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COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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In re the Domestic Partnership of:

JEAN M. WALSH,

Respondent,

and

KATHRYN L. REYNOLDS,

Appellant.

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APPEAL FROM THE SUPERIOR COURT  
FOR PIERCE COUNTY  
THE HONORABLE STEPHANIE AREND

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BRIEF OF APPELLANT

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## I. INTRODUCTION

This, the second appeal from the division of the parties' property after a 22-year equity relationship, at the conclusion of a 12-year domestic partnership, is necessitated by the trial court's refusal to comply with this Court's mandate in *Walsh v. Reynolds*, 183 Wn. App. 830, 335 P.3d 984 (2014), *rev. denied*, 182 Wn.2d 1017 (2015). In the first appeal, this Court directed the trial court on remand to: 1) reconsider when the parties' equity relationship started *before* 2005 and 2) reassess its equitable distribution of property based on the true length of the parties' equity relationship. 183 Wn. App. at 835, ¶ 2. On remand, the trial court did not decide when the parties' equity relationship started before 2005, as directed by this Court. Instead, the trial court reinstated its earlier property division, relying on legal bases this Court had rejected in reversing the trial court's earlier decision. The trial court also adopted purported "new" theories that are directly contrary to the trial court's own earlier decision and to this Court's holding, binding as the law of the case, that long before 2005 the parties *were* in an equity relationship justifying the equitable distribution of property.

The parties' statutory domestic partnership was dissolved in 2012. Appellant Kathy Reynolds has waited far too long for an

equitable distribution of the property acquired during her quarter-century equity relationship with respondent Jean Walsh. This Court should reverse and remand to a different judge to effect this Court's mandate, and award Reynolds her attorney fees incurred in the first remand and in this second appeal, which was made necessary wholly by the unwillingness of the trial court, at Walsh's urging, to abide by this Court's mandate.

## **II. ASSIGNMENTS OF ERROR**

1. The trial court erred in failing to follow this Court's mandate as the law of the case on remand.

2. The trial court erred in holding a needless trial on remand.

3. The trial court erred in entering its second set of findings, many of which are conclusions of law, and individually to each and every finding that was entered on remand. (CP 631-45) The trial court's second set of findings is Appendix B. To the extent the trial court on remand relied on its 2012 findings, or on conclusions based on its 2012 findings, which Reynolds successfully challenged in the earlier appeal, Reynolds incorporates her earlier assignments of error, as set out in Appendix C.

4. The trial court erred in reinstating its property division, which this Court reversed in the earlier appeal. (CP 631-34, 646-56)

### **III. ISSUES RELATED TO ASSIGNMENTS OF ERROR**

1. Was the trial court on remand bound by this Court's holdings affirming the trial court's earlier decision that the parties were in an equity relationship but that the trial court had erred in concluding that the equity relationship began no earlier than 2005?

2. To the extent these issues could be raised again on remand, after being rejected by this Court in the previous appeal, did the trial err in dividing the parties' property in their statutory domestic partnership by holding:

a. that division of quasi-community property would violate the constitutional rights of Jean Walsh, the economically advantaged partner, because she was unaware that her life partner Kathy Reynolds could have an interest in assets acquired during their 22-year relationship?;

b. that Kathy Reynolds was not entitled to a division of property acquired during the parties' equity relationship, beginning in 1988, because the parties were not sexually intimate after their first child was born?;

c. that Reynolds was not entitled to a division of property acquired during the parties' equity relationship because she was "paid" for her services caring for the parties' home and three children while Walsh worked outside the home?;

d. that (inconsistent with the claim that Walsh was unaware that Reynolds could have an interest in "her" assets), Reynolds was not entitled to a division of property acquired during the parties' equity relationship because the parties intended to separately maintain their assets? or;

e. that Reynolds was not entitled to a division of property acquired during the parties' equity relationship because the parties had no intent to create an equity relationship in 2000, when they first registered as domestic partners under California law?

3. Was Reynolds entitled to an award of fees on remand to reconsider the distribution of property in dissolving a statutory domestic partnership?

#### IV. STATEMENT OF FACTS

**A. This Court reversed and remanded, holding that the findings and record did not support the trial court's conclusion that the parties' equity relationship only began in 2005.**

Jean M. Walsh, a Group Health physician, and Kathryn L. Reynolds began living together in California in 1988, where the parties exchanged rings in a ceremony. (RP 49, 75, 216-17) The parties had three children born during their relationship, for whom Reynolds was the primary caregiver. (RP 55, 57, 60, 64, 83) In March 2000, the parties registered as domestic partners in California. (RP 71, 245) In March 2004, they had a marriage ceremony in Oregon. (RP 106) In 2009, the parties registered as domestic partners in Washington, shortly after the Washington Legislature amended its domestic partnership law to ensure that domestic partners are "treated the same as married spouses." (RP 47, 247-48; RCW 26.60.015) The parties separated a year later, having lived together for 22 years.

The trial court entered a decree dissolving the parties' domestic partnership pursuant to RCW ch. 26.60 on November 5, 2012. (CP 435-45) Although recognizing that it would have found

that the parties' equity relationship<sup>1</sup> had begun in 1988 if they were heterosexual (CP 412), the trial court concluded that their equity relationship could not have begun as a matter of law until 2005, when California amended its domestic partnership law to provide that registered domestic partners would have the same protections and rights as married spouses. (CP 368-69)

As a consequence, the trial court awarded Reynolds only half of the parties' "joint retirement" accumulated since 2005; \$46,000 in retirement in her name; \$43,046 from an investment account controlled by Walsh; personal property; and 48% of the sale proceeds from the family home, after awarding Walsh a \$40,834 "offset" for her "separate" contributions to the home. (CP 443-45) Accepting Walsh's argument that the court was prohibited from awarding "her" "separate" property to Reynolds when dissolving their statutory domestic partnership, the trial court left Walsh, an orthopedic

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<sup>1</sup> This brief is using the term "equity relationship," consistent with this Court's earlier decision. *Walsh v. Reynolds*, 183 Wn. App. 830, 335 P.3d 984 (2014), *rev. denied*, 182 Wn.2d 1017 (2015). The courts also refer to cohabitant relationships in which the parties' assets are quasi-community in nature as "committed intimate relationships" or, earlier, "meretricious relationships." See *Olver v. Fowler*, 161 Wn.2d 655, 674 n.1, 168 P.3d 348 (2007) ("While this court has previously referred to such relationships as 'meretricious,' we, like the Court of Appeals, recognize the term's negative connotation. Accordingly, we too substitute the term 'committed intimate relationship,' which accurately describes the status of the parties and is less derogatory.") (citations omitted).

surgeon who makes more in a month than Reynolds earns in a year, with all the remaining assets from an estate that exceeded \$2 million.

Walsh nevertheless appealed, challenging the trial court's decision that the parties were in an equity relationship at all before they registered as domestic partners in Washington in 2009. Reynolds cross-appealed because, having acknowledged that if the parties were heterosexual it "would not hesitate" to find that their equity relationship had begun in 1988 when they had been living together, the trial court had concluded that the parties' equity relationship began only in 2005, when California expanded the statutory rights of same-sex couples registered as domestic partners.

On September 30, 2014, this Court rejected Walsh's appeal in its entirety, affirming the trial court's decision that the parties were in an equity relationship before they registered as domestic partners in Washington. *Walsh v. Reynolds*, 183 Wn. App. 830, 335 P.3d 984 (2014), *rev. denied*, 182 Wn.2d 1017 (2015). A copy of this Court's decision is attached as Appendix A. On Reynold's cross-appeal, this Court reversed the trial court's decision that the "start date" of the parties' equity relationship was 2005, holding that the "findings of fact and the record do not support the trial court's legal conclusion that the parties' 'equity relationship' began no earlier than 2005." 183 Wn.

App. at 851, ¶ 42. This Court held that “the trial court failed to consider the common law and its application to the parties’ ‘equity relationship’ . . . despite explaining that had Walsh and Reynolds been a legally recognized heterosexual marriage, it would not have ‘hesitate[d] to find that a meretricious or ‘equity relationship’ existed for the 20 plus years prior to the date of the marriage.” 183 Wn. App. at 852-53, ¶ 45 (alteration in original).

In its published decision, this Court expressly rejected the trial court’s rationale that the parties’ equity relationship did not commence until 2005, when the California Domestic Partnership Law was expanded to recognize vested property rights in domestic partners’ assets and income. This Court held that the parties’ status as registered domestic partners did “not defeat application of the common law ‘equity relationship’ doctrine to their years together before the statutory registration option became available to them,” and the fact “that California’s legislature did not expressly extend the community property rights to registered domestic partners until [2005] has no bearing on whether the parties established an ‘equity relationship’ before that time, with its corresponding common law community property rights.” 183 Wn. App. at 847, ¶¶ 33, 35 n.18.

Based on the trial court’s findings that the parties’ relationship

involved “continuous cohabitation for approximately 23 years,” the purpose of which was “to create a family while holding themselves out to the world as a family,” and that the parties “contributed their time and energy to . . . raising . . . their family and to joint projects,” this Court held that “the trial court should have extended application of the ‘equity relationship’ doctrine to the parties’ relationship before 2005, including their registered domestic partnership under California’s act [in 2000], an unimpeachable indicator of the intended nature of their relationship.” 183 Wn. App. at 847-48, ¶ 35 (quoting CP 411) (internal quotation marks omitted). This Court directed the trial court on remand to reconsider when *before* 2005 the parties’ equity relationship started, and to reassess its distribution of property at the conclusion of their domestic partnership based on the true length of the equity relationship. 183 Wn. App. at 835, ¶ 2. This Court also awarded attorney fees to Reynolds on appeal rejecting Walsh’s claim that no fees were warranted because the issues on appeal only addressed the consequences of the parties’ equity relationship, and not their statutory domestic partnership. 183 Wn. App. at 858-59, ¶ 60.

After the Supreme Court denied Walsh’s petition for review, 182 Wn.2d 1017 (2015), the case was remanded to the trial court on July 22, 2015. (CP 500)

**B. After an unnecessary trial, the trial court in defiance of this Court's holdings reinstated its earlier decision.**

The trial court finally set the matter for consideration on remand in June 2016. The trial court declined to determine the date the parties' equity relationship began based on this Court's decision and the previous trial testimony and findings entered after a three-day trial in 2012. Instead, over Reynolds' objection (2016 RP 13-15, 45-49),<sup>2</sup> the trial court took an additional two days of testimony. As set out in Appendix D, with the exception of testimony about the current condition of one of the parties' three children and Reynold's post-decree relationship with another woman, the testimony and evidence taken in 2016 was virtually the same as that taken in 2012.

The trial court issued a letter decision on August 18, 2016. (CP 724-30) Rather than determine when the parties' equity relationship had begun before 2005, as this Court had directed it to do, and contrary to this Court's decision affirming the trial court's earlier conclusion that the parties had been in an equity relationship, 183 Wn. App. at 846-47, ¶ 33, the trial court now concluded that the parties were *never* in an

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<sup>2</sup> The record from the previous appeal has been transferred to this appeal. 12/8/17 Letter Ruling. The Clerk's Papers are sequentially numbered; pleadings from the proceedings on remand begin at CP 500. The Report of Proceedings from the trial after remand is identified as "2016 RP \_\_\_\_."

equity relationship. In defiance of this Court's holding that the parties' 2000 California domestic partner registration was "an unimpeachable indicator of the intended nature of their relationship," 183 Wn. App. at 848, ¶ 35, and relying on theories expressly rejected by this Court, the trial court concluded that "equity follows the law and cannot provide a remedy where legislation expressly denies it." (CP 726) The trial court denied attorney fees to Reynolds because the "legal and factual issue presented to this Court on remand from the Court of Appeals did not involve the dissolution of the parties' registered domestic partnership" (CP 729) – directly contrary not only to this Court's award of attorney fees to Reynolds on appeal in the previous appeal, 183 Wn. App. at 858-59, ¶ 60, but to the trial court's own award of fees to Reynolds, which this Court had affirmed on appeal. 183 Wn. App. at 856, ¶ 53.

After the trial court issued its August 2016 letter ruling, Reynolds moved in this Court to recall the mandate or for discretionary review. (CP 731) Although concluding that it appeared that the trial court may have erred in its letter ruling, a Commissioner of this Court denied review, directing the parties to await entry of findings and a judgment on remand that would make the matter ripe

for appeal. (CP 759-60) The Commissioner did grant Reynolds \$18,000 for fees incurred in making the motion. (CP 551-52)

It took until November 22, 2017 for the trial court to enter a second set of findings and conclusions of law, each as proposed by Walsh. (CP 631-45) As set out in Argument § C of this brief, *infra*, the trial court's second findings also are virtually identical to those entered in 2012. Reynolds appeals. (CP 628)

## V. ARGUMENT

### A. **The trial court's reinstatement of the decision this Court had reversed violated the law of the case.**

The trial court may not reinstate a decision that this Court reversed on appeal. The trial court's reinstatement here of the decision that this Court reversed in the first appeal violated the law of the case.

"Upon issuance of the mandate . . . the action taken or decision made by the appellate court is effective and binding on the parties to the review and governs all subsequent proceedings in the action in any court." RAP 12.2. This Court's mandate is binding on parties and the superior court, and "must be strictly followed." *Marriage of McCausland*, 129 Wn. App. 390, 399, ¶ 16, 118 P.3d 944 (2005) (quoting *Harp v. American Sur. Co. of New York*, 50 Wn.2d 365, 368, 311 P.2d 988 (1957)), *rev'd on other grounds*, 159 Wn.2d 607, 152 P.3d

1013 (2007). When the appellate court directs the trial court to consider an issue on remand, “it must adhere to the appellate court’s instructions,” *McCausland*, 129 Wn. App. at 399, ¶ 16, and it cannot “ignore . . . specific holdings and directions on remand.” 129 Wn. App. at 400, ¶ 18; *see also Bank of America, N.A. v. Owens*, 177 Wn. App. 181, 189, ¶ 22, 311 P.3d 594 (2013), *rev. denied*, 179 Wn.2d 1027 (2014).

In *McCausland*, for instance, the husband challenged the trial court’s decision characterizing a monthly \$5,500 “family support” payment to the wife as “property.” This Court reversed, directing the trial court on remand to reconsider the amount of the monthly payment to the wife, and to segregate it as child support only or as child support and maintenance. On remand, the trial court adhered to its former decision, reinstating the \$5,500 monthly payment, this time characterizing a portion of the payment as “property” that would increase if child support decreased, so the wife would continue to receive \$5,500 a month from the husband for the rest of her life. 129 Wn. App. at 400, ¶ 19. In a second appeal, this Court again reversed, holding that the trial court exceeded its authority under the mandate by reinstating an earlier ruling that this Court had reversed. 129 Wn. App. at 400-01, ¶¶ 20-22. The appellate court’s “remand

did not open all other possible dissolution-related issues nor could the trial court ignore our specific holdings and directions on remand.” 129 Wn. App. at 400, ¶ 18.

The trial court on remand here similarly ignored this Court’s specific holdings, reinstating the very ruling that this Court reversed in the first appeal. Worse, the trial court here not only ignored this Court’s mandate, but wholly contradicted it. By concluding that the parties were never in an equity relationship, the trial court granted Walsh the relief she unsuccessfully sought in the first appeal. 183 Wn. App. at 835, ¶ 2 (“We affirm the trial court’s finding of an ‘equity relationship’ between the parties for purposes of equitably allocating their community property in dissolving their registered domestic partnership.”).

The trial court was not free to ignore this Court’s specific holdings that “Walsh and Reynolds lived in an ‘equity relationship’ *before* they registered as domestic partners in Washington in 2009,” 183 Wn. App. at 847 ¶ 33 (emphasis in original), and that “the record [did] not support the trial court’s legal conclusion that the parties’ ‘equity relationship’ began no earlier than 2005.” 183 Wn. App. at 851, ¶ 42. Thus, the trial court could not on “reconsideration” conclude that the parties’ equity relationship did not begin before

2005, or never existed at all. (2017 FF 7C-8, CP 639-40) The trial court's reinstatement here of the decision that this Court had reversed in the first appeal violated the law of the case.

**B. Remand was not an opportunity for the trial court to find new reasons or rely on rejected reasons to reinstate the decision this Court reversed.**

The trial court erred in adopting Walsh's arguments on remand that were already either explicitly or implicitly rejected by this Court in its previous decision. "[T]he decision of the appellate court establishes the law of the case and it *must* be followed by the trial court on remand." *Lodis v. Corbis Holdings, Inc.*, 192 Wn. App. 30, 58, ¶ 51, 366 P.3d 1246 (2015), *rev. denied*, 185 Wn.2d 1038 (2016) (emphasis in original) (quoted source omitted). The "parties and the trial court [are] all bound by the law as made by the decision on the first appeal." *Lodis*, 192 Wn. App. at 57, ¶ 50 (alteration in original). The mandate "rule . . . forbids, among other things, a lower court from relitigating issues that were decided by a higher court, whether explicitly or by reasonable implication, at an earlier stage of the same case." 192 Wn. App. at 56, ¶ 47 (quoted source omitted).

The parties argued, and this Court expressly or necessarily rejected, each of the substantive arguments the trial court, at Walsh's urging, adopted on remand to reinstate the property division that this

Court had reversed. To the extent necessary to preserve her rights on appeal, Reynolds incorporates those arguments from the previous appeal here. In any event, remand is not an opportunity for the trial court to find other reasons to reinstate a decision that the Court of Appeals reversed. Yet that is exactly what the trial court did here.

**1. The trial court violated this Court’s mandate by “reconsidering” this Court’s decision, and effectively overruling it.**

The trial court lacked authority to “reconsider” this Court’s decision that the trial court’s earlier factual findings established that the parties “lived in an ‘equity relationship’ *before* they registered as domestic partners in Washington in 2009,” 183 Wn. App. at 847, ¶ 33 (emphasis in original), but did not support its conclusion “that the parties’ ‘equity relationship’ began no earlier than 2005.” 183 Wn. App. at 851, ¶ 42. That decision by this Court that the parties were in an equity relationship before 2005 is the law of the case. The trial court on remand could not in effect “reverse” this Court’s decision by concluding on remand that the parties were *never* in an equity relationship. (2017 FF 7C, CP 639)

The trial court had no discretion to ignore this Court’s holdings. *Lodis*, 192 Wn. App. at 57, ¶ 50. “An individual trial court is not free to determine which appellate court orders, if any, it

chooses to follow. If a trial court were free to ignore such orders, total chaos would result in the court system.” *State v. Strauss*, 119 Wn.2d 401, 413, 832 P.2d 78 (1992). But the trial court here announced that it would not follow this Court’s holding, concluding that this Court improperly considered its oral ruling, and not its “actual written findings of fact.” (CP 725; 2017 FF 2, CP 636)

The trial court had no authority to challenge what this Court could and could not consider in reaching its decision reversing the trial court. In any event, this Court properly considered the trial court’s oral ruling that “[i]f the two people in this case were a heterosexual couple that had been cohabiting since 1988, [the trial court] would not hesitate to find that a meretricious or equity relationship existed for the 20 plus years prior to the date of the marriage.” 183 Wn. App. at 851, ¶ 43 (quoting CP 412). Furthermore, this Court clearly agreed with Reynolds that the trial court erred in relying solely on the parties’ sexual orientation to conclude that their equity relationship commenced in 2005, rather than 1988:

Reynolds cross-appeals, arguing that the trial court erred in [ ] ruling that the parties’ ‘equity relationship’ commenced in January 2005, rather than in 1988.  
.... **We agree with Reynolds.**

183 Wn. App. at 841, ¶ 21 (emphasis added).

Finally, the trial court could not purport to rely on its earlier findings “that were affirmed on appeal” to reach the same conclusion that the parties could not be in an equity relationship prior to 2005. (2017 FF 2, 6, CP 636-38) *Humphrey Indus., Ltd. v. Clay St. Assocs., LLC*, 176 Wn.2d 662, 671, ¶ 16, 295 P.3d 231 (2013) (*Humphrey II*) (after Supreme Court vacated an attorney fee award, trial court erred by relying on its earlier findings that were purportedly unchallenged in the earlier appeal to once again award attorney fees). The trial court violated this Court’s mandate by “reconsidering,” and effectively overruling, this Court’s decision, while purporting to dictate what this Court could and could not consider in reviewing the trial court’s decision.

**2. The trial court violated this Court’s mandate by relying on theories explicitly rejected by this Court in order to reinstate its original, reversed decision.**

The trial court violated this Court’s mandate by concluding that the parties’ equity relationship did not commence before 2005 (or did not exist at all) based on a theory that this Court explicitly rejected – because the parties registered as domestic partners in California, and then later in Washington, they somehow forfeited common law claims under the equity relationship doctrine. The trial court flatly defied this Court’s determination that the parties’

registration as domestic partners in California in 2000 was an “unimpeachable indicator” of their intent to be in an equity relationship by concluding on remand that the parties were not in an equity relationship and intended only to “take advantage of the health care and related hospital visitation privileges conferred upon registered domestic partners that were not otherwise available to unrelated same-sex adults.” (2017 FF 5, CP 637)

This Court considered and rejected this very reasoning in reversing the first time, holding that the parties’ registration as domestic partners “does not defeat the application of the common law ‘equity relationship’ doctrine to their years together before the statutory registration option became available to them.” 183 Wn. App. at 847, ¶ 33. “That California’s legislature did not expressly extend the community property rights to registered domestic partners until [2005] has no bearing on whether the parties established an ‘equity relationship’ before that time, with its corresponding common law community property rights.” 183 Wn. App. at 847, ¶ 35 n.18.

Further, in addressing Washington’s domestic partnership law, this Court held “[t]o the extent [Walsh] argues the statute retroactively preempted common law equity doctrine before 2008, when there was no legislation in Washington, Walsh is incorrect.” 183 Wn. App. at

848, ¶ 36. The statute did not “retroactively affect the rights, benefits, and property expectations of parties to a meretricious or ‘equity relationship’ accrued before the amendment’s effective date in 2008. *See* Laws of 2008, ch. 6, § 1011.” 183 Wn. App. at 849, ¶ 37 (emphasis removed). The statute “did not erase the parties’ ‘equity relationship’ that already existed before they registered as domestic partners in Washington.” 183 Wn. App. at 850, ¶ 38.

The trial court’s impermissible “retroactive extension” conclusion on remand (2017 FF 3-4, CP 636-37; 2017 CL 15-16, CP 642-45) is the same “constitutional issue” that this Court rejected in the first appeal. The trial court had at the end of the first trial held that “[r]etroactive application of a statute is unconstitutional if it deprives an individual of a vested right without due process of law. A right is vested when it is already processed or legitimately required. It would be unconstitutional to divest these parties of vested property interests in existence prior to the January 1, 2005 effective date.” (2012 CL 5, CP 373) In reversing the trial court’s decision, this Court clearly rejected this argument by holding that recognizing the parties’ property rights under an equitable cause of action was not a retroactive application of the domestic partnership law and that the “findings of fact and the record do not support the trial court’s legal conclusion that the parties’

‘equity relationship’ began no earlier than 2005.” 183 Wn. App. at 851, ¶ 42; see *Humphrey II*, 176 Wn.2d at 671, ¶ 16 (if appellate court holds that the record did not support the trial court’s conclusion, it considered and rejected arguments made in the record).

Even if, as the trial court asserted, this Court “did not analyze the constitutional rights of the parties [because] ‘neither party raises a due process argument on appeal’” (2017 FF 4, CP 636), the burden was on Walsh to have raised her claimed “constitutional rights” in the first appeal as a ground for affirmance. If she failed to do so, she abandoned that claim and could not resurrect it on remand as a basis for the trial court to reinstate a ruling that this Court reversed. See *Bank of America*, 177 Wn. App. at 193, ¶ 27 (Bank, who had been respondent in earlier appeal, “could and should have raised the in rem claim in the first appeal. Having failed to so, the Bank abandoned that claim. The trial court erred by allowing the Bank to resurrect its in rem claim on remand” in order to grant the Bank the very relief that the appellate court reversed in the prior appeal).

On remand, the trial court could not rely on arguments and theories rejected by this Court in the earlier appeal. See *Estate of Langeland*, 195 Wn. App. 74, 82-83, ¶¶ 16-19, 380 P.3d 573 (2016) (unsuccessful respondent cannot rely on arguments rejected in an

earlier appeal to ask the trial court to effectively reinstate its reversed decision on remand), *rev. denied*, 187 Wn.2d 1010 (2017); *see also Farhood v. Allyn*, 132 Wn. App. 371, 379-80, ¶¶ 18-19, 131 P.3d 339 (2006) (dismissing appeal of order enforcing the Court of Appeals mandate by unsuccessful respondent in earlier appeal because argument on remand was fully considered and rejected in the first appeal). The trial court violated the mandate by effectively reinstating its decision on remand relying on Walsh’s discredited theory of “impermissible retroactive application of the statute.”

**3. The trial court violated this Court’s mandate by relying on a theory that this Court implicitly rejected to make a determination on remand that is inconsistent with this Court’s decision.**

The trial court also violated this Court’s mandate in concluding that even if the parties’ equity relationship commenced in 1988, it was precluded from distributing property accumulated by the parties during their relationship based on an alleged “oral prenuptial agreement” stating their “intent” to maintain their assets separately. (2017 FF 9, CP 640) This decision, based on another theory necessarily rejected in the earlier appeal, is wholly inconsistent with this Court’s direction that the trial court on remand determine when the parties’ equity relationship commenced before

2005 and “to revise its property distribution accordingly.” 183 Wn. App. at 853, ¶ 45.

On remand, Walsh renewed an argument made in the trial court, this Court, and in her petition for review of this Court’s decision in the Supreme Court, that the parties’ purported intent to “maintain separate financial lives” precluded distribution of properties acquired during their relationship. (See CP 166-68; Walsh Appellant Br. 14-15, 22-23, 31-33; Walsh Cross-Response Br. 1-3, 7-10, 32-34; Walsh Petition for Review 11-13)<sup>3</sup> This argument was originally rejected *by the trial court itself* when it found that the parties were in an equity relationship starting in 2005 and that the property acquired during the relationship should be equitably divided. (2012 CL 11, 13, CP 463-64)

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<sup>3</sup> Appellant has filed a motion with this Court to have the briefs in the original appeal, Cause No. 44289-2, transferred to the file in this appeal. These briefs are also available on the Court’s website at the following links:

Walsh Appellant Brief:

<http://www.courts.wa.gov/content/Briefs/A02/442892-Appellant's%20Brief.pdf>;

Reynolds Respondent/Cross-Appellant Brief:

<http://www.courts.wa.gov/content/Briefs/A02/442892-Respondent%20Cross-Appellant's%20Brief.pdf>;

Walsh Reply/Cross-Response Brief:

<http://www.courts.wa.gov/content/Briefs/A02/442892-Reply%20Brief.pdf>;

Reynolds Cross-Reply Brief:

<http://www.courts.wa.gov/content/Briefs/A02/442892-Cross-Appellant's%20Reply%20Brief.pdf>.

This Court rejected Walsh’s argument that the parties intended to maintain the separate character of their property in affirming the trial court’s conclusion that the property acquired during the parties’ equity relationship should be equitably divided, reversing only on the trial court’s determination of the 2005 “start date” of the relationship. Walsh’s argument was finally rejected by the Supreme Court when it denied review of this Court’s decision. The trial court could not reinstate a decision that was reversed by this Court, or make a decision at odds with this Court’s holding, by purporting to rely on this “new” ground to support its original decision. The law of the case doctrine precludes “successive reviews of issues that a party raised, or could have raised, in an earlier appeal in the same case.” *Langeland*, 195 Wn. App. at 82, ¶ 16; *Bank of America*, 177 Wn. App. at 191, ¶ 24; *Humphrey II*, 176 Wn.2d at 669, ¶ 13.

In *Bank of America*, the Court of Appeals reversed the trial court’s decision giving the Bank’s lien priority over Treiger’s lien. The Supreme Court affirmed Division One’s decision. On remand, the Bank once again argued that it had priority, this time based on an “in rem” claim that the Bank had previously raised below but that had not been adjudicated by the trial court and was not raised by the Bank as an

alternative grounds for affirmance in the earlier appeal. 177 Wn. App. at 187-88, ¶¶ 17-18. When the trial court on remand relied on the Bank's in rem claim to once again give the Bank priority to the proceeds over Treiger's claim, Division One reversed once again on Treiger's second appeal. The Court held that the "trial court erred by allowing the Bank to resurrect its in rem claim on remand, in effect allowing the Bank to sit on its in rem theory and raise it upon not prevailing on its initial theory. Doing so flies squarely in the face of the indisputable policy against allowing piecemeal appeals." 177 Wn. App. at 193, ¶ 27. The Court held that the trial court's decision on remand reinstating its earlier decision on purported different grounds "thwarted" the Supreme Court's direction on remand. 177 Wn. App. at 191, ¶ 25.

In *Humphrey I*, the Supreme Court had reversed the trial court's decision ordering appellant Humphrey to pay attorney fees based on the trial court's finding that Humphrey acted arbitrarily, vexatiously, and not in good faith. *Humphrey Indus., Ltd. v Clay Street Assocs., LLC*, 170 Wn.2d 495, 507-08, ¶ 22, 242 P.3d 846 (2010) (*Humphrey I*). On remand, the trial court reinstated a portion of the vacated attorney fee award against Humphrey, ostensibly on the grounds that it "recall[ed] that quite apart from the evidence found inadmissible by the Supreme Court, there was significant other

evidence that indicated that Humphrey acted arbitrarily, vexatiously, or not in good faith.” *Humphrey II*, 176 Wn.2d at 669, ¶ 11 (alteration in original) (quoted source omitted). The Supreme Court reversed again, holding that the trial court had no authority to reinstate an award of attorney fees that the higher court had previously vacated. *Humphrey II*, 176 Wn.2d at 671, ¶ 16. The Court held that when it reversed the fee award the first time, it implicitly rejected *any other basis* to impose attorney fees against Humphrey by holding that “the record does not establish that Humphrey’s actions were arbitrary, vexatious, and not in good faith.” *Humphrey II*, 176 Wn.2d at 671, ¶ 16 (quoting *Humphrey I*, 170 Wn.2d at 508, ¶ 24). “This became the law of the case, and the trial court on remand was not authorized to reconsider fees against Humphrey.” *Humphrey II*, 176 Wn.2d at 671, ¶ 16.

Most recently, in *Langeland*, Division One reversed the trial court’s characterization of certain assets of the decedent as separate property in an earlier appeal, holding that Boone failed to overcome the joint property presumption. 195 Wn. App. at 80, ¶ 9. After the trial court on remand complied with the Court’s mandate, concluding that the assets at issue were indeed joint property, Boone appealed, relying on an alleged separate property agreement

between decedent and his former equity partner to claim the assets were separate property.

Faced with a “law of the case” challenge in the second appeal, Boone asserted that the only issue in the previous appeal had been whether Boone had rebutted the presumption of joint character, and claimed that the separate property agreement had not been at issue in the prior appeal. 195 Wn. App. at 82-83, ¶ 17. Division One summarily rejected this argument, stating that in previously ruling that “[a]s a matter of law, Boone failed to overcome the joint property presumption,” “we necessarily rejected the arguments Boone advances now, that the separate property agreement prevented Drown and Langeland from accumulating *any* joint property . . . . Thus, we ‘actually decided’ the issues Boone now raises again.” 195 Wn. App. at 83, ¶ 18 (alteration and emphasis in original). Division One expressly admonished Boone, noting that she “not only raises issues this court already decided, but she also reasserts the same arguments that she asserted in the prior appeal.” 195 Wn. App. at 83, ¶ 19.

Likewise, the trial court here was not authorized to rely upon some “alternative” ground to conclude that the parties were not in an equity relationship, or to conclude that property acquired during the equity relationship could not be distributed because of their “intent”

or supposed “agreement” to separate characterization of property – manifest only in Walsh’s control of the parties’ finances during their relationship. The trial court’s decision on remand is not only inconsistent with this Court’s decision, but contravenes its own earlier decision, affirmed by this Court, that the property accumulated during the parties’ equity relationship was subject to equitable distribution. (2012 FF 13, CP 375)

**C. Each of Walsh’s theories for reinstatement of the previous decision is unfounded on the merits.**

As set out above, the law of the case disposes of any justification for the trial court’s reinstatement of the precise result this Court reversed on appeal. Should there be any doubt, this section of the brief addresses each of the five substantive reasons the trial court on remand relied upon to find that there was no equity relationship prior to 2005: 1) that finding an equity relationship would unconstitutionally deprive Walsh of her property rights, as she was unaware Reynolds might have an interest in property acquired during their relationship; 2) that the parties were not sexually intimate after their first child was born; 3) that Reynolds was “paid” for her services; 4) that (inconsistent with the claim that Walsh did not know Reynolds might have a claim to her property), the parties intended to maintain assets separately; and 5) that the parties had

no intent to create an equity relationship in 2000, when they first registered as domestic partners in California.

The following subsections address each of these issues in turn. Because the trial court relied on identical grounds in 2012, the sections begin with a side-by-side comparison of the 2012 and 2017 decisions. Because Walsh in the earlier appeal sought to rely on the trial court's 2012 findings and conclusions of law to ask this Court to either reverse the trial court's finding that the parties were ever in an equity relationship (appeal), or to affirm the trial court's conclusion that it could not divide property before 2005 (cross-appeal), each subsection then identifies where in Walsh's previous briefing she made this argument, and in turn where Reynolds responded. The subsection then identifies (by opinion paragraph number) where in the previous decision this Court rejected Walsh's argument, before concluding with a nonexhaustive discussion of why the Court's decision was correct.

**1. Application of the equity relationship doctrine does not violate Walsh's constitutional rights.**

**2012 Findings/Conclusions    2017 Findings/Conclusions**

Prior to January 1, 2005, "neither Dr. Walsh nor Ms. Reynolds could have had notice or any reasonable expectation that the property each was accumulating would be characterized in any	"The retroactive extension of the equity relationship doctrine to that property constitutes a violation of the Fifth Amendment's taking clause, which is applied against the
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manner other than how they chose to characterize it . . . . [N]o legal basis for finding an equitable relationship to exist without violating the constitutional rights of the parties.” (2012 CL 4, CP 373)

*See also* 2012 CL 11, CP 463-64

states through the Fourteenth Amendment,” “violates the due process rights of the parties,” and “violates the equal protection clause.” (2017 CL 16, CP 643-44)

*See also* 2017 FF 4, CP 636-637; 2017 CL 14-15, CP 642-43

**Walsh appellate argument:**

“The trial court could not distribute property acquired or accumulated before the parties registered as a domestic partnership without depriving Dr. Walsh of her vested rights.” (Walsh Reply Br. 15; *see also* Walsh Reply Br. 11, 16-18)

**Reynolds appellate argument:**

“Trial court erred in concluding that to apply the equitable relationship doctrine “would constitute an impermissible ‘retroactive application’ of the domestic partnership law, and that because the parties were only granted statutory rights in 2005 they lost all equitable rights under the common law . . . . This court must reject this analysis because it undermines three decades of case law and is contrary to the Legislature’s intent when it enacted the statutes governing domestic partnerships.” (Reynolds Cross-Appeal Br. 23, *see also* Reynolds Cross-Appeal Br. 26-27, 29-31; Reynolds Cross-Reply Br. 7-8)

### **Court of Appeals decision:**

This Court rejected the trial court's previous conclusion that the equity relationship doctrine could not apply to the period of the parties' relationship before 2005 because it would retroactively alter their property rights without due process of law:

"We see no reason why the five *Long* 'equity relationship' factors that the trial court applied to the parties' post-2005 relationship should not also apply to their pre-2005 domestic partnership relationship in California." (¶ 35)

"[T]he trial court declined to consider whether the facts supported applying the 'equity relationship' doctrine to any period during the first 17 years of these parties' relationship, reasoning that characterizing their properties before California's domestic partnership law became effective on January 1, 2005, would 'retroactive[ly]' alter their 'property rights without due process of law.'" (¶ 43, alteration in original)

"But the trial court failed to consider the common law and its application to the parties' 'equity relationship' that existed *before* California's 2005 statutory recognition of such relationships, despite explaining that had Walsh and Reynolds been a legally recognized heterosexual marriage, it would not have 'hesitate[d] to find that a meretricious or 'equity relationship' existed for the 20 plus years prior to the date of the marriage.'" (¶ 45, emphasis and alteration in original; *see also* ¶¶ 36-37 & nn.5, 11, 18)

Men in long-term equity relationships have long (and unsuccessfully) made the argument that it is unfair and a violation of

property rights to award a portion of their “separate” property to a cohabitant who they chose not to marry. Although many of the early cases applying this equitable doctrine undoubtedly involved cases where the man’s property expectations would have been completely justified, that has been no impediment to development of the equity relationship doctrine, *e.g. Marriage of Lindsey*, 101 Wn.2d 299, 304, 678 P.2d 328 (1984); *Connell v. Francisco*, 127 Wn.2d 339, 350, 898 P.2d 831 (1995), or its application to same-sex relationships. See *Vasquez v. Hawthorne*, 145 Wn.2d 103, 107, 33 P.3d 735 (2001); *Gormley v. Robertson*, 120 Wn. App. 31, 37-38, 83 P.3d 1042 (2004); *Relationship of Long*, 158 Wn. App. 919, 925-26, ¶ 16, 244 P.3d 26 (2010). Indeed, after noting that had two cohabitants “not been a same-sex couple, the trial court could only conclude that a meretricious relationship existed between them” in *Gormley*, Division Three rejected an argument that the equity relationship doctrine should not apply to same-sex couples solely because previous cases had dealt only with heterosexual couples. 120 Wn. App. at 37 (“[r]elying on this historical perspective not only ignores the present, but also makes too much of the past.”).

- 2. That the parties stayed together for their family, and not to have sex, does not prevent application of the equity relationship doctrine.**

**2012 Findings/Conclusions      2017 Findings/Conclusions**

Parties stopped being intimate, and only stayed together to maintain family unit. (2012 FF 11, CP 366)

Purpose of relationship was to raise children, not to be in a marital-like relationship. (2017 FF 7B, CP 639)

“The commitment of the parties was to the children, not to each other.” (2012 CL 11B, CP 374)

Lacked degree of commitment between marital-like partners; no common interests; purpose of relationship was to raise children, not for intimate emotional or financial relationship. (2017 FF 8, CP 639-40)

**Walsh appellate argument:**

“The only reason the parties remained living in the same household was because of their bond to the children – not because of an intimate bond between the parties.” (Walsh App. Br. 29-30; *see also* Walsh Reply Br. 5-6, 34-37)

**Reynolds appellate argument:**

“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 middle-aged spouses who have been married 20 years and are now raising three teenagers!” (Reynolds Cross-Reply Br. 2-3; *see also* Reynolds Cross-Appeal Br. 39-41)

### **Court of Appeals decision:**

Regardless whether the parties remained sexually intimate, this Court held that their intent to be co-parents and holding themselves out as a family “weighs in favor of finding an ‘equity relationship’:”

“The purpose of this relationship was to create a family. This is evidenced by the parties’ conception, birth, and cross adoption of three children, living together in an intimate committed relationship, supporting each other emotionally and financially and holding themselves out to the world as a family.” (¶ 32, *quoting* CP 411)

“Walsh acknowledges that the purpose of her relationship with Reynolds was to ‘co-parent’ their children . . . . Walsh’s ‘co-parent’ assertion supports the trial court’s finding that the parties held themselves out as one family, which weighs in favor of its finding an ‘equity relationship.’” (¶ 39 n.21)

There is no authority for Walsh’s argument that the *lack of* sexual intimacy, especially in the later years of an equity relationship, prohibits reliance on the doctrine to equitably divide the parties’ property. While the trial court on remand noted that the parties had “ceased to be [physically] intimate in 1994” (2017 FF 7B, CP 639), “[i]ntimacy and commitment are just two nonexclusive relevant factors a trial court can consider in deciding if equity applies to support an equitable property division.” *Long*, 158 Wn. App. at 922, ¶ 1. In fact, this Court recently held that “[t]he lack of sexual activity

does not show that the parties did not intend to form” an equity relationship,” *Muridan v. Redl*, \_\_\_ Wn. App. \_\_\_, \_\_\_ P.3d \_\_\_, 2018 WL 1476305, at \*6. (Mar. 27, 2018), recognizing that “[t]he word ‘intimate’ in the term ‘committed intimate relationship’ was not intended to make *sexual* intimacy the litmus test for whether courts should equitably divide property at the end of the relationship. Sex is not a threshold requirement for intimacy. While courts may consider physical intimacy within the *Connell* framework, it is not required.” 2018 WL 1476305, at \*7. (emphasis in original) (internal citations omitted).

**3. That Walsh, the economically advantaged party, “paid” Reynolds, does not prevent application of the equity relationship doctrine.**

**2012 Findings/Conclusions      2017 Findings/Conclusions**

Reynolds was paid more than prior housekeeper; paid for her child care; and received over \$500,000 throughout course of relationship. (2012 FF 5, 7-9, CP 365-66)

“Ms. Reynolds['] contributions of labor in areas such as childcare and maintaining the parties’ home was compensated at an agreed upon rate that was fair and reasonable, from the inception of the parties’ relationship, to its end.” (2017 FF 9, CP 640; see also 2017 FF 7A, 8, CP 638-40; 2017 CL 16, CP 644-45)

**Walsh appellate argument:**

“Walsh paid Reynolds’ expenses and provided funds for her to save at her discretion.” (Walsh Reply Br. 37)

**Reynolds appellate argument:**

“There is nothing unusual nor ‘un-traditional’ in the wage earner in the family depositing the family’s only income into an account in his or her name, paying the family’s major expenses, and providing the stay-at-home parent with an allowance to ‘use[ ] entirely as she pleases.’” (Reynolds Cross-Reply Br. 4-5)  
(alteration in original)

**Court of Appeals decision:**

In holding that the parties were in an equity relationship, this Court already considered the trial court’s 2012 findings of fact regarding Reynolds’ “compensation,” and did not find it to be a bar to application of the equity relationship doctrine:

“Reynolds moved into Walsh’s Fresno home, but she paid no mortgage or utilities.” (¶ 4)

“At Reynolds’ request, Walsh fired her former housekeeper and hired Reynolds to perform the same work for the same pay. Walsh also made contributions to Reynolds’ separate retirement account.” (¶ 5)

“Walsh paid Reynolds’ tuition and other educational expenses.” (¶ 6)

“Walsh paid Reynolds additional money for day-care services for her daughter.” (¶ 7)

“Walsh’s income decreased significantly after she sold her practice, but she continued to pay Reynolds at the same rate.” (¶ 8)

“Walsh paid for all three adoptions, all the children’s expenses, the entire mortgage, all utilities, and all other household expenses. When Reynolds paid for something for the children or for the household, she would request and receive reimbursement.” (¶ 9)

“Between 1990 and 2011, Walsh paid Reynolds over \$500,000.” (¶ 10)

After registration in 2000, the parties continued their financial arrangement. (¶ 12)

Reynolds was not Walsh’s “housekeeper” nor her “child care provider.” The parties exchanged rings, adopted each other’s biological children, and acted no differently than any couple committed to their family. That Reynolds, the stay-at-home parent, was given an “allowance” by Walsh, the wage-earning partner, makes this relationship no different than innumerable marriages. This Court recently rejected an argument that even a “more transactional” relationship, where the parties were together to save one party from paying rent or provide the other party with health insurance, “does not nullify or diminish” the other purposes of the relationship, such as “companionship, support, and to create a family.” *Muridan*, 2018 WL 1476305, at \*6.

**4. Walsh’s claimed intent to control “her” assets is not controlling, and is inconsistent with her constitutional arguments.**

**2012 Findings/Conclusions      2017 Findings/Conclusions**

The parties “maintained separate financial lives through the duration of their relationship.” (2012 FF 4, CP 365)

“The parties clearly intended to maintain separate assets and liabilities with limited exceptions.” (2012 CL 11D, CP 374; *see also* 2012 FF 44-45, CP 460)

“Both parties meticulously and scrupulously avoided any comingling of income, assets or debts, creating a reasonable expectation that these rights would not be disturbed at a later date by judicial intervention . . . . Dr. Walsh has proven by clear, cogent, and convincing evidence that the parties agreed to the characterization of all property acquired during their relationship. Dr. Walsh and Ms. Reynolds both testified as to the existence of the agreement.” (2017 CL 16, CP 643-45; *see also* 2017 FF 4, CP 636-37; 2017 CL 15, CP 642-43)

**Walsh appellate argument:**

“Before registering for enumerated rights, they created a life with the intentionality to hold separate property. There was no conceivable reason to draft a prenuptial agreement, just as there was no reason to consider the effect of community property law. . . . . To change this now by retroactively applying community property law unfairly contravenes the parties’ actions and

intentions over their relationship.” (Walsh App. Br. 32; *see also* Walsh App. Br. 31; Walsh Reply Br. 8, 10, 25-26, 33-34)

**Reynolds appellate argument:**

“[A]lthough the trial court found the parties ‘intended to maintain separate assets and liabilities,’ it also found that they ‘intended to live together as a family.’ . . . To the extent there was any ‘intent’ to maintain separate assets, it was solely on the part of Walsh, whose earnings procured the assets and who controlled what name she placed those assets.” (Reynolds Cross-Appeal Br. 41; *see also* Reynolds Cross-Appeal Br. 40; Reynolds Cross-Reply Br. 4)

**Court of Appeals decision:**

This Court held that in light of the other factors weighing in favor of finding the parties were in an equity relationship, it is irrelevant that the parties made “a concerted effort to remain separate financial entities” (¶ 39):

“[A]lthough the parties ‘clearly intended to keep certain asset separate,’ there was ‘no doubt that they intended to live together as a family.’” “[A]lthough Walsh was the principal income earner, both Walsh and Reynolds ‘contributed their time and energy to . . . raising . . . their family’ and to ‘joint projects such as the extensive remodeling of Federal Way home.” (¶ 32, *quoting* CP 411)

“Walsh asserts that, contrary to the trial court’s findings, the parties did not pool their resources, arguing that instead they made a ‘concerted effort to remain separate financial entities,’ such as by maintaining separate bank accounts and by never entering into a joint debt. But we defer to the trial court’s factual findings as long as substantial evidence supports them. As we have already explained, here the evidence and the trial court’s application of the five *Long* factors support the trial court’s characterizing the parties’ post-2005 relationship as an ‘equity relationship.’” (¶¶ 39-40, internal citations omitted)

Again, this argument long has been unavailing when made by men who have attempted to prevent quasi-community property from being distributed at the conclusion of a long-term equity relationship, on the grounds that they controlled the acquisition or investment of the assets. As our courts have long recognized, although parties maintain “separate identities and accounts, the length of cohabitation, the contribution to the house, and their joint efforts on behalf of their relationship amply support the court’s conclusion that this was a meretricious relationship.” *Meretricious Relationship of Sutton*, 85 Wn. App. 487, 491, 933 P.2d 1069, *rev. denied*, 133 Wn.2d 1006 (1997); *see e.g. Olver v. Fowler*, 161 Wn.2d 655, 670, ¶ 30, 168 P.3d 348 (2007) (female cohabitant had a quasi-community interest in property even though all the property was titled in male cohabitant’s name).

Furthermore, Walsh’s “new” argument on remand that the parties somehow had an oral agreement to maintain their assets separately did not prevent the court from distributing property upon the dissolution of the parties’ statutory domestic partnership. RCW 26.09.080 (“in a proceeding for disposition of property following dissolution of . . . the domestic partnership . . . the court shall, without regard to misconduct, make such disposition of the property and liabilities of the parties, either community or separate, as shall appear just and equitable”). Thus, this case is distinguishable from *Parentage of G.W.-F.*, 170 Wn. App. 631, 285 P.3d 208 (2012), relied on by the trial court (2017 FF 9, CP 640; 2017 CL 16, CP 645; CP 728-29), because there the parties never married nor registered as domestic partners, and the trial court could not award separate property to the other party. *Contrast Marriage of DewBerry*, 115 Wn. App. 351, 62 P.3d 525, *rev. denied*, 150 Wn.2d 1006 (2003), where the parties had an oral prenuptial agreement to maintain their assets separately. Notwithstanding the agreement, the trial court awarded the economically disadvantaged spouse “the bulk of the parties’ community property” and cash from the other party’s separate accounts. 115 Wn. App. at 358. In affirming, Division One recognized that “[t]here was no provision of that agreement, however, that

directed the trial court dispose of the parties' property in any particular manner upon dissolution or purported to waive a spouse's interest to an equitable distribution of property." 115 Wn. App. at 365.

**5. The parties' claimed intent only to take advantage of statutory domestic registration does not prevent application of the equity relationship doctrine.**

**2012 Findings/Conclusions    2017 Findings/Conclusions**

Reynolds only registered to make the "family stronger." Reynolds "never stated the registration was to commit to a relationship with" Walsh. (2012 CL 11B, CP 374)

*See also* 2012 FF 14-16, CP 367; 2012 CL 1-2, CP 372

The parties only intended to characterize property consistent with the law in 2000, which "disavowed the creation of any community property or quasi-community property rights." (2017 FF 5, CP 637)

*See also* 2017 CL 14, CP 642

**Walsh appellate argument:**

Arguing that the parties only registered in 2000 "as a statement, rather than to receive any benefit as domestic partners." (Walsh App. Br. 18-19; *see also* Walsh Reply Br. 30-31)

**Reynolds appellate argument:**

If the parties registered in 2000 to become "visible" as a couple and make their "union stronger" and "more like a marriage ... . Contrary to the trial court's reasoning, there could be no more compelling reason to apply the committed intimate relationship

doctrine.” (Reynolds Cross-Appeal Br. 42; *see also* Reynolds Cross-Appeal Br. 31-33; Reynolds Cross-Reply Br. 12-13)

**Court of Appeals decision:**

The Court reversed the trial court ruling that the equity relationship doctrine could not apply to the period of the relationship before 2005:

“We hold, therefore, that the trial court should have extended application of the ‘equity relationship’ doctrine to the parties’ relationship before 2005, including their registered domestic partnership under California’s act, an unimpeachable indicator of the intended nature of their relationship.”(¶ 35)

“In 2003, California expanded this statute to give domestic partnerships the same statutory rights and benefits as married heterosexual couples, thereby *expressly* extending community property rights to domestic partnerships. Walsh and Reynolds registered as domestic partners in California in 2000, receiving the benefits of California’s community property rights law both at that time and later when the statute was amended in 2003.” (¶ 34, internal citation omitted, emphasis in original)

The trial court’s finding that the “parties did not intend to re-characterize their property either retroactively or prospectively” by registering as domestic partners in California in 2000 (2017 FF 5, CP 637) is nonsensical. It is undisputed that the 2000 law did not at the time confer any specific property rights to the parties. Thus, the parties could not have had any intent regarding their property rights

by registering, other than what they each testified: Walsh testified that they registered to show that they were one of “some number of gay couples that would no longer be invisible.” (RP 71-72) Similarly, Reynolds testified that they registered as a “way to make our union stronger and more like a marriage or whatever it would take to make our relationship stronger in the eyes of the law.” (RP 246) As this Court previously held, the parties’ decision to register was “an unimpeachable indicator of the intended nature of their relationship.” 183 Wn. App. at 848, ¶ 35.

In any event, when California amended its domestic partnership law to grant same-sex partners rights that are identical to those of marriage, it expressly applied that amendment retroactively to all registered domestic partnerships that were not terminated prior to the statute’s effective date of January 1, 2005. *See* Cal. Fam. Code § 297.5(k)(1); Cal. Fam. Code § 299. The trial court acknowledged as much in 2012 by concluding that “the 2003 expansion of California’s Domestic Partnership statutes, with an effective date of January 1, 2005, applies to these parties even though neither party actually received the notices required by the statute prior to its effective date.” (2012 CL 3, CP 372-73) However, it then inexplicably concluded that it could not apply the equity relationship doctrine prior to 2005

because “neither Dr. Walsh nor Ms. Reynolds could have had notice or any reasonable expectation that the property each was accumulating would be characterized in any manner other than how they chose to characterize it.” (2012 CL 4, CP 373) This Court wholly rejected that reason as a basis to not apply the doctrine: “That California’s legislature did not expressly extend community property rights to registered domestic partners until 2003 has no bearing on whether the parties established an ‘equity relationship’ before that time, with its corresponding common law community property rights.” 183 Wn. App. at 847, ¶ 35 n.18.

**D. The trial court did not comply with this Court’s mandate when it denied Reynolds attorney fees on grounds rejected by this Court in awarding her fees.**

The trial court also failed to comply with this Court’s mandate by refusing to award attorney fees to Reynolds on remand on the grounds that the “statutory authority for awarding attorney’s fees in the dissolution of a marriage or domestic partnership is not extended to an equity relationship.” (2017 FF 11, CP 641; 2017 CL 19, CP 645) Walsh unsuccessfully made this precise argument in the first appeal. (*See* Walsh Reply Br. 21: “Ms. Reynolds’ entire appeal is devoted to the argument that the equity relationship doctrine was misapplied in this case, and that she should receive a larger property award under that

doctrine. [ ] However, the court has unequivocally stated that attorney’s fees are not available in an action to divide property under the equity relationship doctrine.”) This Court clearly rejected that argument when it awarded Reynolds her fees on appeal under RCW 26.09.140.

This statutory action for dissolution of the parties’ statutory domestic partnership arose under RCW ch. 26.60, which authorizes an award of attorney fees under RCW 26.09.140 based on one party’s need and the other party’s ability to pay. RCW 26.60.015 (“for all purposes under state law, state registered domestic partners shall be treated the same as married spouses”); RCW 26.09.140 (“[t]he court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorneys’ fees”). It is not unusual that as part of a proceeding to dissolve the parties’ statutory relationship, the court will consider their pre-registration equity relationship. *See, e.g., Lindsey*, 101 Wn.2d at 304; *Marriage of Hilt*, 41 Wn. App. 434, 438-39, 704 P.2d 672 (1985); *Marriage of Neumiller*, 183 Wn. App. 914, 919, ¶ 12, 335 P.3d 1019 (2014). This consideration does not limit the court’s authority to award attorney fees under RCW 26.09.140 or limit the court’s award to only those fees related to the statutory relationship.

Not present here are the reasons why RCW 26.09.140 does not wholly apply to *purely* equity relationships – that “[a]ny other interpretation equates cohabitation with marriage; ignores the conscious decision by many couples not to marry; [and] confers benefits when few, if any, economic risks or legal obligations are assumed.” See *Connell*, 127 Wn.2d at 350; *Western Community Bank v. Helmer*, 48 Wn. App. 694, 699, 740 P.2d 359 (1987). Here, the parties did register as domestic partners, availing themselves of all the rights (and responsibilities) in RCW ch. 26.09 and RCW ch. 26.60.

The trial court’s alternative theory that an award of fees was not warranted based on need and ability to pay (2017 CL 19, CP 645) is equally spurious. Walsh earns nearly half a million dollars a year working less than full-time, has no doubt increased her separate estate since the parties’ separation, and has always controlled and had the benefit of the parties’ community-like estate. Reynolds’ income is a fraction of Walsh’s, and she had been denied even the community property which the trial court awarded her in 2012 at the time of the remand in 2016. The trial court’s denial of fees violates the mandate and the previous findings of need and ability to pay by the trial court, and by this Court as well.

**E. This Court should remand to a different judge to equitably distribute the parties' property.**

This Court should remand to a different trial court judge to equitably distribute the property acquired by the parties since 1988. Whether the parties were in an equity relationship is a legal conclusion. 183 Wn. App. at 851, ¶ 42. This Court agreed with Reynolds that the trial court erred in ruling that the parties' equity relationship did not commence in 1988, 183 Wn. App. at 841, ¶ 21, and gave the original trial court an opportunity to correct her legal error by remanding for the trial court to decide *when* the equity relationship began. No evidence on remand or in the earlier trial distinguishes any period of the parties' relationship between the time they began cohabiting in 1988 and when the parties registered in 2000 as domestic partners in California, which this Court regarded as an "unimpeachable indicator" of their intent to be in an equity relationship, 183 Wn. App. at 848, ¶ 35, that could justify any other "start date" for the parties' equity relationship than 1988.

The trial court has demonstrated its utter unwillingness to correct its legal errors and to adhere to this Court's mandate. There is no need for additional evidence or fact-finding. This Court should direct that a different superior court judge carry out its mandate to distribute the parties' community-like property accumulated during

the parties' equity relationship starting in 1988. *See McCausland*, 129 Wn. App. at 417, ¶ 75 (remanding to a different judge after a second appeal); *GMAC v. Everett Chevrolet, Inc.*, 179 Wn. App. 126, 154, ¶ 97, 317 P.3d 1074, *rev. denied*, 181 Wn.2d 1008 (2014) (remanding to a different judge after a second appeal because a “just and expeditious resolution of this case will be best served by remanding this case to a different judge for further proceedings”).

It has been six years since the trial court dissolved the parties' domestic partnership, leaving Reynolds, the economically disadvantaged partner, with only a small fraction of the property the parties accumulated during their 22-year relationship. In order to facilitate an expeditious resolution to litigation that has now dragged on for over six years, and that has been needlessly delayed by Walsh and the trial court, this Court should direct a new judge to carry out its decision by equitably dividing the property accumulated by the parties since 1988 based on the existing record, after directing Walsh to provide current asset information.

**F. This Court should award attorney fees to Reynolds.**

This Court should order Walsh to pay attorney fees to Reynolds not only under RCW 26.09.140 but pursuant to RAP 18.9. This appeal was made necessary because the trial court violated this Court's

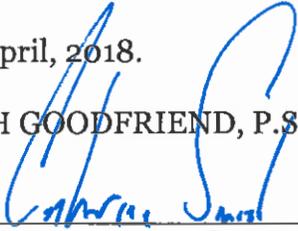
mandate, at the urging of Walsh and her counsel. RAP 12.2 makes this Court's mandate as binding on the parties as it is on the trial court. Walsh persisted in making arguments in the trial court that this Court had rejected and in seeking relief that this Court had denied her, all for the purpose of undermining this Court's mandate. This Court should award Reynolds all of her attorney fees incurred since the mandate was returned to the trial court from the first appeal.

## VI. CONCLUSION

This Court should reverse and remand to a new judge with specific directions that the property accumulated during the parties' relationship since 1988 be equitably distributed. This Court should direct the new judge to carry out its mandate based on the existing record after directing Walsh to provide current information regarding the value of all property she controls. This Court should award attorney fees to Reynolds and direct the trial court to award fees to Reynolds on remand.

Dated this 4<sup>th</sup> day of April, 2018.

SMITH GOODFRIEND, P.S.

By: 

Catherine W. Smith, WSBA No. 9542

Valerie A. Villacin, WSBA No. 34515

Attorneys for Appellant

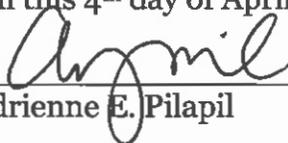
**DECLARATION OF SERVICE**

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on April 4, 2018, I arranged for service of the foregoing Brief of Appellant, to the court and to the parties to this action as follows:

Office of Clerk Court of Appeals – Division II 950 Broadway, Suite 300 Tacoma, WA 98402	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-File
Miryana L. Gerassimova McKinley Irvin 1201 Pacific Avenue, Suite 2000 Tacoma, WA 98402 <a href="mailto:mgerassimova@mckinleyirvin.com">mgerassimova@mckinleyirvin.com</a>	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Barbara A. Henderson Smith Alling PS 1501 Dock St. Tacoma WA 98402-3526 <a href="mailto:bhenderson@smithalling.com">bhenderson@smithalling.com</a> <a href="mailto:kellym@smithalling.com">kellym@smithalling.com</a>	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail

**DATED** at Seattle, Washington this 4<sup>th</sup> day of April, 2018.

  
\_\_\_\_\_  
Andrienne E. Pilapil

183 Wash.App. 830  
Court of Appeals of Washington,  
Division 2.

In re the Domestic Partnership of Jean M.  
WALSH, Appellant/Cross–Respondent,  
v.

Kathryn L. REYNOLDS,  
Respondent/Cross–Appellant.

No. 44289–2–II.

Sept. 30, 2014.

### Synopsis

**Background:** In domestic partnership dissolution proceeding, the Superior Court, Pierce County, Stephanie A. Arend, J., entered order finding that same-sex domestic partners had lived in an equity relationship as of particular date, prior to registration as domestic partners. Partner appealed and other partner cross-appealed.

**Holdings:** The Court of Appeals, Hunt, J., held that:

[1] evidence was sufficient to support finding that partners had an equity relationship even before they registered as domestic partners;

[2] duration of domestic partners' equity relationship began at least as early as partners' registered domestic partnership under other state's law;

[3] enactment of statute providing framework for distribution of a couple's domestic partnership property did not apply retroactively to affect domestic partners' rights pursuant to their equity relationship prior to enactment of statute; and

[4] no unity of interest existed as to real property owned by domestic partners, and thus partners owned property as tenants in common rather than as joint tenants.

Affirmed in part, reversed in part, and remanded.

### Attorneys and Law Firms

**\*\*986** Barbara Anne Henderson, Smith Alling PS, Tacoma, WA, for Appellant/Cross–Respondent.

Janis Marie Dyer, Attorney at Law, Catherine Wright Smith, Valerie A. Villacin, Smith Goodfriend PS, Seattle, WA, for Respondent/Cross–Appellant.

### Opinion

HUNT, J.

[1] **\*834** ¶ 1 Jean M. Walsh appeals and Kathryn L. Reynolds cross-appeals the trial court's decree of dissolution **\*835** of domestic partnership, challenging the court's findings of fact and conclusions of law. They argue that the trial court erred in (1) ruling that they had lived in an “equity relationship”<sup>1</sup> between January 1, 2005, and August 20, 2009; (2) ruling that they owned their Federal Way home as tenants in common; and (3) awarding each approximately 50 percent share of equity in the Federal Way home.<sup>2</sup> Walsh also appeals the trial court's award of attorney fees and costs to Reynolds.

¶ 2 We affirm the trial court's finding of an “equity relationship” between the parties for purposes of equitably allocating their community property in dissolving their registered domestic partnership. We reverse the trial court's finding that this “equity relationship” began only in 2005 and remand to the trial court to reconsider and to amend its finding about when the parties' “equity relationship” began and then to reassess its equitable distribution of community property based on this finding. We also affirm the trial court's award of attorney fees and costs to Reynolds, and we grant her attorney fees and costs on appeal.

### **\*836** FACTS

#### I. Relationship

¶ 3 Jean Margaret Walsh is an orthopedic surgeon living in Pierce County. In 1986, she moved to Fresno, California, where she purchased a home with her personal savings. In 1987, she used additional personal savings to purchase a private medical practice.

¶4 In 1988, Walsh met Kathryn Reynolds. After dating for about three months, Reynolds moved into Walsh's Fresno home, but she paid no mortgage or utilities. Thereafter, Walsh and Reynolds lived together for 20 years but maintained separate bank accounts and financial records. Reynolds was then working for a hardware store; she later worked for a custom home builder.

¶ 5 Soon after Reynolds moved in with Walsh, they agreed that Walsh would pay Reynolds a salary for performing housekeeping \*\*987 at the home they shared. At Reynolds' request, Walsh fired her former housekeeper and hired Reynolds to perform the same work for the same pay. Walsh also made contributions to Reynolds' separate retirement account.

¶ 6 In 1989, Reynolds was laid off from her custom home building job and returned to school at Fresno State University. Walsh paid Reynolds' tuition and other educational expenses; Reynolds completed her degree in 1993.

¶ 7 In 1992, Walsh gave birth to a daughter. Walsh paid Reynolds additional money for day-care services for her daughter. In early 1993, Reynolds moved out of Walsh's house, but Walsh continued to pay Reynolds for household and day-care services. A few months later, however, Reynolds moved back into Walsh's house. In December 1993, Reynolds adopted Walsh's daughter.

¶ 8 In 1996, Walsh gave birth to a son, whom Reynolds adopted in 1997. When Walsh was pregnant, she had decided \*837 to sell her private medical practice. The medical equipment sold for about \$20,000.00. Walsh also sold for \$131,766.22 one share of a local health management company, which she had acquired in 1987, the year before she met Reynolds. Walsh used these proceeds and a portion of her personal bank account to purchase a 20-acre eastern Fresno property in her own name. Walsh's income decreased significantly after she sold her practice, but she continued to pay Reynolds at the same rate as previously.

¶ 9 In 1998, Reynolds gave birth to a daughter, whom Walsh adopted in 2000. Walsh paid for all three adoptions, all the children's expenses, the entire mortgage, all utilities, and all other household expenses. When Reynolds paid for something for the children or for the household, she would request and receive reimbursement

from Walsh. For purposes of buying household items, Walsh added Reynolds as an authorized user on Walsh's separate credit card in 2000; in 2007, Walsh added Reynolds as an authorized user on another separate credit card.

¶ 10 Between 1990 and 2011, Walsh paid Reynolds over \$500,000. Walsh also paid off Reynolds' \$7,500 credit card debt, which Reynolds later repaid to Walsh with a \$500 monthly deduction from her day-care and housekeeping salary.

#### A. Registered Domestic Partners, California, 2000

¶ 11 On March 6, 2000, Walsh and Reynolds registered as domestic partners in California. That year, Walsh sold her eastern Fresno property and purchased a house in Tacoma, Washington, again in her own name. In June, Walsh and Reynolds moved to Washington, where Walsh found employment as an orthopedic surgeon.

¶12 Walsh and Reynolds continued their existing financial arrangement: Walsh paid the mortgage; health, dental, and auto insurance; the children's private school tuition; and other household expenses. Walsh also provided Reynolds \*838 with medical benefits by listing her as a domestic partner with her insurer, and continued to pay Reynolds an income. Walsh and Reynolds kept titles for their respective personal cars in their own names; title to the family car, however, was in both names.

¶ 13 In 2003, Walsh sold the Tacoma home and used the sale proceeds to purchase a home in Federal Way. This time, Walsh and Reynolds both signed the deed, which expressly stated that they were "acquir[ing] all interest" in the property "as joint tenants with right of survivorship, and not as community property or as tenants in common." Clerk's Papers (CP) at 368. Walsh, however, took out a mortgage on the Federal Way property solely in her name; again, Reynolds made no financial contribution to the home's purchase or mortgage. Walsh also paid for all utilities, until the parties' 2012 dissolution.

#### B. Registered Domestic Partners, Washington, 2009

¶ 14 In August 2009, Walsh and Reynolds registered as domestic partners in Washington. They separated seven months later on March 14, 2010.

**\*\*988** II. Procedure: Domestic Partnership Dissolution Trial

¶ 15 Walsh petitioned for dissolution on March 11, 2011. The parties agreed on a parenting plan and child support order for their 16- and 13-year-old children. Post separation and dissolution, Walsh continues to pay for over 92 percent of the private school tuition for their son and younger daughter and nearly all college tuition and costs for their older daughter. Collectively, the parties had amassed over \$2 million in real property, retirement, and investment accounts at the time of the dissolution. Only property distribution and attorney fee issues remained for trial.

**\*839** ¶ 16 After a three-day trial, the trial court assessed the five *Long*<sup>3</sup> factors<sup>4</sup> as applied to Walsh and Reynolds' relationship and found that they had lived and held themselves out as family for almost 23 years, since 1988, when they began cohabiting in California. The trial court also noted that if these two people "were a heterosexual couple that had been cohabiting since 1988 ... this Court would not hesitate to find that a meretricious or equity relationship existed for the 20 plus years prior to the date of the [formal statutory Washington] marriage." Suppl. CP at 412.

¶ 17 Nevertheless, the trial court concluded that (1) the parties had lived in an "equity relationship" beginning January 1, 2005,<sup>5</sup> until they registered as domestic partners under Washington's Domestic Partnership Act, chapter 26.60 RCW, in 2009; (2) therefore, the property the parties had acquired during this "equity relationship" period was subject to equitable distribution as if it were community property; and (3) the property the parties had obtained after their August 20, 2009 domestic partnership registration in Washington, but before their March 14, 2010 separation, was community property.

¶ 18 The trial court also (1) found that the parties owned the Federal Way residence as tenants in common; (2) ordered the residence sold; (3) awarded Walsh an initial \$40,834.42 from the sale of the house for mortgage

payments **\*840** on the home before January 1, 2005<sup>6</sup>; and (4) divided the remaining proceeds 51.89 percent to Walsh and 48.11 percent to Reynolds. The trial court divided equally the remaining community property assets acquired between January 1, 2005, and March 14, 2010. The trial court awarded Reynolds \$35,117.50 in attorney fees<sup>7</sup> and \$2,400.75 in costs, but no maintenance.

¶ 19 Walsh appeals and Reynolds cross-appeals.

ANALYSIS

¶ 20 Walsh argues that the trial court erred in ruling that (1) the "equity relationship" doctrine applied to the parties' relationship *before* they registered as domestic partners in Washington on August 20, 2009, namely in acknowledging a non-Washington-registered "equity relationship" that began on January 1, 2005, when California amended its domestic partnership statute to extend community property rights to registered domestic **\*\*989** partners<sup>8</sup>; (2) assets the parties accumulated during this "equity relationship," between January 1, 2005, and August 20, 2009, were community property subject to distribution during the dissolution trial; and (3) the parties held the Federal Way home as tenants in common, rather than as joint tenants with a right of survivorship. Walsh further argues that the trial court erred in (4) distributing the proceeds of the Federal Way house sale equally; and (5) awarding Reynolds attorney fees and costs. Except for the trial court's finding that the parties' "equity relationship" began in 2005, we disagree with Walsh's contentions.

**\*841** ¶ 21 Reynolds cross-appeals, arguing that the trial court erred in (1) failing to characterize as joint assets the parties' assets accumulated before January 2005; (2) ruling that the parties' "equity relationship" commenced in January 2005, rather than in 1988; (3) ruling that Walsh and Reynolds held the Federal Way property as tenants in common; and (4) entering the decree of dissolution. We agree with Reynolds.

I. Standard of Review

¶ 22 We review a trial court's property distribution to determine whether substantial evidence supports its

findings of fact, and whether those findings support its conclusions of law. *In re Marriage of Pennington*, 142 Wash.2d 592, 602–03, 14 P.3d 764 (2000). “Substantial evidence is ‘evidence in sufficient quantum to persuade a fair-minded person of the truth of the declared premise.’ ” *Gormley v. Robertson*, 120 Wash.App. 31, 38, 83 P.3d 1042 (2004) (quoting *Fred Hutchinson Cancer Research Ctr. v. Holman*, 107 Wash.2d 693, 712, 732 P.2d 974 (1987)). We defer to the trial court’s factual findings. *Pennington*, 142 Wash.2d at 602–03, 14 P.3d 764. But we review its conclusions of law de novo. *Long*, 158 Wash.App. at 925, 244 P.3d 26.

[2] [3] [4] [5] ¶ 23 We review for abuse of discretion the trial court’s distribution of property at the end of an “equity relationship.” *Long*, 158 Wash.App. at 928, 244 P.3d 26. Once the trial court finds an “equity relationship,” the court distributes all property the parties acquired through their efforts during the “equity relationship.” *Id.* To divide the property justly and equitably, the trial court examines the relationship and the parties’ property accumulation. *Id.* at 928–29, 244 P.3d 26 (citing *In re Marriage of Lindsey*, 101 Wash.2d 299, 304, 678 P.2d 328 (1984)). The trial “court may characterize property as ‘separate’ and ‘community’ by analogy to marital property.” *Id.* at 929, 244 P.3d 26 (quoting *Connell v. Francisco*, 127 Wash.2d 339, 351, 898 P.2d 831 (1995)); see RCW 26.16.010–.030 (definitions of separate and community property).

[6] [7] \*842 ¶ 24 But, unlike a marriage dissolution, where *all* property is before the court, only community property is before the trial court for distribution at the end of an “equity relationship.” *Id.* at 929, 244 P.3d 26 (citing *Connell*, 127 Wash.2d at 351, 898 P.2d 831). Any increase in the “value of separate property is likewise separate in nature.” *Id.* (citing *In re Marriage of Lindemann*, 92 Wash.App. 64, 69, 960 P.2d 966 (1998)). Nevertheless,

“if the court is persuaded by direct and positive evidence that the increase in value of separate property is *attributable to community labor or funds*, the community may be equitably entitled to reimbursement for the contributions that caused the increase in value.”

*Id.* (emphasis added) (quoting *Lindemann*, 92 Wash.App. at 70, 960 P.2d 966).

## II. Community Property

¶ 25 Walsh and Reynolds had lived together since 1988, before formalizing their relationship by registering as domestic partners, first in California on March 6, 2000, and again in Washington on August 20, 2009. The trial court (1) characterized the parties’ relationship as an “equity relationship”<sup>9</sup> between the 2005 amendment to California’s Domestic Partnership Act and the parties’ 2009 registration as domestic partners in Washington; and (2) ruled that the assets the parties had acquired during this period \*\*990 were community property under the common law “equity relationship” doctrine.<sup>10</sup>

\*843 ¶ 26 Walsh contends that (1) RCW 26.60.080<sup>11</sup> limited the application of community property rights to registered domestic partnerships, beginning with either the effective date of Washington’s domestic partnership statute (June 12, 2008)<sup>12</sup> or the date the parties registered (here, August 20, 2009), whichever is later; (2) the trial court erred in ruling that the parties had an “equity relationship” between January 1, 2005, and August 20, 2009, when they registered as domestic partners in Washington; and (3) the trial court erred in ruling that the assets the parties acquired during that 4 ½-year period were community property, subject to distribution during their dissolution trial.

¶ 27 In her cross-appeal, Reynolds argues that, in distributing the parties’ property at the dissolution trial, the trial court abused its discretion in applying the “equity relationship” doctrine to only this 4 ½-year post-Washington registration period and in failing to consider their entire 22-year relationship as an “equity relationship.”<sup>13</sup> Thus, we first address the propriety of the trial court’s application of the \*844 “equity relationship” doctrine to the parties’ pre-Washington-registration relationship. We next address whether the trial court erred in limiting application of the “equity relationship” doctrine to the 4 ½ years before the parties registration in Washington, rather than extending it to earlier periods of their relationship.

A. Application of “Equity  
Relationship” Doctrine before 2008

¶ 28 Walsh contends that Washington’s 2008 Domestic Partnership Act, chapter 26.60 RCW, did not extend community property rights to pre-existing registered California domestic partnerships under the “equity relationship” doctrine because the two states’ community property rights schemes were not “substantially equivalent.”<sup>14</sup> See RCW 26.60.090<sup>15</sup>. Walsh is incorrect.

[8] ¶ 29 The “equity relationship” or “[meretricious relationship]” doctrine is a **\*\*991** creature of common law, not statute. *Lindsey*, 101 Wash.2d at 304, 678 P.2d 328 (quoting *Latham v. Hennessey*, 87 Wash.2d 550, 552–53, 554 P.2d 1057 (1976), *overruled in part on other grounds by Lindsey*, 101 Wash.2d at 303–04, 678 P.2d 328) (recognizing meretricious relationship doctrine and instructing trial courts to make “ ‘just and equitable’ ” distribution of property when terminating such relationships).<sup>16</sup> Thus, the trial court did not need to conclude that California’s and Washington’s domestic partnership statutory schemes **\*845** were “substantially equivalent” in 2008 in order to apply Washington’s common law “equity relationship” doctrine to property that Walsh and Reynolds had acquired before they registered their domestic partnership in Washington in 2008.

¶ 30 In Washington, all property acquired during a marriage is presumptively community property. RCW 26.16.030; *In re Marriage of Short*, 125 Wash.2d 865, 870, 890 P.2d 12 (1995). In 2008, our state legislature expressly extended this community property presumption to property acquired during a registered domestic partnership, including partnerships registered in other states. RCW 26.16.030; LAWS OF 2008, ch. 6, § 604.<sup>17</sup> Before the legislature’s statutory recognition of domestic partnerships in 2008, however, Washington courts recognized a common law “equity relationship” in a “ ‘stable, marital-like relationship where both parties cohabit with knowledge that a lawful marriage between them does not exist.’ ” *Long*, 158 Wash.App. at 925, 244 P.3d 26 (quoting *Connell*, 127 Wash.2d at 346, 898 P.2d 831).

[9] ¶ 31 Courts consider several factors in determining the existence of an “equity relationship;” “No one factor is determinative” or “more important than another.” *Long*, 158 Wash.App. at 926, 244 P.3d 26. These factors include “continuous cohabitation, relationship duration, relationship purpose, pooling of resources and services for joint projects, and the parties’ intent.” *Long*, 158 Wash.App. at 926, 244 P.3d 26 (citing *Connell*, 127 Wash.2d at 346, 898 P.2d 831). “These factors are neither exclusive nor hypertechnical but rather a means to examine all relevant evidence.” *Long*, 158 Wash.App. at 926, 244 P.3d 26 (citing *Pennington*, 142 Wash.2d at 602, 14 P.3d 764).

[10] **\*846** ¶ 32 Here, the trial court assessed the five *Long* factors as applied to Walsh’s and Reynolds’ relationship and entered the following findings of fact and conclusions of law:

1. *Continuous Cohabitation*: The trial court found, and the record shows, “But for a few brief interruptions, the parties continuously cohabited from 1988 until 2010.” Suppl. CP at 411.

2. *Relationship Duration*: The trial court found that the parties’ relationship “lasted approximately 23 years.” Suppl. CP at 411.

3. *Relationship Purpose*: The trial court found, “The purpose of this relationship was to create a family. This is evidenced by the parties’ conception, birth, and cross adoption of three children, living together in an intimate committed relationship, supporting each other emotionally and financially and holding themselves out to the world as a family.” Suppl. CP at 411.

4. *Pooling of Resources*: The trial court found that, although Walsh was the principal income earner, both Walsh and Reynolds “contributed their time and energy to ... raising ... their family” and to “joint projects such as the extensive remodel of the Federal Way home.” Suppl. CP at 411.

**\*\*992** 5. *Parties’ Intent*: The trial court found that, although the parties “clearly intended to keep certain assets separate,” there was “no doubt that they intended to live together as a family.” Suppl. CP at 411.

¶ 33 Substantial evidence supports these findings, including that Walsh and Reynolds intended to be in a marriage-like relationship with a shared purpose. The

record contains substantial evidence of their permanency planning, shared love and intimacy, adopting and raising children as a couple, extended family relationships, caring for one another when sick, providing financial and nonfinancial support for each other and their children, and holding themselves out as a couple. That they later formalized \*847 their relationship by registering as statutory domestic partners does not defeat application of the common law “equity relationship” doctrine to their years together before the statutory registration option became available to them. We hold that the trial court correctly ruled that Walsh and Reynolds lived in an “equity relationship” *before* they registered as domestic partners in Washington in 2009, beginning at least as far back as the January 1, 2005 date the trial court chose.

[11] ¶ 34 We also hold, however, that the trial court erred in limiting application of the “equity relationship” doctrine to only the 4 ½ years before the parties registered in Washington. There are several other dates that could serve as starting points for application of this doctrine here. We first consider the parties' registration in California. California's legislature first recognized domestic partnerships between same-sex couples in 1999, when it enacted CAL. FAM.CODE § 297. In 2003, California expanded this statute to give domestic partnerships the same statutory rights and benefits as married heterosexual couples, thereby *expressly* extending community property rights to domestic partnerships. CAL. FAM.CODE § 297.5(k)(1). Walsh and Reynolds registered as domestic partners in California in 2000, receiving the benefits of California's community property rights law both at that time and later when the statute was amended in 2003.

¶ 35 We see no reason why the five *Long* “equity relationship” factors that the trial court applied to the parties' post-2005 relationship should not also apply to their pre-2005 domestic partnership relationship in California,<sup>18</sup> which, as the trial court here expressly recognized, involved *continuous cohabitation* for “approximately 23 years” in a *relationship for which the purpose was “to create a family”* \*848 while “holding themselves out to the world as a family.” Suppl. CP at 411. Throughout their relationship, both Walsh and Reynolds “contributed their time and energy to ... raising ... their family” and to “joint projects,” with “no doubt that they intended to live together as a family.” Suppl. CP at 411. We hold, therefore, that the trial court should have

extended application of the “equity relationship” doctrine to the parties' relationship before 2005, including their registered domestic partnership under California's act, an unimpeachable indicator of the intended nature of their relationship.

#### 1. No statutory preemption before 2008

[12] ¶ 36 But Walsh also argues that, because the legislature “devised a statutory means of resolving property distribution issues by enacting RCW 26.09.080” and applying it to domestic partners in 2008,<sup>19</sup> this \*\*993 statute preempts the common law “equity relationship” doctrine. Br. of Appellant at 25. To the extent that she argues the statute retroactively preempted common law equity doctrine before 2008, when there was no legislation in Washington, Walsh is incorrect. During most of Walsh's and Reynolds' 22-year relationship, Washington's statutes neither recognized same-sex domestic partnerships nor prescribed a means of resolving their property distribution issues that expressly preempted common law. Until our legislature enacted RCW 26.09.080 and provided statutory community \*849 property rights for registered domestic partnerships, only the common law “equity relationship” doctrine addressed property distribution for such partnerships.

¶ 37 This common law “equity relationship” doctrine does not depend on the formality or “legality” of the parties' marriage or relationship. *Vasquez v. Hawthorne*, 145 Wash.2d 103, 107, 33 P.3d 735 (2001). For relationships that existed before our legislature enacted RCW 26.09.080, courts could apply the “equity relationship” doctrine to couples like Walsh and Reynolds, find that they had been living in a “meretricious” or “equity” relationship, and, consequently, distribute their community property equitably. *See Id.*<sup>20</sup> Although RCW 26.09.080 provides a framework for a trial court's distribution of a couple's domestic partnership property, the 2008 amendments to this statute do not retroactively affect the rights, benefits, and property expectations of parties to a meretricious or “equity relationship” accrued *before* the amendment's effective date in 2008. *See LAWS OF 2008*, ch. 6 § 1011. Thus, this statute does not control distribution of property that Walsh and Reynolds accumulated during their relationship before the 2008 amendment.

¶ 38 Walsh also cites RCW 26.60.080 as purporting to show that the legislature intended domestic partners to enjoy community property rights only as of the statute's effective date or the date the parties registered as domestic partners, whichever came later. Here, the trial court correctly \*850 ruled that the parties' pre-2008 community property rights were based on the common law "equity relationship" doctrine, rights that already existed before our legislature enacted RCW 26.60.080, formalizing community property rights "established by [chapter 26.60 RCW]" and expressly extending them to registered domestic partners effective 2008. RCW 26.60.080. Agreeing with the trial court on this point, we hold that RCW 26.60.080 did not erase the parties' "equity relationship" that already existed before they registered as domestic partners in Washington.

## 2. Findings of fact; conclusions of law

¶ 39 Walsh also argues that substantial evidence does not support the trial court's factual findings. Relying on *Pennington*, Walsh contends that the trial court should have reached a different conclusion after weighing the five *Long* factors.<sup>21</sup> Walsh asserts \*\*994 that, contrary to the trial court's findings, the parties did not pool their resources, arguing that instead they made a "concerted effort to remain separate financial entities," such as by maintaining separate bank accounts and by never entering into a joint debt. Br. of Appellant at 31.

¶ 40 But we defer to the trial court's factual findings as long as substantial evidence supports them. *Pennington*, 142 Wash.2d at 602-03, 14 P.3d 764. As we have already explained, here the evidence and the trial court's application of the five *Long* factors support the trial court's characterizing the parties' post-2005 relationship as an "equity relationship." Suppl. CP at 412.

### \*851 3. Cross-appeal

¶ 41 In her cross-appeal, Reynolds argues that the trial court erred in declining to apply the "equity relationship" doctrine to the first 17 years of the parties' 22-year relationship. Walsh counters that (1) the trial court "properly considered the common law, [applicable] statutes, and the length and nature of the

parties' relationship"<sup>22</sup> when it limited application of the "equity relationship" doctrine to the latter period of their relationship between January 1, 2005, and August 20, 2009; but (2) in so doing, the trial court erred in using January 1, 2005, as the date on which their "equity relationship" began and their separate properties converted to community property, rather than August 20, 2009, the date when the parties registered as domestic partners in Washington.

¶ 42 We agree with Walsh that the trial court erred in using January 1, 2005, as the start date; but we disagree that the date should have been August 20, 2009. The findings of fact and the record do not support the trial court's legal conclusion that the parties' "equity relationship" began no earlier than 2005. *Pennington*, 142 Wash.2d at 602-03, 14 P.3d 764; see *Long*, 158 Wash.App. at 925, 244 P.3d 26 (we review de novo the trial court's legal rulings).

¶ 43 As the trial court explained,

If the two people in this case were a heterosexual couple that had been cohabiting since 1988, ... this Court would not hesitate to find that a meretricious or equity relationship existed for the 20 plus years prior to the date of the marriage.

Suppl. CP at 412. Nevertheless, the trial court declined to consider whether the facts supported applying the "equity relationship" doctrine to any period during the first 17 years of these parties' relationship, reasoning that characterizing their properties before California's domestic partnership \*852 law became effective on January 1, 2005, would "retroactive[ly]" alter their "property rights without due process of law."<sup>23</sup> Reynolds contends that (1) this statement shows that the trial court treated the initial period of the parties' same-sex relationship differently than it would have treated a heterosexual relationship; and (2) acknowledging an "equity relationship" does not require "retroactive application" of laws governing domestic partnerships and "is no different than other cases where heterosexual couples cohabit prior to marrying."<sup>24</sup> Br. of Resp't at 27.

¶ 44 RCW 26.09.080 gives the trial court broad discretion in crafting a just and equitable distribution of the parties' property, which distribution we will not disturb on appeal

absent a showing that the trial court committed a manifest abuse of discretion. **\*\*995** *In re Marriage of Hilt*, 41 Wash.App. 434, 439, 704 P.2d 672 (1985) (citing *In re Marriage of Miracle*, 101 Wash.2d 137, 675 P.2d 1229 (1984); *Baker v. Baker*, 80 Wash.2d 736, 498 P.2d 315 (1972)). In light of the trial court's comprehensive and detailed overall distribution of Walsh and Reynolds' separate and community assets, we cannot say that the trial court abused its discretion in ruling that the parties' non-separate assets became community property beginning at least as early as in 2005 and in crafting its property distribution accordingly.

¶ 45 But the trial court failed to consider the common law and its application to the parties' "equity relationship" that existed before California's 2005 statutory recognition of **\*853** such relationships, despite explaining that had Walsh and Reynolds been a legally recognized heterosexual marriage, it would not have "hesitate[d] to find that a meretricious or "equity relationship" existed for the 20 plus years prior to the date of the marriage." Suppl. CP at 412. Thus, we remand to the trial court to consider the extent of the parties' "equity relationship" during this earlier pre-2005 period, to apply the five *Long* factors to this portion of their relationship, and to revise its property distribution accordingly.

#### B. Tenancy in Common, Federal Way Property

¶ 46 Walsh also argues that, although the trial court correctly determined that the parties owned the Federal Way property as tenants in common, the trial court improperly allocated the proceeds from the property's sale. Walsh concedes that Reynolds contributed to the property in the form of "sweat equity." Br. of Appellant at 37–38. Nevertheless, Walsh asserts that the trial court should have awarded her 100 percent of the equity in the Federal Way property, rather than 51.89 percent, because "[s]he made all financial contributions towards the mortgage and reconstruction of the Federal Way house ... from her separate property funds." Br. of Appellant at 37. This argument fails.

¶ 47 In Reynolds' cross-appeal, she argues that (1) the trial court erred in concluding that the parties held the Federal Way home as tenants in common; and (2) instead, they owned it as joint tenants with a right of survivorship. According to Reynolds, when the parties purchased the

Federal Way property, they titled it in both of their names as "joint tenants with right of survivorship, and not as community property or tenants in common." Br. of Resp't at 33–34. Reynolds is correct about the language on the title; but this language alone does not determine the legal character of the property. See *Merrick v. Peterson*, 25 Wash.App. 248, 258, 606 P.2d 700 (1980) (joint tenancy with right **\*854** of survivorship requires all "four unities of time, title, interest and possession"; it is not enough to have only unity of title).

¶ 48 The trial court acknowledged that the Federal Way property title "express [ed] [the parties'] intent" to hold the property as joint tenants with right of survivorship. Suppl. CP at 420. Nevertheless, it concluded that, because only Walsh was liable on the mortgage, she and Reynolds held the property as "tenants in common." CP at 375. Even under the trial court's "tenants in common" characterization, Reynolds contends that (1) Walsh's mortgage obligation did not terminate the joint tenancy with right of survivorship; and (2) even if the trial court had concluded that the parties owned the property as tenants in common, the trial court acted within its discretion in dividing the parties' assets equitably, rather than awarding 100 percent of the equity to Walsh. We agree with the trial court that the parties held the Federal Way property as "tenants in common," despite their stated intent to hold title as joint tenants with right of survivorship. We also agree with Reynolds, however, that because of the parties' existing "equity relationship," the trial court did not abuse its discretion in dividing the value of the property as it did.

[13] [14] ¶ 49 RCW 64.28.020 governs joint tenancy with a right of survivorship: "Every interest created in favor of two or more persons in their own right is an interest in common ... unless declared in its creation to be a joint tenancy, as provided in RCW 64.28.010," which, RCW 64.28.010, in turn, provides that "[j]oint tenancy shall be created only by written instrument, which ... **\*\*996** shall expressly declare the interest created to be a joint tenancy." RCW 64.28.010. "It is well settled that a joint tenancy with survivorship is created when the four unities of time, title, interest and possession exist." *Merrick*, 25 Wash.App. at 258, 606 P.2d 700 (citing *Holohan v. Melville*, 41 Wash.2d 380, 249 P.2d 777 (1952)). "In a true joint tenancy, each of the tenants has an undivided interest in the whole, and not the whole of an undivided interest." *Merrick*, 25 Wash.App. at 258, 606 P.2d 700.

[15] \*855 ¶ 50 The record here shows that the parties never became joint tenants because they did not have the requisite unity under *Merrick*: Reynolds was not liable on the mortgage'. Thus, any joint tenancy severed at its inception. See *Merrick*, 25 Wash.App. at 258, 606 P.2d 700. Despite the parties' clear specification that they took the property as joint tenants with right of survivorship, Walsh's unilaterally undertaking the mortgage obligation (1) was inconsistent with the "unity" interest element, essential to create such a joint tenancy; and (2) automatically "converted" what might have been joint tenancy with right of survivorship into a tenancy in common. *Merrick*, 25 Wash.App. at 258, 606 P.2d 700 ("[A]ny agreement subsequently executed which is inconsistent with the joint tenancy converts it into a tenancy in common.") We hold, therefore, that the trial court correctly concluded as a matter of law that Walsh and Reynolds owned the Federal Way property as tenants in common.

[16] ¶ 51 Nevertheless, in a dissolution proceeding, a trial court has discretion to divide the parties' assets in a manner that it determines is "just and equitable." *In re Marriage of Farmer*, 172 Wash.2d 616, 625, 259 P.3d 256 (2011) (quoting RCW 29.09.080). Considering Reynolds' nonfinancial contributions to the property and regardless of Walsh's claims of her separate property contributions, the trial court here exercised this discretion by awarding Reynolds "close to a 50 [percent] share in the equity in the Federal Way home." Suppl. CP at 495. The trial court also based its decision, in part, on the fact that it did not award any maintenance to Reynolds, the party with far less income and earning potential.

¶ 52 We hold that the trial court did not abuse its broad discretion in the manner in which it crafted a just and equitable division of the parties' nonseparate properties, including its allocation of the equity in the Federal Way property, after balancing the parties' respective needs and contributions. We also hold, however, that the trial court erred in refusing to consider that the parties had a common law "equity relationship" before January 1, 2005, for community property distribution purposes.

### \*856 III. Attorney Fees

#### A. Trial

¶ 53 Walsh contends that the trial court erred in awarding Reynolds her attorney fees and costs. Walsh argues that (1) the 2008 Domestic Partnership Act, chapter 26.60 RCW, does not permit a trial court to award attorney fees in a dissolution; and (2) RCW 26.09.140's fee-shifting provision, which applies generally to dissolutions, did not apply to domestic partnership dissolutions until December 3, 2009. Reynolds counters that the trial court acted within its discretion when it awarded her fees and costs. We agree with Reynolds.

#### B. Standard of Review

[17] ¶ 54 Attorney fees in a dissolution proceeding are based on need and ability to pay. *In re Marriage of Terry*, 79 Wash.App. 866, 871, 905 P.2d 935 (1995). We review a trial court's attorney fee award for abuse of discretion. *Kellar v. Estate of Kellar*, 172 Wash.App. 562, 591, 291 P.3d 906 (2012), review denied, 178 Wash.2d 1025, 312 P.3d 652 (2013). In determining a reasonable fee, we consider the difficulty of the case, the time involved in the preparation and presentation of the case, and the amount and character of property involved. *In re Marriage of Knight*, 75 Wash.App. 721, 730, 880 P.2d 71 (1994),

#### C. Application of RCW 26.09.140 to Domestic Partnership Dissolution

¶ 55 The trial court first ruled that RCW 26.09.140 applied to registered domestic partnership \*\*997 dissolutions. The trial court then found that "Walsh has the ability to pay, and [that] Reynolds has a need. The disparity in income requires this Court to award [Reynolds] 100 percent of her attorney's fees to be paid by [Walsh]." Suppl. CP at \*857 416. The trial court determined Reynolds' fee award according to the factors in *Knight*, and *In re Marriage of Irwin*, 64 Wash.App. 38, 822 P.2d 797 (1992); and it ordered Walsh to pay Reynolds \$35,117.50 in attorney fees and \$2,400.75 in costs.

[18] ¶ 56 Walsh asserts that, because the parties registered their domestic partnership in August 2009, before the legislature amended RCW 26.09.140 to include the current fee-shifting provision, the trial court should not have

applied this amendment to their dissolution. But Walsh petitioned for dissolution in March 2011, more than a year *after* the fee-shifting amendment took effect in December 2009. Thus, the trial court properly applied RCW 26.09.140's fee-shifting provision to the parties' 2011 dissolution proceeding, the "precipitating event" for purposes of falling under this 2009 amendment. *State v. Pillatos*, 159 Wash.2d 459, 471, 150 P.3d 1130 (2007). A " 'statute operates prospectively when the precipitating event for operation of the statute occurs after enactment, even when the precipitating event originated in a situation existing prior to enactment.' " *Pillatos*, 159 Wash.2d at 471, 150 P.3d 1130 (emphasis omitted) (quoting *In re Estate of Burns*, 131 Wash.2d 104, 110–11, 928 P.2d 1094 (1997)).

[19] ¶ 57 Walsh also argues that substantial evidence does not support an award of attorney fees and costs to Reynolds, because, over the course of their relationship, Walsh provided Reynolds with significant assets and financial benefits, which Reynolds could have used to pay her own attorney fees. But Walsh fails to provide any authority to support her implicit argument that a trial court abuses its discretion by awarding attorney fees to a party who has received assets during the relationship and after dissolution. Nor does Walsh otherwise meet the high burden of showing abuse of trial court discretion in its attorney fee award. *In re Custody of Smith*, 137 Wash.2d 1, 22, 969 P.2d 21 (1998) (citing *Knight*, 75 Wash.App. at 729, 880 P.2d 71), *aff'd*, *Troxel v. Granville*, 530 U.S. 57, 120 S.Ct. 2054, 147 L.Ed.2d 49 (2000). Thus, we do not further address this argument. RAP 10.3(a)(6).

\*858 ¶ 58 Walsh next argues that, even if the trial court did not abuse its discretion, we should reduce the attorney fee award to Reynolds because it was unreasonable. Walsh contends that, under the *Knight* factors, (1) the facts of the case were not difficult, (2) it was unreasonable to require her to pay fees for time Reynolds' attorney spent becoming familiar with local rules, (3) these fees were excessive given the relatively short period of the parties' registered Washington domestic partnership, and (4) the fees were unreasonable because Reynolds "had no reasonable awareness as to" how much she incurred in attorney fees. Br. of Appellant at 45. Walsh ignores that the trial court already reduced Reynolds' fees by

subtracting from the requested amount the "attorney's time to familiarize herself with [Pierce County Local Rules] (\$845.00)," "discovery not in compliance with [Pierce County Local Rules] (\$345.00)," and "[a]ttorney fees ... [for a] trial brief never submitted (\$1,445.00)." Suppl. CP at 474.

¶ 59 Walsh does not show that the trial court's discretionary determination of attorney fees was unreasonable. Therefore, we affirm the trial court's attorney fee and costs award at trial.

#### D. Appeal

[20] [21] ¶ 60 Reynolds also asks us to award her attorney fees and costs on appeal based on her need and Walsh's ability to pay, citing RCW 26.09.140. This statute provides that, in an appeal of a trial court's order in a dissolution proceeding, "the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorneys' fees in addition to statutory costs." Thus, we have discretion to award attorney fees after considering the relative resources of the parties and the merits of the appeal. *In re Marriage of Leslie*, 90 Wash.App. 796, 807, 954 P.2d 330 (1998), *review denied*, 137 Wash.2d 1003, 972 P.2d 466 (1999); RAP 18.1. Because Reynolds \*\*998 prevails on appeal, \*859 we grant her attorney fees and costs on appeal, subject to her demonstrating to our court commissioner her need relative to Walsh's ability to pay and her submitting supporting documentation.

¶ 61 We reverse the trial court's property distribution and remand to the trial court (1) to reconsider whether the parties had a common law "equity relationship" before January 1, 2005; and (2) if so, to redistribute the parties' community assets accordingly. We affirm the trial court's award of attorney fees and costs to Reynolds.

We concur: BJORGEN, A.C.J., and LEE, J.

#### All Citations

183 Wash.App. 830, 335 P.3d 984

#### Footnotes

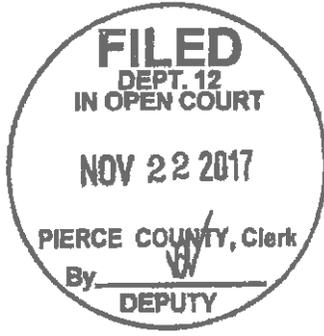
- 1 Washington courts recognize an "equity relationship" as a " 'stable, marital-like relationship where both parties cohabit with knowledge that a lawful marriage between them does not exist.' " *In re Meretricious Relationship of Long*, 158 Wash.App. 919, 925, 244 P.3d 26 (2010) (quoting *Connell v. Francisco*, 127 Wash.2d 339, 346, 898 P.2d 831 (1995)). Courts also refer to such an "equity relationship" as a " 'committed intimate relationship' " or a " 'meretricious relationship.' " *Long*, 158 Wash.App. at 922, 244 P.3d 26 (quoting *Oliver v. Fowler*, 161 Wash.2d 655, 657 n. 1, 168 P.3d 348 (2007)).
- 2 Each party seeks a greater share of the assets than the trial court awarded. More specifically, Walsh argues that the trial court should have applied community property law more narrowly, i.e., only to assets acquired as of their Washington domestic partnership registration on August 20, 2009 (thereby decreasing the community assets available for distribution and leaving a greater share of assets as her separate property). Reynolds argues that the trial court should have applied community property law more expansively, i.e., to assets acquired from the beginning of the parties' relationship in California, 1988 (thereby increasing the community assets available for distribution and increasing her share of property). *In re Meretricious Relationship of Long*, 158 Wash.App. 919, 925, 244 P.3d 26 (2010).
- 3
- 4 At least before our legislature promulgated statutes recognizing domestic partnership status and extending community property rights to such partnerships, Washington courts recognized a common law "equity relationship" in a " 'stable, marital-like relationship where both parties cohabit with knowledge that a lawful marriage between them does not exist.' " *Long*, 158 Wash.App. at 925, 244 P.3d 26 (quoting *Connell*, 127 Wash.2d at 346, 898 P.2d 831). *Long* set forth a non-exclusive list of factors for courts to consider in determining whether an equity relationship exists between partners. *Long*, 158 Wash.App. at 925–26, 244 P.3d 26.
- 5 The trial court ruled that it would be unconstitutional to find an equitable relationship existed before January 1, 2005, because neither California's nor Washington's registered domestic partnership laws vested Walsh and Reynolds with community property rights.
- 6 The trial court also awarded Walsh \$180,000 from her father's contributions and \$30,000 from inherited funds used to pay down the mortgage before Walsh and Reynolds separated on March 2010.
- 7 The trial court reduced Reynolds' requested attorney fee amount by \$2,635 for time her attorney had spent familiarizing herself with Pierce County Local Rules, for discovery not in compliance with the local rules, and for a trial brief never submitted to the court.
- 8 CAL. FAM.CODE § 297.5.
- 9 Suppl. CP 404.
- 10 The trial court also ruled that property the parties had acquired *after* they registered as domestic partners in Washington—between August 20, 2009, and their separation on March 14, 2010—was subject to Washington's community property law and RCW 26.60.080. Neither party disputes the trial court's application of Washington's statutory community property law to this post-August 20, 2009 period of their relationship. Thus, the trial court's distribution of community property acquired during this latter period is not at issue on appeal.
- 11 RCW 26.60.080, which governs community property rights of registered domestic partnerships, provides:

Any community property rights of domestic partners established by chapter 6, LAWS OF 2008 shall apply from the date of the initial registration of the domestic partnership or June 12, 2008, whichever is later.

In 2008, Washington registered domestic partners did not automatically enjoy rights such as community property; in contrast, California registered domestic partners enjoyed the rights and duties of marriage, including community property rights, as early as 2005. 2003 Cal. Stat. 3081, [§ 4, at] 3083[–84]. Walsh contends that (1) California's broader grant of rights is a substantial difference between Washington's domestic partnership rights before 2008; (2) consequently, Washington would not have recognized the relatively expansive domestic partnerships of California in 2008, Br. of Appellant at 7–8, 16; and (3) it was not until December 2009 that Washington's domestic partnerships became "equivalent" to California's. Br. of Appellant at 16 n. 1. But because we can affirm the trial court's ruling based on the alternative "equity relationship" doctrine, we need not address whether Washington would have recognized California's domestic partnerships before 2008.
- 12 LAWS OF 2008, ch. 6, § 601.
- 13 Reynolds actually uses the term "committed intimate relationship." See, e.g., Br. of Resp't at 23. But for purposes of this opinion, we use the term that the trial court used, "equity relationship." CP at 375. See also n. 1, *supra*.
- 14 More specifically, Walsh argues that (1) RCW 26.60.090, which establishes reciprocity with other states' domestic partnership laws, provides that Washington will recognize "substantially equivalent" foreign domestic partnerships; (2) when California extended community property rights to domestic partners in 2003, Washington did not; and (3) therefore, Washington and California's domestic partnership laws were not "substantially equivalent." RCW 26.60.090.

- 15 The legislature amended RCW 26.60.090 in 2009, 2011, and 2012. LAWS OF 2012, ch. 3, § 12; LAWS OF 2011, ch. 9, § 1; LAWS OF 2009, ch. 521, § 72. These amendments did not alter the statute in any way relevant to this case; accordingly, we cite the current version of the statute.
- 16 See also *Olver*, 161 Wash.2d at 668–69, 168 P.3d 348 (“Washington common law has evolved to look beyond how property is titled, requiring equitable distribution of property that would have been community property had the partners been married.”).
- 17 RCW 26.60.090 expressly grants reciprocity to domestic partnerships already existing in other jurisdictions when Washington's registered domestic partnership law became effective:  
A legal union, other than a marriage, of two persons that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under this chapter, shall be recognized as a valid domestic partnership in this state and shall be treated the same as a domestic partnership registered in this state regardless of whether it bears the name domestic partnership.  
(Emphasis added).
- 18 That California's legislature did not expressly extend community property rights to registered domestic partners until 2003 has no bearing on whether the parties established an “equity relationship” before that time, with its corresponding common law community property rights.
- 19 RCW 26.09.080 governs the disposition of property and liabilities in a dissolution and provides relevant factors for a court to consider when distributing assets, such as:  
(1) The nature and extent of the community property;  
(2) The nature and extent of the separate property;  
(3) The duration of the marriage or domestic partnership; and  
(4) The economic circumstances of each spouse or domestic partner at the time the division of property is to become effective.  
The legislature amended the statute in 2008 to include the terms “domestic partner” and “domestic partnership” in addition to “spouse” and “marriage.” See LAWS OF 2008, ch. 6, § 1011.
- 20 As our Supreme Court has more specifically explained:  
When equitable claims are brought, the focus remains on the equities involved between the parties. Equitable claims are not dependent on the “legality” of the relationship between the parties, nor are they limited by the gender or sexual orientation of the parties. For example, the use of the term “marital-like” in prior meretricious relationship cases is a mere analogy because defining these relationships as related to marriage would create a de facto common-law marriage, which this court has refused to do. [*Pennington*, 142 Wash.2d at 601, 14 P.3d 764]. Rather than relying on analogy, equitable claims must be analyzed under the specific facts presented in each case. Even when we recognize “factors” to guide the court's determination of the equitable issues presented, these considerations are not exclusive, but are intended to reach all relevant evidence.  
*Vasquez*, 145 Wash.2d at 107–08, 33 P.3d 735.
- 21 More specifically, Walsh argues that, in *Pennington*, the Washington Supreme Court held that the parties did not meet the “pooling of resources” factor because they did not purchase property jointly, did not contribute jointly to their retirement accounts, and maintained separate bank accounts. Br. of Appellant at 28 (quoting *Pennington*, 142 Wash.2d at 607, 14 P.3d 764). Nevertheless, Walsh acknowledges that the purpose of her relationship with Reynolds was to “co-parent” their children. Br. of Appellant at 29. Walsh's “co-parent” assertion supports the trial court's finding that the parties held themselves out as one family, which weighs in favor of its finding an “equity relationship”.
- 22 Reply Br. of Appellant at 5 (emphasis omitted).
- 23 Suppl. CP at 412, 413. Neither party raises a due process argument on appeal.
- 24 Reynolds cites several cases for the proposition that courts treat property accumulated during a period of cohabitation before marriage as “community-like” and, thus, available for distribution during a dissolution. Br. of Resp't at 27 (citing *Bodine v. Bodine*, 34 Wash.2d 33, 36–37, 207 P.2d 1213 (1949); *Lindsey*, 101 Wash.2d at 306–07, 678 P.2d 328; *In re Marriage of Hilt*, 41 Wash.App. 434, 441, 704 P.2d 672 (1985)). But none of these cases stand for the proposition that a trial court is required to treat long-term cohabitation as an “equity relationship” that creates community property; rather, the trial court “may be ... justified in treating such property as though it belonged to the community.” *Bodine*, 34 Wash.2d at 36, 207 P.2d 1213. See *Connell*, 127 Wash.2d at 350, 898 P.2d 831 (warning that an interpretation of meretricious or “equity relationships” that “equates cohabitation with marriage ... ignores the conscious decision by many couples not to marry.”).

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**Superior Court of Washington, County of PIERCE**

<p>In re the domestic partnership of:          Petitioner:    <b>JEAN WALSH</b>            And Respondent:    <b>KATHRYN REYNOLDS</b></p>	<p>No. 11-3-00924-5            Findings and Conclusions on Remand          Following Dissolution of a Registered          Domestic Partnership          (FNFL)</p>
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**Findings and Conclusions on Remand following  
dissolution of  
a Registered Domestic Partnership**

**1. Basis for findings and conclusions**

Court hearing on: June 13 & 14, 2016, where the following people were present:

- Petitioner
- Petitioner's Lawyer
- Respondent
- Respondent's Lawyer
- Other: William C. Deaton, C.P.A.

The Court admitted exhibits 1-104; 108-145; 161-168; 170; 172-175; 184; 185; 187-189; and 193-196. The Court also considered the decision of the Court of Appeals.

CR 52; RCW 26.09.030; .070(3)  
Mandatory Form (05/16, rev. 4/25/16)  
FL Divorce 232

Findings and Conclusions on Remand  
following dissolution of a Registered  
Domestic Partnership  
p. 1 of 16

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**The Court makes the following findings of fact and conclusions of law:**

**2. Notice**

The Respondent appeared in this case and responded to the *Petition*.

**3. Jurisdiction over the former domestic partnership and the former domestic partners**

At the time the *Petition* was filed,

The Petitioner lived in Washington State.

The Respondent lived in Washington State.

**Conclusion:** The court has jurisdiction over the former domestic partnership.  
The court has jurisdiction over the Respondent.

**4. Information about the former domestic partnership**

The partners registered their domestic partnership with the State of Washington on August 20, 2009. The Court entered a Decree of Dissolution on November 5, 2012 dissolving the Domestic Partnership. The property distribution was appealed to the Court of Appeals, Division II, under case no. 44289-2-II. The case was returned to the trial court by Mandate filed herein on July 22, 2015 to reconsider the commencement date of the parties' equity relationship and the impact, if any, on property and debt distribution.

**5. Separation Date**

The domestic partnership community ended on; March 14, 2010. The parties stopped acquiring community property and incurring community debt on this date.

**6. Status of this domestic partnership**

The domestic partnership was dissolved by Decree of Dissolution entered on 11/5/12.

**7. Separation Contract**

Does not apply.

**8. Real Property**

Real property is identified in the Findings of Fact and Conclusions of Law entered on 11/5/12. It should be awarded as ordered in the Decree of Dissolution entered on

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11/5/12.  
**9. Community Personal Property**

Personal property is identified in the Findings of Fact and Conclusions of Law entered on 11/5/12. It should be awarded as ordered in the Decree of Dissolution entered 11/5/12.

**10. Separate Personal Property**

**Conclusion:** The division of separate personal property described in the Decree of Dissolution entered 11/5/12 is fair (just and equitable).

**11. Community Debt**

**Conclusion:** There is no community debt.

**12. Separate Debt**

**Conclusion:** The division of separate debt described in the Decree of Dissolution entered 11/5/12 is fair (just and equitable).

**13. Maintenance**

Maintenance was requested.

**Conclusion:** Maintenance should:

**Not be ordered because:** The Court previously denied Respondent's request for maintenance and neither party appealed the denial. The decision denying maintenance is now the law of the case and is not properly before this Court on remand. See also paragraph number 2.11.

**14. Fees and Costs**

Each party should pay his/her own fees or costs.

Other findings:

Ms. Reynolds requested attorney's fees following remand. The domestic partnership was dissolved on 11/5/12. The Court finds that the only legal and factual issues before the Court involved the starting date of the alleged equity relationship between the parties' and its impact, if any, on property distribution. The statutory authority of RCW 26.09.040 for awarding attorney's fees in the dissolution of a marriage or registered domestic partnership is not extended by analogy to an equity relationship. *Connell v. Francisco*, 127 Wn.2d 339, 349 (1985).

CR 52; RCW 26.09.030; .070(3)  
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Findings and Conclusions on Remand  
following dissolution of a Registered  
Domestic Partnership  
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**15. Protection Order**

No one requested an *Order for Protection* in this case.

**16. Restraining Order**

No one requested a *Restraining Order* in this case.

**17. Pregnancy**

Neither party is pregnant.

**18. Children of the domestic partnership**

The former domestic partners have no children together who are under the age of 18 and who have not either graduated from high school or received a GED. Post-secondary support should be paid pursuant to ¶3.14 of the Order of Child Support entered on July 9, 2012.

**19. Jurisdiction over the children (RCW 26.27.201 – .221, .231, .261, .271)**

Does not apply. The former domestic partners have no children together who are under the age of 18.

**20. Parenting Plan**

The former domestic partners have no children together who are under the age of 18.

**21. Child Support**

Post-secondary support shall be paid pursuant to ¶3.14 of the Order of Child Support entered on July 9, 2012.

**22. Other Findings or Conclusions**

The Findings of Fact and Conclusions of Law entered on November 5, 2012 are incorporated by reference. Additional Findings of Fact and Conclusions of Law following trial on remand are attached hereto.

November 21, 2017  
Date

Stephanie A. [Signature]  
Judge or Commissioner



CR 52; RCW 26.09.030; .070(3)  
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Findings and Conclusions on Remand  
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**Petitioner and Respondent or their lawyers fill out below.**

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- may be signed by the court without notice to me



*Barbara A. Henderson, WSBA No. 16175  
Attorney for Petitioner*

This document:

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- is presented by me
- may be signed by the court without notice to me

*Jeffrey A. Robinson, WSBA No. 8294  
Attorney for Respondent*

**ADDITIONAL FINDINGS OF FACT**

1. This matter came before the trial Court on remand from the Court of Appeals, Division II. See *Walsh v. Reynolds*, 183 Wn. App. 830, 335 P.3d 984 (2014). Specifically, the remand requires the trial Court:
- (1) To reconsider whether the parties had a common law "equity relationship" before January 1, 2005; and
  - (2) If so, to redistribute the parties' community assets accordingly. 183 Wn. App. 859.
2. The Court of Appeals upheld all of the trial Court's findings of fact entered on November 5, 2012 as supported by substantial evidence. 183 Wn. App. at 846. There was no finding by the Court of Appeals that this Court's written ruling was ambiguous. Therefore, this Court reconsidered whether the parties had a common law "equity relationship" before January 1, 2005 based upon its prior written findings of fact and additional evidence presented at the trial following remand.
3. The Court of Appeals directive requires this Court to reconsider the date of the commencement of the equity relationship of the parties. Only if this Court determines that an equity relationship commenced between Dr. Walsh and Ms. Reynolds prior to January 1, 2005 is this Court to redistribute the parties' community property accordingly. This reading is supported by the appellate Courts use of the terms "reconsider" and "if so". The appellate Court's decision requires this Court to reexamine its decision regarding the commencement date of the parties' equity relationship as a condition precedent to redistribution, if any, of the parties' community property. Therefore, this Court considered other possible dates "that *could* serve as starting points for application of [the equity relationship] doctrine here. 183 Wn. App. at 847 (emphasis added).

In reconsidering other potential dates for commencement of the parties' equity relationship, this Court did not rely on, nor did it base its decision on, the formality or legality of the parties' marriage or relationship. This Court did consider the constitutional rights of the parties.

4. The Court of Appeals did not analyze the constitutional rights of the parties, stating "neither party raises a due process argument on appeal". 183 Wn. App. at 852, Fn. 23. As a result, the Court of Appeals did not overturn or invalidate Conclusion of Law #11 entered November 5, 2012 as follows:

Prior to January 1, 2005, there was no ability for domestic partners to accumulate or create community property and no legal basis for finding an equitable relationship to exist without violating the constitutional rights of the parties.

Conclusion of Law #11 remains the law of the case. The Court of Appeals did not overrule the finding of this Court that the award of property acquired by either party to the non-acquiring party prior to January 1, 2005 would violate the parties' constitutional rights.

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Even were it not the law of the case, Dr. Walsh raised additional constitutional arguments that this Court finds persuasive. There is clear, cogent and convincing evidence that the parties agreed to the characterization of all property acquired during the relationship. The parties specifically maintained separate property throughout their relationship. The parties consciously maintained separate private property throughout their relationship, the retroactive extension of the equity relationship doctrine to distribute that property to the other party raises significant issues under the 5<sup>th</sup> Amendment Taking Clause. This Court's judicial extension of that doctrine would cause an unconstitutional taking.

5. The Court examined the facts and circumstances surrounding the parties' registration as domestic partners on March 6, 2000 in the State of California. The Court of Appeals stated that this was "an unimpeachable indicator of the intended nature of their relationship." 182 Wn. App. at 848. This Court finds that the parties intended their relationship to be consistent only with the rights expressly conferred upon them by that registration. The California Domestic Partnership Act expressly disavowed the creation of any community property or quasi-community property rights. All actions taken by the parties at that time were consistent with their intent to acquire and maintain separate property. Following registration, the parties took no actions to combine or co-mingle (in any way) their separate property or debt acquired by each prior to the date of registration. The parties did not thereafter create or maintain any joint account of any type, nor did they thereafter acquire joint debt. The parties continued to operate as separate financial entities before and after registering as domestic partners in California.

To the extent that the registration of Dr. Walsh and Ms. Reynolds as domestic partners in the State of California was an expression of their intent, it was an expression that they intended to take advantage of the health care and related hospital visitation privileges conferred upon registered domestic partners that were not otherwise available to same-sex adults. Not only did the plain language of the California legislation expressly disavow the creation of any community property or quasi-community property rights, it required either shared title or express written agreement for joint property acquisition. The California statute was consistent with the agreement of the parties to characterize all property acquired during their relationship at the time it was acquired. The parties did not intend to re-characterize their property either retroactively or prospectively.

Therefore, the Court cannot utilize the March 6, 2000 California registration date as the commencement date of an equity relationship between these parties.

6. The Court entered Findings of Fact that were affirmed on appeal. A compilation of these findings of fact on November 5, 2012 regarding the non-exclusive factors required to establish an equity relationship are summarized as follows:

- A. Continuous cohabitation: Except for a few brief interruptions, the parties cohabitated from 1988 until 2010. Their intimate relationship ceased in 1994, except for a brief time in 2007.
- B. The purpose of the relationship: the purpose of the relationship was to create a family. The focus and intent of the parties' continuing relationship was on raising and

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co-parenting their children. The commitment of the parties was to the children, not to each other. Respondent stated at trial that her purpose for entering the Domestic Partnership was to 'make the family stronger.' Respondent never stated the registration was to commit to a relationship with Petitioner. The parties conceived, gave birth to and cross-adopted three children and held themselves out to the world as a family. In 1993, while Julia was an infant, Respondent moved out of Petitioner's home and entered into a relationship which she categorized as 'an affair.' Respondent continued to care for Julia during the day, for which she was paid.

C. Pooling of resources and services for joint projects: Dr. Walsh was the sole financial support of the family. While Dr. Walsh was the principal earner, the parties contributed their time and energy to the raising of their family. They jointly remodeled the Federal Way home, although it was Dr. Walsh who paid for the remodel from earnings prior to January 1, 2005. During the entire relationship the parties had no joint accounts of any type. During the entire time that the parties resided together, neither party entered into any joint debt to any third party. They maintained separate financial lives through the duration of their relationship. Each party considered the vehicle titled in her name to be her separate property. When the parties began to cohabit, Petitioner had a housekeeper, whom she paid for various household chores, including laundry and housekeeping. Eventually, Respondent took over the same tasks as had been performed by the housekeeper and was paid as much or more as the prior housekeeper had been paid. Respondent suggested this arrangement. This arrangement continued until entry of temporary orders in September 2011. Petitioner paid over \$500,000 to Respondent during the years they resided in the same household.

D. Intent of the parties: The parties clearly intended to maintain separate assets and liabilities, with limited exceptions such as the Federal Way property and the Sprinter Van. They also intended to live together as a family.

In addition, based upon the testimony at trial the Court finds that Dr. Walsh and Ms. Reynolds consciously structured their financial lives to avoid shared property. Dr. Walsh testified to the societal discrimination faced by individuals in same-sex relationships, including specifically against these parties. ~~Dr. Walsh and Ms. Reynolds knew other same-sex couples and were aware that many of them took affirmative steps to order their financial lives similar to those of traditional married couples. This included titling assets in both parties' names, jointly acquiring debt, and maintaining joint bank and other financial accounts.~~ <sup>Bank</sup> Dr. Walsh and Ms. Reynolds made conscious decisions to maintain separate financial lives and adhered to that consistently, except in the rare instance to which they otherwise agreed in a writing executed at the time of acquisition (See Exhibit 33A, Deed to Federal Way property) and family vehicles (such as the Sprinter van), which were titled in both names.

7. The Court considered the additional testimony of the parties regarding both their relationship and their conscious ordering of their assets and debts. This Court makes the following additional findings.

A. On the facts of this case it is difficult for the Court to conclude that the relationship was "marital-like". In a marriage, one spouse does not pay the other spouse for

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childcare or household chores or laundry. In a marriage where one spouse is the wage earner and the other spouse is the homemaker, the homemaker does not file a separate income tax return declaring as income the wages earned by her spouse and paid to her for her services. "Because the nature of the common law claim of committed intimate relationship operates primarily as a property claim, pooling of economic resources and functioning as an economic unit is an important factor in determining whether the parties ever intended to create a committed intimate relationship whereby each party would have an interest in property acquired during their relationship." *Hobbs v. Bates*, No. 51463-6-I 2004 WL 1465949.

- B. The relationship ceased to be intimate in 1994. "Intimacy" can mean different things to different people, and certainly the parties' lack of physical intimacy since before their son was born – and yet they continued to live together – is very telling. It is also very telling that each of these parties did not serve as the "birth coach" when the other party was pregnant. The parties continued to cohabit for the purpose of raising their children, not for the purpose of sharing an intimate relationship with each other. At its core, that is not a marital-like relationship.
- C. Based on the foregoing, this Court concludes that the parties' intent was not to create a committed intimate relationship whereby each party would have an interest in the property acquired during the relationship.

8. The Court concludes that Dr. Walsh conclusively established that the parties intentionally kept their financial lives separate and purposely intended to maintain separate property from the commencement of their relationship to its end. In the rare instances when they elected joint ownership, that intention was meticulously documented via title or Deed.

Dr. Walsh and Ms. Reynolds made a conscious choice to avoid creating a financial relationship intended to approximate marriage. Instead, they kept separate bank accounts; they did not assume the liabilities of each other's financial obligations; and their primary means of exchanging money was through an employer-employee relationship that is not in any way akin to the co-mingling of marital funds.

On these facts, the Court concludes that these parties intentionally chose not to engage in a "marital like" relationship with regard to property and debt acquisition. In a marriage in which the parties intend to create community property, one spouse does not pay the other spouse for childcare or other household chores. Ms. Reynolds benefited from this decision. She filed separate income tax returns declaring as income the wages paid to her, allowing her to fund her SEP IRA, which was awarded to her. Ms. Reynolds had the use and benefit of her separate income with no responsibility for paying household expenses.

In addition to the lack of physical intimacy during the majority of the parties' cohabitation, the parties lacked the degree of commitment to the other that one would expect to find between marital-like partners. Neither of the parties served as the other's "birth coach" when the other party was pregnant. They did not have common interests. For example, they did not vacation together without the children. Instead, they co-habited for the purpose of raising children, not for the purpose of sharing an intimate, physical,

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emotional, or financial relationship with each other. At its core, they did not have a marital like relationship sufficient to support a finding of the creation of a community interest in property acquired by either of them during the relationship prior to January 1, 2005.

Based on the foregoing, this Court concludes that the parties' did not have a committed intimate relationship prior to January 1, 2005 whereby each party had an interest in property acquired by the other prior to that date.

9. Even if this Court had concluded that Dr. Walsh and Ms. Reynolds shared an equity relationship dating back to 1988 (when they first began to cohabit) there is clear, cogent and convincing evidence that these parties agreed to the characterization of all property acquired during their relationship. This agreement is akin to an oral prenuptial agreement, and was observed throughout the relationship. See *In re GWF*, 170 Wn. App. 631, 637-38 (2012). Partners in an equity relationship, like spouses, can change the status of their community-like property to separate property by mutual agreement. Dr. Walsh established the existence of an agreement for each party to acquire and maintain separate property through testimony and exhibits. The evidence provided by both parties' supports the finding that they mutually observed the terms of the separate property agreement from the inception of their relationship, to its end. Here, the record reflects meticulous efforts to maintain separate finances and property.

Ms. Reynolds suggested that she be compensated for various household chores, including laundry, housekeeping and childcare. Findings of Fact nos. 5, 7, and 9. Ms. Reynolds was paid for her labor from the time she moved into Dr. Walsh's home until this Court entered temporary orders in September 2001. It is undisputed that Dr. Walsh paid Ms. Reynolds over \$500,000, while also paying all costs associated with Ms. Reynolds obtaining a college degree. Dr. Walsh paid all household expenses and virtually all expenses for the children. Findings of Fact nos. 8, 9, and 10. Ms. Reynolds filed income tax return and treated these payments as income. Finding of Fact no. 7. Dr. Walsh made loans to Ms. Reynolds and Ms. Reynolds repaid Dr. Walsh. Findings of Fact nos. 40 and 45. The parties had no joint accounts of any type. Finding of Fact no. 4. The parties acquired vehicles and titled them each in their own name. When it was their intent to have a family vehicle, it was titled in both names and considered by both parties to be jointly owned. Findings of Fact nos. 4, 42, and 44.

The facts of this case lead the Court to conclude that the prior distribution of assets and debts following the trial in 2012 is fair and equitable under all the circumstances. Although Ms. Reynolds claims that the prior property distribution unjustly benefits Dr. Walsh at her expense, this is not supported by the facts. Ms. Reynolds ~~fails to~~ <sup>BAD</sup> acknowledge that her contributions of labor in areas such as childcare and maintaining the parties' home was compensated at an agreed upon rate that was fair and reasonable, from the inception of the parties' relationship, to its end. This continued even during periods of time that Dr. Walsh was not working due to complications from pregnancy or when her income dramatically decreased after she sold her private practice in 1996.

Having reconsidered, as directed by the Court of Appeals, whether these parties had a

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common law equity relationship before January 1, 2005, this Court finds that they did not intend to create community property and that the nature of their relationship does not support the conclusion that either acquired an equitable or community interest in the property acquired by the other. There is, therefore, no basis to redistribute the parties' assets and debts.

10. Ms. Reynolds again seeks an award of spousal maintenance. This Court previously entered Conclusion of Law No. 17 denying that request. Ms. Reynolds did not appeal the denial of spousal maintenance. The Court's previous decision denying spousal maintenance is the law of the case.

Even were it not the law of the case, Ms. Reynolds did not provide any credible testimony or evidence in support of her renewed request. ~~Instead, Ms. Reynolds provided proof through exhibit 185 that she is employed fulltime. Exhibits 195 and 196 indicate that Ms. Reynolds purchased a home in Pierce County in December 2013, with the home deeded to:~~ <sup>7/11/14</sup>

~~Lisa Janene Brummond and Kathryn L. Reynolds, domestic partners under the Washington State Domestic Partnership Agreement no. 15023, filed on August 27, 2013.~~

~~The fact that Ms. Reynolds purchased real property with an individual described as her domestic partner further supports the conclusion that application of the statutory factors pursuant to RCW 26.09.090 do not support an award of spousal maintenance to her. She testified that Ms. Brummond was an airline pilot and that their domestic partnership provided her with airline benefits. They also acquired real property in which each had an ownership interest and subsequently sold the property. Ms. Reynolds also received sale proceeds from the sale of the Federal Way property and from the sale of personal property pursuant to the 2012 Decree. She has resources, income from employment, and a college degree. None of the children live with Ms. Reynolds nor does she pay child support. Dr. Walsh continues to be financially responsible for all three adult children.~~

11. Ms. Reynolds requests attorney fees. The sole issues before the Court on remand are limited to reconsideration of the date of commencement of an equity relationship between these parties and the impact, if any, upon property and debt distribution. The factual and legal issues before this Court do not involve the dissolution of the parties' registered domestic partnership. Attorney's fees were previously awarded to Ms. Reynolds based upon RCW 26.09.140. The statutory authority for awarding attorney's fees in the dissolution of a marriage or domestic partnership is not extended to an equity relationship.

~~In addition, Ms. Reynolds has received the proceeds from the sale of the Federal Way property and community and personal property. She received and retained child support paid by Dr. Walsh when Dr. Walsh was the primary parent of the child for whom she paid support. Ms. Reynolds is employed fulltime. Under these circumstances this Court declines to award attorney's fees.~~ <sup>7/11/14</sup>

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12. The prior written Conclusions of Law are incorporated into this Court's decision by reference.

13. Based upon the foregoing, this Court concludes that the parties' intent was not to create a committed intimate relationship prior to January 1, 2005, whereby either party would have an interest in property or debt acquired by the other prior to that date.

**ADDITIONAL CONCLUSIONS OF LAW FOLLOWING TRIAL ON REMAND**

14. This Court is not required by the Court of Appeals to find that an equity relationship between these parties began prior to January 1, 2005 and to redistribute assets. The Court of Appeals directive is in two parts, the first being a condition precedent to the second. This Court was directed to and did reconsider the commencement date of the equity relationship. This Court determined that an earlier date is unsupported by the facts and law and thus, there is no basis to redistribute the parties' community property. To reconsider means to think again, reevaluate and reexamine. "If so" is a condition precedent and not a direction to redistribute assets. In its reconsideration, this Court did not base its analysis on the formality or legality of the parties' relationship. This Court did consider the constitutional arguments raised at the trial on remand, as well as Conclusion of Law No. 11, entered November 5, 2012, which was not invalidated by the Court of Appeals ruling in Walsh v. Reynolds. It is not fair and equitable to treat the parties' relationship as equivalent to marriage for the purpose of imposing a community property regime on property acquired by the parties, individually, prior to January 1, 2005. These parties consciously and purposely structured their finances to avoid shared property.

When the parties registered as Domestic Partners in California on March 6, 2000 it was an expression of their intent to take advantage of the limited rights specifically conferred upon registered domestic partners that were not otherwise available to unrelated same sex adults. The plain language of the legislation unequivocally states that it shall not create any interest in, or rights to, any property, owned by one partner or the other partner, including, but not limited to, rights similar to community property or quasi-community property. November 5, 2012 Finding of Fact No. 16, citing AB 26, Part 4, Sections (d) and (e). Conclusion of Law No. 1. To suggest that registration expressed the parties' intent to acquire and hold property as community or quasi-community disregards the plain language of the legislation. It also disregards the facts that led the Court to conclude that these parties operated as separate financial entities prior to and after their March 6, 2000 domestic partnership registration in California. The California statute expressly denies the remedy which Respondent specifically seeks to impose through the equity relationship doctrine. Equity follows the law and cannot provide a remedy where legislation expressly denies it. *Stephanus v. Anderson* 26 Wn. App. 326, 334 (1980).

15. Prior to January 1, 2005, these same-sex parties could not have entered into a lawful marriage recognized in the state of Washington, thereby conferring upon them the full

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benefits of a marriage. To retroactively re-characterize property acquired prior to January 1, 2005 as community or quasi-community property would be unconstitutional.

This Court, in 2012, made the following Conclusions of Law:

4. Prior to the effective date of the expansion of California Domestic Partnership law (January 1, 2005), each party had vested property rights in all assets and income acquired by that party prior to that date. Prior to the amendment of California's Domestic Partnership laws and the 2008 amendment to Washington's domestic partnership act, neither Dr. Walsh nor Ms. Reynolds could have had notice or any reasonable expectation that the property each was accumulating would be characterized in any manner other than how they chose to characterize it. There was no ability for domestic partners to accumulate or create community property in California until January 1, 2005, and in Washington until the 2008 amendment to the Domestic Partnership statute (RCW 26.16 et seq.). Accordingly, prior to those dates there is no legal basis for finding an equitable relationship to exist without violating the constitutional rights of the parties.

5. The Washington State Constitution, Article I, Section 23 prohibits the State from application of any ex post facto laws. Application of the equitable relationship doctrine prior to the January 1, 2005 effective date of California's expanded domestic partnership law would deprive these individuals of vested property rights without due process of law. Retroactive application of a statute is unconstitutional if it deprives an individual of a vested right without due process of law. A right is vested when it is already processed or legitimately required. It would be unconstitutional to divest these parties of vested property interests in existence prior to the January 1, 2005 effective date.

Emphasis added.

These Conclusions of Law were not disturbed by the Court of Appeals, which noted this Court ruled that it would be unconstitutional to find an equitable relationship existed before January 1, 2005, because neither California's nor Washington's domestic partnership laws vested Walsh and Reynolds with community property rights. *Walsh v. Reynolds* at FN 5. Instead, the Court left these conclusions of law intact, stating "neither party raises a due process argument on appeal." *Walsh v. Reynolds* at FN 23.

16. The parties consciously maintained themselves as separate financial entities throughout their relationship, maintaining separate private property from the date of acquisition through January 1, 2005. The retroactive extension of the equity relationship doctrine to that property constitutes a violation of the Fifth Amendment's taking clause, which is applied against the states through the Fourteenth Amendment. US Constitution.

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Amendment V; *Chicago, B & Q. R. Co. v. City of Chicago*, 166 U.S. 226, 239 (1897) (applying takings clause against the states); See also Wn. Constitution Article 1 Section 16 (Amendment 9) "no private property shall be taken or damaged for public or private use without just compensation having first been made."). Under this clause, "it has long been accepted that the sovereign may not take the property of [one person] for the sole purpose of transferring it to another party." *Kelo v. City of New London, Connecticut*, 545 U.S. 469, 477 (2005). The transfer of Dr. Walsh's separate property to Ms. Reynolds by this Court via application of a judicially created equitable doctrine would amount to an unconstitutional taking. This Court previously found that the first date upon which either party could have had notice that the property they were acquiring could be treated as community property occurred on January 1, 2005, the effective date of California's "everything but marriage" legislation. The Court's judicial extension of the equity relationship doctrine to a date prior to January 1, 2005 would cause an unconstitutional taking. The U.S. Supreme Court has explained that unforeseeable judicial actions raise taking implications by "declaring that was once an established right of private property no longer exists." *Stop the Beach Renourishment, Inc. v. Florida Department of Environmental Protection*, 560 U.S. 702, 715 (210) (plurality) (citing *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 162 (1980)). Neither Ms. Reynolds nor Dr. Walsh had notice that property acquired prior to January 1, 2005 could be treated as community property or that either party would be treated at a later date as having acquired an equitable interest in property or debts acquired by the other.

Both parties meticulously and scrupulously avoided any co-mingling of income, assets or debts, creating a reasonable expectation that these rights would not be disturbed at a later date by judicial intervention. To do so now would be an unconstitutional judicial taking of property.

Further, "a judicial decision that eliminates or substantially changes established property rights, which are a legitimate expectation of the owner, is 'arbitrary or irrational' under the due process clause". *Stop the Beach Renourishment*, 560 U.S. 737 (quoting *Lingle v. Chevron USA, Inc.* 544 U.S. 528, 542 (2005)). A ruling declaring property or debts acquired prior to January 1, 2005 to be community property or community debt violates the due process rights of the parties.

Application of an equitable theory to characterize property acquired by either party prior to January 1, 2005 as community or quasi-community property also violates the equal protection clause. Prohibiting same-sex individuals from marrying one another has been declared unconstitutional by the U.S. Supreme Court in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015). Discriminatory marriage laws prevented these parties from marrying prior to January 1, 2005 (and thereafter in the majority of states). Some same-sex couples created financial relationships approximating marriage, but Dr. Walsh and Ms. Reynolds intentionally did the opposite. They chose to and did maintain separate financial lives. They kept separate bank accounts; they did not assume the liabilities of each other's financial obligations; and their primary means of exchanging money was through an employer/employee relationship, not a marital-like co-mingling of funds. To now retroactively impose the burdens of marriage on these parties violates equal protection and is unconstitutional. This Court is required to avoid applying the law in manner that is

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unconstitutional or that would invite constitutional concerns. See, e.g., *In re Marriage of McLean*, 132 Wn. 2d 301, 937, P.2d 602, 605 (1997). The Court therefore will not apply the equitable relationship doctrine to distribute property acquired by one of the parties prior to January 1, 2005 to the other party.

The right to contract exists for partners in committed intimate relationships. *In re GWF*, 170 Wn. App. 631, 638 (2012). Dr. Walsh has proven by clear, cogent, and convincing evidence that the parties agreed to the characterization of all property acquired during their relationship. Dr. Walsh and Ms. Reynolds both testified as to the existence of the agreement. See Finding of Fact No. 6C. Ms. Reynolds herself suggested that she be paid for household services and childcare. The testimony of both parties and the exhibits (see exhibits 50 - 58, Ms. Reynolds tax returns) conclusively establish that the parties observed the terms of the agreement throughout cohabitation. Neither party was secretive about her finances. They did not share financial information with each other because each had separate and independent control of her own finances. Here, as in *GWF*, the record "reflects painstaking and meticulous effort to maintain separate finances and property". See Finding of Fact No. 6D. Based on the record in this case, the agreement of the parties will be observed for property acquired prior to January 1, 2005.

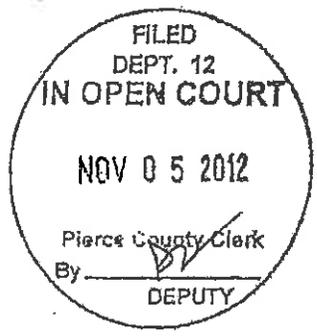
The prior distribution of assets and debts does not unjustly benefit Dr. Walsh at the expense of Ms. Reynolds. Ms. Reynolds was compensated for her efforts. Ms. Reynolds compensation was neither reduced nor terminated during periods of time that Dr. Walsh's income was dramatically reduced. There is no basis for this Court to redistribute the parties' assets and debts.

17. The property distribution contained in the Decree of Domestic Partnership entered November 5, 2012 is hereby affirmed. Any amount not actually distributed to Ms. Reynolds shall be adjusted based upon gains and losses to the original amount awarded through the date of distribution.

18. Spousal maintenance is denied.

19. Ms. Reynolds request for attorney's fees is denied. The legal and factual issues presented to this Court on remand from the Court of Appeals did not involve the dissolution of the parties' registered domestic partnership. The only issue before the Court involved the date of commencement of the parties' equity relationship and distribution (if any) of property acquired prior to January 1, 2005. The statutory authority for awarding attorney's fees in the dissolution of a marriage or domestic partnership is not extended by analogy to an action for distribution of the property following an equity relationship. *Connell v. Francisco*, 127 Wn.2d 339, 349 (1985). The Court also considered need and ability to pay. Ms. Reynolds has income and assets available to her to pay her own attorney's fees and costs.

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SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

In Re the Domestic Partnership of:  
  
JEAN M. WALSH,  
  
and  
  
KATHRYN L. REYNOLDS,  
  
Respondent.

No. 11-3-00924-5

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW (REGISTERED  
DOMESTIC PARTNERSHIP) PROPOSED  
BY PETITIONER

I. Basis for Findings

The findings are based on: trial on July 9, 10 and 11, 2012. ~~The Court admitted exhibits 1 through 104 and 109 to 111.~~ The following people attended:

- Petitioner, Jean M. Walsh, testified;
- Petitioner's Lawyer, Barbara A. Henderson;
- Respondent, Kathryn L. Reynolds, testified;
- Respondent's Lawyer, Jan M. Dyer;
- Other: Richard Torosian, CPA, testified telephonically.

The Court admitted Exhibits 1 through 102; 104 and 108-110. The Court received and reviewed supplemental briefing from counsel for both parties.

II. Findings of Fact

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

2.1 Residency of Parties

The Petitioner is a resident of the State of Washington, and resides in the county of Pierce.

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The Respondent is a resident of the State of Washington, and resides in the county of King.

2.2 Notice to the Respondent

The Respondent appeared, responded or joined in the petition.

2.3 Basis of Personal Jurisdiction Over the Respondent

The facts below establish personal jurisdiction over the respondent.

The Respondent is currently residing in Washington.

2.4 Date of Registration of Domestic Partnership and Parties' Residence

The parties registered as Domestic Partners <sup>as domestic partners</sup> in the State of California in 2000 when they resided in California. They registered ~~their domestic partnership~~ in Washington State on August 20, 2009, ~~under the 2008 statute then in effect but not under any subsequent amendment to that statute.~~ On that date, the parties resided at Federal Way, Washington.

2.5 Status of the Parties

Petitioner and Respondent separated on March 14, 2010.

2.6 Status of Domestic Partnership

The domestic partnership is irretrievably broken and at least 90 days have elapsed since the date the petition was filed and since the date the summons was served or the Respondent joined.

2.7 Separation Contract or Domestic Partnership Agreement

There is no written separation contract or domestic partnership agreement. ~~The Domestic Partnership Registration application, signed by both parties states: "any rights conferred by this registration may be superseded by a will, deed, or other instrument signed by either party to this domestic partnership registration."~~

2.8 Community Property

The parties have the following real or personal community or quasi-community property:

- A. 2007 Sprinter Van, titled in both names.
- B. Eagle Trailer titled in name of Respondent;

① Inheritance funds (\$30,000<sup>00</sup>) invested in the Federal Way Property, and Principal Mortgage reduction from date of refinance (5/10/04) to 1/1/05 in the amount of \$10,834.42.

- C. 2007 Fleetwood Tent Trailer;
- D. Kubota Tractor
- E. Group Health retirement assets accumulated between January 1, 2005 and March 14, 2010;
- F. Funds deposited to USAA Investment account between January 1, 2005 and March 14, 2010, except for funds inherited by Dr. Walsh.

Separate Property

The Petitioner has the following real or personal separate property:

A. Real property legally described as, Section 25 Township 21 Range 02 Quarter 13 MARCH-MCCANDLESS L 11 & 12 B 7, and commonly known as 3917 N. 37<sup>th</sup> St., Tacoma, WA 98407 ("Tacoma Property");

\* Each party holds an interest, as tenant in common with the other party to the

~~B. Funds invested in the purchase of real property and reconstruction of the home located at on said real property legally described as, the south 390 feet of the north 938 feet of the west 330 feet of the east 457.875 feet of the southwest quarter of the southeast quarter of Section 1, Township 21 North, Range 3 East, W.M, in King County, Washington Except any portion thereof with the west 15 feet of the east 142.875 feet of the south 500 feet of said southwest quarter of the southeast quarter; and common known as 30210 - 23<sup>rd</sup> Ave. SW, Federal Way, WA 98023 ("Federal Way Property"), prior to January 1, 2005 and after March 14, 2010.~~

- C. USAA SEP account in her sole name;
- D. Funds deposited in USAA Managed Investment account in her sole name prior to January 1, 2005 and after March 14, 2010. including gains and losses;
- E. Group Health retirement assets acquired prior to January 1, 2005 and after March 14, 2010, including gains and losses;
- ~~F. Steinway piano purchased and restored entirely by Petitioner in 1991;~~
- G. Union Bank checking account in her sole name; and
- ~~H. USAA checking account in her name and in the name of the parties' daughter, Julia Walsh.~~

The Respondent has the following real or personal separate property:

- A. The 2010 Nissan Truck titled in her sole name;
- B. USAA retirement accounts in her sole name;

\* [As if fully repeated here re: FEDERAL WAY PROPERTY]

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C. All right, title and interest in and to James Reynolds Family Trust, including the proceeds of the sale of real property held by the trust; and

D. All right title and interest in and to the business known as Les Scoop Too, including all business equipment and all liabilities thereof.

E. Any personal checking or savings accounts in her sole name.

F. Steinway piano, gifted to her from Petitioner.

2.9 Community Liabilities

There are no known community liabilities.

2.10 Separate Liabilities

The Petitioner has incurred the following separate liabilities, ~~except for Petitioner's reimbursement of separate funds used to purchase the Federal Way property and to tear down the house on the property and construct the existing house.~~

<u>Creditor</u>	<u>Amount</u>
USAA Federal Mortgage on the property commonly known as 3917 N. 37 <sup>th</sup> St., Tacoma, WA 98407 (See Exhibit 34)	\$259,663 (original loan amount)
JPMorgan Chase Bank	\$256,729.23. – Prior to Petitioner paying \$30,000.00 from inheritance on March 1, 2010 on the mortgage obligation for the property at 30210 23rd Ave SW, Federal Way WA

- A. All liabilities incurred by her since March 14, 2010;
- B. All credit card debt in her sole name.

The Respondent has incurred the following separate liabilities:

<u>Creditor</u>	<u>Amount</u>
Loan for purchase of Nissan truck (See Exhibit 46)	\$8,000.00 (orig. loan amt.)

- A. All credit card debt in her sole name;
- B. \$2,000.00 owed to petitioner (business loan);  
(See Exhibit 42)
- C. All liabilities incurred by her since March 14, 2010;
- D. All liabilities incurred for or by the business known as Les Scoop Too.

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2.11 Maintenance

Maintenance should not be ordered.

Other: The respondent did not provide any factual basis or analysis of the statutory factors to support an award maintenance as required under RCW 26.09.090. She stated in general terms that she needed money for an education, but Dr. Walsh has already paid for Ms. Reynolds to obtain her undergraduate degree. Respondent did not provide any evidence of the cost of additional education or of the time necessary to complete the same. She has started a business and invested time, money, and effort to establish the same. She has the ability to be self reliant and has been awarded sufficient assets as well. Furthermore, Ms. Reynolds provided no credible evidence of any other plan, other than to continue operating her business. She had only a vague and unspecified request for a lump sum that bore no relationship to her financial need or future plans.

2.12 Continuing Restraining Order

Does not apply.

2.13 Protection Order

Does not apply.

2.14 Fees and Costs

The Court is applying RCW 26.09.140 to the dissolution of this domestic partnership. The legislature was not required to specifically amend RCW 26.09.140 in 2008 when it expanded Washington's Domestic Partnership law effective June 2008 because the statute does not use the term "spouses" but refers to parties to a dissolution. Therefore, the Court has considered Dr. Walsh's ability to pay attorney's fees and has determined that Ms. Reynolds has a need for the same. The disparity in their incomes leads the Court to award 100% of the fees incurred by Ms. Reynolds to be paid by Dr. Walsh. The amount of said fees shall be determined by reference to the factors enumerated in Marriage of Knight, 75 Wn.App. 721, 880, P.2d, 71 (1994) and in Marriage of Irwin, 64 App. 38, 822, P.2d 790 (1992).

2.15 Pregnancy

No party is pregnant.

2.16 Dependent Children

~~The petitioner and respondent have alleged that they are the parents of these children.~~

Name of Child: Julia Walsh Age: 20

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~~Name of Child: Joseph Reynolds Walsh Age: 16~~  
~~Name of Child: Emily Reynolds Walsh Age: 14~~

The court finds the following:

Other: The Petitioner and Respondent are legal parents of all three (3) children. Julia and Joseph are Petitioner's birth children and were adopted by Respondent. Emily is Respondent's birth child and was adopted by Petitioner.

The children listed below are dependent upon both domestic partners.

Name of Child: Julia Walsh Age: 20  
(post secondary support only)  
Name of Child: Joseph Reynolds-Walsh Age: 16  
Name of Child: Emily Reynolds-Walsh Age: 14

2.17 Jurisdiction Over the Children

This court has jurisdiction over the children for the reasons set forth below.

This court has exclusive continuing jurisdiction. The court has previously made a child custody, parenting plan, residential schedule or visitation determination in this matter and retains jurisdiction under RCW 26.27.211.

This state is the home state of the children because:

The children lived in Washington with a parent or a person acting as a parent for at least six consecutive months immediately preceding the commencement of this proceeding.

2.18 Parenting Plan

The parenting plan signed by the court dated July 9, 2012, is approved and incorporated as part of these findings.

2.19 Child Support

There are children in need of support and child support should be set pursuant to the Washington State child support statutes. The Order of Child Support signed by the court dated July 9, 2012, and the child support worksheet, which has been approved by the court, are incorporated by reference in these findings.

2.20 Other

1           1.     The parties first cohabitated in October 1988, when Respondent moved into  
2           Petitioner's home in Fresno, California. Petitioner purchased the Fresno home in  
3           1986, prior to ~~the~~ meeting Respondent.

4           2.     When the parties first began to cohabit, Petitioner owned her own private  
5           medical practice in Fresno. She also had a SEP-IRA account at Glendale Federal  
6           Savings that was later consolidated with other retirement funds in a USAA SEP  
7           account. Petitioner also owned her own automobile and a full complement of  
8           household goods and furnishings.

9           3.     When the parties began to cohabit, Respondent owned an automobile, her  
10          clothing and household goods. She was employed at a hardware store and continued  
11          to work at other jobs for a period of time.

12          4.     During the entire relationship the parties had no joint accounts of any type.  
13          Petitioner did not add Respondent to any checking, savings or brokerage accounts, nor  
14          did Respondent add Petitioner to any of her checking, savings or retirement accounts.  
15          During the entire time that the parties resided together, neither party entered into any  
16          joint debt to any third party. The parties had no joint credit accounts. At one point the  
17          respondent was added as an authorized user to two (2) of the Petitioner's credit card  
18          accounts so that she could charge household expenses. They maintained separate  
19          financial lives through the duration of their relationship. For example, throughout the  
20          majority of their relationship, Petitioner had a vehicle titled in her name, Respondent  
21          had a vehicle titled in her name, and there was also a jointly titled vehicle. Each party  
22          considered the vehicle titled in her name to be her separate property. At the time of  
23          separation, Petitioner had a 2006 Subaru and Respondent had a 1990 Porsche Carrera  
24          911 in their respective names.

25          5.     When the parties began to cohabit, Petitioner had a housekeeper, whom she  
26          paid for various household chores, including laundry and housekeeping. Eventually,  
27          Respondent took over the same tasks as had been performed by the housekeeper and  
28          was paid as much or more as the prior housekeeper had been paid. Respondent  
29          suggested this arrangement. This arrangement continued until entry of temporary  
30          orders in September 2011.

31          6.     The parties decided to have children and make a family. In December 1991,  
32          Petitioner became pregnant with Julia through artificial insemination. Julia was born  
33          in August 1992. Petitioner became pregnant again in 1994, but suffered a miscarriage.  
34          She became pregnant with Joe in 1995 and he was born in 1996. Respondent had  
35          difficulty conceiving but eventually became pregnant with Emily and she was born in  
36          1998. Both parties adopted the biological children of the other through second parent  
37          adoptions. Emily's adoption was completed in 2000. ~~As had been the case with both~~  
38          ~~earlier adoptions, Petitioner paid all fees and costs associated with the same.~~

39          7.     In 1992, Julia was born. Respondent's reported income that year, included  
40          payment for child care services relating to Julia, paid to her by Petitioner. In 1994 the

1 Respondent and accountant Richard Torosion created an entity called Management  
2 Services, as a result of which she was able to make contributions to a SEP IRA. From  
3 1992 through 1999 while the parties lived in the State of California, Respondent filed  
4 tax returns on which she reported income she had received from Petitioner. (See  
5 Exhibits 50-58). Respondent continued to be paid during the time that Petitioner was  
6 earning less or no income because of pregnancies. The respondent was paid regardless  
7 of the petitioner's income or work status. Respondent referred to these payments as a  
8 monthly allowance.

9 8. After the parties moved to the State of Washington, Petitioner continued to pay  
10 Respondent on a monthly basis. As shown on Exhibit 3 and as testified to by  
11 Petitioner, Petitioner established that she paid over \$500,000.00 to Respondent during  
12 the years they resided in the same household. The sums paid by Petitioner to  
13 Respondent were essentially Respondent's discretionary income, as Petitioner paid all  
14 household expenses, including automobile related expenses, and essentially all  
15 expenses for the children. Thus, Respondent was free to use her income as she saw fit.

16 9. In 1993, while Julia was an infant, Respondent moved out of Petitioner's home  
17 and entered into a relationship which she categorized as "an affair." Respondent  
18 continued to care for Julia during the day, for which she was paid. Several months  
19 later, she moved back into Petitioner's home where she resided in a separate wing.  
20 She subsequently resumed cohabitating with Petitioner.

21 10. In May 1993, Respondent graduated from Fresno State University with a B.S.  
22 degree in construction management. Petitioner paid all of the expenses (including  
23 tuition, books and fees) for Respondent to obtain her undergraduate degree.

15 11. The parties stopped being intimate with one another following Petitioner's  
16 miscarriage in 1994, a situation which continued throughout the rest of the time they  
17 resided with one another except for a brief period in 2007. They continued to reside in  
18 the same house and to maintain the family unit.

19 12. Having experienced two (2) previous difficult pregnancies, Petitioner decided  
20 to sell her private medical practice in Fresno when she became pregnant again. She  
21 completed the sale of her private practice in March 1996, prior to the birth of Joe in  
22 July 1996, and never established another private medical practice thereafter.  
23 Petitioner returned to work doing things such as independent medical examinations  
and she was later employed at two local hospitals.

24 13. Petitioner made no additional contributions to her individual SEP-IRA after tax  
25 year 1999 (before the parties moved to the State of Washington in 2000). Over the  
26 years, various accounts which had been established prior to 1999, were consolidated  
27 and the balances transferred into the current USAA SEP IRA. Petitioner was able to  
28 trace all deposits made to her USAA SEP IRA to dates pre-dating the California  
29 registered domestic partnership. (See Exhibits 21-23).

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2 14. On March 6, 2000, Petitioner and Respondent registered as a domestic  
3 partnership in the State of California. Their registration was pursuant to a statute  
4 which provided only limited, enumerated benefits to registered domestic partners  
5 including hospital visitation rights and rights to health insurance benefits if one partner  
6 was an employee of certain local governments. (See Exhibit 41).

7 15. The California Domestic Partnership certificate states in relevant part, "We  
8 agree to be jointly responsible for each other's basic living expenses incurred during  
9 our domestic partnership." (See Exhibit 65).

10 16. The primary benefit conferred by California Domestic Partnership law at the  
11 time of the parties' registration was related to healthcare and specifically excluded  
12 property rights. The law in effect at that time stated:

13 "The filing of a Declaration of Domestic Partnership pursuant to this  
14 division shall not, in and of itself, create any interest in, or rights to,  
15 any property, real or personal owned by one partner in the other  
16 partner including, but not limited to, rights similar to community  
17 property of quasi-community property.

18 Any property or interest acquired by the parties during the domestic  
19 partnership where title is shared shall be held by the partners in  
20 proportion or interest assigned to each partner at the time the  
21 property or interest was acquired unless otherwise expressly agreed  
22 in writing by both parties. Upon termination of the domestic  
23 partnership, this subdivision shall govern the division of any  
property jointly acquired by the partners."

(AB 26, Part 4, Sections (d) and (e).

17 17. In March, 2000, Petitioner accepted a position with Group Health in Tacoma.  
18 Petitioner, Respondent and the three (3) children moved to Tacoma in June 2000.  
19 Washington had no domestic partnership laws in effect at that time and did not  
20 recognize domestic partnerships registered in other states.

21 18. When the parties relocated to Washington in June 2000, Petitioner sold the  
22 home she had owned in Fresno, and the proceeds from that sale were used as the down  
23 payment on the home Petitioner purchased at 2202 Davis Court Northeast, Tacoma,  
WA 98422 ("Davis Court property"). (See Exhibits 30-31).

19 Exhibit 4, prepared by CPA Richard Torosian, accurately traces the proceeds  
20 of the sale of Petitioner's Fresno home to the purchase of the Davis Court property.  
21 Petitioner was solely liable on the mortgage for the Davis Court property. The Davis  
22 Court home was refinanced and again, Petitioner was solely liable on that obligation.

1 20. In 2003, the parties purchased, as joint tenants with right of survivorship, a 3-  
2 acre property in Federal Way. The Statutory Warranty Deed states: By their signature  
3 below, Grantees evidence their intention to acquire all interest granted them hereunder  
4 as joint tenants with right of survivorship, and not as community property or as tenants  
5 in common. (See Exhibit 32).

6 21. Petitioner was able to trace the proceeds from the sale of the Davis Court home  
7 (her separate property) to the purchase of the Federal Way property. Again, Exhibit 4,  
8 prepared by the parties' CPA, accurately traces this transaction. (See Exhibit 30-33).

9 22. Although the deed to the Federal Way property lists both parties as joint  
10 tenants with right of survivorship, only Petitioner was liable on the purchase money,  
11 mortgage obtained for the purchase of the Federal Way property. (See Exhibit 32).

12 23. The Federal Way property was subsequently refinanced in 2004 with  
13 Washington Mutual. Again, Petitioner is solely liable on that obligation. Petitioner  
14 made all payments on the mortgage from her income. The Washington Mutual  
15 mortgage is now with Chase Bank. (See Exhibit 33).

16 24. In March, 2004, the parties made a day trip to Portland, Oregon, where they  
17 participated in a marriage ceremony and received a marriage license in Multnomah  
18 County. They did not take their children or invite other guests. Petitioner knew that the  
19 marriage was not legal and intended her participation as a political statement and as a  
20 way to stop remaining "invisible" in society. By letter dated May 6, 2005, they were  
21 informed that the Oregon Supreme Court ruled that the license was not valid and that  
22 Oregon's marriage laws do not allow them to wed. The parties were informed, in  
23 writing, that the Oregon marriage was invalid and had no legal force or effect. The  
parties never married in a jurisdiction where same sex marriage was legal. (See Exhibit  
60).

24 25. The Federal Way property, purchased in 2003, contained a house that required  
25 a complete tear down and reconstruction. Petitioner's father contributed  
26 approximately \$180,000.00 to the cost thereof. Petitioner considered this a pre-  
inheritance or gift from her father. (See Exhibit 59).

27 26. In 2003, the California legislature amended its domestic partnership laws with  
28 an effective date of January 1, 2005. As of that date, California Domestic Partnership  
29 statutes provided community property rights to registered domestic partners, although  
30 earned income was not treated as community property for state income tax purposes.  
31 In relevant party, the statute provided:

32 "Registered domestic partners shall have the same rights, protections  
33 and benefits and shall be subject to the same responsibilities,  
obligations and duties under law, whether they derive from statutes,  
administrative regulations, court rules, government policies, common

1 law, or other provisions or sources of law, as are granted to or  
2 imposed upon spouses.”

3 27. The 2003 California legislation required notices to be sent to registered  
4 domestic partners at their address of record to provide them with an opportunity to  
5 terminate their domestic partnership prior to January 1, 2005, when expended rights  
6 would become effective.

7 28. Neither Dr. Walsh nor Ms. Reynolds received notice pursuant to the notice  
8 provisions of the California domestic partnership statute. Neither party took action to  
9 terminate their California Domestic Partnership at any time prior to their separation.

10 29. The parties registered as a domestic partnership in the State of Washington on  
11 August 20, 2009. Although Respondent testified that they registered as soon as  
12 registration became available, in fact, domestic partnership registration became  
13 available in the State of Washington in 2007. (See Exhibit 40).

14 30. The Washington Declaration of Registered Domestic Partnership states in  
15 relevant part:

16 “Any rights conferred by this registration may be superseded by a  
17 will, deed or other instrument signed by either party to this domestic  
18 registration.”

19 It also states that the parties' registration is made pursuant to Ch.156 Law of 2007.  
20 (See Exhibit 40)

21 31. Petitioner's father, Gerald Walsh, died in November 2009. Petitioner received  
22 all of the cash he had in bank accounts and was also the beneficiary of his life  
23 insurance policy. In total, Petitioner inherited approximately \$124,000.00 from her  
24 father. (See Exhibit 15-17).

25 32. Respondent received an interest in The Reynolds Family Trust upon the death  
26 of her Father. The major asset of the Trust was the home owned by her Father. That  
27 home has been sold and she has received a share of the sale proceeds.

28 33. Petitioner deposited \$90,000.00 of the money she inherited from her father into  
29 her USAA managed investment account. These deposits occurred after the parties  
30 registered as a domestic partnership in the State of Washington and prior to their  
31 separation. These deposits are Petitioner's separate property. (See Exhibit 27).

32 34. Petitioner made an additional principal payment on the mortgage of the Federal  
33 Way home in the amount of \$30,000.00 on March 1, 2010. This \$30,000.00 was  
34 inherited from her father. Just prior to paying that amount on the mortgage, the  
35 mortgage balance was \$256,729.23. This \$30,000.00 payment's Petitioner's separate  
36 property. (See Exhibit 36).

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2 35. On March 14, 2010, Respondent packed a bag for herself and Emily and left  
the family home taking Emily with her. Although she and Emily returned several  
3 hours later, the parties subsequently confirmed, in writing, that they terminated their  
4 relationship on March 14, 2010. Respondent did not deny the separation date in her  
Response to the Petition and in fact, confirmed it by pre-trial submissions. The parties  
date of separation is March 14, 2010. (See Exhibit 43).

5 36. On March 11, 2011, Petitioner filed a petition for dissolution of domestic  
6 partnership. She continued to pay the mortgage on the family home and the vast  
majority of expenses associated therewith through the date of trial, which commenced  
7 July 9, 2012, and continuing post trial.

8 37. The parties entered into an agreed parenting plan for their two (2) minor  
children, Joseph and Emily. Subsequently, the parties entered into an agreed order of  
9 child support for their two minor children, Joseph and Emily and entered into an  
agreement regarding post secondary support for their oldest daughter, Julia. (See  
10 Exhibit 2).

11 38. Petitioner paid child support of \$2,584.00 per month to Respondent through  
July 2012 for the support of two children. Only Emily resided primarily with  
12 Respondent during that time and Joseph resided with Petitioner.

13 39. The focus and intent of the parties' continuing relationship was on raising and  
co-parenting their children. Both parties testified regarding their commitment to their  
14 children.

15 40. Petitioner loaned Respondent \$2,000.00 during the pendency of this  
dissolution proceeding and that amount should be repaid by Respondent.

16 41. The Petitioner purchased a Steinway piano from Respondent's Aunt in 1991  
and paid to restore it that year. It was subsequently appraised at \$25,000.00.  
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18 42. The parties acquired vehicles during the years they cohabitated. At the time of  
separation, the Petitioner had a 2006 Subaru titled to her while Respondent owned a  
19 1990 Porsche Carrera. In January 2010, Respondent traded the Porsche for a 2010  
Nissan truck after separation. Petitioner received the 2003 Toyota Camry from her  
20 Father.

21 43. The following vehicles/assets were acquired after January 1, 2005 and before  
March 14, 2010:

- 22 A. 2007 Sprinter Van -- acquired August 2007;  
23 B. 2007 Fleetwood tent trailer -- acquired July 2006;  
C. Kubota tractor -- acquired in December 2005;  
D. Eagle trailer -- acquired in June 2007.

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2 44. At the time of separation, on March 14, 2010 Respondent owned a 1990  
3 Porsche Carrera 911, which had been purchased during the domestic partnership in  
4 January of 2010. She sold that vehicle and purchased a 2010 Nissan Frontier, which  
5 she titled in her sole name. This transaction illustrates the way in which these parties  
6 operated financially throughout their relationship. (See Exhibit 46).

7 45. Another example of the parties' intent to remain separate financial entities is  
8 that when Petitioner paid a significant portion of a debt Respondent had incurred on a  
9 Farm Bureau credit card, that amount was repaid to Petitioner by Respondent via a  
10 deduction from the amount Petitioner paid to Respondent on a monthly basis. In fact,  
11 Respondent testified that she repaid Petitioner, in full as agreed between the parties.

12 46. After the parties moved to the State of Washington, Petitioner continued to pay  
13 Respondent on a monthly basis. Respondent characterizes this sum as "her  
14 allowance." As shown on Exhibit 3 and as testified to by Petitioner, Petitioner  
15 established that she paid over \$500,000.00 to Respondent during the years they  
16 cohabited. The sums paid by Petitioner to Respondent were essentially Respondent's  
17 discretionary income, as Petitioner paid all household expenses and essentially all  
18 expenses for the children.

### 19 III. Conclusions of Law

20 The court makes the following conclusions of law from the foregoing findings of fact:

#### 21 3.1 Jurisdiction

22 The court has jurisdiction to enter a decree in this matter.

#### 23 3.2 Granting a Decree

The parties should be granted a Decree of Dissolution of Domestic Partnership.

#### 3.3 De Facto Parent

Does not apply. The parties are the legal (biological and adopted) parents of all three (3) children.

#### 3.4 Pregnancy

Does not apply.

#### 3.5 Disposition

The court should determine the status of the parties' domestic partnership, make provision for a parenting plan for any minor or dependent children of the domestic

1 partnership, make provision for the support of any minor child of the domestic  
2 partnership entitled to support, consider or approve provision for maintenance of either  
3 domestic partner, make provision for the disposition of property and liabilities of the  
4 parties, make provision for the allocation of the children as federal tax exemptions,  
5 make provision for any necessary continuing restraining orders, and make provision  
6 for the change of name of any party. The distribution of property and liabilities as set  
7 forth in the decree is fair and equitable.

8  
9 **3.6 Continuing Restraining Order**

10 Does not apply.

11  
12 **3.7 Protection Order**

13 Does not apply.

14  
15 **3.8 Attorney Fees and Costs**

16 There is a need for Respondent to be awarded attorney's fees and Petitioner has the  
17 ability to pay the same. Respondent is awarded reasonable attorney's fees.

18  
19 **3.9 Other**

20 From the findings of fact set forth in sections 2.1 through 2.21 hereof, the Court makes  
21 the following:

22  
23 **CONCLUSIONS OF LAW**

1. Under the 2000 California domestic partnership registration, the parties enjoyed only limited rights relating to hospital visitation rights, and the ability for certain local governmental employers to offer health care coverage. Neither party acquired any community property rights or quasi community property interest in the property or income of the other party pursuant to their initial registration.
2. When the parties moved to Washington in June 2000, no registered domestic partnership rights from California were recognized in Washington. Washington did not recognize reciprocal registered domestic partnerships until June 12, 2008 with the passage of RCW 26.60.090. The parties received no notification of the California expansion of domestic partnership law effective on January 1, 2005. Thus, they had no opportunity to opt out as provided by California law.
3. Neither Dr. Walsh nor Ms. Reynolds took any action to terminate their California Domestic Partnership at any time. Therefore, the 2003 expansion of California's Domestic Partnership statutes, with an effective date of January 1, 2005, applies to

1 these parties even though neither party actually received the notices required by the  
2 statute prior to its effective date.

3 4. Prior to the effective date of the expansion of California Domestic Partnership law  
4 (January 1, 2005), each party had vested property rights in all assets and income  
5 acquired by that party prior to that date. Prior to the amendment of California's  
6 Domestic Partnership laws and the 2008 amendment to Washington's domestic  
7 partnership act, neither Dr. Walsh nor Ms. Reynolds could have had notice or any  
8 reasonable expectation that the property each was accumulating would be  
9 characterized in any manner other than how they chose to characterize it. There was  
10 no ability for domestic partners to accumulate or create community property in  
11 California until January 1, 2005, and in Washington until the 2008 amendment to the  
12 Domestic Partnership statute (RCW 26.16 et seq). Accordingly, prior to those dates  
13 there is no legal basis for finding an equitable relationship to exist without violating  
14 the constitutional rights of the parties.

15 5. The Washington State Constitution, Article I, Section 23 prohibits the State from  
16 application of any ex post facto laws. Application of the equitable relationship  
17 doctrine prior to the January 1, 2005 effective date of California's expanded domestic  
18 partnership law would deprive these individuals of vested property rights without due  
19 process of law. Retroactive application of a statute is unconstitutional if it deprives an  
20 individual of a vested right without due process of law. A right is vested when it is  
21 already processed or legitimately required. It would be unconstitutional to divest these  
22 parties of vested property interests in existence prior to the January 1, 2005 effective  
23 date.

6. Notwithstanding, the Court has broad equitable powers to carry out the legislative  
intent behind the domestic partnership statute (RCW 26.60.15), which is to treat  
Washington's domestic partners the same as if they were spouses. The Court therefore  
holds as a matter of law that an equitable relationship existed between Dr. Walsh and  
Ms. Reynolds during the time from January 1, 2005 to August 20, 2009.

7. The equity relationship doctrine allows the Court to make a just and equitable division  
of property "that would have been characterized as community property had the  
parties been married." Connell v. Francisco, 127 Wn.2d. 339, 350, 898, P2d 831  
(1995). Unlike the division of property upon dissolution of a marriage, where both  
community and separate property are before the Court for equitable division, a Court  
dividing property acquired during an equity relationship has discretion to equitably  
divide only that property that would have been characterized as community if the  
parties had been married. Olver v. Fowler, 131 Wn.App. 135, 140; 126 P.3d 69, 72-73  
(2006). Therefore only property that was acquired or accumulated between January 1,  
2005 and August 20, 2009 (the date of the Washington domestic partnership  
registration) is before the Court for equitable distribution,

1 8. Petitioner and Respondent registered as domestic partners under RCW 26.60, on  
2 August 20, 2009, thereby creating a valid Washington Domestic Partnership. (See  
3 *Exhibit 40*).

4 9. Property obtained after the date of registration, August 20, 2009, but before the date of  
5 separation on March 14, 2010, is community in character and is subject to RCW  
6 26.60.080.

7 10. The Court finds that an equitable distribution of property acquired by the parties  
8 between January 1, 2005 and March 14, 2010 is 50/50.

9 11. An "equity relationship" is a stable marital-like relationship where both parties  
10 cohabit with the knowledge that a lawful marriage between them does not exist.  
11 Equitable claims are not limited by the gender or sexual orientation of the parties (In  
12 Re: Long and Fregeau, 158 Wn.App.919, 244 P.3d 26 (2010)). Applying the factors of  
13 the equity relationship doctrine, the Court concludes as follows:

14 A. Continuous cohabitation: Except for a few brief interruptions, the parties  
15 cohabitated from 1988 until 2010. Their intimate relationship ceased in 1994,  
16 except for a brief time in 2007.

17 B. The purpose of the relationship: the purpose of the relationship was to create  
18 a family. The commitment of the parties was to the children, not to each other.  
19 Respondent stated at trial that her purpose for entering the Domestic  
20 Partnership was to "make the family stronger." Respondent never stated the  
21 registration was to commit to a relationship with Petitioner. The parties  
22 conceived, gave birth to and cross-adopted three children and held themselves  
23 out to the world as a family.

C. Pooling of resources and services for joint projects: Dr. Walsh was the sole  
financial support of the family. While Dr. Walsh was the principal earner, the  
parties contributed their time and energy to the raising of their family. They  
jointly remodeled the Federal Way home, although it was Dr. Walsh who paid  
for the remodel from earnings prior to January 1, 2005.

D. Intent of the parties: The parties clearly intended to maintain separate assets  
and liabilities, with limited exceptions such as the Federal Way property and  
the Sprinter Van. The also intended to live together as a family.

Weighing these factors, the equity relationship doctrine applies as of January 1,  
2005; the date upon which California's expanded domestic partnership law became  
effective. Prior to January 1, 2005, there was no ability for domestic partners to  
accumulate or create community property and no legal basis for finding an  
equitable relationship to exist without violating the constitutional rights of the

1 parties. As a matter of law, an equity relationship existed between Dr. Walsh and  
2 Ms. Reynolds during the time from January 1, 2005 until August 20, 2009.

3 12b. The Court lacks jurisdiction over the parties separate property during the term  
4 of the equity relationship, which is defined as all property acquired prior to January 1,  
5 2005. All separate property shall be awarded to the party who holds the separate  
6 property in accordance with RCW 26.16.010.

7 13a. Any community property that was acquired or accumulated between January 1,  
8 2005 and March 14, 2010 is before the Court for equitable distribution. An equitable  
9 distribution is a 50/50 distribution of community property acquired during that time  
10 period. The property distribution should be made as follows:

11 A. Respondent should be awarded the 2010 Nissan Frontier truck and petitioner  
12 shall be awarded the 2006 Subaru and the 2003 Toyota.

13 B. The GroupHealth Pension, 401k Salary Deferral Plan and Profit Sharing Plan  
14 acquired between January 1, 2005 and March 14, 2010 is community property  
15 subject to equal division and should be divided between the parties evenly.  
16 Petitioner shall retain all amounts acquired before January 1, 2005 and after  
17 March 14, 2010. (See Exhibits 18-19).

18 C. Each party should be awarded the household goods, furniture, furnishings and  
19 their personal effects in her possession, except that Petitioner should be  
20 awarded the following personal belongings currently in the possession of  
21 Respondent if the parties can agree upon a specific list, such as: gifts to  
22 Petitioner from her relatives, art from Petitioner's office and photos/pictures of  
23 the children currently in Respondent's possession, plus other separate property  
owned by her prior to January 1, 2005. If either party has photographs of the  
children they shall make them available to the other party for copying.

14a. When the parties executed the deed to the Federal Way property, legally  
described as , the south 390 feet of the north 938 feet of the west 330 feet of the east  
457.875 feet of the southwest quarter of the southeast quarter of Section 1, Township  
21 North, Range 3 East, W.M, in King County, Washington Except any portion  
thereof with the west 15 feet of the east 142.875 feet of the south 500 feet of said  
southwest quarter of the southeast quarter; and commonly known as 30210 23<sup>rd</sup> Ave.  
SW, Federal Way, WA, it did not convert the home to community property. (See  
Exhibit 32).

15a. The Federal Way property is not held as joint tenants with right of  
survivorship, but as tenants in common between Petitioner and Respondent. The joint  
tenancy never came into being because Petitioner financed the property in her sole  
name and therefore there were not the requisite unities of title legally required for a

1 joint tenancy. Therefore, each party has an interest in the property consistent with  
2 financial contributions of each. All funds Petitioner expended to purchase and  
3 remodel the property prior to January 1, 2005 shall be returned to her. (See Exhibit  
4 33).

5 ~~16~~ 10. The Federal Way property was acquired before January 1, 2005 and as such  
6 has both separate and community property interest. All contributions to the acquisition  
7 and construction of the Federal Way property are traceable to Petitioner's separate  
8 property, and Petitioner made all subsequent contributions to the mortgage, utilities,  
9 and other costs associated with the home. Petitioner's father's contributions of  
10 \$180,000 are allocable to Petitioner. She also contributed \$30,000 from inherited  
11 funds to pay down the mortgage obligation just prior to separation in March 2010.  
12 These amounts shall be awarded to Petitioner prior to determining the net proceeds  
13 available for equal division between the parties.

14 ~~17~~ 11. No maintenance should be awarded to Respondent for the following reasons:  
15 A. The Respondent has not provided sufficient facts required for analysis  
16 of the statutory factors necessary for the Court to award maintenance  
17 pursuant to RCW 26.09.090.  
18 B. Dr. Walsh has already paid for Ms. Reynolds to obtain an  
19 undergraduate college degree. Her request for unspecified additional  
20 money for education does not provide the Court with sufficient factual  
21 or legal basis for the award of maintenance.  
22 C. Ms. Reynolds has already started a business and has the ability to  
23 become self reliant. To the extent she has been awarded assets  
accumulated from the effective date of January 1, 2005 and her own  
separate assets she does not need maintenance.  
D. Dr. Walsh has made significant contributions to Ms. Reynolds since  
separation. Pursuant to the Temporary Orders entered in September  
2011 Petitioner has paid \$2589/month in child support for two children  
until July 2012, while only one child actually resided with Respondent.  
Petitioner will continue to pay child support for the child residing with  
Respondent until September 2017.  
E. Since 1988 the respondent has received over \$500,000.00 from  
Petitioner, nearly all discretionary.  
F. The Court finds that Respondent is able to meet her reasonable monthly  
living expenses based upon earnings/assets, including the child support  
transfer payment.

24 ~~18~~ 13. An award of attorney's fees in a dissolution proceeding is based on need and  
25 ability to pay. RCW 26.09.140 applies to the dissolution of domestic partnerships  
even though it was not among the statutes specifically amended by the legislature.  
The statute refers to parties to a dissolution proceeding and not to spouses, so a  
specific amendment was not required. The Court holds the statute applicable in this  
case in which the parties' registered domestic partnership lasted for seven months.

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The disparity in the income of the parties requires the Court to award Ms. Reynolds 100% of her attorney's fees to be paid by Dr. Walsh. *This Court Finds \$39,117.50 reasonable in fees and \$2,400.75 in costs to be reasonable.*

19. 14. Each party should promptly sign all deeds, excise tax affidavits and other documents necessary to transfer assets as set out herein.

20. 15. The domestic partnership should be dissolved and a decree of dissolution of the parties' registered Domestic Partnership should be entered.

21. 16. Final distribution of funds awarded to the parties below cannot be determined until the house is sold and the net distribution of all assets can be calculated.

The Petitioner should be awarded the following:

- A. Petitioner's USAA SEP IRA (100% acquired prior to January 1, 2005) is awarded to Petitioner as her separate property;
- B. The 2006 Subaru automobile is awarded to Petitioner;
- C. The 2003 Toyota Camry is awarded to Petitioner
- D. 50% of Group Health Permanente Pension and 401k Salary Deferral Plan and Group Health Cash Balance Pension Plan accumulated between January 1, 2005 and March 14, 2010 subject to gains and losses thereon, as follows:

Employee 401(k):	\$106,554.41
Retirement:	\$49,391.83
Profit Sharing:	\$4,984.94
<u>Cash Balance Pension Plan:</u>	<u>\$2,143.76</u>
TOTAL:	\$163,064.39

E. Petitioner is awarded 100% of Group Health Permanente Pension and 401k Salary Deferral Plan and Group Health Cash Balance Pension Plan accumulated prior to January 1, 2005 and After March 14, 2010, subject to gains and losses thereon;

F. Petitioner is awarded her USAA Investment account in her name except for ~~\$43,169.42~~ which is awarded to Respondent (subject to gains/losses)

Balance as of March 14, 2010:	\$500,890.72
Petitioner's Inheritance from Gerald Walsh:	<del>(\$90,000.00)</del>
	<del>\$410,000.72</del> \$410,890.72
Balance as of January 1, 2005	<del>(\$324,797.87)</del>
	<del>\$86,392.85</del> \$86,092.85
	<del>43,046.42</del>
	<u>\$43,196.43 to each party.</u>

1  
2 G. Petitioner is awarded \$2,000.00 from Respondent to re-pay the loan from  
Petitioner. This amount may be deducted from sums awarded to Respondent;

3  
4 H. Petitioner is awarded all right, title and interest to the home and real property  
commonly known as 3917 N. 37<sup>th</sup> St., Tacoma, WA. Subject to mortgage  
thereon in her sole name and legally described as:

5  
6 Lots 11 and 12 in Block 7 of March-MoCandless Addition to Tacoma, as per  
plat recorded in book 8 of plat B page 50 records of Pierce County Auditor;  
situated in the City of Tacoma, County of Pierce, State of Washington.;

7  
8 I. 50% of the net proceeds from the sale of the following assets:

- 9 1) 2007 Sprinter Van;  
10 2) 2007 Fleetwood Tent Trailer  
11 3) Kubota Tractor  
12 4) Eagle Trailer

Respondent shall be responsible for  
selling these items. The parties shall  
use best efforts to reach agreement  
on all terms of sale. If agreement  
cannot be reached, the dispute shall  
be submitted to Christopher Key to  
resolve.  
Costs of  
resolving any dispute resolution  
shall be part of the costs of  
sale.

11 J. ~~One~~ <sup>Her share</sup> half of the net proceeds from the sale of the home and real property  
commonly known as 30210-23<sup>rd</sup> Avenue SW, Federal Way, WA. Net  
proceeds shall be determined as follows:

13 Sale Price: TBD

14 Less: Costs of sale, commissions, closings costs/fees, pro-rated taxes

15 Less: Mortgage balance at separation; \$256,729.23 (prior to Dr. Walsh's principal  
payment of \$30,000.00 on February 2, 2010)

16 Less: Principal mortgage reduction from date of refinance

(5/10/04) to 1/1/05:

\$10,834.42

Subtotal:

\$267,653.65

17 ~~Less Dr. Walsh's Down payment and finance charges:~~

~~\$320,840.32~~

18 Net PROCEEDS: 51.89% to Dr. Walsh  
48.11% to Ms Reynolds

19 ~~Half to each party:~~

Sale price less \$40,834.42 to Dr. Walsh

20 \*\*Subject to conditions of sale set out herein.

21 L. Each party should be awarded the household goods, furniture, furnishings and  
22 their personal effects in her possession, except that Petitioner should be awarded the  
following personal belongings currently in the possession of Respondent: gifts to  
23 Petitioner from her relatives, art from Petitioner's office and photos/pictures of the  
children currently in Respondent's possession, plus other separate property owned by  
her prior to January 1, 2005.

\* 50% of net proceeds of  
Sale of personal property,  
as set forth in PI, page 20.

Respondent should be awarded the following:

- A. 2010 Nissan Frontier Truck, subject to indebtedness thereon;
- B. 50% of Petitioner's Group Health Permanente Pension and 401k Salary Deferral Plan and Group Health Cash Balance Pension Plan accumulated between January 1, 2005 and March 14, 2010, subject to gains and losses thereon as follows:

Employee 401(k):	\$106,554.41	
Retirement:	\$49,381.83	
Cash Balance Pension Plan	\$4,984.31	\$2,143.76
TOTAL:	\$160,920.55	\$163,064.39

Profit Sharing

- C. USAA Retirement accounts in Respondent's sole name including:

S/D SEP:	\$35,111.23	
SEP IRA:	\$10,176.18	\$43,046.42

- D. Respondent is awarded the sum of ~~\$43,169.42~~ from Petitioner's USAA Federal Savings Bank Investment account, subject to gains and losses thereon;

- E. All right, title and interest in and to the James Reynolds Family Trust, including the proceeds of the sale of real property held by the trust;

- F. All right, title and interest in and to the business known as Les Scoop Too, including all business equipment and all liabilities thereof;

G. (1) Steinway Piano;

Her share

H. ~~One-half~~ of the net proceeds from the sale of the home and real property commonly known as 30210-23<sup>rd</sup> Avenue SW, Federal Way, WA. Net proceeds shall be determined as follows:

Sale Price: TBD

Less: Costs of sale, commissions, closings costs/fees, pro-rated taxes

Less: Mortgage balance at separation: \$256,729.23 (prior to Dr. Walsh's principal payment of \$30,000.00 on February 2, 2010)

Less: Principal mortgage reduction from date of refinance (5/10/04) to 1/1/05:

\$10,834.42

Subtotal:

\$267,653.65

Net Proceeds: 51.89% to Dr. Walsh  
48.11% to Ms. Reynolds

1 ~~Less Dr. Walsh's Down payment and finance charges. \$320,840.32~~

2  
3 One-half to each party: Sale price less \$ 40,834.42 to Dr. Walsh

4 *I.F.* Each party should be awarded the household goods, furniture, furnishings and  
5 their personal effects in her possession, except that Respondent should be awarded the  
6 following personal belongings currently in the possession of Petitioner: gifts to  
7 Petitioner from her relatives and photos/pictures of the children currently in  
8 Petitioner's possession, plus other separate property owned by her prior to January 1,  
9 2005.

7 Conditions of Sale:

- 8 A. The Federal Way home will be sold. It shall be listed forthwith by a listing agent  
9 chosen by agreement of the parties. If they are unable to agree, they will utilize the  
10 USAA Mover's Advantage Program;
- 11 B. The parties shall continue to own the property as tenants in common, pending sale  
12 closing;
- 13 C. The parties shall cooperate fully in the sale process; and unless they agree otherwise,  
14 they shall follow all recommendations of the agent in connection with the listing and  
15 sale; provided that if either party objects to a particular recommendation, Christopher  
16 Keay will arbitrate and the costs of arbitration shall become part of the cost of sale  
(RCW 7.04);
- 17 D. If any agreed upon recommendation of the agent, requires an out of pocket  
18 expenditure, the one paying it shall be reimbursed fully, dollar for dollar, from the sale  
19 proceeds as though it were a cost of sale;
- 20 E. Pending a sale closing, Ms. Reynolds may continue to reside on the property and shall  
21 be responsible for paying ~~\$1,500.00 per month to Dr. Walsh, plus~~ utilities and all  
22 normal expenses of upkeep and maintenance. Dr. Walsh will continue to pay the  
23 mortgage payments (including taxes/insurance), *until the sale closes.*

17 Liabilities to Respondent:

- 18 1. All liabilities associated with the business known as Les Scoop Too including  
19 all equipment and debts;
- 20 2. 2010 Nissan Frontier Truck loan;
- 21 3. All credit card accounts in Respondent's name only;
- 22 4. All liabilities incurred since separation (\$2,000.00 payable to Petitioner)

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Dated: November 5, 2012.

*Stephanie Arend*  
Judge Stephanie Arend

FILED  
DEPT 12  
IN OPEN COURT  
NOV 05 2012  
Clerk  
DEPUTY

Presented by:

Approved for entry:

Notice of presentation waived:

*Barbara A. Henderson*  
Barbara A. Henderson, WSBA #16175  
Attorney for Petitioner

*Jan M. Dyer*  
Jan M. Dyer, WSBA #20356  
Attorney for Respondent

*Jason Walsh*  
Jason Walsh, Petitioner

*Kathryn Reynolds*  
Kathryn Reynolds, Respondent

Any accounts held jointly in the name of either Petitioner or Respondent, or both of them, and any child of theirs, shall be held for the sole benefit of that child.

## COMPARISON OF 2012 & 2016 TRIAL TESTIMONY

### Similarities Between the 2012 & 2016 Testimony

<u>Topic</u>	<u>2012 Trial</u>	<u>2016 Trial</u>
Walsh purchased Fresno house in 1986.	RP 39, 42	RP 190
Parties met in 1988 at Walsh's private practice; started dating after terminating physician/patient relationship.	RP 40, 48, 214	RP 186
Parties had separate bank accounts.	RP 41	RP 87
Walsh purchased her private practice from two brothers. Later sold her practice for \$20,000.	RP 40, 61, 216	RP 191, 245-46 (paid \$80,000 for the practice)
Reynolds moved into Walsh's house around October 1988. Walsh's house looked "brand new."	RP 49	RP 186, 372
After moving in, Reynolds took over the housework that had been performed by Walsh's housekeeper. Walsh paid Reynolds the same as the former housekeeper.	RP 49-50	RP 87, 202 (Walsh gave Reynolds money every month); 298 (Reynolds used the money for the house, children, etc.)
Reynolds believed she kept a good home, cleaning, doing the laundry, etc.	RP 228	RP 373
Moved to Washington in 2000.	RP 5	RP 201
Walsh made the mortgage payments on all their houses.	RP 51	RP 190
Walsh paid for Reynolds' college tuition.	RP 53	RP 203
The parties decided they wanted to have a family after being together for a short while.	RP 53 (decided they wanted children in 1990), 217	RP 193, 290, 295-96 (talked about having a family 6-8 months after starting their relationship)

App. D

<b>Topic</b>	<b>2012 Trial</b>	<b>2016 Trial</b>
Parties executed wills and durable powers of attorney, designating each other as their beneficiaries and giving each other decision-making authority. In these documents, each referred to the other as her "life partner."	RP 55, 164-65 (intended to create these documents because the parties couldn't get married), 446	RP 216-17
Reynolds was unable to get pregnant via artificial insemination so Walsh agreed to carry and Julia was conceived by artificial insemination. Julia was born in 1992 and Reynolds provided daycare.	RP 55-57, 132, 220	RP 193-95
Reynolds adopted Julia in December 1993.	RP 57, 67	RP 197
At some point after Julia was born, Reynolds moved out but then the parties reconciled after Julia had a serious operation.	RP 58-59, 302-03	RP 247, 90
After having a miscarriage, Walsh became pregnant with Joe. Parties stopped having sex after Joe was born.	RP 60, 100	RP 90, 197
Walsh sold her share of Value Care for \$131,716.22, depositing that money into a USAA money market account.	RP 62-63	RP 241
Reynolds adopted Joe.	RP 65, 68 (adoption was in 1997)	RP 199
Walsh paid the family's expenses, Reynolds did not contribute to the family expenses. In 2000, Reynolds was authorized on Walsh's credit card which Reynolds used for household expenses.	RP 68-69, 355, 383	RP 88, 96
From 1990-2011, Walsh paid Reynolds around \$500,000.	RP 70	RP 88, 203
Parties registered their Domestic Partnership in California in 2000. Walsh wanted to enter into a domestic partnership because she felt "invisible."	RP 71, 245	RP 96
Walsh gave Reynolds a ring.	RP 246	RP 186

<b>Topic</b>	<b>2012 Trial</b>	<b>2016 Trial</b>
Walsh purchased 20-acres of land in Fresno that the parties intended to build a house on. Sold the property in Fresno and used that money to pay down the debt on the house they owned in Northeast Tacoma.	RP 73-74, 251	RP 199-200, 241-42
Facilitating the parties' plan to build a home on the 20-acre Fresno property, Reynolds was responsible for working with the architect to develop plans.	RP 251, 401	RP 200, 373-74
The family moved to Washington after Walsh accepted a job at Group Health, as an orthopedic surgeon.	RP 72, 75	RP 79, 201
Reynolds stopped paying taxes on the money she got from Walsh.	RP 79	RP 235, 356-57
Parties sent the children to private school.	RP 82	RP 189 (sent the children to Catholic school)
Reynolds was finally able to conceive after having a polyp removed from her uterus and became pregnant with Emily in 1998.	RP 83, 235	RP 282-83, 295
Purchased the Federal Way house in 2003, and Walsh made a \$350,000 down payment.	RP 83, 85	RP 164-65
Refinanced the loan on the Federal Way house so it could be torn down and rebuilt/remodeled.	RP 87	RP 165
Walsh's father paid for some of the cost of rebuilding the Federal Way house.	RP 89 (Walsh's father paid \$180,000 to \$185,000), 367	RP 168 (Walsh's father paid \$177,000) (dead-man statute objection sustained)
Walsh's father lived with the family in the Federal Way house.	RP 89, 92, 305	RP 208-09
Walsh received 2-3 installments of \$30,000 from her father.	RP 93	RP 112-13
Walsh received \$120,000 as an inheritance from her father.	RP 93	RP 181
Parties sued the builder/contractor on their Federal Way house.	RP 90, 288	RP 211

<b>Topic</b>	<b>2012 Trial</b>	<b>2016 Trial</b>
There was a law suit against the title company for a property line/boundary dispute.	RP 288	RP 169
In 2009 the parties registered as domestic partners in Washington.	RP 94, 247	RP 189
Walsh invested \$1.1 million into the Federal Way house (purchase and reconstruction). There will be a net loss even after sale of the house.	RP 103-04	RP 172
Walsh paid off an \$800 credit card bill that Reynolds had incurred from buying a stereo when the couple first got together.	RP 104, 432	RP 96
In 2004, the parties participated in an invalid wedding ceremony in Oregon.	RP 106-10	RP 189, 213
Parties could have gotten legally married in California in 2008 but chose not go.	RP 111	RP 214
In 2012, Walsh predicted that Julia would attend graduate school. In 2016, Walsh testified that Julia had attended graduate school. Walsh paid for Julia's school.	RP 115	RP 80, 387
In 2012, Julia and Joseph lived with Walsh and Emily lived with Reynolds. In 2016, Julia, Joseph, and Emily lived with Walsh.	RP 114, 323	RP 227, 229
Walsh discusses the balance of her SEP IRA account and states that she has not made any withdrawals. USAA manages this account.	RP 121-125	RP 114-17, 122.
Walsh discusses her USAA investment account.	RP 136-37	RP 111, 114-15, 167, 177, 179
Walsh discusses her Group Health retirement accounts which have different components: "retirement," the "401(k)," and "profit-sharing."	RP 139-40	RP 123-25
Walsh believes that the parties never jointly owned property, other than what was titled in both their names.	RP 148	RP 214-15

<b><u>Topic</u></b>	<b><u>2012 Trial</u></b>	<b><u>2016 Trial</u></b>
The parties are both listed as “borrowers” for the Federal Way mortgage. The parties are listed as joint tenants with the right of survivorship.	RP 158-60	RP 210, 287
The statutory warranty deed for the Federal Way home has a section stating the grantees’ intention that it was not their intention to create community property, but to execute the document or inheritance purposes.	RP 85	RP 226
The parties are both named as plaintiffs against the contractors for the Federal Way house.	RP 161	RP 211
Walsh claimed Reynolds as a dependent so Reynolds could get medical insurance through Walsh.	RP 200-01, 205	RP 205-06, 235, 370
Reynolds has a degree in construction management.	RP 213	RP 200
Reynolds does not understand her tax returns.	RP 241, 243	RP 355
Reynolds owned a garden maintenance business.	RP 212	RP 277-78 (business called Le Scoop Garden Maintenance where her acquaintance scooped dog poop and Reynolds went after and mowed the lawns. Business was dissolved after a number of years.)
Reynolds did not like the Northeast Tacoma house and wanted to move.	RP 256	RP 207
Reynolds received inheritance money from her father.	RP 293	RP 277
Reynolds cared for Walsh’s family.	RP 306	RP 305
While Walsh’s father lived with the parties in their Federal Way house, Reynolds would care for him by bringing him food and helping him to the doctor.	RP 308	RP 208-09

<b><u>Topic</u></b>	<b><u>2012 Trial</u></b>	<b><u>2016 Trial</u></b>
Because of the work she did for the family (i.e., staying home while Walsh practice medicine), Reynolds was never able to develop a resume or meaningful work experience.	RP 309	RP 318-19
Reynolds asked the court to award her maintenance.	RP 310, 408	RP 317
After separation, Walsh loaned Reynolds \$2,000. There is an email saying that the loan will be repaid.	RP 333, 387	RP 175-76
Reynolds has a credit card with Farm Bureau.	RP 348	RP 182
Walsh paid to have the Steinway piano refurbished.	RP 365	RP 360, 387
Reynolds asks the court to award her attorney fees.	RP 408, 412	RP 312 (the court had previously awarded Reynolds attorney fees), 317 (asking for attorney fees in this action)
Discussions of the parties' physical intimacy.	RP 59-60, 99-100, 332-33	RP 90, 193, 212, 226-27, 252-55

**Differences Between the 2012 & 2016 Testimony**

<b><u>Topic</u></b>	<b><u>2012 Trial</u></b>	<b><u>2016 Trial</u></b>
Extensively discussed Julia's education and that she now has seizure disorder (diagnosed sometime in 2015) and how it prevents her from being able to work. Julia has to live at home and cannot complete her graduate studies.	Not discussed	RP 80-85, 223-25
Walsh believes that the culture around same-sex relationships is "transient."	Not discussed	RP 246, 250-52
The parties did not serve as the other's birth coach during their children's deliveries.	Not discussed	RP 91, 245, 271

<b>Topic</b>	<b>2012 Trial</b>	<b>2016 Trial</b>
Discussed the furnishings that each party took from the Federal Way house prior to its sale.	Not discussed	RP 309-10
William Deaton, CPA, testified (1) on the differences between the dissolution of a domestic partnership vs. a dissolution of marriage under the U.S. tax code, (2) what penalties and taxes would be applicable to withdrawals from Walsh's retirement plans, and (3) on the tax consequences related to the fact that a QDRO would not likely be available in this case and what the tax ramifications would be of that.	Did not testify	RP 131-56
Court allowed "both sides to present evidence [ ] relevant to any of the assets that were before the Court when the Court heard the trial before and made a distribution of those assets and <i>what's happened to those assets since.</i> "		RP 162; <i>see, e.g.</i> , RP 158-66.
In 2013, after the separation, Reynolds purchased a house with her then-girlfriend, Lisa Brummond. As of the 2016 trial, she is in the process of selling the house and had moved into an apartment.	Not discussed	RP 276-77, 315, 319-20, 327, 335-36, 341-47, 353
Discussion of Reynolds' relationship with Lisa Brummond.	Not discussed	RP 327, 329, 345-48, 351, 365, 372
Discuss Walsh's alleged handwritten edits to Reynolds' resume (Exhibit 167) where the corrections list Reynolds as a "homemaker" and "spouse."	Not discussed	RP 279-80, 375-76

**SMITH GOODFRIEND, PS**

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**Superior Court Case Number:** 11-3-00924-5

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