

No. 49436-1

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

DONALD S. MURIDAN,

Appellant,

v.

NICOLE REDL,

Respondent.

APPEAL FROM THE SUPERIOR COURT
FOR PIERCE COUNTY
THE HONORABLE GAROLD E. JOHNSON

RESPONDENT'S BRIEF

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I. INTRODUCTION

The parties lived together from December 2008 through February 27, 2015. During the relationship, they raised one child, held themselves out as domestic partners and were engaged to be married. They also attempted *in vitro* fertilization subsequent to the birth of their first child.

The trial court properly found as a matter of fact that the parties were in a committed intimate relationship. The trial court then made a just and equitable division of the parties' property and debts.

This court should affirm the trial Court's property and debt distribution and award Redl her attorney fees on appeal because Muridan's appeal is frivolous.

II. REPLY ARGUMENT

- A. Sexual intimacy need not be proven before the court can equitably divide property and debts acquired during the parties' 6-year relationship. Similarly, infidelity in and of itself does not equate the end of the CIR/equity relationship.**

Whether a committed intimate relationship exists is a question of fact, subject to the deferential "substantial

evidence" standard of review. *In re Sutton & Widner*, 85 Wn. App. 487, 490- 91, 933 P.2d 1069, *rev. denied*, 133 Wn.2d 1006 (1997). This court must reject Muridan's challenge to the trial court's determination that the parties were in a committed intimate relationship/equity relationship from December 2008 through February 27, 2015.

A committed intimate relationship "is a stable, marital-like relationship where both parties cohabit with knowledge that a lawful marriage between them does not exist." *Connell v. Francisco*, 127 Wn.2d 339, 346, 898 P.2d 831 (1995). This was the very essence of the parties' six-year relationship.

As noted in *Byerly v. Cail*, 193 Wn. App. 677, 685-686 (Div II, 2014):

The committed intimate relationship doctrine serves to protect unmarried parties who acquire property during their relationships by preventing the unjust enrichment of one at the expense of the other when the relationship ends. *See In re Marriage of Pennington*, 142 Wash.2d 592, 602, (2000).

In deciding whether the parties had a committed intimate relationship, courts consider several nonexclusive factors, none of which necessarily has more significance than another: (1) continuity of cohabitation; (2) duration of the relationship; (3) purpose of the relationship; (4) pooling of resources and services for joint projects; and (5) the intent of the parties. *Pennington*, 142 Wn.2d at 601-05.

Courts should not apply these factors in a hypertechnical fashion, but must base the

determination on the particular circumstances of each case. *Pennington*, 142 Wn.2d at 602.

Whether the parties had a committed intimate relationship presents a mixed question of law and fact. *Pennington*, 142 Wn.2d at 603–03, 14 P.3d 764. Therefore, we defer to the trial court's unchallenged findings of fact, as well as challenged findings supported by substantial evidence in the record, but review de novo whether the trial court's legal conclusions properly follow from those findings. *Pennington*, 142 Wash.2d at 602–03, 14 P.3d 764. In this review, we neither weigh the evidence nor judge the credibility of the witnesses. *In re Marriage of Greene*, 97 Wn. App. 708, 714 (1999).

Byerly at 685-686.

After Muridan's prostate cancer and subsequent surgeries, that the parties may not have always had a vigorous sex life does not make their relationship any less "marital-like" - just ask any number of married couples who have "lost that spark" in the bedroom, but remain in a loving, intimate and committed marriage. There can be no doubt that sleeping the in the same bed with someone virtually every night from December 2008 through February 27, 2015 (RP 265-266); kissing (RP 303-304); getting engaged to be married (RP 307); raising a child in the same home (RP 307); attempting *in vitro* / assisted artificial conception in 2013 (RP 283); making daily mutual life/business decisions (RP 394-395); supporting one's fiancé through multiple cancer surgeries both in state and out-

of-state (RP 310 and RP 37 and Trial Exhibit 153); and, going on vacations together as a family (RP 283 and 304-305) are all intimate acts.

On November 22, 2014, Muridan posted on Facebook, in part:

“ . . . Second is Niki Redl my partner, the love of my life, the mother of my beautiful child Donald who I love dearly, the only woman in my life who made huge sacrifices and stood by me the entire time good and bad, traveled with me many times for treatments all over the country, gave me comfort when I was so very scared, when I cried, attended countless radiation sessions, one of the last and first person to see when I had anesthesia and awoke from all my surgeries, niki [sic] lying next to me in bed and giving positive reassurance when you awake in the middle of night worried about dying and not being there for my son. . . . Deep down I knew her [Redl] being positive was a guise, she was also scared but at that moment it gave me hope and comfort. For this, I am forever grateful for having a strong woman by my side. . . .”

Trial Exhibit 153.

Contrary to Muridan's argument, the term "committed intimate relationship" was not intended to make *sexual* intimacy the "up-or-down" litmus test for whether an equitable division of property may be made at the end of the relationship. Instead, the court adopted the term in rejecting

the "antiquated" (and derogatory)¹ term "meretricious relationship." *Olver v Fowler*, 131 Wn.App. 135, 141, fn. 9, 126 P.3d 69 (2006), *aff'd*, 161 Wn.2d 655, 168 P.3d 348 (2007). "Intimacy and commitment are just two non-exclusive relevant factors a trial court can consider in deciding if equity applies to support an equitable property division." *Long v. Fregeau*, 158 Wn. App. 919, 922, 1,244 P.3d 26 (2010).²

B. Substantial evidence supports the relationship meeting all five Connell factors that a committed intimate, equity relationship existed from December 2008 through February 27, 2015.

To summarize the application of the five *Connell* factors as applied to the case at bar:

(1) **Continuity of Cohabitation**: December 2008 through February 27, 2015. (RP 128, 130, 133, BR

¹ The adjective "meretricious" derives from the Latin term for a prostitute. *Peffley-Warner v. Bowen*, 113 Wn.2d 243,246, fn. 5,778 P.2d 1022 (1989).

² In holding that two men were in a committed intimate relationship even though one was not sexually faithful, the *Long* court suggested that the more proper "phraseology" is "equity relationship" - the term used by the trial court in this case and a "neutral, more accurately descriptive, substitute term in analyzing the common fact-equity issues found in this subject area." 158 Wn.App. at 922, i 2. If use of the adjective "intimate" causes a party to make the sort of argument made by Muridan here, Redl agrees that the focus should be redirected to the "equity" of attempting to deny a life partner any of the benefit of accumulated assets based on a claim that the litigants' sex life was unsatisfactory.

Appellant 18).

(2) **Duration of Relationship:** December 2008 through February 27, 2015. (RP 265-266, BR Appellant 18). On October 24, 2014 Muridan posted on facebook a photo of him and Redl and their son all together with a caption, “Going to an industry party with my very hot significant other— with Niki Redl”. (Trial Exhibit 152).

(3) **Purpose of the Relationship:** See items above discussing intimacy. Not only were the parties engaged to be married, but they both signed under penalty of perjury an Affidavit of Domestic Partnership with the Franklin Pierce School District on August 26, 2010 in which they had to attest to the following, amongst other things:

We have an intimate, committed relationship of mutual caring and intend to remain sole domestic partners indefinitely; and, We agree to be responsible for each other’s basic living expenses during our domestic partnership such as food, shelter, or medical expense; we also agree that we share financial obligations. . . . (Trial Exhibit 105 admitted

into evidence and RP 146-147).

(4) **Pooling of resources and services for joint**

projects: The parties shared the cost of medical insurance, cable, groceries and daycare for their son. (RP 282-283). Redl lived in Muridan's separate home rent-free six to eight months after she moved in for the next 5 to 6 years. (RP 282). Muridan added Redl as the beneficiary to his life insurance policy. (RP 150-151). Muridan purchased Redl a Mini Cooper car in January 2013. (RP 145). Muridan consulted Redl on business decisions and transactions. (RP 394-395). Muridan consulted Redl on a major \$75,000 investment loan to an unreliable friend. (RP 250-251). Muridan and Redl had a joint bank account. (RP 139).

(5) **Intent of the parties:** The parties were in a stable six-year relationship that was marital-like in every single way with the exception of a marriage license. They held themselves out as "domestic partners" (RP 146-157, Exhibit 105) and were engaged to be married on 12/25/2010 (RP 307).

Based upon the foregoing, there is substantial evidence

supporting the trial court's findings of fact that this relationship strongly and unquestionably meets all five of the Connell factors from December 2008 through February 27, 2015.

C. Substantial evidence supports trial court's finding that the property acquired during this CIR/equity relationship would have been treated as community property had the parties been legally married.

The trial court awarded Redl fifty percent of three assets which were determined to have been acquired during the parties CIR/equity relationship:

1. Rainier on Pine, a retail marijuana business, with Mr. Muridan's partial ownership interest valued at \$700,000;
2. Timberland Bank Account with a balance of \$25,000 as of 02/27/2015; and,
3. Equipment used to grow marijuana sold on a contract held by Mr. Muridan in the amount of \$50,000.

Rainier on Pine was started by Mr. Muridan as a medical marijuana store with the name of Rainier Wellness Center on November 1, 2010. (RP 269-270). Mr. Muridan took on some business partners (one holding a licensing to sell retail marijuana) and he converted Rainier Wellness Center to

a retail marijuana store with the name Rainier on Pine in August 2014, retaining a 25% interest therein. (RP 284). Clearly, Mr. Muridan's interest in Rainier on Pine was accrued during the CIR/equity relationship.

As far as the value established by the trial court, Mr. Muridan sold his 25% interest in Rainier on Pine for \$700,000 in December 2015 thereby clearly establishing the value of this interest. (RP 293-295).

The \$25,000 in Mr. Muridan's checking account as of the date of separation which was divided 50/50 by the trial court, Mr. Muridan admitted the same. There is no dispute. (RP 294).

Lastly, the \$50,000 contract held by Mr. Muridan for the sale of marijuana equipment, he testified he acquired this equipment in 2012. (RP 321). This is during the CIR/equity relationship. Then, on July 6, 2016 that he had another 6 months of payments to receive on this 2-year note. (RP 321). That would put the final payment as of January 2017. That means he started receiving the payments in January 2015 right near the time of separation (February 27, 2015). For some unknown reason, Mr. Muridan did not bring the note to trial and did not have it admitted as an exhibit.

D. Substantial evidence supports the trial court's division of property and debts to the parties.

The trial court awarded Mr. Muridan 100% of his separate property which primarily consisted of his house. (CP 20). The trial court then divided the property accumulated during the CIR/equity relationship 50/50. (CP 25).

Mr. Muridan argues for the first time on appeal that there may be deductions from the \$700,000 he received from the sale of his 25% share in Rainier on Pine (a d/b/a of JAR Mangement). (RP 163-164). His trial counsel made no argument before the trial court and offered no evidence that there would be deductions from the \$700,000. In fact, Mr. Muridan testified as to exactly how the \$700,000 would be paid to him without any mention of any deductions. (RP 163-164).

Mr. Muridan testified at trial that he was 100% in remission from his cancer. (RP 40-41 July 7, 2016 and BR of Appellant 47). Further, Mr. Muridan's fiance Jennifer Gray earns \$150,000 per year. (RP 38-39).

The trial court's' division of property and debt accumulated during the CIR/equity relationship was fair and equitable.

E. This court should award attorney fees to Redl because the appeal is frivolous pursuant to RAP 18.9.

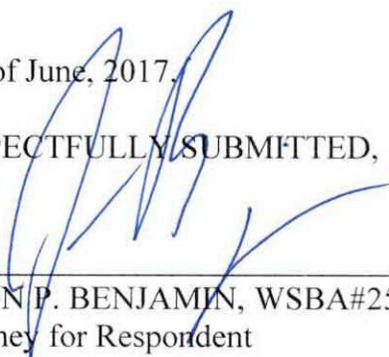
Redl requests attorney fees under RAP 18.9 because Muridan's appeal is frivolous.

"An appeal is frivolous if, considering the entire record, the court is convinced that the appeal presents no debatable issues upon which reasonable minds might differ, and that the appeal is so devoid of merit that there is no possibility of reversal." *Advocates for Responsible Dev. V. Wash. Growth Mgmt. Hearings Bd.*, 170 Wn.2d 577, 580 (2010). An appeal is not frivolous where the appellate raises even one debatable issue. *Advocates*, 170 Wn.2d at 580. That is the situation here.

IV. CONCLUSION

Based upon the foregoing, this court should affirm the trial court in all regards. This court should reject Muridan's appeal and award Redl her attorney fees on appeal.

Dated this 13th day of June, 2017.

RESPECTFULLY SUBMITTED, 

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CERTIFICATE OF SERVICE

I certify that on the 13th day of June, 2017, I caused a true and correct copy of this Respondents' Brief to be served on the following in the manner indicated below:

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