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## STATEMENT OF FACTS

- A. The only asset of the estate is an undivided partial interest in a home that the decedent inherited from his deceased father (See Exhibit 1, Inventory).
- B. In the ejectment proceedings, Ms. Witt stipulated that she would remove all of her personal belongings from the home before vacating the same. (Exhibit 2)
- C. The Petitioner never “acknowledged” any interest of the Respondent in the estate. On the contrary, he has consistently denied any such interest. He only referred to her “claim”, which he has rejected. (*Ibid.*)
- D. Ms. Witt raises the fact that she filed a Petition to establish her interest in the estate. (Resp. Brief p. 6) and that the trial court denied the motion. (*Ibid.*) This is not borne out by the record. The Clerk’s Minutes are not part of the record on appeal. In any event, the text of the minutes are ambiguous at best. The motion to dismiss was not denied as alleged. The court did not rule that additional facts were needed to be made.

The Petition of the Respondent to establish her claim in the estate was filed after the expiration of the thirty-day nonclaim period. (Respondent's Brief, Exhibit 9).

In any event, the issue was not raised below and should not be heard on appeal. (RAP 2.5(a))

## DISCUSSION OF RESPONDENT'S ARGUMENTS:

### Issue No. 1: Failure to Comply With NonClaim Statute:

Contrary to the manner in which "Issue" is phrased in Respondent's Brief, the issue in this case is not whether a "spouse" forfeits a claim to the property by not filing her suit. There is no contention that Ms. Witt was the "spouse" of the decedent. At most, she was a companion in a meretricious, or, committed intimate, relationship.

The term "quasi-spouse" does not appear in the reported case law and has not been judicially defined and, therefore, should not be applied in this case.

The question is whether a person claiming property of an estate based upon a meretricious (committed intimate) relationship with the decedent must comply with the nonclaim statute. The Appellant argues that under the circumstances of this case she is required to do so, and that her failure to timely file her action for recovery bars her claim.

*Connell v Francisco*, 127 Wn. 2d 339, 898 P.2d 831

(Wash. 1995) cited by Respondent does not hold that "all property acquired during the relationship is presumed to be owned by both

parties”, as set forth in the brief at page 7. In that case, the court states:

“ . . . we limit the distribution of property following a meretricious relationship to property that would have been characterized as community property had the parties been married.” 127 Wn. 2d at 350.

There is no allegation that the property of this estate would have been community property if the parties had been married. The only asset of the estate is a one-half interest in a home that was inherited by the decedent from his father, which clearly would have been the separate property of the decedent even if he had been married.

In any event, the case does not apply to the case at bar because it did not involve the nonclaim statute in any way. It was a suit brought to divide the property acquired by the parties during the relationship.

The same is true of *Marriage of Lindsey*, 101 Wn.2d 299, 78 P.2d 328 (Wash. 1984), a dissolution of marriage case.

*Brenchly's Estate*, 96 Wash. 223, 164 P. 913 (Wash. 1917) does not involve the nonclaim statute in any way. In *Oliver v. Fowler*, 161 Wn.2d 655, 168 P.3d 348 (Wash. 2007) the claimant had formally

challenged the inventory which had been filed in the estate. No violation of the nonclaim statute was alleged or invoked.

It is the position of the Appellant that whether or not the property claimed would have been separate or community had the parties been married, the claimant must still comply with the statute. However, even if this position is not correct, then surely the statute must be followed when the claim is for property that clearly would have been the separate property of the decedent, even if they had been married. Counsel has not been able to locate case law that states this specifically, but believes that it follows from the reasoning set forth in Appellant's brief.

**Issue No. 2. Estoppel to Invoke the NonClaim Statute:**

The Petitioner is not estopped from denying the claim of the Respondent by agreeing that she would not waive her claim by vacating the property.

This issue was never raised or mentioned in any of the proceedings below, and should not be considered on appeal. RAP 2.5(a), which sets forth:

**"Rule 2.5. CIRCUMSTANCES WHICH MAY AFFECT  
SCOPE OF REVIEW:**

**(a) Errors Raised for First Time on Review. The appellate**

court may refuse to review any claim of error which was not raised in the trial court. . .”

In any event, it is submitted that the estate did not consent to the validity of the claim of the Respondent simply by stipulating merely that she was not waiving her claims by the act of vacating the premises. The definition, per Webster’s Collegiate, 3d Ed., of the noun “claim” is: “. . . a demand for something rightfully or allegedly due. . .” It in no way could be construed to grant to her any interest in the property. To establish an estoppel against the personal representative of the estate, she must prove that it is applicable to this fact situation.

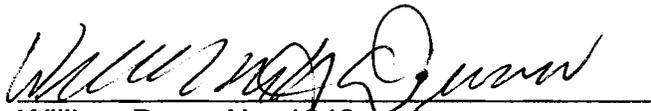
“Equitable estoppel requires: (1) an admission, statement, or act inconsistent with a claim afterward asserted; (2) action by another in reasonable reliance on that act, statement, or admission; and (3) injury to the party who relied if the court allows the first party to contradict or repudiate the prior act, statement, or admission.” *Robinson v. City of Seattle*, 119 Wash.2d 34, 82, 830 P.2d 318, cert. denied, 506 U.S. 1028, 113 S.Ct. 676, 121 L.Ed.2d 598 (1992).

Nothing in the conduct of the personal representative has been shown to indicate the intention of validating the claim of Ms. Witt against the property or that she in fact relied upon any such conduct to her detriment.

## CONCLUSION

The sole issue in this appeal is whether the Nonclaim Statute (RCW 11.40.100) applies to claims against an estate based upon an alleged meretricious relationship. Appellant respectfully argues that if it does not, then the probate of an estate would be unduly complicated and open to challenge at almost any time in the future. This clearly was not the intent of the legislation.

Respectfully submitted July 22, 2011.



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COURT OF APPEALS  
DIVISION II

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No. 41641-7-II

STATE OF WASHINGTON  
BY COURT OF APPEALS, DIVISION II  
~~OF THE STATE OF WASHINGTON~~

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JULIE WITT, Respondent

vs.

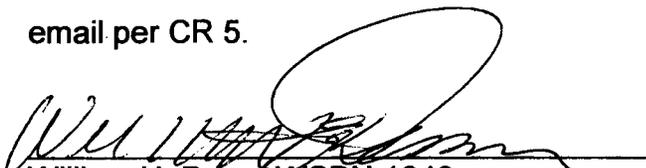
RONALD D. YOUNG, as the personal representative of the Estate  
of Danny Merle Young and the ESTATE OF DANNY MERLE  
YOUNG, Petitioner

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CERTIFICATE OF SERVICE OF REPLY BRIEF OF APPELLANT

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I certify that on July 26, 2011, I served a copy of the  
attached Appellant's Reply Brief on the attorney for the  
Respondent at the attorney's office email address of record, by  
email per CR 5.

  
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CERTIFICATE OF SERVICE OF REPLY BRIEF OF APPELLANT