

Court of Appeals No. 70715-9-I

IN THE WASHINGTON STATE COURT OF APPEALS
DIVISION 1

TRUDY C. NEUMANN,
Respondent,

v.

NICOLE WELLER, WILLIAM GRANT WELLER, JESSICA TICE, and the
ESTATE OF WILLIAM LYNN WELLER,

Appellants,

BRIEF OF RESPONDENT TRUDY NEUMANN

By:

Christopher P. Williams, WSBA No. 18735
143 5th Ave North
Edmonds, WA 98020
(425) 778-1151

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III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

- 1.0 The trial court did not error by failing to expand RCW 11.07.010 to include other relationships besides marriages and certified domestic partnerships and to broaden the law beyond its clear stated purposes to include other relationships including meretricious relationships, committed intimate relationships, partnerships, friendships or other relationships.
- 2.0 Is respondent entitled to summary judgment declaring her to be the owner of the proceeds naming her as the beneficiary?

IV. PARTIES:

Ms. Trudy Neumann, respondent, shall be referred to as Ms. Neumann. The appellants collectively shall be referred to as “the Estate” for ease of understanding where applicable per RAP 10.4(e).

V. STATEMENT OF THE CASE:

A. Introduction:

As far as this author can establish, this is a case of first impression. The court has never extended RCW 11.07.010 to other relationships beyond marriage or registered domestic partnerships. The court in this matter found that, “the court finds that it does not have authority to extend RCW 11.07.010 to a meretricious or other relationships.”, CP 151.

B. Facts:

Trudy Neumann and William Weller began a relationship in approximately 1986 and maintained that relationship until approximately 2002, CP 111. On April 25, 2005, Mr. Weller and Ms. Neumann stipulated to a Finding of Fact and Conclusions of Law dissolving, formally, the meretricious relationship, CP 110-12 CP 114-115.

The parties were awarded their respective personal property including life insurance in his and in her name respectively, CP 115. Mr. Weller, at the time of separation, had an accidental death and

dismemberment policy, CP 117-24. This policy named Trudy Neumann as the sole beneficiary, CP 117-24, Mr. Weller died unexpectedly in October 2011 in a glider accident, CP 97.

Despite the fact that the couple concluded their meretricious relationship, it is undisputed that the parties remained friends CP 38-65, CP 104-106.

VI. ARGUMENT

RCW 11.12.010(1) specifically addresses that “revocation of certain nonprobate transfers is provided under 11.07.010”. RCW 11.07.010 “applies to all nonprobate assets... held at the time of the entry of **a decree of dissolution of marriage or state registered domestic partnership or declaration of invalidity or certification of termination of a state registered domestic partnership**” *emphasis ours*.

This is the bright line rule, before this court there is no state registered domestic partnership, there is no decree of dissolution of marriage, there is no declaration of invalidity or certification or termination of a state registered domestic partnership.

In short, if this court is to start reading meretricious relationships or committed intimate relationships or partnerships or friendships as a marriage or partnerships then there is no bright line rule. To rule

otherwise would simply obliterate the proposition that the courts may not read into statutes words which are not there, *Compton v. the City of Seattle*, 18 Wn. App. 285, 289, 567 P. 2d 262 (1977), *emphasis ours*.

It was argued at trial “but after they broke up they [Mr. Weller and Ms. Neumann] continued to be friends. Not just casual friends but they had a very special friendship. Mr. Weller and Ms. Neumann went to Christmas parties together, they attended movies together (even attending the International Film Festival in Seattle), went for bike rides, helped each other out with transportation for medical appointments and even Easter breakfast and Christmas service. The two truly meant a lot to each other which included Gospel singing, Christmas lighting, church services, coffee and even a Hawaiian party, CP 38-65.

Our relationship ended in the romantic meretricious nature but we remained close friends. While I have been advised that I may not speak about what William told me because of the deadmans statute, I can tell you that we were close. I traveled back east on more than one occasion to attend weddings with Lynn. I bought Lynn regal cinema gift cards for his birthday and Christmas for years. Lynn bought me gifts for the holidays as well. I remember a coat and a sweater for Christmas of 2010 as well as small gifts like a ginger grater and dinner for my birthday. We loved attending movies together. We attended the Seattle International Film Festival together with a focus on foreign films. His favorite movie during the 2011 Seattle International Film Festival was *The Red Eagle*. We would walk to the midnight madness films at the Egyptian on occasion and I would even bicycle to Tukwila from Renton to have breakfast with him before

riding to work. We often rode our bikes together on the interurban trail and from Renton to the Mercer Island Blueberry farms and enjoyed Shakespeare's plays when they were being performed. All of this was after we separated. Lynn came every year to my holiday party at work and most years to Sheri's Christmas outing (my friend) except when he could not get off work. I also went with Lynn to his family's Christmas get together with his brother Ed's family and his cousin Jamie's family in 2010.

We attended church outings together including Easter breakfast, Christmas eve service, Gospel singers, the Hawaiian music nights and Christmas lighting in Renton. We went together to fun run's where Lynn ran and I walked. We often would go out for meals and coffee (which I don't drink). I took Lynn as his assistant and stand by person for his colonoscopy and Upper GI tract exam and reciprocally Lynn took me for my colonoscopy and picked me up at the doctor's office back in 2008. Lynn gave me a cell phone and we called and texted each other throughout the day. In short we remained lifelong friends.

CP 38-65.

This was after the meretricious relationship formally ended, they remained very close friends, see CP 38-65. Even the appellants agree that Ms. Neumann and Mr. Weller were friends, see CP 104-106.

Ms. Neumann was the sole beneficiary of Mr. Weller's Last Will and Testament executed in 1988, CP 126-129. However, Ms. Neumann disclaimed any interest in the estate even though she was the sole beneficiary and executor of the will, CP 131.

Even though the estate of William Weller did include a will by William Weller, the estate was probated intestate, see CP 96-103.

This court will determine if RCW 11.07.010(1)(2) shall revoke the beneficiary of an accidental death and dismemberment insurance policy when the parties were in a meretricious relationship. As argued by the Estate in the Motion for Summary Judgment by the Estate, should equitable principles guided by RCW 11.07.010(2) apply in this case to terminate or “revoke a beneficiary designation of a nonprobate asset in favor of a former participant in a meretricious relationship following judicial determination of that meretricious relationship” CP 96-103.

The estate goes on to argue that only after establishing and dissolving a relationship should equity act to automatically revoke a nonprobate beneficiary determinations between the parties. In applying this brand new, never before seen, equitable rule applied to RCW 11.07.010(1)(2) the appellant argues, “applying such an equitable rule in this situation comports with public policy. There are no policy concerns like “codifying a common law marriage” if this equitable rule is established” CP 7.

The Estate concluded finally, “this equitable rule would not run contrary to the expectation of the parties it would not be reasonable in

either divorce or meretricious relationship context for a former spouse or a meretricious participant to expect that he or she would have a continuing benefit from the relationship.” CP 96-103.

The Estate apparently ignores the law and the relationship of the parties. It is quite foreseeable that these good friends for years after separation, engaged in a close personal relationship which included exchanging gifts during the holidays, attending movies and the ongoing activities of a close friendship, see CP 38-65. It is foreseeable that William Weller intended for Trudy Neumann to be his beneficiary under his life insurance policy. As a legal matter, the courts long ago found in marriage:

it is a general rule that when a husband names a wife as beneficiary of a life insurance policy on his own life, and thereafter they are divorced but no change is made in the beneficiary, the mere fact of the divorce does not affect the right of the named beneficiary to the proceeds of the insurance policy,
see *Henley v. Henley*, 95 Wn. App. 91, 974 P.2d 362 (1999), see

also *Northwest Life Insurance Co. v. Margaret Perrigo* 47 Wn. 2d 291, 287 P.2d 334 (1955), *William v. Cowan* 48 Wn. 2d 680 (1956), *In re the Estate of Reynolds*, 17 Wn. App. 472, 563 P.2d 1311 (1977).

The Estate argued that “that RCW...11.96.020 empowers the court to do what is just and equitable under the circumstances” However the *Henley* court ruled otherwise:

RCW 11.96.020, see also *In re Estate of Toth*, 91 Wn. App. 204, 207, 955 P.2d 856 (1998). The statute does not give the courts the power to ignore the express language of the statute such as RCW 11.07.010. Generally, “[I]n construing a statute, it is always safer not to add to or subtract from the language of the statute unless imperatively required to make it a rational statute” citation omitted. The courts cannot read into a statute words which are not there” *Coughlin v. City of Seattle*, 18 Wn. App. 285, 289, 567 P.2d 262 (1977), *Henley* at 97.

This is precisely the case at bar. RCW 11.07.010 does not contain the words meretricious relationship, intimate relationship, partnerships, friendships or any other relationship. It is specifically revoking nonprobate assets on dissolution of marriage or registered domestic partnerships, see RCW 11.07.010, emphasis ours.

The court in *Henley* refused to apply equitable principles and there is no citation for adding equitable principles to add or subtract from the statute in the case at bar.

The Estate today wishes to extend RCW 11.07.010 to meretricious relationships even though the lower court found that it could not extend RCW 11.07.010 to meretricious or other relationships, see RP at 18.

Appellants rely on *Marriage of Lindsey*, 101 Wn. 2d 299, 678 P. 2d 328, (1984) and *Connell v. Francisco* 127 Wn.2d 339 (1995), 898 P. 2d 831 (1995) for the proposition that meretricious properties would be

divided. *Connell* supra, states that the division of property in terms of a meretricious relationship as follows “as such the law involving the distribution of marital property do not apply to the division of property following a meretricious relationship”, see *Connell* supra, emphasis ours.

In *Vasquez, Vasquez v. Hawthorne*, 145 Wn.2d 103 (2001) at 363 citing *Connell* supra at 350, “until the legislature as a matter of public policy includes meretricious relationships are equivalent to marriage we limit the distribution of property following the meretricious relationship to property that would have been characterized as community property had the parties been married”.

Even as late as 2007 in *Soltero v. Wimer*, 159 Wn. 2d 428 (2007), the Supreme Court recognized that separate property of a meretricious relationship is not subject to division, reversing the Court of Appeals, see also *Aetna Life Insurance Co. v. Wadsworth*, 102 Wn.2d 652 (1984).

Since there is no spouse or registered domestic partnership in the current case the analysis ends there. But the court went on:

We hold further that the former spouse named beneficiary in the policy is entitled to the proceeds unless (1) a dissolution decree specifically states that the former spouse is divested of his or her expectancy as named beneficiary AND (2) the policy owner formally executes this previously stated intention to change the beneficiary within a reasonable time (but no longer than

1 year) after dissolution. After this reasonable time period, assuming no community property rights are invaded, the beneficiary named in the insurance policy is entitled to the proceeds despite a statement in the dissolution decree indicating a contrary intent.

See *Aetna*, supra, emphasis ours.

In this case there is no contrary intent. There is nothing to suggest that William Weller did not intend to leave his life insurance and estate to his good friend and former lover Trudy Neumann.

What is clear is that appellants are attempting to extend RCW 11.07.010

RP 18:

MR. HAROLDSON: Thanks, Your Honor. ...
I perceive it to be-- the issue is somewhat of a narrow question, something like , should 11.07.010 --

JUDGE DARVAS: Be extended?

MR. HAROLDSON: --be extended? Or should there be, I mean, if you want to call it that or call it an equitable remedy?

Judge Darvas persisted,

JUDGE DARVAS: So my question to you is: Where do I find the legal authority to do what you want me to do?

MR. HAROLDSON: You find legal authority in the extension of cases beyond -- or meretricious relationships,-- the meretricious relationship doctrine has drawn on history over, historical time, or it's drawn from marriage law

and given some of the bundle of sticks, but not all of them.

JUDGE DARVAS: But am I not required to presume that when the legislature enacted 11.07 the legislature knew darn well that there were people living in meretricious relationships and they certainly could have addressed it they had wished to do so.

RP 18.

This is precisely the issue before the court today and the judge has eloquently focused her attention directly and precisely on the issue. As Judge Darvas stated, “So isn’t that a fairly clear direction from the Court of Appeals that the Court is required to read the statute according to its terms and not extend it by what we think the legislature meant to say, didn’t actually say?” RP 25.

Judge Darvas was eloquent in her examination of the law in this case:

...this is not a family law case.

These people were never married to the extent that they had a legally cognizable meretricious relationship. They ended that long ago and everybody agrees to that. So, there is no issue of fact about that.

I’m frankly I am not aware of any law that gives me authority to apply an equitable remedy in this case. The *Henley Case*, which has never been overruled, makes clear that RCW 11.07.010 has to be read and applied

according to its own terms and not expanded by the court.

...The statute in its current form invalidates designation of a former spouse or former state-registered domestic partner a beneficiary in a life insurance policy at the time of dissolution of the marriage or decree recognizing the end of the state-registered domestic partnership

That situation simply doesn't apply in this case

I don't have authority to make law here. Maybe the Supreme Court does and you're certainly free to take it up, but I don't see that I have any authority to craft an equitable remedy under these circumstances.

The rule has long been that when somebody names another person as their beneficiary on their life insurance policy that's a matter of contract and it's going to be honored.

...The Wadsworth case (phonetic), yeah, the Wadsworth Case, put a little bit of a modification on that general principle, finding that there would be a presumption that a spouse intended to change the beneficiary of his or her ex-spouse after a decree of dissolution of the marriage within a reasonable time.

But if the divorced spouse did not do so within a year then the—again the general principle of contract law would apply and the named beneficiary would be entitled to the proceeds of the insurance policy.

11.07.010 changed that for people who have had dissolution of their marriage or they're a state-registered domestic partnership.

It says absolutely nothing about people who have been in meretricious relationships.

And, again, I don't believe that this Court has any legal authority to extend the express terms of the statute to the

situation here where Mr. Weller and Ms. Neumann were involved in a meretricious relationship which they mutually agreed to dissolve and has a Court order with respect to who got what property and then apparently maintained some sort of relationship thereafter.

The judge precisely recognizes the limitations of RCW 11.07.010.

This court does not extend meretricious relationships to make them marriages and it should not do so here.

The law of meretricious relationships is clearly in the legislature's authority. They have reviewed the decisions that have come about and have chosen not to make meretricious relationships the equivalent of marriages or registered domestic partnerships. Our legislature has had the opportunity on multiple amendments to RCW 11.07.010 to amend it to include meretricious relationships that have been in existence a very long time and have chosen not to do so. The court should not extend this clear and unambiguous law.

In reviewing the cases cited by appellant, appellant cites *Matter of Marriage of Lindsey*, 101 Wn. 2d 299, 678 P.2d 328 (1984). *Lindsey* stood for the proposition of dividing property accumulations for a just and equitable division of property, see *Lindsey* at 304. *Connell v. Francisco*, 127 Wn. 2d 339, 898 P. 2d 831 (1995) was discussed *supra*. *Warden v. Warden*, 36 Wn. App. 693, 676 P. 2d 1037, *rev. den.*, 101 Wn. 2d 1016 (1984), in the *Warden* case the couple simply weren't legally married as

the one spouse was previously married so they simply divided the assets pursuant to RCW 26.09.080. This case does nothing to discuss the case at bar, RCW 11.07.010. *Mears v. Scharbach*, 103 Wn. App. 498, 12 P. 3d 1048 (2000) talks about a “spouse” and never discussed meretricious relationships, see *Mears* at 499. In interpreting RCW 11.12.050 and by reviewing RCW 11.07.010 the court never grappled with meretricious relationships.

The Court of Appeals in *Mears*, supra stated “holding that the beneficiary designation of a surviving former spouse had automatically been revoked by operation of statute and that statute did not unconstitutionally impair decedents contract with the insurer. The court affirms the judgment, *Mears* at 498. In that case, Ms. Mears artfully argued the constitutionality of RCW 11.07.010 and the impairment of Mr. Mears contract but be clear *Mears* specifically addresses “divorcing couples” *Mears v. Scharbach*, 103 Wn. App. 498 at 507.

Thereafter the Estate attempts to make the leap to expand RCW 11.07.010 by adding the additional language of “meretricious relationships” or “committed intimate relationships” see appellant brief page 14. The Estate argues that upon termination of a domestic partnership the will of the testator is revoked as to the former domestic partner,

11.12.050, 11.12.050(1). Here there is no will before this court. RCW 11.02.050 does not apply to nonprobate assets.

RCW 26

The Estate argues “*Lindsey, Connell, Warden, Foster, Gilmore, and Kelly*, each approved the trial court’s consideration of... RCW 26.09.080 in making a just and equitable distribution of the property of parties in a committed intimate relationship...”, see the Estate’s Brief pg. 12.

In the case at bar, the division of properties has already occurred. There is no division of property before the court. RCW 26.09.080 was not even argued at the lower court previously. “On review of an order granting or denying a motion for summary judgment the appellate court will consider only evidence and issues called to the attention of the trial court” RAP 9.12. “An argument neither pleaded not argued to the trial court cannot be raised for the first time on appeal”, *Sneed v. Barna*, 80 Wn. App.843, 847, 912 P.2d 1035 (1996) as cited in *Sourakli v. Kyriakos*, 144 Wn. App. 501 (2008). Matters not before the lower court cannot be argued for the first time on appeal.

RCW 11.12.050

The Estate argues for the first time RCW 11.12.050 regarding the legal termination of domestic partnerships with regards to a will. RCW

11.12.050 does not deal with nonprobate assets. It specifically states that it is not dealing with non-probate transfers and refers the reader to RCW 11.07.010 for nonprobate transfers, see RCW 11.12.050.

Not only does RCW 11.12.050 not apply to this case, it was never argued prior to the appeal. The estate is attempting to apply a probate statute to a nonprobate asset. This court would have to add clear and unambiguous language to the nonprobate statute, RCW 11.07.010, to effectuate the transfer they are attempting. The result is that the statute would be extended by words that currently don't exist in the statute. The Estate wants to take certain portions from RCW 11.12.050 and paste them into RCW 11.07.010.

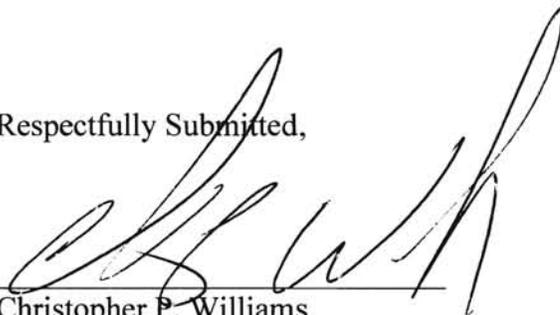
VII. CONCLUSION

In conclusion, RCW 11.07 affects marriages and registered domestic partnerships, it does not affect meretricious relationships or friendships or partnerships. The Court should uphold the trial court's decision granting Trudy Neumann's Motion for Summary Judgment.

VIII. ATTORNEY FEES

The court should award fees to the respondent for having to defend at great expense this matter. Plaintiff requests fees pursuant to RAP 14.2 and 14.3.

Respectfully Submitted,



Christopher P. Williams

No. 18735

Attorney for Respondent Trudy Neumann

IX CERTIFICATE OF MAILING

The undersigned does hereby declare that on November 6, 2013 the undersigned deposited a copy of brief of respondent Trudy Neumann filed in the above entitled case into the United States mail, first class postage addressed to the following persons:

Christopher Constantine
Of attorneys for Nicole Weller
P.O. Box 7125
Tacoma, WA 98417-0125

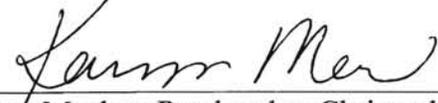
Peter Haroldson
Of attorneys for Nicole Weller
4505 Pacific Hwy E, Ste A
Tacoma, Washington 98424

Trudy Neumann
PO Box 4101
Renton, WA 98057

Sent via Pacific NorthWest Legal Support to:

Clerk, Washington State Court of Appeals, Division I
One union square
600 University St.
Seattle, WA 98101-1176

Dated this 6th day of November 2013

By: 
Karryn Meeker, Paralegal to Christopher Williams