

FILED
SUPREME COURT
STATE OF WASHINGTON
5/13/2021 8:43 AM
BY SUSAN L. CARLSON
CLERK

NO. 99674-1

SUPREME COURT
OF THE STATE OF WASHINGTON

NO. 53794-0-II
COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

LEONARD C. DEWITT,

Petitioner,

v.

ESTATE OF KEVIN W. HANNAN,

Respondents,

ANSWER OF RESPONDENT ESTATE OF KEVIN W. HANNAN TO
PETITION FOR REVIEW

DAVID CORBETT PLLC
David J. Corbett
2106 N. Steele St.
Tacoma, WA 98406
Telephone: (253) 414-5235
david@davidcorbettlaw.com
Attorneys for Respondent Estate of Kevin W. Hannan

TABLE OF CONTENTS

TABLE OF AUTHORITIES..... ii-iii

I. IDENTITY OF RESPONDENT.....1

II. CITATION TO COURT OF APPEALS’ OPINION.....1

III. THE ESTATE’S RESTATEMENT OF THE CASE.....1

IV. THE ESTATE’S ARGUMENT AGAINST GRANTING REVIEW.....4

 1. Introduction to the Estate’s argument.....4

 2. The Petition for Review largely ignores RAP 13.4, except for a very brief argument about RAP 13.4(b)(4)....4

 3. This case does not involve any issue of substantial *public* interest.....5

 4. The Court of Appeals did not err as a matter of law, or overlook genuine issues of material fact, when it affirmed summary judgment in the Estate’s favor.....8

IV. CONCLUSION.....11

TABLE OF AUTHORITIES

Cases

<i>Connell v. Francisco</i> , 127 Wn.2d 339, 898 P.2d 831 (1995).....	7, 9, 10, 11
<i>Hart v. Dep't of Soc. & Health Servs.</i> , 111 Wn.2d 445, 759 P.2d 1206 (1988).....	7
<i>In re Flippo</i> , 185 Wn.2d 1032, 380 P.3d 413 (2016).....	6
<i>In re Marriage of Pennington</i> , 142 Wn.2d 592, 14 P.3d 764 (2000).....	8, 9, 10, 11
<i>Matter of Leonard Carpenter Dewitt v. Estate of Kevin William Hannan</i> , Court of Appeals No. 53794-0II, 2021 WL 982588.....	passim
<i>Obergefell v. Hodges</i> , 576 U.S. 644, 135 S. Ct. 2584, 192 L. Ed. 2d 609 (2015).....	6
<i>Randy Reynolds & Associates, Inc. v. Harmon</i> , 193 Wn.2d 143, 437 P.3d 677 (2019).....	6
<i>State v. Duncan</i> , 180 Wn. App. 245, 327 P.3d 699, 704 (2014)	8
<i>State v. Watson</i> , 155 Wn.2d 574, 122 P.3d 903, 904 (2005).....	6

Other Authorities

https://crsreports.congress.gov/product/pdf/IN/IN11516#:~:text=The%20CDC%20eviction%20moratorium%20took,moratorium%20until%20June%2030%2C%202021	4
https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html	3
Washington Appellate Practice Deskbook (4 th ed.) § 18.2(5).....	8

Rules

RAP 13.4 passim

I. IDENTITY OF RESPONDENT

The Respondent presenting this Answer to the Petition for Review is the Estate of Kevin W. Hannan (the “Estate”), which substituted in as Respondent in the Court of Appeals after the death of Kevin W. Hannan (“Mr. Hannan”).

II. CITATION TO COURT OF APPEALS DECISION

The relevant Court of Appeals decision is the unpublished opinion filed on March 16, 2021 in the *Matter of Leonard Carpenter Dewitt v. Estate of Kevin William Hannan*, Court of Appeals No. 53794-0II, 2021 WL 982588.

III. THE ESTATE’S RESTATEMENT OF THE CASE

This case concerns the alleged existence of a committed intimate relationship (“CIR”) between Petitioner Leonard C. Dewitt (“Mr. Dewitt”) and Mr. Hannan. The Court of Appeals’ decision provides a detailed statement of the case, and thoroughly reviews the evidence presented at summary judgment.¹ The Estate will therefore not provide a complete account of the case, but will briefly highlight two areas that Mr. Dewitt either fails to mention or appears to deliberately distort in his argumentative, one-sided, and unsupported Statement of the Case.²

First, since Mr. Dewitt claims to have had a 16-year committed

¹*Matter of Dewitt v. Hannan*, 2021 WL 982588 at *1 to *6.

² Not only does Mr. Dewitt fail to support his Statement of the Case with citations to the record on review, but he also includes allegations about events clearly outside the record, such as settlement negotiations and the cause of Mr. Hannan’s death. *See, e.g.*, Petition for Review, at p. 4. *See also id.*, at p. 6 (citing to “[Record generally]”).

intimate relationship with Mr. Hannan, the Court of Appeals properly emphasized the extensive, largely undisputed evidence that during the bulk of the relevant period, Mr. Dewitt was cohabiting with a different man: Mr. Leonard Michael Haan.³ The Court of Appeals summarized part of the evidence bearing on the relationship between Mr. Dewitt and Mr. Haan as follows:

- A December 2005 declaration from Haan in Dewitt's dissolution proceedings with his former wife, stating that he was assisting Dewitt with child support payments, referencing Dewitt's son "visiting us," CP at 478, and stating that it was not fair "for Leonard and I to have to pay child support for times when [Dewitt's son] is with us." CP at 479.
- A February 2009 letter from Haan to a court that was sentencing Dewitt on a criminal conviction stating, "Leonard has been my partner for four years. Together we are raising his son We live in Tacoma." CP at 562.
- A December 2014 declaration from Haan in a lawsuit Dewitt had filed, stating that he resided at 2106 South 25th Street in Tacoma and that DeWitt "has lived with me at this address for approximately 8 or 9 years." CP at 509.
- Dewitt's May 2016 petition for a DVPO against Haan stating that he and Haan were current or former domestic partners, and asking the court to order Haan to vacate their "shared residence." CP at 525.
- *5 • The May 2016 DVPO issued against Haan stating that "[p]etitioner shall have exclusive right to the residence

³ See, e.g., *Matter of Dewitt*, 2021 WL 982588, at *8–9 (noting that "there is extensive, undisputed evidence in the record that Dewitt and Haan lived together as a couple between 2005 and May 2016," and that "[e]ven declarations submitted to support Dewitt acknowledged his relationship with Haan").

petitioner and respondent share” and listing Dewitt's address as 2106 S. 25th Street in Tacoma. CP at 532.

- Haan's May 2016 declaration in connection with his petition for a DVPO stating that Dewitt “abandoned his residency on April 1, 2016 (our 11th yr anniversary)” and that Dewitt had been residing in Seattle with “his new boyfriend(s).” CP at 544.⁴

Mr. Dewitt’s Petition for Review does not even mention his prolonged cohabitation with Mr. Haan. However, the Petition for Review continues to list Mr. Dewitt’s address as the same as that of Mr. Haan.⁵

Second, Mr. Dewitt twice states that he was evicted from Mr. Hannan’s home “during the moratorium.”⁶ Mr. Dewitt does not specify which “moratorium” he is referring to, but the only conceivable references known to counsel for the Estate would be the federal, state, or local eviction moratoriums imposed on account of Covid-19. But the court order requiring Mr. Dewitt to vacate Mr. Hannan’s home was issued on November 7, **2019**, and the first known case of Covid 19 in the United States was confirmed only on January 21, **2020**. CP 285.⁷ Mr. Dewitt was not evicted during any legal moratorium on evictions.

⁴ *Matter of Dewitt*, 2021 WL 982588, at *4–5. *See also* CP 545 (Mr. Haan’s declaration against Mr. Dewitt, stating that “[t]his technique [used by Dewitt] of getting judges to sign these orders to have more time to clean a person out has been seen before by me”).

⁵ *See* title page of Petition for Review, giving Mr. Dewitt’s address as 2106 S. 25th Street, Tacoma, WA 98405. Compare CP 509 (declaration by Mr. Haan, giving 2106 S. 25th Street as Mr. Haan’s address), and CP 888.

⁶ Petition for Review, at p. 2 and p. 8.

⁷ This Court may take judicial notice of the date of the first confirmed Covid-19 case in the United States, as established by:

<https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html>. *See also*

IV. THE ESTATE'S ARGUMENT AGAINST GRANTING DISCRETIONARY REVIEW

1. Introduction to the Estate's argument.

The Estate concedes that whether Mr. Dewitt had a CIR with Mr. Hannan is a matter of substantial interest to Mr. Dewitt. That same question was also of substantial interest to Kevin Hannan, who devoted a considerable share of his energy and attention during the last year of his life to successfully defending against Mr. Dewitt's lawsuit in Pierce County Superior Court. CP 1-4, 273-276. But the parties' interest in this case, however intense, does not mean that the case involves—or that the Petition for Review identifies—“an issue of substantial public interest that should be determined by the Supreme Court.”⁸ Mr. Dewitt does not even attempt to argue that any of the other criteria for review specified by RAP 13.4(b) are satisfied by this case. For these and other reasons specified below, this Court should deny Mr. Dewitt's Petition for Review.

2. The Petition for Review largely ignores RAP 13.4, except for a very brief argument about RAP 13.4(b)(4).

Pursuant to RAP 13.4(b), this Court will accept review only in the following circumstances:

- (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or

<https://crsreports.congress.gov/product/pdf/IN/IN11516#:~:text=The%20CDC%20eviction%20moratorium%20took,moratorium%20until%20June%2030%2C%202021> (noting that the federal “CARES Act eviction moratorium began on March 27, 2020”).

⁸ RAP 13.4(b)(4) (emphasis added).

- (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or
- (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
- (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.⁹

Mr. Dewitt’s Petition for Review never quotes RAP 13.4(b), and nowhere argues that the criteria stated in RAP 13.4(b)(1) through (3) are satisfied. Read charitably, the Petition for Review can be taken as claiming that RAP 13.4(b)(4) applies, since the Petition asserts that “fair treatment which does not express bias in favor of bar represented parties together with proper understanding of Committed Intimate Relationships *is an issue of substantial interest.*”¹⁰ However, this claim does not withstand scrutiny.

3. This case does not involve any issue of substantial *public* interest.

The fact that a case is of great importance to the parties does not suffice to make it a matter of substantial public interest. Whether Mr. Hannan and Mr. Dewitt had a committed intimate relationship is a quintessentially private issue.¹¹ Indeed, several of Mr. Dewitt’s “issues for review” are simply one-sided allegations about what may have been said or done in private between two consenting adults, one of whom is

⁹ RAP 13.4(b).

¹⁰ Petition for Review, at p. 5 (end of first paragraph) (emphasis added).

¹¹ See, e.g., *Obergefell v. Hodges*, 576 U.S. 644, 666, 135 S. Ct. 2584, 2599, 192 L. Ed. 2d 609 (2015) (noting that “decisions concerning marriage are among the most intimate that an individual can make”). Of course, the question of which classes of persons can exercise the right to marry has recently been of great public interest, but this case poses no issue about which classes of persons may marry, or form CIRs.

now deceased.¹² The fact that the lower courts can properly be called on to address disputes related to such allegations does not make those disputes—or their resolution by the lower courts—matters of substantial public interest.

Case law provides little guidance as to what does make an issue one of “substantial public interest.”¹³ But “substantial public interest” has been found where “[t]he Court of Appeals holding, while affecting parties to this proceeding, also has the potential to affect every [other] proceeding” in a large number of cases.¹⁴ Dewitt does not even allege that this case has similar potential. As he states himself, “[t]he case essentially comes down to whether or not the five *Connell* factors have been met and whether or not a CIR has been established that would require an equitable

¹² See, e.g., Petition for Review, at pp. 1-2 (Issues Nos. 4, 10, 13.

¹³ RAP 13.4(b)(4).

¹⁴ *State v. Watson*, 155 Wn.2d 574, 577, 122 P.3d 903, 904 (2005). See also *In re Flippo*, 185 Wn.2d 1032, 380 P.3d 413, 414 (2016) (granting review where “there are numerous now-pending personal restraint petitions . . . making claims similar to those asserted by Mr. Flippo”). There is a more substantial body of case law regarding whether an issue presented for review is moot. See, e.g., *Randy Reynolds & Associates, Inc. v. Harmon*, 193 Wn.2d 143, 152–53, 437 P.3d 677, 682 (2019). There is at least some overlap between this law and the interpretation of RPC 13.4(b)(4), since mootness turns on “whether a case presents an issue of continuing and substantial public interest.” *Id.* at 152. To the extent the factors relevant to mootness analysis are also relevant to the application of RAP 13.4(b)(4), they do not support Mr. Dewitt’s position. *Id.* at 152-153. See also *Hart v. Dep’t of Soc. & Health Servs.*, 111 Wn.2d 445, 448-441, 759 P.2d 1206 (1988) (providing detailed discussion of factors bearing on mootness).

distribution of assets *according to the specific facts of this case.*”¹⁵ These are simply not issues of substantial public interest.

Mr. Dewitt’s argument for review is not strengthened by claiming that this case somehow poses an issue about “bias in favor of bar represented parties.”¹⁶ This assertion appears to rest exclusively on Mr. Dewitt’s belief that both the trial court and the Court of Appeals misapplied the summary judgment standard to his detriment.¹⁷ However, as the Court of Appeals expressly noted, because its “review is de novo, it is immaterial whether the trial court applied the wrong standard.”¹⁸ Moreover, even if the Court of Appeals itself had misapplied the summary judgment standard, or made other errors of law to Mr. Dewitt’s disadvantage, this would not be evidence of bias against Mr. Dewitt, let alone of bias against *pro se* parties in general.¹⁹ Mr. Dewitt’s apparent

¹⁵ Petition for Review, at p. 3 (first sentence) (emphasis added). Mr. Dewitt is referring here to the case of *Connell v. Francisco*, 127 Wn.2d 339, 346, 898 P.2d 831, 834 (1995) (stating that “[r]elevant factors establishing a [CIR] 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”).

¹⁶ Petition for Review, at p. 5 (end of first paragraph). *See also* Petition for Review, at p. 1 (Issue No. 1).

¹⁷ *Id.* at pp. 3-5.

¹⁸ *Matter of Dewitt*, 2021 WL 982588 at *7 note 2.

¹⁹ *See, e.g., State v. Duncan*, 180 Wn. App. 245, 255, 327 P.3d 699, 704 (2014), *aff’d and remanded*, 185 Wn.2d 430, 374 P.3d 83 (2016) (noting that “[j]udicial rulings alone almost never constitute a valid showing of bias”). Mr. Dewitt’s claim of “an obvious pattern of bias . . . which . . . has been observed beyond this case” is completely unsupported by evidence or argument. *See* Petition for Review, at p. 3.

belief that there is an issue of “substantial public interest” in this case because it somehow exemplifies bias against *pro se* parties is completely unsupported as a matter of fact and law.

4. The Court of Appeals did not err as a matter of law, or overlook genuine issues of material fact, when it affirmed summary judgment in the Estate’s favor.

By itself, misapplication by the Court of Appeals of the summary judgment standard to the evidence in this case would not suffice to satisfy any of the criteria established by RA 13.4(b).²⁰ But the case against granting review is only strengthened by the fact that Mr. Dewitt fails to identify any errors by the Court of Appeals.

The key case for understanding the application of the summary judgment standard to CIRs is *In re Marriage of Pennington*, 142 Wn.2d 592, 14 P.3d 764, 772 (2000). In *Pennington*, the Supreme Court consolidated two cases, in each of which the superior courts had found after trial that there was a CIR.²¹ This Court found that the trial courts had erred as a matter of law, because the evidence presented did not support the legal conclusion that a CIR existed.²² Accordingly, in the current case,

²⁰ *See, e.g.*, Washington Appellate Practice Deskbook (4th ed.) § 18.2(5) (noting that “[t]he Supreme Court, in passing upon a petition for review, is not operating as a court of error, but rather is functioning as the highest policy-making judicial body of the state. Its concern is with the general state of the law, not particular applications of it, whether involving the state constitution, statutory or regulatory law, or the common law”).

²¹ *In re Marriage of Pennington*, 142 Wn.2d at 597, 599.

²² *Id.* at p. 594 (holding that “the facts of these cases do not support concluding the existence of stable, cohabiting relationships for either of the parties”).

decided on summary judgment, it was proper for the Court of Appeals to compare the evidence presented below with that presented in the consolidated *Pennington* cases, and to determine if the evidence, interpreted in the light most favorable to Mr. Dewitt, provided more support for a CIR than was found inadequate as a matter of law in *Pennington*.²³ The Court of Appeals properly concluded that the evidence of a CIR here was weaker than in the *Pennington* cases, and therefore properly concluded that Hannan was entitled to summary judgment.²⁴

Mr. Dewitt’s arguments to the contrary all fail. His argument regarding the factor of “pooling of resources and services for joint projects” fixates on the assertion that he did some work on a “specific asset,” namely, Mr. Hannan’s home in North Tacoma.²⁵ But the *Pennington* court was clearly concerned with more than whether a claimant had done some work on an identifiable asset.²⁶ In particular, it

²³ See, e.g., *Matter of Dewitt*, at *9 (noting that “[t]he facts here show a much more sporadic cohabitation than in *Pennington*”), and *11 (comparing the facts of this case with those of the *Pennington* cases on the issue of pooling of financial resources, and concluding that “there is no evidence that Dewitt and Hannan intertwined their finances, such as joint bank accounts, shared living expenses, or shared mortgage payments”).

²⁴ See *Matter of Dewitt*, 2021 WL 982588, at *12 (balancing *Connell* factors in light of *Pennington*).

²⁵ Petition for Review, at pp. 5-6.

²⁶ The logic of Mr. Dewitt’s argument is that *any* amount of work on an identifiable asset creates a basis for equitable distribution. *Id.* The obvious weakness of this claim—would helping to fix a flat tire on a car create an equitable claim to share in the value of the car?—is revealed by the fact that Mr. Dewitt never cites to any evidence regarding the amount or value of work done.

looked to whether a claimant “*substantially invested* her time and effort into any specific asset *so as to create any inequities.*”²⁷ The Court of Appeals did not err here by taking the evidence in the light most favorable to Mr. Dewitt, and concluding that it still fell short of what the Supreme Court held to be insufficient evidence of “substantial investment” in *Pennington*.²⁸

As for the *Connell* factor of intent, Mr. Dewitt asserts without basis that the Court of Appeals held that “direct evidence is required to prove that two males were putting themselves out as a reproductive heterosexual couple.”²⁹ This is a complete distortion of the Court of Appeals’ opinion on the intent factor, which stated in part as follows:

Significantly, Dewitt offers no direct evidence that the parties had a mutual intent to form a CIR. None of Dewitt's declarations state that *he* intended to form a CIR, much less that there was such a mutual intent. The question here is whether mutual intent can be inferred when viewing the evidence in a light favorable to Dewitt. But as with the continuous cohabitation factor, the undisputed evidence that Dewitt did not live full time with Hannan until after May 2016 and lived for significant periods with Haan for 11 years negates any reasonable inference that there was a mutual intent to form a CIR. And the facts here show less of a mutual intent than in *Pennington*.³⁰

Mr. Dewitt’s unsupported assertion about “scientific evidence” and his reference to the “[Record generally]” simply underline the weakness of his argument here, as does his claim that there evidence of “*intent of keeping*

²⁷ *In re Marriage of Pennington*, 142 Wn.2d at 605.

²⁸ *See Matter of Dewitt*, 2021 WL 982588, at *11 (citing to *Pennington* 142 Wn.2d at 604-605).

²⁹ Petition for Review, at p. 4.

³⁰ *Matter of Dewitt*, 2021 WL 982588, at *12.

the relationship past the sixteen years.”³¹ The issue with regard to intent is “mutual intent to form a CIR,” and the Court of Appeals did not err in finding insufficient evidence of such intent to create a genuine issue of material fact.³²

IV. CONCLUSION

A CIR “is a stable, marital-like relationship where both parties cohabit with knowledge that a lawful marriage between them does not exist.”³³ Whether Mr. Dewitt can prove that he and Mr. Hannan were engaged in a CIR is simply not a question of substantial public interest. Moreover, Mr. Dewitt fails to identify any error in the Court of Appeals’ decision that no CIR was established. This Court should deny Mr. Dewitt’s Petition for Review.

DATED this 13th day of May 2021.

DAVID CORBETT PLLC

By: s/ David J. Corbett
David J. Corbett, WSBA# 30895
2106 N. Steele St.
Tacoma, WA 98406
Telephone: (253) 414-5235
david@davidcorbettlaw.com
Attorney for Respondent Estate of Kevin
Hannan

³¹ Petition for Review, at p. 7.

³² *Matter of Dewitt*, 2021 WL 982588, at *12.

³³ *Connell*, 127 Wn.2d at 346.

CERTIFICATE OF SERVICE

I certify that on May 13, 2021, I emailed the foregoing Answer to Petition for Review by Respondent Estate of Kevin Hannan to Mr. Leonard Dewitt, Petitioner *pro se*, at his email address of:

Leostar5678@gmail.com

Dated this 13th day of May 2021 at Tacoma, Washington.

By: s/ David J. Corbett

DAVID CORBETT PLLC

May 13, 2021 - 8:43 AM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 99674-1
Appellate Court Case Title: Leonard Carpenter Dewitt v. Estate of Kevin William Hannan
Superior Court Case Number: 18-3-02728-3

The following documents have been uploaded:

- 996741_Answer_Reply_20210513083955SC253657_6693.pdf
This File Contains:
Answer/Reply - Answer to Petition for Review
The Original File Name was Answer to Petition for Review final.pdf

A copy of the uploaded files will be sent to:

- leostar5678@gmail.com

Comments:

Answer by Estate of Kevin Hannan to Petition for Review filed by Mr. Dewitt

Sender Name: David Corbett - Email: david@davidcorbettlaw.com
Address:
2106 N STEELE ST
TACOMA, WA, 98406-8213
Phone: 253-414-5235

Note: The Filing Id is 20210513083955SC253657