policy decision articulated by our Supreme Court, while giving precedence to the joint property presumption furthers those policies articulated by the court in In re Marriage of Lindsey,[37] Connell v. Francisco,[38] and Olver v. Fowler.[39] Finally, in the context of this case, giving precedence to the inventory

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[35] Hamilton, 182 Wash. at 89.
[36] 1 FISHMAN, § 4:62.
[37] 101 Wn.2d 299, 678 P.2d 328 (1984).
[38] 127 Wn.2d 339, 898 P.2d 831 (1995).
[39] 161 Wn.2d 655, 168 P.3d 348 (2007).

presumption would frustrate the Olver court's statement that a deceased partner's heirs should have no greater rights than the decedent would have, if alive. The inventory presumption relieved Boone from an onerous burden of persuasion that applied to Langeland and that she could not meet.

We hold that the presumption that property acquired during an intimate committed relationship is jointly owned prevails over the presumption of correctness for an estate inventory.

We next consider whether the trial court's failure to apply this presumption prejudiced Drown. Drown and Boone primarily contest ownership of three probate assets, the proceeds from a software company Langeland founded, a house that he purchased with Drown, and a 36-foot sailboat. All were acquired during the Langeland/Drown committed relationship and subject to the joint property presumption. The court received no evidence tracing any of these three assets to funds owned by Langeland before his relationship with Drown began or acquired by Langeland by gift or inheritance afterward. As a matter of law, Boone failed to overcome the joint property presumption with respect to all three contested probate assets.

Boone contends that Drown's own testimony establishes the separate character of the sailboat. Drown testified,

> Q. I believe you testified that Mr. Langeland purchased the Catalina 36 sailboat with his own funds, correct?

A. Correct.

But Boone's argument ignores the following clarifying testimony from Drown:

Q. Do you know where the funds came to purchase this boat, came from?
A. Um, he saved all of his money for this boat.
Q. And was that savings that occurred during the time that you were in a committed intimate relationship starting in 1991?
A. Yes.

Boone also contends that Drown failed to establish the existence of a committed intimate relationship. This contention ignores Boone's stipulation filed pretrial with the trial court:

> You and each of you will please take note that for the purposes of the proceedings herein, Janell Boone hereby stipulates that decedent and Sharon Drown were in an intimate committed relationship.

Boone provides no explanation why this stipulation does not control this issue.

Even if the trial court mischaracterizes property as community or separate, this court may uphold a division of property, so long as it is fair and equitable.[40] Remand is required only where (1) the trial court's reasoning indicates that its characterization of the property significantly influenced distribution of property and (2) it is not clear that had the court properly characterized the property, it would have divided it in the same way.[41] Here, the findings of fact and conclusions of law show that the trial court's belief that Drown had no equitable

[40] In re Marriage of Kraft, 119 Wn.2d 438, 449, 832 P.2d 871 (1992).
[41] In re Marriage of Shannon, 55 Wn. App. 137, 142, 777 P.2d 8 (1989).

interest in the contested probate assets clearly influenced its decision to award those assets to Boone. Therefore, we reverse the trial court's division of probate assets and remand for further proceeding consistent with this opinion. To provide the trial court with full discretion to make an equitable division, we also vacate its award of attorney fees to Boone.

Contrary to the assumption contained in Drown's briefing filed with this court, a determination that the contested probate assets were jointly owned does not require that the trial court divide them equally between Drown and Boone. The three-part analysis adopted in Connell requires that the trial court determine what property is subject to division and make a fair and equitable division based upon the factors identified in the court's opinion.[42]

Because of our resolution of the characterization of the contested probate assets, we need not address Drown's assignments of error to the trial court's evidentiary rulings or its application of the dead man's statute.

We next address Drown's claim that the trial court should have "applied, by analogy, Washington intestate statutes," as regards community property to award her, in equity, Langeland's interest in various assets. We must reject this claim because we are bound by the Supreme Court's decision, holding:

> [U]nder Washington law, a surviving partner in a "meretricious" relationship does not have the status of a widow with respect to

[42]Connell, 127 Wn.2d at 349.

> intestate devolution of the deceased partner's personal property. The division of property following termination of an unmarried cohabiting relationship is based on equity, contract or trust, and not on inheritance.[43]

On cross appeal, Boone alleges that the trial court erred by finding that Drown was entitled to the funds in Langeland's Fidelity IRA. Several months before his death, Langeland transferred funds from an employer pension plan into a Fidelity IRA account and named Drown the account beneficiary. Boone characterizes this transaction as an inter vivos gift and argues that the gift was invalid because Drown did not prove by clear and convincing evidence that Langeland made the gift without any undue influence.

Boone's argument depends upon her characterization of the beneficiary designation as an inter vivos gift:

> In order to constitute a gift of personal property, one of the things necessary is that there must be a delivery, and that delivery must be such as will divest the donor of the present control and dominion over the property absolutely and irrevocably, and confer upon the donee the dominion and control.[44]

Designating a life insurance beneficiary is not an inter vivos gift because the designation is "merely a means of transmitting property at death"[45] and the beneficiary has no rights before the insured's death. Similarly, naming the beneficiary of an IRA is not an inter vivos gift. As a result, the cases involving

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[43] Peffley-Warner v. Bowen, 113 Wn. 2d 243, 253, 778 P.2d 1022 (1989).
[44] Decker v. Fowler, 199 Wash. 549, 551, 92 P.2d 254 (1939).
[45] Francis v. Francis, 89 Wn.2d 511, 514, 573 P.2d 369 (1978).

inter vivos gift relied upon by Boone have no application. Drown did not have the burden of proving by clear, cogent, and convincing evidence the validity of the beneficiary designation and the absence of undue influence. The court heard testimony from Drown about her role in assisting Langeland to create the rollover IRA; it heard testimony from Boone's expert witness opining that Langeland's signature on the transfer documents was a forgery; and it heard Drown's denial of any wrongdoing. The court ultimately found the IRA beneficiary designation valid. Substantial evidence supports the court's findings on this issue.

Boone, on cross appeal, argues that the court should increase her fee award to include fees relating to the IRA claim. As discussed above, the court did not err in awarding the IRA to Drown; therefore, we deny Boone's request for additional fees.

CONCLUSION

Because the court failed to apply the correct presumption to property acquired during the Langeland/Drown committed intimate relationship, we

reverse and remand to the trial court to reconsider the proper distribution of the jointly acquired assets and the issue of attorney fees. Otherwise, we affirm.

Leach, C.J.

WE CONCUR:

Dwyer, J.

Appelwick, J.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Estate of RANDALL J. LANGELAND. SHARON DROWN, Appellant, v. JANELL BOONE, Respondent.	NO. 67255-0-I (Consolidated with No. 67659-8-I) ORDER DENYING MOTION FOR RECONSIDERATION

The respondent, Janell Boone, having filed a motion for reconsideration herein, and a majority of the panel having determined that the motion should be denied; now, therefore, it is hereby

ORDERED that the motion for reconsideration be, and the same is, hereby denied.

Dated this 5th day of December, 2013.

FOR THE COURT:

Leach C.J.
Judge

APPENDIX "B"

Honorable Judge Ira J. Uhrig

IN THE SUPERIOR COURT OF WASHINGTON FOR WHATCOM COUNTY

In Re the Estate of: RANDALL J. LANGELAND, Deceased.	No: 09-4-00039-9 FINDINGS OF FACT AND CONCLUSIONS OF LAW

THIS MATTER having come on duly and regularly for trial from May 10, 2011 to May 12, 2011 before the Honorable Ira J. Uhrig, Judge of the Superior Court, on the issues of (1) the status of estate assets as either jointly or individually acquired and the respective interests of the parties in said assets; (2) a determination of the Estate and Ms. Drown's interests in the property located at 3946 Lakemont Street, Bellingham, WA; (3) whether the alleged inter vivos gift of the IRA from Mr. Langeland to Ms. Drown was a valid transfer; and (4) whether the estate should properly deny Ms. Drown's creditor's claim in the amount of $500,000+, Petitioner Janell Boone having been represented by her attorneys of record, Michael L. Olver and Kameron L. Kirkevold of Helsell Fetterman LLP, and Respondent Sharon Drown having been represented by her attorney of record, Douglas R. Shepherd of the Law Offices of Douglas R. Shepherd, and the Court having reviewed all of the pleadings and exhibits herein, and the Court having heard the testimony of all witnesses and all arguments of counsel, and the Court being otherwise fully advised in the premises, the Court

HELSELL FETTERMAN
Helsell Fetterman LLP
1001 Fourth Avenue, Suite 4200
Seattle, WA 98154-1154
206.292.1144 WWW.HELSELL.COM

does now hereby make and enter the following findings of fact and conclusions of law. Insofar as any finding of fact may constitute a conclusion of law, and insofar as any conclusion of law may constitute a finding of fact, then each shall be incorporated into and are hereby incorporated under the appropriate categories of findings of fact or conclusions of law.

FINDINGS OF FACT

1. Decedent, Randall J. Langeland, died January 9, 2009, leaving no Last Will and Testament.

2. Decedent was survived by Petitioner, Janelle Boone; two grandchildren; Jacob Gandel, 18; and Kristin Boone, 14; and his mother Agnes Langeland.

3. At the time of Decedent's death, he was living with Sharon Drown.

4. Decedent and Sharon Drown had been involved in a Committed Intimate Relationship for many years.

5. Decedent and Sharon Drown shared work on household domestic duties.

6. Decedent and Sharon Drown shared equally in all household expenses.

7. Decedent and Sharon Drown maintained separate bank accounts at all times.

8. Decedent and Sharon Drown did not comingle assets, except for 3 checks totaling $6,650 described in Exhibit 29 which Sharon Drown deposited in decedent's account by accident.

9. Decedent and Sharon Drown maintained the separate character of all property except property which was intentionally purchased jointly as described in the Estate Inventory and Appraisement.

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Helsell Fetterman LLP
1001 Fourth Avenue, Suite 4200
Seattle, WA 98154-1154
206.292.1144 WWW.HELSELL.COM

10. Even if there was a Committed Intimate Relationship, there was no property, other than that specifically set for the Estate Inventory and Appraisement that was jointly acquired to be equitably divided.

11. There was no joint or substantial investment of time or money into any specific asset so as to create any inequities favoring Ms. Drown.

12. Decedent purchased real property located at 3946 Lakemont Street, Bellingham, WA, using his own separate assets.

13. Decedent and Sharon Drown entered into a contract in which Ms. Drown was to acquire an interest in the Bellingham property by making payments in accordance with Exhibit 30 admitted herein.

14. Ms. Drown made payments, including a $10,000 down payment, totaling $17,565.29 in cumulative interest, and $29,144.71 in principal, which equates to a 24.7% ownership interest in the home at the time of Decedent's death.

15. Ms. Drown filled out Exhibit 31 to transfer Mr. Langeland's Fidelity IRA (formerly Enloe Medical Center IRA) on 8-24-08 to a Fidelity account that she created online that named herself as beneficiary. The signatures on Exhibit 31 are ~~not~~ deemed to be those of Mr. Langeland.

16. The accounting of Carolyn Lennington admitted as Exhibit 2, is Approved; the personal representative's fees and attorney's fees set forth therein through 4-28-2011 are approved. Any further fees may be submitted for approval without prejudice and she is hereby discharged.

17. Sharon Drown has advanced numerous unsupported legal theories throughout these proceedings including but not limited to a claim that she is entitled to assets by intestate succession; that she is a spouse; that she has a right to a jury trial; that she should

HELSELL FETTERMAN
Helsell Fetterman LLP
1001 Fourth Avenue, Suite 4200
Seattle, WA 98154-1154
206.292.1144 WWW.HELSELL.COM

be paid for domestic services etc which caused unnecessary attorney's fees and costs to be incurred.

18. The parties received their earnings in their own name; they scrupulously deposited their own earnings into their own accounts titled in their own names; they carefully did not jointly acquire any assets of significance; they meticulously divided, to the penny, all expenses equally; and decedent did not add Sharon Drown to any of his bank accounts; and only allowed her to acquire an interest in the residence by making payments with interest as provided in Exhibit 30. Decedent did not marry Sharon Drown nor did he execute a will in her favor.

CONCLUSIONS OF LAW

1. This court has statutory and plenary authority to grant the relief requested pursuant to Title 11 of the Revised Code of Washington.

2. Sharon Drown is not a statutory heir of the Estate of Randall Langeland, and does not inherit any of the separate assets of Decedent.

3. Sharon Drown holds a one-half interests in personal property described in the Estate inventory as jointly owned property purchased by Ms. Drown and Mr. Langeland.

4. Exhibit 30 signed by Sharon Drown was a valid contract, and through Ms. Drown's partial performance of said contract she has acquired a 24.7% interest in the Estate real property located at 3946 Lakemont Street, Bellingham, WA.

~~5. There is insufficient evidence to support Ms. Drown's claim by clear, cogent, and convincing evidence that decedent gifted to her his Fidelity IRA (formerly Enloe Medical Center IRA) and Ms. Drown is required to return the $56,982.60 to the Estate forthwith.~~ Ms. Drown is entitled to the funds in the Fidelity IRA

6. Ms. Drown is prohibited by Washington State Law from recovering on her

HELSELL FETTERMAN
Helsell Fetterman LLP
1001 Fourth Avenue, Suite 4200
Seattle, WA 98154-1154
206.292.1144 WWW.HELSELL.COM

claim for equitable reimbursement for domestic services, and Ms. Drown's creditor's claim for $500,000+ is disallowed.

7. Ms. Drown should be reimbursed by the estate ~~entitled to an offset against the return of the IRA money of $56,982.60~~ for (a) $3,000 that she paid for decedent's funeral; and (b) $6,650 that she accidentally deposited in decedent's account.

8. Any claim that decedent intended or did jointly acquire assets with Sharon Drown that were titled in his own name through the use of his own income or assets exclusively is substantially rebutted by his careful and meticulous conduct described in Finding 18.

9. The court has discretion to award attorney's fees from any party to any party and concludes that it would be inequitable to require the Estate assets or Janell Boone its sole heir to bear all the costs and fees associated with defending some of the claims advanced herein by Sharon Drown.

NOW THEREFORE, it is hereby ORDERED, ADJUDGED, and DECREED:

1. Ms. Drown's ownership interest in the real property located at 3946 Lakemont Street, Bellingham, WA, is equivalent to 24.7% of the net sale proceeds;

2. ~~Sharon Drown must return $50,782.60 to the Estate by deposit in the court registry within 7 days;~~ The estate shall pay $9,500 to Sharon Drown (which may be offset from the funds in #5, below).

3. Sharon Drown's Creditor's claim is disallowed;

4. Sharon Drown's challenge to the estate inventory is denied and her petition is dismissed.

5. Counsel for Sharon Drown shall immediately pay all estate funds under his control including but not limited to Sharon Drown's May rent of $683 and $75,130.23 in his trust account;

HELSELL FETTERMAN
Helsell Fetterman LLP
1001 Fourth Avenue, Suite 4200
Seattle, WA 98154-1154
206.292.1144 WWW.HELSELL.COM

6. Sharon Drown is ordered to pay the reasonable attorney's fees and costs for Janell Boone in an amount to be determined at a later hearing; and not to include fees or costs related to the Fidelity IRA

7. Janell Boone is hereby re-appointed as successor administrator of the Estate de bonis non without non-intervention powers at this time and the clerk shall issue letters upon the filing of an oath;

8. Carolyn Lennington is Discharged as administrator herein and she shall deposit all funds under her control into the registry of the court except for a holdback of $3,000 to pay future court approved costs of administration and she shall transfer all other estate assets or documents of title in her custody or under her control to Janell Boone upon her qualification as successor administrator.

9. Sharon Drown shall vacate the residence located at 3946 Lakemont Street, Bellingham, WA, within 90 days; Janell Boone is authorized to sell said residence as soon as practicable.

DATED this 26 day of May, 2011.

SUPERIOR COURT JUDGE,
Ira J. Uhrig

Presented by:

HELSELL FETTERMAN, LLP.

By_____
Michael L. Olver, WSBA #7031
Kameron L. Kirkevold, WSBA #40829
Attorneys for Janelle Boone

HELSELL
FETTERMAN
Helsell Fetterman LLP
1001 Fourth Avenue, Suite 4200
Seattle, WA 98154-1154
206.292.1144 WWW.HELSELL.COM

FILED

MAY 2 6 2011

WHATCOM COUNTY CLERK

By: _____

Honorable Judge Ira J. Uhrig

IN THE SUPERIOR COURT OF WASHINGTON FOR WHATCOM COUNTY

In Re the Estate of: RANDALL J. LANGELAND, Deceased.	No: 09-4-00039-9 ORDER ON DEADMAN'S STATUTE

THIS MOTION made during trial on this matter on May 12, 2011, by Petitioner, Sharon Drown, for Order declaring Janell Boone has waived the protections under RCW 5.30.060, otherwise known as the Dead Man's Statute, and the Court having carefully considered the arguments and testimony of both Parties, the Court finds that Ms. Boone's counsel was careful in questioning Sharon Drown on the IRA and the residence; he objected continuously, routinely and appropriately; and the Court concludes as a matter of law that the purpose of the dead man's statute is to prevent fraud and self serving testimony even though, at times it prohibits otherwise admissible testimony, and it may be anachronistic but it is enforceable until otherwise changed by the legislature. Any waiver applies only to the sharing of expenses and the Court has previously ruled that testimony about the splitting of payment of 50% of the expenses between Sharon Drown and the Decedent, and conduct in accordance therewith is admissible, NOW, THEREFORE, it is hereby:

HELSELL FETTERMAN
Helsell Fetterman LLP
1001 Fourth Avenue, Suite 4200
Seattle, WA 98154-1154
206.292.1144 WWW.HELSELL.COM

ORDERED, ADJUDGED, AND DECREED, that Ms. Drown's Motion to declare that the dead man's statute is waived as to statements or transactions with the decedent beyond the sharing of expenses is DENIED.

DATED this 26 day of May, 2011.

IRA J. UHRIG, JUDGE

Presented By:

HELSELL FETTERMAN, LLP

By: _____
MICHAEL L. OLVER, WSBA # 7031
KAMERON L. KIRKEVOLD, WSBA # 40829
Attorneys for Janell Boone

HELSELL FETTERMAN
Helsell Fetterman LLP
1001 Fourth Avenue, Suite 4200
Seattle, WA 98154-1154
206.292.1144 WWW.HELSELL.COM