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No. 66029-2-1

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION ONE

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In re the Matter of

LINDA RINALDI  
Respondent

and

TAMAR BAILEY  
Appellant

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FILED  
COURT OF APPEALS  
DIVISION ONE  
2018 JUN 16 AM 11:01

ON REVIEW FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING COUNTY

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OPENING BRIEF OF APPELLANT

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## I. INTRODUCTION

This case involves a relationship but not a committed intimate relationship. The distinction has both personal and legal consequences. In Washington, when parties to a couple do not or cannot legally marry, the court may, at separation or death, distribute quasi-community property, but only if facts establish the existence of a marital-like relationship. Unlike with marriage, where the parties' intent to commit to one another is made explicit on the front end of the relationship, proving the relationship looking backwards necessarily requires an exacting standard. Unlike when the committed intimate relationship doctrine began, vast numbers of people today cohabit without marrying. They operate in varying degrees of mutual interdependence, materially and emotionally. Some make marital-like commitments to one another and many more do not. The committed intimate relationship doctrine must separate the former from the latter. That is, because the committed intimate relationship is invoked only to prevent an unjust enrichment, the facts must clearly establish both parties were "all in" in the same way as married couple. In this case, only one of the parties made that investment. Without both parties sharing in the intent to commit fully, no committed intimate relationship existed.

## II. ASSIGNMENTS OF ERROR

### *Assignments of Error*

1. The trial court erred when it denied the motion to continue trial despite that Bailey's counsel was gravely ill.
2. The trial court erred when it found the parties were involved in a committed intimate relationship for all of the 15 years they cohabited.
3. The trial court erred when it declined to distribute the pension by means of a QDRO, or it erred when, having ruled the pension could not be distributed, it offset the pension against other property.
4. The trial court erred when it valued this pension without considering the federal law restrictions on distributing the pension.
5. The court erred by entering the following findings of fact and conclusions of law, as well as entering its "Summary Decision" (CP 106-107, 109-113):

#### 2.4 Finding of Committed Intimate Relationship

Based upon the evidence and testimony presented during trial, this Court finds that the parties shared a committed intimate relationship from September 1993 until separation in January 2008. The facts establishing the parties' committed intimate relationship are detailed in the Summary Decision

Finding a Committed Intimate Relationship dated and signed by this court on July 8, 2010. The Summary Decision is attached hereto at **Exhibit A**, and is incorporated as if fully set forth herein.

The court finds that there was a committed intimate relationship between the parties and that all property acquired during the relationship is deemed community property and subject to equitable distribution. The court finds that a 50/50 distribution of the property acquired during the relationship is a just and equitable distribution given the age of the parties, the capacity to earn a living, and the resources and services each brought to the relationship.

#### 2.5 Community Property

The parties have the following real or personal community property:

The real and personal community property of the parties is set forth in the chart included with the court's Summary Decision at Exhibit A.

#### 2.7 Community Liabilities

The parties have outstanding community liabilities as set forth in the chart included with the court's Summary Decision at Exhibit A.

#### 2.9 Other

Based upon the court's 50/50 division of the parties' \$1,952,341.00 community property as fully set forth in the chart included in Exhibit A, the Petitioner is [awarded] an additional judgment in the amount of \$218,806.00 against the Respondent as an equalizing payment. A Decree shall be entered contemporaneously with these Findings of Fact and Conclusions of Law confirming the judgment.

### 3.2 Granting a Decree

The parties shall be granted a decree awarding each party her separate property and liabilities, and dividing the community property in a fair and equitable manner.

### 3.3 Disposition

The court should determine the status of the parties, and make provision for the disposition of property and liabilities of the parties. The distribution of property and liabilities as set forth in the decree is fair and equitable.

CP 106-107, 109-114. (The documents are attached to this brief.)

#### *Issues Pertaining to Assignments of Error*

1. Can this court determine whether the trial court abused its discretion in denying a continuance when there is no record of the court's reasoning?
2. Does it appear from this record that the court abused its discretion in denying a continuance when trial counsel was gravely ill?
3. When one party to a relationship refuses to make a commitment or to plan for a future together while secreting funds for her planned departure from the relationship, does a committed intimate relationship exist?

4. Can the court distribute a federally regulated pension in dissolution of a nonmarital relationship?

5. If federal law prohibits the court from distributing the pension, does federal law likewise prohibit the court from using the pension as an offset against other property?

6. If federal law restricts distribution of the pension, must the pension be valued in a way that accounts for the restriction on alienation?

### III. STATEMENT OF THE CASE

#### A. THE PARTIES BECAME FRIENDS, THEN LOVERS, THEN ROOMMATES.

Bailey and Rinaldi met in Alaska in the mid 1980s and became friends. 4RP 125-126.<sup>1</sup> The women developed a mutual attraction, though Rinaldi's intimate relationships had been almost exclusively with men. 4RP 126-127. When Bailey learned her feelings were reciprocated, and because she was in a

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<sup>1</sup> The verbatim report of proceedings in this case consists of eight volumes produced by three different court reporters. Two of the volumes, 6 and 7, are from the morning and afternoon of the same day. In this brief, the volumes will be cited as follows:

05/24/10 – 1RP  
05/25/10 – 2RP  
05/26/10 – 3RP  
06/08/10 – 4RP  
06/09/10 – 5RP  
06/10/10 – 6RP (morning)  
06/10/10 – 7RP (afternoon)  
07/23/10 – 8RP

monogamous relationship with another woman at the time, she stopped seeing Rinaldi outside of group activities. 4RP 127-128. After moving to Tennessee for work, Bailey did not see Rinaldi for several years. 4RP 128-129.

When the parties met again, both were single and the mutual attraction remained. 1RP 42; 4RP 158-162. They began to see each other socially and, eventually, became lovers. 1RP 41-44; 4RP 163. Rinaldi had recently moved to the Puget Sound region and Bailey had recently moved from Tennessee back to Alaska. 4RP 134-136; 164. Bailey would visit Rinaldi on layovers in Seattle. 1RP 45. This meant that she would “bid” for flights that included a Seattle layover, though she lived in Alaska and was based in Oakland. 4RP 134, 161-162, 165-167. Basically, Bailey would commute to Oakland to begin her work “day,” then commute back to Alaska, while trying to layover in Seattle. 1RP 65.

Fairly soon, the two women began to discuss living together in the same city. 1RP 54; 4RP 164. For career reasons, they decided to live in Alaska. 1RP 54-56. (Though Rinaldi said she quit her job, 1RP 57, her job was ending, 6RP 46.) In September, 1993, Rinaldi moved into Bailey’s house in Anchorage. 1RP 57-58.

Bailey added Rinaldi to an existing checking account, from which the parties paid household expenses. 1RP 62; 5RP 15-16, 21.

Within a year, Rinaldi wanted to move back to the Seattle area and Bailey agreed. 1RP 65. After renting for a time, the parties bought a home in West Seattle, taking possession in April, 1995. 1RP 68. They lived in the house until January 2008, when Rinaldi asked Bailey to leave on the pretense of a trial separation. 5RP 24, 26. In fact, Rinaldi quickly consulted with an attorney, and appears to have done so even earlier. 5RP 29; 6RP 51, 61, 143.

Rinaldi had only once before been in a relationship she described as “long term,” and in that case she meant a couple of years in the 1970s when she lived off and on with a man in Phoenix. 1RP 47-48. As she described it, “[p]eople did not tend to work out well for me.” 1RP 49. Her recollection of her relationship history with Bailey was hazy, particularly as the court would not allow her to rely on notes she brought with her to court, and she struggled to remember when they discussed their mutual attraction or when they first kissed or the details of their dating relationship. 1RP 33, 35, 36, 37, 41, 43, 52. Rinaldi described them in this early stage as being “fairly in love.” 1RP 54.

**B. THE PARTIES COHABITED, BUT RINALDI WOULD NOT SOLEMNIZE THE RELATIONSHIP OR JOIN IN PLANNING FOR THE PARTIES' LONG-TERM FUTURE TOGETHER.**

Bailey was “all in” in her relationship with Rinaldi. She pursued Rinaldi. 4RP 160. She described their dating relationship as “this great love affair.” 4RP 164. She told how she “loved Linda probably more than anybody I have ever loved in my life.” 4RP 220. She took the initiative in adding Rinaldi to her bank account. 5RP 15. She arranged to execute mutual estate-planning documents, which Rinaldi resisted. 1RP 90-93; 5RP 36-37. She researched long-term care for their future, which Rinaldi refused to discuss. 5RP 38.

Bailey raised with Rinaldi the possibility of having a child together, but Rinaldi was absolutely opposed. 4RP 221. Bailey also repeatedly asked Rinaldi to solemnize or formalize their commitment. 4RP 220; 5RP 36. Consistently, Rinaldi refused, giving one excuse after another. She said she did not want to marry because her parents could not attend because Rinaldi had not told her parents about the nature of her relationship. 4RP 221-222. She “came out” to them in 2000, but still would not “marry” Bailey. 1RP 75. She objected there was no one to marry them and then objected to the people who might perform the ceremony,

including Bailey's sister. 4RP 222. As the sister recalled, Rinaldi "in no uncertain terms told me that, you know, I certainly would not be the one performing the marriage ceremony if there was ever to be one, which there would not be." 6RP 25. Rinaldi refused to go to Massachusetts, when marriage became available there, because, she said, it would have no legal effect. 2RP 107; 4RP 222. (The legal effect was not clear at first. 6RP 25.) Rinaldi said at trial she was not opposed to the idea of getting married, but wanted something small and private. 1RP 95. However, Bailey likewise did not want anything large or lavish. 4RP 220. Rinaldi's friends knew she refused to "marry" Bailey. See, e.g., 2RP 103-104. As one of Rinaldi's close friends recalled about Bailey's repeated requests to make a commitment, "there was really no interest in doing that on Linda's part." 6RP 41. Rinaldi did not say why, but was consistent over the years in her lack of desire to "marry" Bailey. 6RP 41, 50-52.

Pepper Schwartz, professor of sociology at the University of Washington with expertise in couples and their variations, testified about commitment and intimacy. 4RP 15-21. Her research has discovered substantial distinctions between cohabitation and marital or marital-like commitments. 4RP 26-30. In particular,

among cohabitants, the involved parties often reported “distinctly different visions of what they were in.” 4RP 26-28. This internal inconsistency means the parties are “not in the same relationship really.” *Id.* Schwartz remarked on how significant solemnization was for couples, including same-sex couples, regardless of the legal effect of the solemnizations. 4RP 31-33. A ritual of some kind requires the parties have the commitment discussion with each other and requires them to make public their decision. 4RP 28. This significance explains why so many same-sex couples went to Vermont or Portland or San Francisco when it seemed those places offered them marriage or a marriage equivalent. 4RP 31-32, 54. Indeed, Schwartz “would define marriage or marriage-like commitments as almost always requiring some kind of ritual, some kind of presentation to others of what they are.” 4RP 26, 54, 56.

In describing the attributes of marital or marital-like relationships, Schwartz emphasized commitment, intimacy, and shared vision or reality. See, e.g., 4RP 35-37, 40-43. The relationship is characterized, at its core, by honesty and self-revealing, security and comfort, emotional connection, openness and sharing of feelings and experiences. 4RP 48. Thus, even while parties in a committed relationship may go through difficult

periods, they rarely threaten to leave. 4RP 51-53. Where one party views the relationship as on the brink of splitting up, Schwartz saw reason to question whether any commitment remained or was ever there. 4RP 51-53. Similarly, significant dishonesty in the relationship would disqualify the relationship as a committed one, in the professor's view. 4RP 84-85.

**C. AT LEAST SEVEN YEARS BEFORE SEPARATION,  
RINALDI BEGAN SECRETING FUNDS IN PREPARATION  
FOR THE RELATIONSHIP ENDING.**

Bailey carried the relationship in financial terms, as well as emotional ones. According to Steven Kessler, over the course of the cohabitation, from 1993 to 2008, Bailey earned \$2,656,000 to Rinaldi's \$801,000. RP 70. All of Bailey's income, after payroll deductions (including for her 401(k)) was deposited into the household account. 5RP 169; see, also, 5RP 46. Bailey believed in the relationship "as a we and an us." 5RP 46, 184. From that account, the parties paid for all their living expenses and recreational expenses. According to Bailey's calculations, she funded their life at 87%, while Rinaldi contributed 13%. 5RP 112. As Rinaldi said to Bailey's sister, when taking her out to dinner, "let's spend Tamar's money." 6RP 24.

By contrast, it was unclear where all of Rinaldi's income went. Her taxes and retirement were often paid from the joint account, not her business account. 1RP 167-168. Moreover, it came out in discovery and at trial that Rinaldi had been secreting funds since at least 2000, with the help of a sister in California. 1RP 171; 5RP 56, 84-85. Bailey learned of this "mad money" through a random subpoena of financial institutions. 5RP 94-96, 104-105, 108, 119. At first, Rinaldi told her expert, Steven Kessler, the amount was \$21,780, which he could not verify. 3RP 85, 102. At trial, Rinaldi at first acknowledged she had secretly saved approximately \$24,000-25,000. 1RP 171. Later, her counsel told Kessler to add \$10,000 to the earlier figure, for a total of over \$31,000. 3RP (05/26/10) 85. Bailey felt certain, based on a comparison of Rinaldi's income and her expenses and household contributions, they had not found all of the money Rinaldi had secretly saved. 5RP 112-114, 119.

Beginning in 2000 or 2001, Rinaldi began this secret savings plan in anticipation of breaking up with Bailey. 1RP 171. She enlisted her sister's help. Judy Rinaldi described how, in 2000, Rinaldi sent money to her to hold, saying that she and Bailey might be splitting up and she needed the money to support herself for

several months. 4RP 95-96, 100. The sister received additional funds from Rinaldi over the years and invested them and reinvested them. 4RP 101-107. Her recollection of the specifics was pretty fuzzy. 4RP 107. However, she thought she probably sent Rinaldi \$20,020 in 2005, but also thought the amount was probably \$25,000, and sent by her to Rinaldi in 2008. 4RP 101, 105, 107, 115. The sister did not know why Rinaldi involved her in this effort. 4RP 116. She did not know the source of the funds, except that Rinaldi said the first installment came from her pay. 4RP 119-120. The sister knew the funds were kept secret from Bailey. 4RP 121. Rinaldi explained she had her sister manage the account “[b]ecause [she] didn’t want Tamar to know about that account.” 6RP 131.

In addition to these funds, Rinaldi borrowed money, \$13,666.95, from the household to renovate a property of her family’s in Kellogg, Idaho, which was then sold. 6RP 110-111. Instead of reimbursing the relationship from the proceeds, Rinaldi banked them herself. 1RP 179; 4RP 114, 206-207; 6RP 141-142.

Rinaldi also held an account with the rest of the sale proceeds, totaling \$77,570.00, which had been disbursed to her and her two sisters, as they were titled owners of the property,

which their parents quitclaimed to them in 1997. 4RP 107; 6RP 107, 114. The sisters testified these funds were for their mother, though the account was held solely in Rinaldi's name. 4RP 119.

She also told a friend she was secretly giving money to a niece, and intended not to tell Bailey. 6RP 39. To this same friend, Rinaldi often made clear how important it was to her to own things, with titles being a recurring theme in Rinaldi's conversation. 6RP 40. Bailey, likewise, told of Rinaldi's insistence on being titled on the airplane Bailey bought with her father. 4RP 194-195.

**D. BAILEY'S EMPLOYER HAS A DEFINED BENEFIT PENSION PLAN FOR PILOTS.**

Bailey is a pilot. She began her career with a small carrier flying cargo planes in Alaska before joining FedEx as a flight engineer. 4RP 129-134. Gradually, she moved up in rank until attaining the captain's seat in 2001. 4RP 134-137. She flies a wide-body jet, an MD-11, which she describes as a giant DC-10, on international flights. 4RP 136, 149. The work is difficult and exhausting, both physically and mentally, requiring complete concentration. 4RP 168-170. Putting her body through repeated pressurization cycles and temporal disorientation as she crosses back and forth between time zones takes a physical toll, including placing her at an increased risk for cancer. 4RP 169-172.

Bailey's position at FedEx is not transferrable, in the sense that pilot seniority is company-driven and switching companies means starting at the bottom, with implications both for salary and for control over home bases, schedules, and routes. 4RP 147. Currently, Bailey is at the top of FedEx's pay scale, grossing about \$250,000 annually. 4RP 148-149.

Bailey's employer is one of the few airlines after 9/11 to have retained a defined benefit pension plan, and it has retained only the pilots' plan. 4RP 154-156; 4RP 156. Pensions for all other FedEx employees, none of whom besides the pilots are unionized, have been dismantled and those employees now participate in defined contribution plans. 4RP 156. The pilots have been warned their pension plan is on the "auction block" and warned to plan for their retirement as if there will be no pension. RP 156-157. Pilots in most of the other airlines have seen their retirement frozen or terminated. 4RP 157. As Bailey explained, she gets nothing from this pension until she retires, which she anticipates doing by age 60. 5RP 161, 173.

Taking no account of these circumstances, Rinaldi's expert, Steven Kessler, valued the Pilots Retirement in separate property

find another attorney at this late date who could acquire the same level of knowledge of the facts, the parties, and the issues,” as Dyer. Id. Trial was rescheduled to May 24, 2010.

Dyer hoped she would be able to resume work. CP 192. Instead, she suffered further complications, necessitating a second emergency surgery on April 30, 2010. CP 194, 195-198. On May 19, she requested another continuance, which Rinaldi opposed. CP 195-198, 195-198. The court denied the motion and the matter proceeded to trial as scheduled, less than a month after Dyer’s surgery. CP 210-211.

At trial, Dyer obviously struggled. She had not complied with various pretrial requirements. 1RP 4-23 (joint statement of evidence, KCLCR 26). She appeared unprepared for trial from the outset. 1RP 3-4 (saying both that she did and did not sign the joint statement of evidence). She waived opening statement. 1RP 18. She waived cross-examination of Rinaldi, indicating she would call Rinaldi as an adverse witness in her case in chief. 2RP 86. She never did.

She needed a break in the middle of testimony on the second day of trial. 2RP 62. Frequently, her examination of witnesses was confusing. See, e.g., 2RP 100, 103. Once, when

the court scolded Dyer for what seemed a disrespectful attitude, Dyer apologized and explained she was having difficulties with her illness. 3RP 37-38. Frequently, Dyer seemed addled, for example, as when she presented Bailey's expert witness, Pepper Schwartz. 4RP 6-8. In her examination of Bailey, it was clear Dyer was not in command of the trial exhibits nor had she prepared her witness, who the court repeatedly admonished to slow down, among other things. See, e.g., 4RP (06/08/10) 139-146, 153-154, 157, 159, 186, 194, 203-204, 210, 211; 5RP 38, 54-55, 59-65, 81-84, 87. 92; 6RP 136. Dyer advised the court she was having trouble speaking because of pain in her mouth. 5RP 3-9, 103. At one point, she admitted a lack of knowledge of the case due to her being "completely unconscious" during parts of the past year. 5RP 91-92. She referred to a deposition of Rinaldi's mother, but never produced the mother or the deposition for impeachment purposes on the subject of whether the mother knew Rinaldi was holding the proceeds from the Kellogg property sale for her benefit. See, e.g., 6RP 139.

At presentation, almost six weeks later, Dyer admitted she was unprepared for trial, as, for example, failing to obtain a financial expert to counter Kessler regarding the separate property portion of

Bailey's 401(k), which they only guessed at during trial. 8RP 24. Dyer told the court she ended up in surgery again right after the trial, her third emergency surgery in six months. 8RP 23. As it turned out, her leg was broken throughout the trial and she was every bit as sick as she had felt. Id. "[I]n hindsight," Dyer explained, going to trial was "a clear mistake." Id.

#### F. TRIAL COURT DECISION AND APPEAL.

The trial court ruled in Rinaldi's favor and held the parties had been in a committed intimate relationship for 15 years, from 1993 to 2008. CP 95-101. The court awarded each party their separate property, as Kessler had characterized it. CP 114. And the court split the "community property" 50/50. Id. The court included the defined benefit pension, as valued by Steven Kessler, but placed that asset in Bailey's column and awarded Rinaldi all the West Seattle home and an equalizing payment of \$218,806. CP 114.

Bailey moved for reconsideration arguing that the court treated the defined benefit pension as if it were savings. CP 115-120. She asked the court to deal with the pension as federal law requires, by entering a Qualified Domestic Relations Order (QDRO). Id. She observed that by treating the pension as an

asset, offsetting other assets, and requiring an equalization payment, Bailey would have to liquidate some of her 401(k) with attendant penalties. Id.

The court denied the motion, being unpersuaded it could enter a QDRO for the pension. CP 143. The court commented on “a great deal of uncertainty as to whether federal law regarding same sex couples would permit a QDRP to be entered” and observed that there was no evidence FedEx would implement such an order. CP 143-144.

Bailey timely appealed. CP 146-169.

#### IV. SUMMARY OF ARGUMENT

Bailey went to trial severely disadvantaged by her trial attorney's incapacity, which affected not only the conduct of trial but the year of preparation that should have preceded trial. Nevertheless, trial did demonstrate that only one of these parties was fully committed to the relationship and, for that reason, the committed intimate relationship doctrine does not apply. Even if it did, because the parties are not married, the federally regulated pension either must be distributed per federal law, or it cannot be distributed at all. Certainly, given the restriction on alienation, it cannot be given its usual value.

## V. ARGUMENT

### A. THE COURT SHOULD HAVE GRANTED THE MOTION TO CONTINUE TRIAL IN LIGHT OF COUNSEL'S MEDICAL CONDITION.

Bailey's trial counsel was gravely ill throughout most of the proceedings below, beginning in May 2009 when she was involved in a near-fatal automobile accident. She had three major emergency surgeries in six months, from December until just after trial concluded, during the most crucial period for Bailey's case. She requested a continuance, but was denied. Three days later, she conducted trial with a broken leg and other maladies (e.g., affecting her mouth). For Bailey, this was a lose-lose proposition.

This Court reviews a trial court's decision whether to grant a continuance for a manifest abuse of discretion, meaning whether the trial court exercised discretion based on untenable grounds or reasons. *In re V.R.R.*, 134 Wn. App. 573, 580-581, 141 P.3d 85 (2006). A trial court's consideration of a motion to continue should take into account "a number of factors, including diligence, due process, the need for an orderly procedure, the possible effect on the trial, and whether prior continuances were granted." *Id.*, at 581. Denial of a continuance may violate constitutional due process,

where prejudice results or where the trial result would have been different if a continuance was granted. *Id.*

Here, the basis for the trial court's ruling is unknown, since no record was made apart from the order denying Bailey's motion. CP 210-211. Accordingly, it cannot be known whether and how the trial court considered the relevant factors, rendering the court's decision unreviewable. See *In re Marriage of Horner*, 151 Wn.2d 884, 896, 93 P.3d 124 (2004) ("only when it clearly appears what questions were decided by the trial court, and the manner in which they were decided," can meaningful review occur). Rinaldi objected to the continuance on the basis that it was "simply too late to ask for a continuance, ...." CP 199. Rinaldi also noted that Bailey had "not complied with any pretrial requirements or deadlines," and accused her of attempting to excuse this noncompliance with a last minute request for a continuance. CP 199-200. She asked for terms \$10,000 to cover the expenses to Rinaldi of any continuance. CP 204-209. She did not claim she would be prejudiced aside from this expenditure of costs and the fact of delay.

In fact, of course, the failure of Bailey's counsel to comply with pretrial requirements underscores the need for the

continuance. Dyer was incapacitated and not performing effectively for her client. Trial had been continued once before under nearly identical circumstances. CP 188-190, 191-193. As it turned out, Dyer was seriously ill during trial and ended up in emergency surgery again after trial concluded. 8RP (07/23/10) 23.

Because of Dyer's illness, her performance at trial suffered, both because of her contemporaneous illness but also because of her lack of preparation. Examples pervade the record. Of particular note is the failure to investigate, adequately, the diversion of funds by Rinaldi to secret accounts. Instead of enlisting a forensic accountant, Dyer left it largely up to Bailey to sort out 15 years of financial data. 3RP 71. Yet, the fact of Rinaldi's scheme is critical both to the issue of committed intimate relationship and to the issue of the amount available for distribution. In this and in many other ways, counsel was unprepared for trial. Given her illness, and the lack of any irremediable prejudice to Rinaldi, the court should have granted a continuance out of fairness to Bailey.

**B. THERE WAS NO COMMITTED INTIMATE RELATIONSHIP BECAUSE THE PARTIES WERE NOT IN THE SAME RELATIONSHIP.**

As Rinaldi's own close friend acknowledged, two people being a couple is not the same as being married. 6RP 52. This

distinction is as important as it is difficult to draw. As with early common law marriage cases, the committed intimate relationship doctrine requires the court to discern from conduct an intent made explicit when parties solemnize their marriages. However, unlike early common law marriages, there is none of the same pressures to find the existence of a marriage. There is no stigma for the parties to endure; no children to go unsupported; etc. See, e.g., *In re Thornton's Estate*, 81 Wn.2d 72, 77, 499 P.2d 864 (1972) (decrying as archaic the "moralistic aura" of earlier treatments of unmarried couples). Rather, the committed intimate relationship doctrine is invoked only to prevent an unjust enrichment.

1) The doctrine is invoked only to prevent an unjust enrichment.

To no small degree, the committed intimate relationship doctrine arose to protect women in relationships where, because of countless structural reasons, economic power was unequally distributed.<sup>2</sup> See, e.g., *Humphries v. Riveland*, 67 Wn.2d 376, 407 P.2d 967 (1965) (man controlled couple's finances and died,

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<sup>2</sup> Laws, as well as social convention, restricted a woman's right to contract, to own property, to engage in employment of her choosing. See Norma Basch, *In the Eyes of the Law* (1982), 17, 19-20, 22-23. See, e.g., *Califano v. Webster*, 430 U.S. 313, 327 (1977); *Goesaert v. Cleary*, 335 U.S. 464 (1948); *Bradwell v. Illinois*, 83 U.S. (16 Wall.) 130 (1872).

leaving them - and his partner - "in a mess"). Unfortunately, these reasons may be just as compelling today. *Owens v. Automotive Machinists Pension Trust*, 551 F.3d 1138 (9<sup>th</sup> Cir. 2009) (man and women in relationship with children for 26 years, with woman performing all the domestic labor and only asset of relationship the man's pension).

Formerly, the controlling presumption in Washington, that title determined ownership, "often operate[d] 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 so-called meretricious relationship." *West v. Knowles*, 50 Wn.2d 311, 316, 311 P.2d 689, 693 (1957) (Finley, J., concurring). The committed intimate relationship doctrine exists to prevent that injustice. As the Supreme Court not long ago reminded, "[w]e have never divorced the [committed intimate] relationship doctrine from its equitable beginnings." *In re Marriage of Pennington*, 142 Wn.2d 592, 602, 14 P.3d 764 (2000). Rather, "property acquired during the relationship should be before the trial court so *that one party is not unjustly enriched* at the end of such a relationship." *Id.* (internal citations omitted). These roots are determinative here, where no unjust enrichment can be claimed.

- 2) The incidents of cohabitation do not, without the commitment of both parties, satisfy the requirements of the doctrine.

The committed intimate relationship doctrine applies to couples who are not married but who are in stable, marital-like relationships cohabiting with knowledge that a lawful marriage between them does not exist. *Pennington*, 142 Wn.2d at 602. To determine the existence of this relationship, a trial court must examine all relevant facts on a case by case basis, guided by five nonexclusive factors: continuous cohabitation, duration of the relationship, purpose of the relationship, the intent of the parties, and the pooling of resources and services for joint projects. *Pennington*, 142 Wn.2d at 603. This Court's review of a trial court's determination owes deference to the trial court's findings, but the legal conclusions flowing from those factual findings are reviewed de novo. *Id.*, 602-603.

- a) Continuous Cohabitation

The parties cohabited for 15 years, though, due to work, Bailey was away from the residence about half the time.

b) Duration of the relationship

The parties were involved in some kind of relationship for 15 years. However, duration alone does not tell us the nature of that relationship. As noted by the Supreme Court in regard to a 12 year relationship, “a long-term relationship alone does not require the equitable division of property.” *Pennington*, 142 Wn.2d at 604. Likewise, Professor Schwartz noted that duration does not necessarily reveal the state of mind or the degree of commitment. 4RP 66. Even sham relationships can endure a long time. 4RP 42-43.

c) Intent of the Parties

As *Pennington* makes clear, the parties to a relationship can have different intentions. In *Pennington*, Van Pevanage intended to be in long-term relationship and expected to marry Pennington. By contrast, Pennington was already married when his relationship with Van Pevanage began, but “more importantly,” he refused to marry Van Pevanage after his divorce. 142 Wn.2d at 604. As the court noted, Pennington's refusal, coupled with Van Pevanage's insistence on marrying, belies the existence of the parties' mutual intent to live in a meretricious relationship.” *Id.*

This factor should have no less significance in this case. Here, Bailey very much intended to form a marital-like relationship, whereas Rinaldi consistently withheld herself from making that commitment, including by refusing to acknowledge the commitment in a ceremony or with rings, but also by declining to participate in planning for their future together. Rather, she was planning for a future alone, secreting funds for more than half the relationship in anticipation of the relationship ending. Bailey and Rinaldi may have shared a home, but they did not share a reality.

Similarly, in the companion case in *Pennington*, one of the parties was married during her relationship to the other party, rendering the evidence of intent too equivocal. 142 Wn.2d at 606. Likewise, here, though there was no evidence that Rinaldi was sexually intimate with someone else during her relationship to Bailey, there was substantial evidence that her loyalties lay elsewhere (i.e., her sister and her friends) and substantial evidence that, beginning in 2000, she intended to leave the relationship. This equivocation is fatal to a doctrine that must be manifest in the parties' conduct. See, e.g., *Olver v. Fowler*, 161 Wn.2d 655, 168 P.3d 348 (2007) (finding committed intimate relationship between

parties who died simultaneous but who had married in a religious ceremony).

d) Purpose of the relationship

Here, too, there was no meeting of the minds. Though the relationship began in friendship and love and sexual intimacy, it long ago stopped fulfilling those purposes. The parties operated as roommates, and not very compatible roommates. Rinaldi resented having to care for Bailey's companion animals; preferred to travel by herself; interacted as little as possible with Bailey. Though Bailey's job provided most of the household income stream, she got little care or support from Rinaldi when she would return home, exhausted, from her travel. Granted some marriages are likewise unhappy, but, for the law's purposes, there is no uncertainty regarding the parties' investment in the relationship. There is no need to construct a relationship by looking backwards, as with the equitable doctrine. Necessarily, the factors take on a different light. It is not enough to go through the motions. The parties must manifest a purpose to be kin to one another.

e) Pooling of resources

As both cases in *Pennington* make clear, the existence of joint banking accounts, which may facilitate cohabitation no matter

the intimacy or commitment of the parties, is not dispositive. Both couples in *Pennington* had joint accounts. Both participated in some joint projects together (e.g., remodeling, business venture). Chesterfield and Nash also continued to separately fund retirement accounts and they also maintained their own careers, as did the parties here. As the court in those cases recognized, as a practical matter, cohabitants necessarily pool their resources to some degree. What the court must also find is the kind of resource pooling that signals a complete commitment to the relationship as an entity itself. Here, again, the disparity in the parties' degree of investment in the relationship is telling. Bailey's paycheck went automatically into the joint accounts. Rinaldi happily spent "Tamar's money," but also diverted thousands of dollars to her own secret fund. This is not keeping separate accounts, as many married couples do. Rather, this drives a stake in the heart of "marital-like," since the marital relationship is one of trust and confidence, with each spouse bearing the other fiduciary duties. *In re Marriage of Hadley*, 88 Wn.2d 649, 665, 565 P.2d 790, 798 (1977) (Horowitz, J. dissenting opinion), *citing Friedlander v. Friedlander*, 80 Wn.2d 293, 494 P.2d 208 (1972) and *Hamlin v. Merlino*, 44 Wn.2d 851, 272 P.2d 125 (1954). Not surprisingly, the

couples research described by Professor Schwartz reinforces that this honesty is a critical component of commitment and intimacy. The trial court was entirely too dismissive of the evidence of Rinaldi's secret financial life. Parties relying on the committed intimate relationship doctrine should be held to the same fiduciary standard as married people, or, perhaps more, given the limitations on a nonmarried person's access to financial information.

Finally, the parties' joint ventures are more properly characterized as ventures of tenants in common, which is how the parties hold the house in West Seattle.

As *Pennington* makes clear, the committed intimate relationship standard is an exacting one. The court looks for a degree of commitment to and investment in the relationship from which there is no turning back, making it inequitable not to treat the fruits of that investment as quasi-community property. Here, the equities do not run in that direction. From at least 2000, Rinaldi has been working on an exit plan. Indeed, in the most crucial respects, she exited long before the actual separation. Certainly, given the lack of mutuality evident here, it is absurd to characterize Bailey as having been unjustly enriched in this relationship.

C. THE COURT ACTED IN VIOLATION OF FEDERAL LAW  
WHEN IT DISTRIBUTED BAILEY'S PENSION.

Even if there had been a committed intimate relationship, the court could not distribute Bailey's FedEx pension because federal law forbids it under these circumstances.

Bailey's pension is governed by the Employee Retirement Income Security Act (ERISA), which limits the divisibility of pensions. In order to qualify as an ERISA pension plan, a pension plan must "provide that benefits provided under the plan may not be assigned or alienated." 29 U.S.C. § 1056(d)(1). Accordingly, alienation or assignment of benefits is prohibited except for certain state domestic relations orders. *In re Estate of Gardner*, 103 Wn. App. 557, 561, 13 P.3d 655 (2000); 29 U.S.C. § 1056(d)(3)(A).

To be a qualified domestic relationship order (QDRO), a "judgment, decree, or order" "made pursuant to a State domestic relations law" must "relate[ ] to the provision of child support, alimony payments, or marital property rights to a spouse, former spouse, child, or other dependent of a participant[.]" 29 U.S.C. § 1056(d)(3)(B)(ii)(I). Such an order "creates or recognizes the existence of an alternate payee's right to, or assigns to an alternate payee the right to, receive all or a portion of the benefits payable with respect to a participant under a plan[.]" § 1056(d)(3)(B)(i)(I).

In the 9<sup>th</sup> Circuit, an order entered by a Washington court in a committed intimate relationship case has qualified as a QDRO, despite the federal requirement that the order relate to the provision of “*marital* property rights to a spouse, former spouse, child, or other dependent of a participant” (emphasis added). *Owens v. Automotive Machinists Pension Trust*, 551 P.3d 1138 (2009). Bailey asked the court to apply the *Owens* case here, but the court balked. CP 115-120, 143. The court observed that the other requirement under ERISA, defining who can be an “alternate payee,” does not appear to be satisfied here. CP 143. Whereas in *Owens*, the court approved the distribution of a federally regulated pension to a non-marital intimate, it did so only because the trial court found the party to be a “dependent” as claimed on federal tax returns during the relationship, thus qualifying the party as an “alternate payee.” Here, Rinaldi was not Bailey’s dependent for federal purposes and does not otherwise satisfy any of the definitions of alternate payee under the statute. 19 U.S.C. § 1056(d)(3)(K). Consequently, the court held it cannot distribute the pension to her.

Indisputably, federal law in this area is supreme. *Egelhoff v. Egelhoff*, 532 U.S. 141, 121 S.Ct. 1322, 149 L.Ed.2d 264 (2001).

If, under federal law, the pension simply cannot be distributed under the circumstances of this case, it should be taken off the table. It cannot be used to offset other assets. *Landauer v. Landauer*, 95 Wn. App. 579, 975 P.2d 577, rev. denied 139 Wn.2d 1002 (1999). In *Landauer*, a spouse owned property that could not be alienated because of federal law controlling Indian land. The court forbade using the property as an offset against other community property. 95 Wn. App. at 589. This same result must apply to Bailey's federally regulated pension.

In some cases, this might work an injustice, but not here, given the constraints of the defined benefit plan in question. As Bailey explained, this pension is not a sum of money available to her now, or ever. It is a benefit she *may* receive, depending on a series of contingencies. Prominent among these contingencies is the fact that these plans have become endangered species in the airline industry. Most companies have evaded or restructured the obligation to pay under such pension plans, generally translating into a reduction in benefits to the employee. See, e.g., *Borley v. Smith*, 149 Idaho 171, 233 P.3d 102, 106, 111 (2010) (describing loss to pilots of defined benefit plan through bankruptcy of United Airlines); *Davidson v. Davidson*, 916 S.W.2d 918, 921 (1995)

(benefits payable under defined benefit pilots retirement reduced as a result of Eastern Airlines bankruptcy).

Further, of course, Bailey may not live to enjoy retirement at all, or may not reach full retirement age, given the physical and mental stress of her job. Under a typical QDRO, the payee and the alternate payee share in the risks and uncertainties incidental to such plans. Here, by contrast, Bailey must pay Rinaldi cash despite that Bailey may never see a penny from her pension, or may see only half a penny. While Bailey gets a contingent benefit, Rinaldi gets a house and cash settlement, which Bailey must liquidate her 401(k) (with attendant penalties) to pay. In short, if *Owens* does not apply, then the pension cannot be used as an offset.

Moreover, even if the pension could properly be considered in a case where it cannot be distributed, it should be valued to reflect the many contingencies affecting it and the restriction on distribution. Where there is evidence of restrictions affecting value of an asset, the court must consider those restrictions in determining a value. See *Landauer*, 95 Wn. App. at 590-591. The ability to alienate property is a restriction. See *In re Marriage of Langham and Kolde*, 153 Wn.2d 553, 566, 106 P.3d 212 (2005)

(tort of conversion occurs when the tortfeasor limits the property owner's "range of elective action") (internal citations omitted).

Again, *Landauer* is instructive. There this Court rejected as invalid an appraisal of land value that did not reflect the federal restriction on alienation. As the court noted, "utility value" of real property is different from market value. Here, too, the value of the defined benefit pension is not the same as it would be if federal law permitted its distribution.

Here, the trial court's valuation and distribution of the defined benefit pension ignores these realities. The court treated the pension as if it were a lump sum, certain in amount and available without restriction. The court treated the pension as it would in a marital dissolution, except this is not a marital dissolution, which is key to the federal law. Accordingly, it was error to offset the pension against other property.

## VI. CONCLUSION

For the foregoing reasons, Tamar Bailey respectfully asks this Court to vacate the decree and remand for redistribution of the assets held as tenants in common. Alternatively, she asks the court to remand for redistribution with no consideration given to the

defined benefit pension plan, or, at minimum, for redistribution based on a value reflecting federal restrictions on the pension.

Dated this 15th day of June 2011.

RESPECTFULLY SUBMITTED,



---

PATRICIA NOVOTNY #13604

Attorney for Appellant

Bailey v. Rinaldi  
Court's Division of Assets and Liabilities

EXHIBIT #  
(including  
illustrative)

COMMUNITY PROPERTY	Gross Value	Debt	Net Value	LINDA RINALDI		TAMAR BAILEY		EXHIBIT # (including illustrative)
				SEPARATE	COMMUNITY	SEPARATE	COMMUNITY	
<b>Real Property</b>								86, 300, 328, 335
6747 46th Ave. SW, Seattle, WA	\$ 680,000.00	\$ (165,944.00)	\$ 514,056.00		\$ 514,056.00			90, 91, 92, 302-304
2200 Fairbanks Ave., Anchorage AK	\$ 330,500.00	\$ (213,358.00)	\$ 117,142.00			\$ 117,142.00		
<b>Bank Accounts</b>								373, 140, 144, 156, 363, 364, 365, 391.2
Linda Rinaldi "safety fund"	\$ 32,351.00		\$ 32,351.00		\$ 32,351.00			
<b>Personal Property</b>								
Household furniture & furnishings - Rinaldi *value not contested at trial	\$ <del>20,000.00</del>		\$ <del>20,000.00</del>		\$ <del>20,000.00</del>			
Household furniture & furnishings - Bailey *value not contested at trial	\$ <del>20,000.00</del>		\$ <del>20,000.00</del>					
<b>Investment and Retirement Accounts</b>								
FedEx 401 K Plan	\$ 443,910.00		\$ 443,910.00		\$ 50,000.00	\$ 393,910.00	376, 377	
FedEx Pilot's Retirement Savings	\$ 739,854.00		\$ 739,854.00		\$ 157,921.00	\$ 581,933.00	376	
Northern Air Cargo IRA (Bailey)	\$ 50,306.00		\$ 50,306.00		\$ 50,306.00		376, 308-310	
SEP IRA in name of Rinaldi	\$ 241,261.00		\$ 241,261.00	\$ 34,304.00	\$ 206,957.00		376	
USAA *2104 investment acct (Bailey)	\$ <del>119,008.00</del>		\$ <del>119,008.00</del>					
USAA *2104 investment acct (Bailey)	\$ 119,008.00		\$ 119,008.00			\$ 119,008.00	51	
ABT & WA ST. retirement (Rinaldi)	\$ 4,500.00		\$ 4,500.00	\$ 4,500.00			55, 57	
<b>Vehicles and Accessories</b>								
Aircraft (50% interest)	\$ 59,125.00		\$ 59,125.00			\$ 59,125.00	376, 70, 71, 92, Bailey testimony, 189, 190	
2004 Volvo *no testimony to support value; ct utilized Resp.'s value	\$ 15,000.00		\$ 15,000.00			\$ 15,000.00		
1994 Volvo *value not contested	\$ 4,000.00		\$ 4,000.00		\$ 4,000.00			
1990 Subaru *value not contested	\$ 1,000.00		\$ 1,000.00			\$ 1,000.00		
<b>Miscellaneous Assets and Debts</b>								
Silver coins	\$ 3,000.00		\$ 3,000.00			\$ 3,000.00	314	
Gold coins	\$ 22,000.00		\$ 22,000.00			\$ 22,000.00	314	
* Alaska air miles - no value at trial					50%			
<b>Total All Property</b>	\$ <del>2,799,720.00</del>	\$ (165,944.00)	\$ <del>2,633,776.00</del>	\$ 38,804.00	\$ 757,521.00	\$ 258,227.00		
	2,745,815		2,367,813		Transfer Payment: \$ 218,806	\$ 998,623.00		
					50/50 Division of Community Assets:	\$ 998,623.00		

Parties will  
divide remaining  
disputed personal  
property directly.

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\* If possible, 50% of the Alaska Air miles as of January 18, 2008 will be transferred from Petitioner to Respondent. If transfer is not possible, or the parties agree that the cost is prohibitive, the Petitioner shall redeem air miles for the purchase of airline tickets of Respondent's choice. Petitioner shall provide documentation of the air mile balance as of January 18, 2008

Honorable Mary Yu

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

In re the Marriage of:

LINDA RINALDI  
Petitioner,  
and  
TAMAR BAILEY  
Respondent.

NO. 08-2-29794-2 SEA

**DECREE RE: COMMITTED INTIMATE  
RELATIONSHIP AND DIVISION OF  
PROPERTY**

**Clerk's action required**

**I. Judgment/Order Summaries**

**1.1 Restraining Order Summary:**

Does not apply.

**1.2 Real Property Judgment Summary:**

Real Property Judgment Summary for property awarded to the Petitioner is set forth below:

Assessor's property tax parcel or account number: 431570-0455

**1.3 Money Judgment Summary:**

Judgment Summary is set forth below.

A. Judgment creditor Linda Rinaldi  
B. Judgment debtor Tamar Bailey

*Decree re: Committed Intimate Relationship  
and Division of Property - Page 1*

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206.292.1144 WWW.HELSELL.COM

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C. Principal judgment amount	\$ <del>221,258.50</del> 218,806.00
D. Interest to date of judgment	\$ _____
E. Attorney fees	\$ _____
F. Costs	\$ _____
G. Other recovery amount	\$ _____
H. Principal judgment shall bear interest at 12 % per annum	
I. Attorney fees, costs and other recovery amounts shall bear interest at _____	
% per annum	
J. Attorney for judgment creditor	<u>Misty M. Willits</u>
K. Attorney for judgment debtor	<u>Jan Dyer</u>
L. Other:	

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**End of Summaries**

**II. Basis**

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

**III. Decree**

*It Is Decreed that:*

**3.1 Finding of a Committed Intimate Relationship**

The court has entered Findings of Fact and Conclusions of Law finding that a committed intimate relationship existed between the parties.

**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 A**. This exhibit is attached or filed and incorporated by reference as part of this decree.

**3.4 Liabilities to be Paid by the Petitioner**

*Decree re: Committed Intimate Relationship and Division of Property - Page 2*

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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 A. 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.

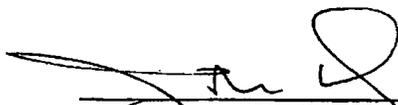
**3.6 Hold Harmless Provision**

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.

Dated: 7/23/10 \_\_\_\_\_  
  
Judge Mary Yu

Presented by: \_\_\_\_\_ Approved for entry:  
Notice of presentation waived:

HELSELL FETTERMAN LLP  
  
Misty M. Willits, WSBA #35410  
Jake D. Winfrey, WSBA #29747  
Attorneys for Petitioner

  
Jan M. Dyer, WSBA #20355  
Attorney for the Respondent

*Decree re: Committed Intimate Relationship  
and Division of Property - Page 3*

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Honorable Mary Yu

SUPERIOR COURT OF WASHINGTON COUNTY OF KING

In re the Matter of:

LINDA RINALDI,

Petitioner,

and

TAMAR BAILEY,

Respondent.

No. 08-2-29794-2 SEA

**Findings of Fact  
and Conclusions of Law  
(FNFCL)**

**I. Basis for Findings**

The findings are based on trial. The following people attended: Petitioner, Linda Rinaldi; Petitioner's Attorneys, Misty M. Willits and Jake Winfrey of Helsell Fetterman LLP; Respondent, Tamar Bailey; Respondent's Attorney Jan Dyer of Dyer and Primont.

**II. Findings of Fact**

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

**2.1 Residency of Petitioner**

The Petitioner is a resident of the state of Washington.

**2.2 Notice to the Respondent**

The Respondent appeared, responded or joined in the petition.

1 **2.3 Basis of Personal Jurisdiction Over the Respondent**

2 The facts below establish personal jurisdiction over the respondent.

3 The parties lived in Washington during their committed relationship  
4 and the petitioner continues to reside in this state.

5 The parties own real property in this state.

6 **2.4 Finding of Committed Intimate Relationship**

7 Based upon the evidence and testimony presented during trial, this Court  
8 finds that the parties shared a committed intimate relationship from  
9 September 1993 until separation in January 2008. The facts establishing the  
10 parties' committed intimate relationship are detailed in the Summary  
11 Decision Finding a Committed Intimate Relationship dated and signed by  
this court on July 8, 2010. The Summary Decision is attached hereto at  
Exhibit A, and is incorporated as if fully set forth herein.

12 The court finds that there was a committed intimate relationship between  
13 the parties and that all property acquired during the relationship is deemed  
14 community property and subject to equitable distribution. The court finds  
15 that a 50/50 distribution of the property acquired during the relationship is  
16 a just and equitable distribution given the age of the parties, the capacity to  
earn a living, and the resources and services each brought to the  
relationship.

17 **2.5 Community Property**

18 The parties have the following real or personal community property:

19 The real and personal community property of the parties is set forth in the  
20 chart included with the court's Summary Decision at Exhibit A.

21 **2.6 Separate Property**

22 The parties have the following real or personal separate property:

23 The real and personal separate property of the parties is set forth in the  
24 chart included with the court's Summary Decision at Exhibit A.

25 **2.7 Community Liabilities**

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The parties have outstanding community liabilities as set forth in the chart included with the court's Summary Decision at Exhibit A.

**2.8 Separate Liabilities**

The parties each have incurred post-separation liabilities that are not before this court. The Respondent has incurred separate liability against her separate real property at 2200 Fairbanks Ave., Anchorage AK.

**2.9 Other**

Based upon the court's 50/50 division of the parties' ~~\$1,997,246.00~~ <sup>1,952,341.00</sup> community property as fully set forth in the chart included in Exhibit A, the Petitioner is an additional judgment in the amount of ~~\$221,258.36~~ <sup>218,806.00</sup> against the Respondent as an equalizing payment. A Decree shall be entered contemporaneously with these Findings of Fact and Conclusions of Law confirming the judgment.

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**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 final order in this matter.

**3.2 Granting a Decree**

The parties shall be granted a decree awarding each party her separate property and liabilities, and dividing the community property in a fair and equitable manner.

**3.3 Disposition**

The court should determine the status of the parties, and make provision for the disposition of property and liabilities of the parties. The distribution of property and liabilities as set forth in the decree is fair and equitable.

**3.4 Other**

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Does not apply.

Dated: 7/23/10

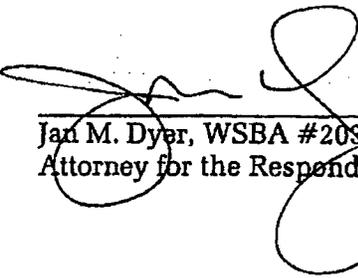
  
\_\_\_\_\_  
Judge Mary Yu

Presented by:

Approved for entry:  
Notice of presentation waived:

HELSELL FETTERMAN LLP

  
\_\_\_\_\_  
Misty M. Willits, WSBA #35410  
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Attorneys for Petitioner

  
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR THE COUNTY OF KING

In re the Matter of:

LINDA RINALDI,

Petitioner,

and

TAMAR BAILEY,

Respondent.

No.08-2-29794-2 SEA

SUMMARY DECISION FINDING A  
COMMITTED INTIMATE RELATIONSHIP

THIS MATTER came before the undersigned for trial on May 24, 2010. Trial lasted six days and was completed on June 10, 2010. After considering all of the evidence and argument from counsel, the court finds that Linda Rinaldi and Tamar Bailey were in a committed intimate relationship that requires the court to evaluate the interest each party has in the property acquired during the relationship and to make a just and equitable distribution of such property.<sup>1</sup>

The parties, Linda Rinaldi and Tamar Bailey, were in a lesbian relationship for approximately fifteen years. The primary issue at trial was whether the relationship fit within the legal framework of a "committed intimate relationship" that triggers an equitable distribution of property acquired during the relationship. Ms. Bailey argued at trial that the relationship was not

<sup>1</sup> The court is utilizing the term "committed intimate relationship" rather than "meretricious relationship" since the Washington Supreme Court adopted the term as an alternative way to describe relationships which meet the legal standard of equitable property distribution. See *Olver v. Fowler*, 161 Wn.2d 655 (2007).

SUMMARY DECISION - I

a committed intimate relationship and that direct evidence of this was the fact that they did not marry or register as domestic partners.

The court acknowledges the fact that same-sex couples do not have the legal right to marry in Washington State. The unavailability of this right continues to present a unique set of challenges for such couples intending to enter into a committed intimate relationship that is financially interdependent. However, the decision to marry or not marry is not a simple question and cannot be judged outside the context of the particular relationship at issue. Here, Ms. Rinaldi testified about the difficulty of telling her family about her relationship with Ms. Bailey and why a public wedding presented cultural, political, and religious challenges for her. In this circumstance and in this relationship, the court concludes that Ms. Rinaldi's refusal to marry is not evidence of the absence of her intent to be in a committed intimate relationship with Ms. Bailey.

The case was filed as a petition for dissolution of a committed intimate relationship and/or a petition for equitable distribution/partition of property. The underlying equitable doctrine governing the case is the recognition of a "stable, marital-like relationship where both cohabit with knowledge that a lawful marriage does not exist." It flows from this state's lack of recognition of a common law marriage, *de facto* or otherwise, and the problem of dividing property at the end of a relationship. See *In re Marriage of Pennington*, 142 Wn.2d 592 (2000) and *Connell v. Francisco*, 127 Wn.2d 339 (1995). The doctrine rests on the principle that the parties are not married, and it is settled law that it applies to same-sex relationships. See *Gormely v. Robertson*, 120 Wn. App. 31 (2004).

Ms. Bailey argues that application of this doctrine to same-sex couples requires a new or different set of rules. She asks this court to adopt the factors offered by her expert, Dr. Schwartz,

for determining whether there is a committed intimate relationship. These factors include honesty, trust, emotional safety, sharing of feelings, deeper exposure of self, and "sharing the same reality." The court accepts the factors offered by Dr. Schwartz as factors that a court may consider in evaluating whether any couple intended to be in a committed intimate relationship. However, these factors are neither exclusive nor controlling and must be considered in light of the factors provided by the long line of cases under which the doctrine has developed. As outlined in *Cornell*, relevant factors for the court's consideration include: continuous cohabitation, duration of the relationship, purpose of the relationship, pooling of resources and services for joint projects, and the intent of the parties.

Utilizing the above factors, the court finds overwhelming evidence of a committed intimate relationship between Ms. Rinaldi and Ms. Bailey. The parties began their relationship in the summer of 1992. Ms. Rinaldi lived in Washington and Ms. Bailey resided in Anchorage, Alaska. Ms. Rinaldi relocated to Anchorage in September 1993 and moved in with Ms. Bailey. In July 1994, the couple relocated to Seattle and lived together in a rental home and in 1995, they jointly purchased a home in West Seattle. The home was titled in both names and the loan applications and financing documents list them as joint owners. Ms. Bailey's professional occupation is a pilot and so she was frequently away due to her job. Notwithstanding her flight schedule, the court finds that they continuously cohabited until their separation in 2008.

During the relationship, multiple bank accounts and credit cards were opened listing both individuals as joint owners. They established each other as beneficiary on retirement accounts and insurance policies. Earnings were pooled to pay common debts and household expenses. In 1996 and 2007, both women executed wills naming one another as the sole beneficiary and executed reciprocal powers-of-attorney for both financial and health care decisions. The 2007

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confer as to whether the proposed findings should be entered by the court or whether a formal presentation date should be scheduled.

IT IS SO ORDERED this 8<sup>th</sup> day of July, 2010.



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Judge Mary Yu

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Bailey v. Rinaldi  
Court's Division of Assets and Liabilities

EXHIBIT #  
(including  
illustrative)

COMMUNITY PROPERTY	Gross Value	Debt	Net Value	LINDA RINALDI		TAMAR BAILEY		EXHIBIT # (including illustrative)
				SEPARATE	COMMUNITY	SEPARATE	COMMUNITY	
								86, 300, 328, 335
<b>Real Property</b>								90, 91, 92, 302-304
6747 46th Ave. SW, Seattle, WA	\$ 680,000.00	\$ (165,944.00)	\$ 514,056.00		\$ 514,056.00		\$ 117,142.00	
2200 Fairbanks Ave., Anchorage AK	\$ 330,500.00	\$ (213,358.00)	\$ 117,142.00					
								373, 140, 144, 156, 363, 364, 365, 391.2
<b>Bank Accounts</b>								
Linda Rinaldi "safety fund"	\$ 32,351.00		\$ 32,351.00		\$ 32,351.00			
<b>Personal Property</b>								
Household furniture & furnishings - Rinaldi *value not contested at trial	\$ <del>20,000.00</del>		\$ <del>20,000.00</del>		\$ <del>20,000.00</del>		\$ <del>20,000.00</del>	
Household furniture & furnishings - Bailey *value not contested at trial	\$ 20,000.00		\$ 20,000.00					
<b>Investment and Retirement Accounts</b>								
FedEx 401 K Plan	\$ 443,910.00		\$ 443,910.00		\$ 50,000.00	\$ 393,910.00		376, 377
FedEx Pilot's Retirement Savings	\$ 739,854.00		\$ 739,854.00		\$ 157,921.00	\$ 581,933.00		376
Northern Air Cargo IRA (Bailey)	\$ 50,306.00		\$ 50,306.00		\$ 50,306.00			376, 308-310
SEP IRA in name of Rinaldi	\$ 241,261.00		\$ 241,261.00	\$ 34,304.00	\$ 206,957.00			376
USAA <del>Investment acct (Bailey)</del>	\$ <del>119,008.00</del>		\$ <del>119,008.00</del>					
USAA *2104 investment acct (Bailey)	\$ 119,008.00		\$ 119,008.00			\$ 119,008.00		51
ABT & WA ST. retirement (Rinaldi)	\$ 4,500.00		\$ 4,500.00	\$ 4,500.00				55, 57
<b>Vehicles and Accessories</b>								
Aircraft (50% interest)	\$ 59,125.00		\$ 59,125.00			\$ 59,125.00		376, 70, 71, 92, Bailey testimony, 189, 190
2004 Volvo *no testimony to support value; ca utilized Resp.'s value	\$ 15,000.00		\$ 15,000.00			\$ 15,000.00		
1994 Volvo *value not contested	\$ 4,000.00		\$ 4,000.00		\$ 4,000.00		\$ 1,000.00	
1990 Subaru *value not contested	\$ 1,000.00		\$ 1,000.00					
<b>Miscellaneous Assets and Debts</b>								
Silver coins	\$ 3,000.00		\$ 3,000.00			\$ 3,000.00		314
Gold coins	\$ 22,000.00		\$ 22,000.00			\$ 22,000.00		314
* Alaska air miles - no value at trial								
<b>Total All Property</b>	\$ <del>2,790,720.00</del>	\$ (165,944.00)	\$ <del>2,624,776.00</del>	\$ 38,804.00	\$ <del>2,663,580.00</del>	\$ 258,227.00	\$ <del>2,405,353.00</del>	
	2,745,815		2,368,833		218,806		998,623.00	
					Transfer Payment: \$			
					50/50 Division of Community Assets: \$			

Parties will  
divide remaining  
disputed personal  
property directly.

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\* If possible, 50% of the Alaska Air miles as of January 18, 2008 will be transferred from Petitioner to Respondent. If transfer is not possible, or the parties agree that the cost is prohibitive, the Petitioner shall redeem air miles for the purchase of airline tickets at Respondent's choice. Petitioner shall provide documentation of the air mile balance as of January 18, 2008

King County Superior Court  
Judicial Electronic Signature Page

Case Number: 08-2-29794-2  
Case Title: RINALDI VS BAILEY  
Document Title: ORDER  
Signed by Judge: Mary Yu  
Date: 8/23/2010 2:49:30 PM

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Judge Mary Yu

This document is signed in accordance with the provisions in GR 30.  
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