

FILED
Court of Appeals
Division II
State of Washington
6/22/2018 3:29 PM

51125-8-II

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

JEAN M. WALSH,

Respondent/Cross-Appellant,

v.

KATHRYN L. REYNOLDS,

Appellant/Cross-Respondent.

BRIEF OF RESPONDENT/CROSS-APPELLANT JEAN M. WALSH

Barbara A. Henderson,
WSBA No. 16175
Robert E. Mack,
WSBA No. 6225
SMITH ALLING, P.S.
Attorneys for Respondent/Cross-
Appellant
JEAN M. WALSH

1501 Dock Street
Tacoma, Washington 98402
Telephone: (253) 627-1091
Facsimile: (253) 627-0123

TABLE OF CONTENTS

I. INTRODUCTION..... 1

II. CROSS-APPEAL ASSIGNMENTS OF ERROR 1

III. CROSS-APPEAL STATEMENT OF ISSUES..... 3

IV. STATEMENT OF THE CASE..... 5

V. RESPONSE TO REYNOLDS’ STATEMENT OF FACTS..... 7

 A. The remand from this Court did not require finding
 a pre-2005 start date..... 7

 B. Following the trial, not objected to by either party,
 the trial court reconsidered, not reinstated, its earlier
 ruling..... 8

WALSH’S ARGUMENT ON APPEAL

VI. STANDARD OF REVIEW 9

 A. Determinations based upon equitable doctrines are
 reviewable for abuse of discretion 9

 B. The issue of when an equity relationship began or
 ended is a question of fact..... 10

 C. Property division following an equitable
 relationship is reviewed for abuse of discretion 11

VII. WALSH’S SUBSTANTIVE ARGUMENT ON
 APPEAL 12

 A. The Court of Appeals should reconsider certain
 rulings of law made in 2014 because they
 misapplied common law and violated Walsh’s
 constitutional rights..... 12

B. The trial court erred in distributing property acquired by Walsh before August 20, 2009 to Reynolds	14
1. Taking Walsh’s property and giving it to Reynolds would violate the Takings Clause of the Federal and State Constitutions.....	14
2. Taking Walsh’s property and giving it to Reynolds would violate the due process clause of the Fourteenth Amendment of the United States Constitution and Article 1, Section 3 of the State Constitution.....	19
3. Taking Walsh’s property and giving it to Reynolds would violate the Equal Protection Clause of the Fourteenth Amendment	22
C. It was error to distribute Walsh’s separate property to Reynolds under Washington common law	25
D. The equitable relationship doctrine does not create a common law marriage.....	31
VIII. WALSH’S ARGUMENT IN RESPONSE TO REYNOLDS’ BRIEF.....	32
A. The law of the case doctrine does not prevent reconsideration.....	32
1. The trial court followed the mandate	32
B. The law regarding oral prenuptial agreements was extended to parties in an equity relationship after the conclusion of the first trial	37
C. Substantial evidence supports the trial court’s reconsideration of application of the <i>Long</i> Equity Relationship Factors.....	38

1. The lack of intimacy between the parties was not limited to their sexual relationship.....	38
2. The financial arrangement between the parties indicated their relationship was not “marital-like”.....	39
3. Both parties evidenced mutual intent to control their own assets	40
4. The parties’ intent regarding domestic partner registration is a question of fact. Application of the equity relationship doctrine contravenes the intent of the parties.....	41
D. The trial court correctly denied Reynolds attorney fees in compliance with this Court’s mandate	43
E. This case should not be remanded to a different judge.....	45
F. Attorney fees on appeal should be denied	47
IX. CONCLUSION.....	47

APPENDICES:

Appendix A: Findings of Fact and Conclusions of Law (Registered Domestic Partnership) Proposed by Petitioner, filed November 5, 2012. (CP 359-81)	
Appendix B: Findings and Conclusions on Remand Following Dissolution of a Registered Domestic Partnership, filed November 22, 2017. (CP 631-45)	
Appendix C: Comparison of Reynolds’ Statement of Facts to Record.	
Appendix D: Additional Evidence from 2016 Trial Testimony Only.	
Appendix E: U.S. Constitution – Fourteenth Amendment; Amendment 5.	

Appendix F: California AB 26, Ch. 588, October 10, 1999.

Appendix G: Washington State Final Bill Report, 2SHB 3104, effective
June 12, 2008.

TABLE OF AUTHORITIES

TABLE OF CASES

STATE

<i>Arkinson v. Ethan Allen, Inc.</i> , 160 Wn.2d 535, 160 P.3d 13 (2007).....	10
<i>Asche v. Bloomquist</i> , 132 Wn. App. 784, 133 P.2d 475 (2006).....	16, 20, 45
<i>Bank of America, N.A. v. Owens</i> , 153 Wn. App. 115, 221 P.3d 917 (2009).....	19
<i>Connell v. Francisco</i> , 127 Wn.2d 339, 898 P.2d 831 (1995)	14, 44
<i>Continental Casualty Co. v. Weaver</i> , 48 Wn. App. 607, 739 P.2d 1192 (1987).....	44
<i>DewBerry v. George</i> , 115 Wn. App. 351, 62 P.3d 525 (2003).....	37
<i>Dragt v. Dragt/DeTray, LLC</i> , 139 Wn. App. 560, 161 P.3d 473 (2007).....	27
<i>Eastlake Cmty. Council v. Roanoke Assoc., Inc.</i> , 82 Wn.2d 475, 513 P.2d 36 (1973).....	27
<i>Folise v. Folise</i> , 113 Wn. App. 609, 54 P.3d 222 (2002), <i>rev. denied</i>	34
<i>Gormley v. Robertson</i> , 120 Wn. App. 31, 83 P.3d 1042 (2004).....	15, 18, 31
<i>Harris v. Fortin</i> , 183 Wn. App. 522, 333 P.3d 556 (2014)	9
<i>Harris v. Ski Park Farms, Inc.</i> , 120 Wn.2d 727, 844 P.2d 1006 (1993).....	36

<i>Heaton v. Imus</i> , 93 Wn.2d 249, 608 P.2d 631 (1980).....	28
<i>Holst v. Fireside Realty, Inc.</i> , 89 Wn. App. 245, 948 P.2d 858 (1997).....	12
<i>Hough v. Ballard</i> , 108 Wn. App. 272, 31 P.3d 6 (2001).....	34
<i>In re Gallagher’s Estate</i> , 35 Wn.2d 512, 213 P.2d 621 (1950).....	31
<i>In re Kelly and Moesslang</i> , 170 Wn. App. 722, 287 P.3d 12 (2012).....	44
<i>John H. Sellen Const. Co. v. Dep’t of Revenue</i> , 87 Wn.2d 878, 558 P.2d 1342 (1976).....	42
<i>Marriage of Fahey</i> , 164 Wn. App. 42, 262 P.3d 128 (2011).....	10
<i>Marriage of Greene</i> , 97 Wn. App. 708, 986 P.2d 144 (1999).....	10, 40
<i>Marriage of Kaseburg</i> , 126 Wn. App. 546, 108 P.3d 1278 (2005).....	11
<i>Marriage of Landry</i> , 103 Wn.2d 807, 699 P.2d 214 (1985).....	18
<i>Marriage of Lindsey</i> , 101 Wn.2d 299, 678 P.2d 328 (1984).....	24, 26
<i>Marriage of McLean</i> , 132 Wn.2d 301, 937 P.2d 602 (1997)	23
<i>Marriage of Pennington</i> , 142 Wn.2d 592, 14 P.3d 764 (2000).....	9, 11, 47
<i>Marriage of Tower</i> , 55 Wn. App. 697, 780 P.2d 863 (1989)	11
<i>Milone & Tucci, Inc. v. Bona Fide Builders, Inc.</i> , 49 Wn.2d 363, 301 P.2d 759 (1956).....	28
<i>Muridan v. Redl</i> , 3 Wn. App. 2d 44, 413 P.3d 1072 (2018).....	10, 11, 31, 39, 47

<i>Newport Yacht Basin Ass'n. of Condo. Owners v. Supreme NW, Inc.</i> , 168 Wn. App. 56, 277 P.3d 18 (2012).....	36
<i>Olympic Forest Prod., Inc. v. Chaussee Corp.</i> , 82 Wn.2d 418, 511 P.2d 1002 (1973).....	22
<i>Parentage of G.W.-F.</i> , 170 Wn. App. 631, 285 P.3d 208 (2012).....	37, 38
<i>Relationship of Long</i> , 158 Wn. App. 919, 244 P.3d 26 (2010).....	29, 38
<i>Roberson v. Perez</i> , 119 Wn. App. 928, 83 P.3d 1026 (2004).....	12
<i>Samuel's Furniture, Inc. v. Dep't of Ecology</i> , 147 Wn.2d 440, 54 P.3d 1194 (2002).....	13
<i>Scavenius v. Manchester Port. Dist.</i> , 2 Wn. App. 126, 467 P.3d 372 (1970).....	13
<i>Sintra, Inc. v. City of Seattle</i> , 131 Wn.2d 640, 935 P.2d 555 (1997).....	12
<i>Sorenson v. Pyeatt</i> , 158 Wn.2d 523, 146 P.3d 1172, (2016).....	9
<i>State v. Aho</i> , 137 Wn.2d 736, 975 P.2d 512 (1999).....	22
<i>State v. Hescocck</i> , 98 Wn. App. 600, 989 P.2d 1251 (1994).....	7
<i>Stephanus v. Anderson</i> , 26 Wn. App. 326, 613 P.2d 533 (1980).....	42
<i>Vasquez v. Hawthorne</i> , 99 Wn. App. 363, 994 P.2d 240 (2000), <i>rev'd on other grounds</i> 145 Wn.2d 103 (2001)	14, 36
<i>Vasquez v. Hawthorne</i> , 145 Wn.2d 103, 33 P.3d 735 (2001).....	18, 30
<i>Velez v. Smith</i> , 142 Cal.App. 4th, 1154, 48 Cal. Rptr. 3d 642 (2006).....	6

Walsh v. Reynolds, 183 Wn. App. 830, 335 P.3d 984
 (2014), *rev. denied*, 182 Wn.2d 1017 (2015)..... 5, 13, 25,
 31-33, 36-37, 44

Williams v. Duke, 125 Wn. 250, 215 P. 372 (1923) 43

FEDERAL

Bd. of Regents v. Roth, 408 U.S. 564 (1972) 22

Calder v. Bull, 3 U.S. 386 (1798) 16

Chicago, B. & Q. R. Co. v. City of Chicago, 166 U.S. 226
 (1897)..... 15

E. Enterprises v. Apfel, 524 U.S. 498 (1998)..... 20

Gete v. I.N.S., 121 F.3d 1285 (9th Cir. 1997) 13

Hawaii Hous. Auth. v. Midkiff, 467 U.S. 229 (1984)..... 3, 17

Hollingsworth v. Perry, 570 U.S. 693 (2013)..... 17

INS v. St. Cyr, 533 U.S. 289 (2001)..... 23

Kelo v. City of New London, 545 U.S. 469 (2005) 16-17

Leslie v. Fidelity Nat. Title Ins. Co., 598 F. Supp. 2d 1176
 (W. D. Wash 2009)..... 28-29

Lingle v. Chevron U.S.A. Inc., 544 U.S. 528 (2005)..... 4, 20

Obergefell v. Hodges, 135 S. Ct. 2584 (2015)..... 4, 22-23

Perry v. Brown, 671 F.3d 1052 (9th Cir. 2012), *vacated and
 remanded sub nom., Hollingsworth v. Perry*, 570 U.S.
 693 (2013)..... 17

Perry v. Sindermann, 408 U.S. 593 (1972)..... 22

<i>Smith v. Mulvaney</i> , 827 F.2d 558 (9 th Cir. 1987).....	46
<i>Stop the Beach Renourishment, Inc. v. Fla. Dep't of Envtl. Prot.</i> , 560 U.S. 702 (2010).....	3-4, 15, 17, 20
<i>Vernon v. Qwest Communications Intern., Inc.</i> , 643 F. Supp. 2d 1176 (W.D. Wash 2009).....	27

CONSTITUTIONAL PROVISIONS

WASHINGTON

Wash. Const., art. I, § 3.....	4, 19, Appendix E
Wash. Const., art. I, § 16.....	3, 16, Appendix E

FEDERAL

U.S. Const. art. 6.....	22
U.S. Const. amend. V.....	15-16, 18, Appendix E
U.S. Const. amend. XIV	4, 19, 22, Appendix E

STATUTES

Cal. Fam. Code § 297	17
Cal. Fam. Code § 297.5(a).....	18
Chapter 1, Laws of 1998.....	20
Chapter 56, Laws of 2007.....	6
Chapter 521, Laws of 2009.....	19
RCW 26.04.010	20
RCW 26.04.020	20
RCW 26.09.080	11

RCW 26.09.140	44
RCW 26.16.030	31
RCW 26.60.080	4, 6, 19

RULES

RAP 2.3(b)(3)	34
RAP 2.5(a)(3).....	13
RAP 2.5(c)(2).....	12, 38
RAP 10.3(a)(4).....	1
RAP 17.7.....	34
RAP 18.9.....	47

OTHER AUTHORITIES

Black’s Law Dictionary, 567 (5 th ed. 1979).....	13
California AB 26 Bill Analysis, Assembly Floor, 9/08/1999	
.....	41-42, Appendix F
Final Bill Report 2SHB.....	30, Appendix G
21 Kenneth W. Weber, WASHINGTON PRACTICE: FAMILY AND COMMUNITY PROPERTY LAW, § 57.8, at 396-402 (2 nd ed. 2015)	39
27 Am. Jur. 2d <u>Equity</u> § 87 (2018)	43

I. INTRODUCTION

This second appeal is brought by Dr. Jean Walsh (“Walsh”) following the trial court’s division of property between her and Ms. Kathryn Reynolds (“Reynolds”). This brief first addresses issues regarding violation of Walsh’s constitutional rights and then responds to Reynolds’ Brief in support of her appeal, particularly to demonstrate that the trial court followed the mandate of this Court. *Infra*. V(A).

At the outset, we note that Reynolds has failed to comply with RAP 10.3(a)(4), by not providing a “separate concise statement of each error a party contends was made by the trial court.” Instead, Reynolds contends “the trial court erred in entering its second set of findings, many of which are conclusions of law, and individually as to *each and every finding that was entered on remand*”. (Reynolds App. Br. 2, ¶ 3) (emphasis added).

II. CROSS-APPEAL ASSIGNMENTS OF ERROR

1. The trial court erred in determining that property acquired by either party prior to their August 20, 2009 Washington domestic partnership registration was subject to division.

2. The trial court erred in the portions of Additional Findings of Fact 8 and 9 (hereafter 2017 FF) and Conclusions of Law 14 and 15 (hereafter 2017 CL) concluding that Walsh’s separate property acquired

after January 1, 2005 may be distributed to Reynolds, as well as to the portions of the November 2012 Conclusions of Law (hereafter 2012 CL) 3, 4, 6, 7, 9, 10, 11, 12, 13, and 16 concluding the same. Appendix A is a copy of the 2012 FF and CL with Walsh's assignments of error highlighted in yellow. Appendix B is a copy of the 2017 FF and CL similarly highlighted. Applying the equity relationship doctrine to separate property acquired by Walsh after January 1, 2005 violated Walsh's constitutional rights.

3. The trial court erred in the portions of 2017 CL 16 that "the agreement of the parties" to maintain separate property "will be observed" only "for property acquired prior to January 1, 2005." (CP 643-45 ¶16). Applying the equity relationship doctrine to separate property acquired by Walsh after that date violated Walsh's constitutional rights.

4. The trial court erred in 2017 CL 17, insofar as it affirmed the portion of 2017 FF 9 finding that "the prior distribution of assets and debts following the trial in 2012" - which applied the common-law equity relationship doctrine to redesignate as community-like property the parties' separate property acquired after January 1, 2005 - "is fair and equitable under all the circumstances." (CP 645 ¶17; CP 374 ¶9). Applying the equity relationship doctrine to distribute separate property acquired by Walsh after that date violated Walsh's constitutional rights.

5. The trial court erred in awarding temporary attorney's fees to Reynolds. The statutory extension of attorney fees to Walsh's pre-existing domestic partnership, without opportunity to opt-out, violated her right to substantive due process.

III. CROSS-APPEAL STATEMENT OF ISSUES

1. The Takings Clause of the U.S. Constitution, applied to the states via the Fourteenth Amendment, prevents a government from taking property from one private party and giving it to another. *Hawaii Hous. Auth. v. Midkiff*, 467 U.S. 229, 245 (1984). It also precludes state courts from applying judge-made doctrines to eliminate a private party's "established property right[s]." *Stop the Beach Renourishment, Inc. v. Fla. Dep't of Envtl. Prot.*, 560 U.S. 702, 725-26, & n.9 (2010) (plurality opinion). Article 1, Section 16 of the State Constitution likewise prohibits the taking of private property for private use. Consistent with the governing legal regime at the time, which denied same-sex partners the benefits of marriage, Walsh scrupulously maintained separate property throughout her relationship with Reynolds. Did the trial court err in concluding that it "is fair and equitable" to take from Walsh separate property acquired by her after January 1, 2005, and transfer it to Reynolds via the common-law equity relationship doctrine?

2. The Due Process Clause of the Fourteenth Amendment protects private parties from arbitrary or irrational exercises of state power. “[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*, 560 U.S. at 737 (Kennedy, J., concurring in part and concurring in the judgment) (quoting *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 542 (2005)). Likewise, Article 1, Section 3 of the State Constitution prohibits depriving any person of property “without due process of law.” Although Walsh registered under RCW 26.60.080 for limited domestic partnership benefits in 2009, she did not intend that her separate property rights would be eliminated through retroactive application of common law or statutorily expanded rights and responsibilities. Did the trial court err in concluding that it “is fair and equitable” to redistribute to Reynolds separate property acquired by Walsh after January 1, 2005?

3. The Equal Protection Clause of the Fourteenth Amendment protects individuals from being singled out as disfavored by the government. In violation of that protection, same-sex couples were “denied the constellation of benefits that the States have linked to marriage” for the duration of the parties’ relationship here. *Obergefell v. Hodges*, 135 S. Ct. 2584, 2601 (2015). Did the trial court err in

concluding that it “is fair and equitable” to redistribute to Reynolds separate property acquired by Walsh after January 1, 2005?

4. Was it error to distribute property acquired by Walsh prior to August 20, 2009 based on equitable principles, absent express or implied contract?

IV. STATEMENT OF THE CASE

This Court’s 2014 opinion contains a recitation of the basic facts, which Walsh hereby incorporates. *Walsh v. Reynolds*, 183 Wn. App. 830, 836 -38, ¶¶3-14, 335 P.3d 984 (2014) *rev. denied*, 182 Wn.2d 1017 (2015). Reynolds’ Statement of Facts contains misstatements and omissions. Appendix C compares some of those misstatements to the facts in the record. Additional facts deduced at the trial on remand are summarized here and more completely in Appendix D.

The parties separated shortly after their first child (Julia) was born in 1992. When they resumed living together, their primary commitment was to raise Julia. (2016 RP 90). After Julia’s birth, the parties did not vacation together without the children. (2016 RP 91). Neither party was the other’s birth coach when Walsh later gave birth to Joe, and Reynolds gave birth to Emily. (2016 RP 91). When Reynolds had major surgery in 2000, she asked her sister (not Walsh) to be with her during recovery. (2016 RP 90-92). The focus and intent of the parties continuing

relationship was on raising the children. Their commitment was to the children, not to each other.

The parties were aware that they could choose whether or not to acquire and maintain property separately or jointly (2016 RP 93-94). They were aware of others in same-sex relationships who had contracted for co-ownership; they intentionally chose not to take similar action. (2016 RP 94). Walsh and Reynolds first lived together in California in 1988. In 2000, Walsh and Reynolds registered under the California domestic partnership registration statute, which specifically provided that registration created no rights to community property or quasi-community property. (2012 FF 16, CP 367).¹ By filing in 2000, neither Walsh nor Reynolds intended to affirm, or create, any community property interests. (2017 FF 5, CP 637).

Their intentions had not changed with the agreement between the parties to acquire and hold property as separate when they registered in Washington on August 20, 2009 as domestic partners under RCW 26.60.080, Ch. 56 Laws of 2007. (The parties separated less than seven months later). The registration document stated: “any rights conferred by this registration may be superseded by a will, deed, or other instrument

¹ California later extended the scope of the Act by amendment effective January 1, 2005. *See Velez v. Smith*, 142 Cal.App. 4th, 1154, 1163-64, 48 Cal. Rptr. 3d 642 (2006).

signed by either party to this domestic partner registration.” (CP 369). These facts support 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.” (2017 FF 8, CP 639). This agreement, found to be akin to an oral prenuptial agreement, was observed throughout the relationship (2017 FF 9, CP 640).

The trial court’s findings are based on substantial evidence.

V. RESPONSE TO REYNOLDS’ STATEMENT OF FACTS

A. The remand from this Court did not require finding a pre-2005 start date.

In addition to arguments and assertions that are factually inaccurate (*See* Appendix C), Reynolds also relies on musings of the trial court in its 2012 oral ruling. The trial court’s Findings of Fact and Conclusions of Law did not incorporate, and are not based on, these oral comments. The trial court’s written ruling was unambiguous. Following remand, the trial judge pointed out that “when a trial court’s written ruling is unambiguous, the Court of Appeals may not turn to the trial court’s oral ruling.” (CP 725) (citing *State v. Hescock*, 98 Wn. App. 600, 605-06, 989 P.2d 1251 (1994) (“The court’s oral opinion is ‘no more than a verbal expression of [its] informal opinion at that time...necessarily subject to further study and consideration, and may be altered, modified, or completely abandoned.’”).

Reynolds also portrays as insubstantial the total property distribution awarded to her by the trial court, describing herself as “economically disadvantaged”. (Reynolds App. Br. 49). In doing so, she ignores the \$500,000 received by her from Walsh (2012 FF 8) and other awards that together approximate \$1 million (App. C) “from an estate that exceeded \$2 million” (Reynolds App. Br. 7).

B. Following the trial, not objected to by either party, the trial court reconsidered, not reinstated, its earlier ruling.

Reynolds now asserts that trial on remand was held despite her “objection”. The facts tell another story. Reynolds’ attorney noted the case for trial (CP 502-3), setting it for June 13, 2016, and affirming the number of trial days one month prior. Reynolds filed no motion to strike the trial or to preclude testimony. The position of Reynolds’ appellate counsel (present at trial for opening argument) contradicts all actions and pleadings of her trial counsel through the date of trial. (2016 RP 13-15, 29-30, 42).

The trial court did not “reinstate” its earlier decision. After reconsideration, the trial court correctly ruled there was no factual or legal basis to adopt an earlier start date. Reynolds disagrees with that analysis by erroneously asserting that it did not occur. Walsh’s disagreement however is with the limitation imposed upon the court to examine only pre-2005 dates, without regard to constitutionality.

As Commissioner Schmidt decided in denying Reynolds' motion for discretionary review:

This court did not order the trial court to find a pre-2005 commencement date for the equity relationship. It ordered that the trial court reconsider whether January 1, 2005, was the appropriate commencement date. The trial court did so albeit not in the way Reynolds argued it should have.

Ruling Denying Review, CP 759.

WALSH'S ARGUMENT ON APPEAL

VI. STANDARD OF REVIEW

A. Determinations based upon equitable doctrines are reviewable for abuse of discretion.

Current case law provides for de novo review of the ultimate conclusion that the parties had an equity relationship. *In re Marriage of Pennington*, 142 Wn.2d 592, 603, 14 P.3d 764 (2000). However, that determination is a mixed question of law and fact. *Id.* at 603. The weight of authority supports applying the abuse of discretion standard to cases turning on the application of equitable doctrines. *E.g. Harris v. Fortin*, 183 Wn. App. 522, 527, 333 P.3d 556 (2014) (holding that abuse of discretion applied to summary judgment invoking estoppel); *Sorenson v. Pyeatt*, 158 Wn.2d 523, 531, 146 P.3d 1172 (2016) (holding that the Supreme Court reviews trial court's fashioning of equitable remedies under abuse of discretion standard). The trial court must weigh and balance the evidence, judge credibility and balance the factors to reach a

determination. *In re Marriage of Greene*, 97 Wn. App. 708, 714, 986 P.2d 144 (1999). Because of these discretionary factors, the trial court's decision merits deference, and should be reviewed for abuse of discretion. *Arkinson v. Ethan Allen, Inc.*, 160 Wn.2d 535, 538, 160 P.3d 13 (2007).

Even under a de novo standard, the trial court's findings of fact are reviewed for substantial evidence. *In re Marriage of Fahey*, 164 Wn. App. 42, 55, 262 P.3d 128 (2011). Under that standard, evidence is deemed "substantial" if it would persuade a rational, fair minded person of the finding's truth. *Id.* An appellate court does not judge the credibility of witnesses or weigh the evidence that was before the trial court; on these matters it should defer to the trial court. *Marriage of Greene*, 97 Wn. App. at 714.

B. The issue of when an equity relationship began or ended is a question of fact.

Here, the trial court reconsidered its earlier findings of fact (affirmed by this Court), in light of additional, supplementary evidence. Reynolds' argument that the testimony was "virtually the same" misstates the record. *See* Appendix D. It also ignores the mandated limitation of reconsidering only the 2005 starting date. The trial court was asked to make a determination of a "start date" based on disputed facts. "This review is an issue of fact." *Muridan v. Redl*, 3 Wn. App. 2d 44, 56, 413 P.3d 1072 (2018).

C. Property division following an equitable relationship is reviewed for abuse of discretion.

A trial court's distribution of property acquired during an equitable relationship is to be just and equitable. *Pennington*, 142 Wn.2d at 602. This distribution is reviewed for abuse of discretion. *Id.*; *See also Muridan*, 3 Wn. App. at 56. It has long been recognized in Washington that the trial court is entitled to great deference when distributing property in a dissolution proceeding. Property distribution will not be overturned unless there has been a manifest abuse of discretion. *In re Marriage of Kaseburg*, 126 Wn. App. 546, 556, 108 P.3d 1278 (2005) (citations omitted). "The trial court manifestly abuses its discretion if it makes an untenable or unreasonable decision." *Id.*, (citing *In re Marriage of Tower*, 55 Wn. App. 697, 700, 780 P.2d 863 (1989)).

Here, the trial court's decision with regard to property acquired before 2005 was reasonably based on the unique factual record, the various statutes at issue and the evolving development of the common law. The trial court properly concluded that Walsh had not been unjustly enriched, the parties had agreed to the property characterizations, and Reynolds' proposed allocation was neither fair nor equitable. *See* RCW 26.09.080.

VII. WALSH'S SUBSTANTIVE ARGUMENT ON APPEAL

A. **The Court of Appeals should reconsider certain rulings of law made in 2014 because they misapplied common law and violated Walsh's constitutional rights.**

In certain respects, this Court's 2014 ruling should be reconsidered and revised. The earlier ruling in this case misapplied common law and also violated Walsh's constitutional rights. The Court has the authority to revise the ruling.

RAP 2.5(c)(2) provides as follows:

The appellate court may at the instance of a party review the propriety of an earlier decision of the appellate court in the same case and, where justice would best be served, decide the case on the basis of the appellate court's opinion of the law at the time of the later review.

The Supreme Court has interpreted RAP 2.5(c)(2) "to allow review of a previous decision when the decision is erroneous and when justice would best be served by review." *Sintra, Inc. v. City of Seattle*, 131 Wn.2d 640, 652, 935 P.2d 555 (1997). This Court may review the earlier decision on that basis, *Roberson v. Perez*, 119 Wn. App. 928, 931-32, 83 P.3d 1026 (2004), and has recognized that revision of an earlier opinion is appropriate specifically when the court did not earlier determine a certain issue, and where an additional review of facts would impel a different conclusion. *See Holst v. Fireside Realty, Inc.*, 89 Wn. App. 245, 258, 948 P.2d 858 (1997).

Additionally, RAP 2.5(a)(3) provides that “manifest error affecting a constitutional right” may be raised for the first time on review. Reynolds contends this Court “implicitly” rejected Walsh’s constitutional arguments. (Reynolds App. Br. 22). This position fails for two reasons. First, RAP 2.5(a)(3) applies. This is because constitutional rights are issues of fundamental importance:

[A] waiver of a constitutional right is ‘not to be implied and is not lightly to be found.’ Moreover, in accord with the rule that acquiescence cannot be presumed in the loss of fundamental rights, it is a central tenet of constitutional law that ‘courts indulge every reasonable presumption against waiver.’

Gete v. I.N.S., 121 F.3d 1285, 1293 (9th Cir., 1997) (citations omitted).

Second, this Court has stated it did not rule on Walsh’s due process argument.² *Walsh*, 183 Wn. App. at 842 n. 23. (“Neither party raises a due process argument on appeal”). There can be no “implicit” rejection of an issue never considered, despite having been squarely raised by Walsh.³

² The Supreme Court’s failure to accept an interlocutory appeal in this case likewise was not a determination on the merits. Because of this Court’s remand to the trial court, this Court’s previous opinion was not a “final decision... which leaves nothing open to further dispute and which sets at rest cause of action between parties.” *Samuel’s Furniture, Inc. v. Dep’t of Ecology*, 147 Wn.2d 440, 452, 54 P.3d 1194 (2002) (citing BLACK’S LAW DICTIONARY, 567 (5th ed. 1979)). Appellate courts disfavor “piecemeal review.” *Scavenius v. Manchester Port Dist.*, 2 Wn. App. 126, 127, 467 P.3d 372 (1970).

³ Reynolds contends that Walsh “abandoned” any argument that retroactively applying the equity relationship doctrine would violate her constitutional rights. Reynolds App. Br. 21. But as Reynolds’ own brief makes clear, Walsh plainly asserted in her initial appeal that “distribut[ing] property acquired or accumulated before” any court or legislature had even considered

B. The trial court erred in distributing property acquired by Walsh before August 20, 2009 to Reynolds.

1. Taking Walsh's property and giving it to Reynolds would violate the Takings Clauses of the Federal and State Constitutions.

Reynolds urges this Court to find that an equitable doctrine developed as Washington common law, and first referred to as a “meretricious relationship”⁴ in 1995, *Connell v. Francisco*, 127 Wn.2d 339, 898 P.2d 831 (1995), establishes the character of property acquired by them in California. This is directly contrary to this Court’s ruling in 2000 (later reversed) that the “meretricious relationship” doctrine applied only to heterosexual couples who could legally marry under state law. *Vasquez v. Hawthorne*, 99 Wn. App. 363, 994 P.2d 240 (2000), *rev'd on other grounds*, 145 Wn.2d 103, 33 P.3d 735 (2001). Not until 2004 did the Court of Appeals (Div. 3) apply the “committed intimate relationship doctrine” to property division at the voluntary termination of a same-sex

applying the rules of community property to same-sex partnerships would unconstitutionally “depriv[e] Walsh of her vested rights.” Reynolds App. Br. 30 (quoting Walsh’s initial appellate briefs). Both this Court and the trial court understood that argument to be a constitutional one, as reflected in Reynolds’ own acknowledgement that this Court (albeit erroneously) “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.” Reynolds App. Br. 31.

⁴ This doctrine was later termed a “committed intimate relationship” and then an “equity relationship”. For consistency, the term “equity relationship” is used throughout, unless a different term is used in the cited material.

relationship. *Gormley v. Robertson*, 120 Wn. App. 31, 83 P.3d 1042 (2004).

Given the evolving parameters of this common law doctrine, neither of the parties here knew, or could have known, that property they were acquiring as early as 1988 would be deemed – decades later – to be community property when first acquired. Nonetheless, Reynolds urges the court to apply this doctrine to property Walsh acquired in California, before 2000. The trial court here correctly determined that an equity relationship “for purposes of division of property” could not constitutionally have existed prior to January 1, 2005, the date when California’s expansion of its domestic partnership statute became effective. The trial court erred in distributing property acquired prior to August 20, 2009.

Transferring Walsh’s separate property to Reynolds via the equity relationship doctrine would constitute a judicial taking. *See Stop the Beach*, 560 U.S. at 725 (recognizing judicial takings doctrine and clarifying that “the existence of a taking does not depend upon the branch of government that effects it”). Under the Takings Clause, “private property” shall not “be taken for public use, without just compensation.” U.S. Const. amend. V; *see Chicago, B. & Q. R. Co. v. City of Chicago*, 166 U.S. 226, 239 (1897) (Fifth Amendment Takings Clause applies

against the states).⁵ The Takings Clause prevents government from taking property from one party and giving it to another, regardless of whether compensation is provided to the deprived party. *Kelo v. City of New London*, 545 U.S. 469, 477 (2005) (“[T]he sovereign may not take the property of *A* for the sole purpose of transferring it to another private party *B*, even though *A* is paid just compensation.”); *see also Calder v. Bull*, 3 U.S. 386, 388 (1798) (Chase J.) (“a law that takes property from *A* and gives it to *B*” is “contrary to the great first principles” embodied in the Bill of Rights). The Takings Clause also ensures that government may not take private property in ways that are “excessive, unpredictable, or unfair.” *Kelo*, 560 U.S. at 496 (O’Connor, J., dissenting).

Our courts have recognized that “[a] property right is protected by the United States Constitution when an individual has a reasonable expectation of entitlement deriving from existing rules that stem from an independent source such as state law.” *Asche v. Bloomquist*, 132 Wn. App. 784, 797, 133 P.2d 475 (2006). Walsh had such an expectation based on the law existent at the time she acquired separate property.

⁵ The Takings Clause of the Washington Constitution is essentially identical. *See* Wash. Const. art. 1 § 16 (amend. 9) (“No private property shall be taken or damaged for public or private use without just compensation having been first made.”).

Applying the equity relationship doctrine here to strip Walsh of her separate property would plainly fail the public use requirement, as it would be entirely for Reynolds' private use and private benefit. *See Hawaii Hous. Auth.*, 467 U.S. at 245. ("A purely private taking could not withstand the scrutiny of the public use requirement; it would serve no legitimate purpose of government and would thus be void."). Walsh would receive no compensation for the forced transfer (although no amount of compensation could save the taking, *see Kelo*, 545 U.S. at 477), and it would be contrary to Walsh's established property rights and settled expectations. *See Stop the Beach*, 560 U.S. at 726 & n.9 (judicial decision eliminating "established property right" constitutes a taking).

Walsh and Reynolds registered as domestic partners in California in March of 2000. As of that date, California's Domestic Partnership Act "gave registered domestic partners only limited rights, such as hospital visitation privileges ... and health benefits for the domestic partners of certain state employees." *Perry v. Brown*, 671 F.3d 1052, 1065 (9th Cir. 2012), *vacated and remanded sub nom. Hollingsworth v. Perry*, 570 U.S. 693 (2013). The Act expressly disavowed applying the state's community property regime to same-sex couples at the time. *See Cal. Stats.* 1999, ch. 588, § 2 (codified at Cal. Fam. Code § 297(a)). It was not until 2003 (after the parties had moved to Washington) that the California Legislature

extended community property rights to registered domestic partners, and it was not until 2005 that the 2003 Act's expansion of rights took effect, *see* Cal. Stats. 2003, ch. 421, § 4 (codified at Cal. Fam. Code § 297.5(a)).

Moreover, at the time Walsh and Reynolds first registered their California partnership, no Washington court had extended the equity relationship doctrine to same-sex relationships.⁶ A judicial decision distributing Walsh's property to Reynolds via Washington's equity relationship doctrine thus would violate the Takings Clause.

In addition, Washington law is clear that the law of the state in which property is acquired determines the nature of property rights:

Washington has long accepted the principle that the character of property is determined under the law of the state in which the couple is domiciled at the time of its acquisition.

In re Marriage of Landry, 103 Wn.2d 807, 810, 699 P.2d 214 (1985).

Even if the property had been acquired in Washington, "the characterization of property as community or separate is determined as of

⁶ Washington first applied the equity relationship doctrine to divide property at the voluntary end of the relationship of a same-sex couple in 2004, in *Gormley v. Robertson*, 120 Wn. App. 31, 83 P.3d 1042 (2004). The first time a Washington court even stated that equitable claims are not dependent on the "legality" of the relationship between the parties, so might not be limited by the gender or sexual orientation of the parties, was in 2001, in a case involving a survivor's claim against his deceased partner's estate, *see Vasquez v. Hawthorne*, 145 Wn.2d 103, 33 P.3d 735 (2001). This decision was issued after Walsh and Reynolds registered in California.

the date of its acquisition.” *Bank of America, N.A. v. Owens*, 153 Wn. App. 115, 123, 221 P.3d 917 (2009), *aff’d in part, rev’d in part*, 173 Wn.2d 40, 266 P.3d 211 (2011). Walsh had a right to rely on these decisions.

Finally, Walsh’s registration on August 20, 2009 under RCW 26.60.080 did not change the nature of her property rights. Nor did the enactment of “everything but marriage,” Chapter 521 Laws of 2009, (certified on December 3, 2009 following challenge through Referendum 71).

2. Taking Walsh’s property and giving it to Reynolds would violate the due process clause of the Fourteenth Amendment of the United States Constitution and Article 1, Section 3 of the State Constitution.

Reynolds wants the equitable relationship doctrine to apply to all property acquired during the parties’ relationship. In other words, Reynolds contends that *all* property Walsh acquired after 1988 should be deemed community-like property subject to redistribution by judicial fiat regardless of the law in place *as of the time it was acquired*. However, an application of Washington State “common law” that nonetheless retroactively deems Walsh’s separate property to be community property on the date acquired, subject to later distribution, would deprive Walsh of property without due process of law.

Not a single person in the United States in the 1980s (or the 1990s) would have had notice that same-sex individuals' separate property could be deemed community-like property under a later conceived judicial doctrine designed to mirror the burdens of a marriage regime when every state at the time denied same-sex couples any of the benefits of marriage, and in many instances specifically passed new legislation designed to solidify that discriminatory regime. *See* Laws of 1998, Ch. 1 (Washington's Defense of Marriage Act).⁷

As Justice Kennedy explained in his separate opinion in *Stop the Beach*, “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.” 560 U.S. at 737 (Kennedy, J., concurring in part and concurring in the judgment) (quoting *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 542 (2005)); *see also, e.g., E. Enterprises v. Apfel*, 524 U.S. 498, 548 (1998) (Kennedy, J., concurring in judgment, dissenting in part) (“If retroactive laws change the legal consequences of transactions long closed, the change can destroy the reasonable certainty and security which are the very objects of property ownership.”). *See Ashe, supra*. Retroactive application of a community

⁷ Codified at RCW 26.04.010 and .020, and later amended.

property ruling destroys “the reasonable certainty and security” relied on by Walsh.

It took multiple legislative enactments for same-sex partners to be granted community property even on a prospective basis. Previously, however, California and Washington expressly prevented Walsh and Reynolds from marrying or enjoying the benefits of a marriage-like regime. While some same-sex couples reacted to that unfortunate reality by using the law of contract to create financial relationships intended to approximate marriage, Walsh and Reynolds took the opposite approach: they chose to maintain entirely separate financial lives. They kept separate bank accounts, did not assume the liabilities of each other’s financial obligations, and primarily exchanged money through an employer-employee relationship that was nothing like the normal commingling of marital funds. Even if some same-sex couples imagined a world in which a state would allow them to share in the benefits and burdens of marriage, Walsh and Reynolds consciously acted otherwise by ordering their financial affairs in a manner fully consistent with the (discriminatory) legal regime that prevailed for the first decade-plus of their relationship.

Walsh had no reason to expect that a Washington court might one day order a forced transfer of her private property to Reynolds. To order

this now via application of a later developed judicial doctrine would be to deprive her of property without due process of law. *See Perry v. Sindermann*, 408 U.S. 593, 601 (1972) (“property” subject to constitutional protection includes all interests “secured by ‘existing rules or understandings’” (quoting *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972))). Almost twenty years ago, our Supreme Court recognized that “judicial decisions which are applied retroactively may raise due process concerns...” *State v. Aho*, 137 Wn.2d 736, 742, 975 P.2d 512 (1999). This Court’s original opinion squarely raises such due process concerns.

Our claim here is based on both the federal and the state constitutions. However, “insofar as the due process clause of the Fourteenth Amendment provides greater protection than does article 1, section 3, the federal constitution must prevail.” *Olympic Forest Prod., Inc. v. Chaussee Corp.*, 82 Wn.2d 418, 422, 511 P.2d 1002 (1973) (citing U.S. Const. art. 6).

3. Taking Walsh’s property and giving it to Reynolds would violate the Equal Protection Clause of the Fourteenth Amendment.

Until 2012 (certainly prior to 2005), Walsh was prevented from enjoying the benefits of marriage as a result of marriage laws that unconstitutionally discriminated on the basis of sexual orientation. *See Obergefell*, 135 S. Ct. at 2602-03. To deprive Walsh now of property that

those discriminatory laws mandated be kept separate would perversely double down on that discrimination. Only same-sex couples were “denied the constellation of benefits that the States have linked to marriage.” *Id.* at 2601. If Reynolds is correct, then only same-sex couples will face the prospect of having private property taken from them and redistributed without any compensation or due process in return. Such a ruling would violate Walsh’s constitutional right to equal protection of the laws.

When faced with a choice between applying the law in a manner plainly constitutional or one that would invite constitutional concerns, the courts are obliged to choose the former approach. *See, e.g., In re Marriage of McLean*, 132 Wn.2d 301, 308, 937 P.2d 602 (1997); *INS v. St. Cyr*, 533 U.S. 289, 300 (2001). Avoiding the constitutional concerns here would also comport with the facts and legal reality of the parties’ relationship during the relevant period of time: they were legally prohibited from engaging in a marital relationship, and they intentionally chose *not* to engage in a “marriage-like” relationship when ordering their respective financial lives.

Rather than further perpetuate the discrimination to which Walsh was subjected by governments for decades, this Court should affirm what the trial court rightly recognized: to retroactively impose the *burdens* of marriage on Walsh, when she had not been able to partake in the normal

benefits of marriage, not only would add injury to the insult to which the states' traditional marriage regimes subjected her, but would violate her constitutional rights.

The equitable relationship doctrine developed to ensure that equity would apply in cases in which heterosexual couples who had lived in a marriage-like relationship but were not formally married disagreed over the post-dissolution division of property. *See In re Marriage of Lindsey*, 101 Wn.2d 299, 678 P.2d 328 (1984). In that context—where the parties *could* have shared in the benefits of marriage but for whatever reason chose not to—Washington courts concluded that in some cases the “just and equitable” result upon dissolution of a relationship would be one that treated the parties as if they had been married all along. But that context is fundamentally different from here, where the parties were legally barred from sharing in the benefits of marriage on the basis of their sexual orientation. In *this* context, retroactively deeming separate property to be subject to distribution via the equity relationship doctrine ignores the very basis for its inception, and indeed would violate the U.S. and Washington Constitutions.

Accordingly, although the trial court was correct in holding that it “would be unconstitutional” to “retroactively re-characterize property acquired prior to January 1, 2005 as community or quasi-community

property” via the equity relationship doctrine (or any other judicial doctrine), *see* CP 642-43 at ¶ 15,⁸ the decision to apply the equity relationship doctrine and redesignate as community-like property the parties’ separate property *after* that date, *see* CP 640 at ¶ 9 (“the prior distribution of assets and debts following the trial in 2012 is fair and equitable under all the circumstances”),⁹ violated Walsh’s constitutional rights.

C. It was error to distribute Walsh’s separate property to Reynolds under Washington common law.

We ask this Court to recognize that certain of Walsh’s property interests were first acquired elsewhere than in Washington. The earlier opinion concluded that Washington common law, declared by the Washington courts only after Walsh and Reynolds had moved to this state, applied retroactively to acquisition of property by the parties before they moved here. The source for that decision is stated to be Washington common law. *Walsh*, 183 Wn. App. at 847-48, ¶35.

This ruling is contrary to the relevant facts. For example, Walsh was able to trace all deposits to her SEP IRA to dates pre-dating the California domestic partnership (2012 FF 13, CP 366). The only law that

⁸ *See also* CP 373 at ¶ 4-5; CP 640 at ¶ 8; CP 642 at ¶ 14; CP 643-45 at ¶ 16.

⁹ *See also* CP 372 at ¶ 3; CP 373 at ¶ 6-7; CP 374 at ¶ 9-10; CP 645 at ¶ 17.

could have applied to determine the ownership of funds in that IRA would have been federal law establishing IRA accounts, and California property law. However, this Court determined that an “equity relationship”, created under Washington court decisions (promulgated years after the property was acquired), “could” apply to the division of property, even to property acquired when the parties resided in another state. This is a fundamental misapplication of the law and should be reconsidered.

This Court’s cited authority was *In re Marriage of Lindsey*, 101 Wn.2d 299, 678 P.2d 328 (1984). This reliance on *Lindsey* is incorrect for a number of reasons. First, *Lindsey* involved the disposition of property of a husband and wife married under Washington State statutes. 101 Wn.2d at 300. Second, in *Lindsey* our Supreme Court specifically recognized that California and Washington common law differed. *See id. Lindsey*, at 304-05.

Under this Court’s previous decision, every couple in the United States and its territories (possibly even beyond), living in a statutory or other type of domestic relationship acquiring property under the laws of the jurisdiction in which they reside (including jurisdictions that do not recognize community property), should be on notice that the common law of Washington someday may be applied retroactively to their property

rights if they were ever to move to, or die in, Washington State. This is a legal bridge too far.

Also, this Court's earlier opinion failed to recognize that a division of property based on equitable principles generally should not take place absent an expressed or implied contract.

This Court's previous decision takes the equitable distribution principle and unmoors it from its legal anchor, namely the division of property via an implied contract. "Equitable relief is usually only appropriate where there are two private parties in dispute within a contractual or propertied relationship." *Eastlake Cmty. Council v. Roanoke Assoc., Inc.*, 82 Wn.2d 475, 484, 513 P.2d 36 (1973). Moreover, the concept of "unjust enrichment" is a concept that also arises, and cannot exist separate, from contract law. *E.g., Dragt v. Dragt/DeTray, LLC*, 139 Wn. App. 560, 576, 161 P.3d 473 (2007). The federal courts have recognized that, under Washington State law, "unjust enrichment is an equitable theory", and it is based on "an implied contract." *See Vernon v. Qwest Commc'ns Int'l., Inc.*, 643 F. Supp. 2d 1256, 1266 (W.D. Wash. 2009).

In order for this Court to have distributed property under an equity relationship analysis, it must necessarily find (which it did not do in this case) that the parties had entered into an implied contract, in this case a

contract “implied in fact.” “A contract implied in fact is an agreement of the parties arrived at from their conduct rather than their expressions of assent. Like an expressed contract, ‘it grows out of the intentions of the parties to the transaction, and there must be a meeting of the minds.’” *Heaton v. Imus*, 93 Wn.2d 249, 252, 608 P.2d 631 (1980), (quoting *Milone & Tucci, Inc. v. Bona Fide Builders, Inc.*, 49 Wn.2d 363, 368, 301 P.2d 759 (1956)). On the contrary, the trial court found that these parties impliedly contracted to maintain separate property. (2017 FF 9, CP 640). The court in *Heaton* emphasized the following: “Recovering in quasi-contract is based on the prevention of unjust enrichment.” 93 Wn.2d at 252. For this Court to have applied the five factors supporting division of property based on an equity relationship, it necessarily would have had to have found that Walsh and Reynolds had impliedly contracted to share property jointly as though married. Such an implied contract would be based on a “meeting of minds” between Walsh and Reynolds. In this case, however, the meeting of minds regarding the distribution of property was that each party acquired and maintained her assets and debts separately.

The law of Washington State on this matter was set out by the United States District Court, W.D. WA in *Leslie v. Fid. Nat. Title Ins. Co.*, 598 F. Supp. 2d 1176 (W.D. Wash. 2009). In *Leslie*, the court explained that a claim for unjust enrichment, established under a three part test under

Washington State law, arises out of an “implied contract claim,” *Id.* at 1183-84. Furthermore, the court explained that an “implied contract requires mutual assent of the parties,…” *Id.* at 1184. Such “mutual assent” to share property was not present here.

In addition, the court’s reliance on the principles set out in *In re Meretricious Relationship of Long*, 158 Wn. App. 919, 244 P.3d 26 (2010) is misplaced. The facts in *Long* are significantly different than the facts in this case. First, in *Long* neither same-sex partner had resided in any state other than Washington. *Id.* at 923. All property they had acquired was acquired solely under either Washington State statutes or common law. *Id.* Second, during at least part of the relationship, one of the parties was married to a third party – his wife. *Id.* at 924. That factor is not present here. Third, Long declined his partner’s (Fregau) request to register their relationship as a domestic partnership under Washington State statute. *Id.* at 922. Finally, the parties each contributed to the earnest money, down payment and renovation expenses of the house titled only to Fregau. *Id.* at 923. They also shared expenses and a bank account. *Id.* Consequently, a property division between them necessarily had to have been made under (a) Washington State law only, and (b) common law, insofar as neither of them had sought the protection of a domestic partnership registration. The

application of equity was specifically premised upon preventing unjust enrichment. None of those factors is present here.

The common law equity relationship doctrine developed in the absence of a statutory guide:

Indeed we developed this equitable doctrine because the legislature has not provided a statutory means of resolving property distribution issues that arise when unmarried persons, who have lived in a marital-like relationship and acquire what would have been community property had they been married, separate.

Vasquez v. Hawthorne, 145 Wn.2d 103, 108-09, 33 P.3d 735 (2001) (internal citations omitted), Alexander, C.J., concurring.

The original opinion also assumed that the equity relationship construct was a recognized concept in state law during the parties' relationship, and one on which they should have relied. This assumption is not supported by the legislative and popular enactments. In enacting Chapter 6 Laws of 2008, the Legislature believed that it was extending "community property laws" to "domestic partners". See Final Bill Report, 2SHB 3104, at 3 (Appendix G). There would have been no reason for the Legislature to have acted thus in 2008 if this Court were correct that community property rights already existed for domestic partners through Washington common law.

D. The equitable relationship doctrine does not create a common law marriage.

Washington law does not recognize common-law marriage. *E.g. In re Gallagher's Estate*, 35 Wn.2d 512, 514-515, 213 P.2d 621 (1950). Until *Walsh*, community property rights were limited to marriage and registered domestic partnerships. RCW 26.16.030 (amended in 2008 to include state registered domestic partnership, L 2008 c 6 § 604). Despite these well-established principles, this Court's opinion refers to "community property" that could have been acquired by Walsh and Reynolds via an equity relationship prior to any registration date, including their registration as domestic partners in California. In an opinion issued after *Walsh*, this Court made it clear that marital community property law does not apply directly to equity relationships. Furthermore, the correct term is "community-like" property. *See Muridan, supra*, at 56 n.2, 4. This concept was not recognized in *Walsh*.

The first application of the equity relationship doctrine to a same-sex couple for purposes of property division at the termination of their relationship was not until 2004, in *Gormley v. Robertson*, 120 Wn. App. 31, 38, 83 P.3d 1042 (2004). There, the trial court "exercised sound discretion in preventing unjust enrichment" between parties who had "comingled their funds, made joint purchases and incurred debt." *Id.* at 39-40.

While the equity relationship doctrine was evolving in Washington courts, these parties lived in California and registered there as domestic partners under a statute that specifically disclaimed creation of community or quasi-community property rights. They operated at all times as separate financial entities. (CP 746. 2017 FF 6(C)).

VIII. WALSH’S ARGUMENT IN RESPONSE TO REYNOLDS’ BRIEF

A. The law of the case doctrine does not prevent reconsideration.

Reynolds asserts that the trial court reinstated a decision that this Court reversed. In support, Reynolds contends: (1) the trial court did not adhere to the mandate; (2) the trial court concluded the parties were never in an equity relationship; or (3) the trial court was bound by Reynolds interpretation of the law of the case. However, the trial court here reconsidered, not reinstated, the 2005 application of the equity relationship doctrine to these parties for purposes of property division.

1. The trial court followed the mandate.

The trial court followed this Court’s mandate. On remand, the trial court was tasked “(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.” *Walsh*, 183 Wn. App. at 858. Here, the trial court articulated in both its letter ruling and in its Findings of Fact and Conclusions of Law strict adherence to this mandate. In

issuing its letter ruling, the trial court analyzed the language of the mandate, pointing out that to “reconsider means to think again, reevaluate, reexamine.” (2017 FF 14, CP 642, 725). The following directive begins with “if so” which is a condition precedent, the condition being the subject of the reconsideration (2017 FF 14, CP 642, 725). The trial judge was required to and did consider other possible dates “that *could* serve as starting points for application of [the equity relationship] doctrine here.” *Walsh*, 183 Wn. App. at 847 (emphasis added). (2017 FF 3, CP 636, 726).

The trial court correctly ruled there was no factual or legal basis to adopt an earlier date. As Commissioner Schmidt decided in denying Reynolds’ motion for discretionary review:

This court did not order the trial court to find a pre-2005 commencement date for the equity relationship. It ordered that the trial court reconsider whether January 1, 2005, was the appropriate commencement date. The trial court did so albeit not in the way Reynolds argued it should have.

Ruling Denying Review, CP 759.

Significantly, Reynolds misstates this Court’s mandate to the trial court. That court was not asked to “reconsider when before 2005 the parties’ equity relationship started...” (Reynolds App. Br. 9) (emphasis added). Rather, it was directed to “reconsider whether the parties’ had a common law ‘equity relationship’ before January 1, 2005; and if so to redistribute the parties’ community assets accordingly.” *Walsh*, 183 Wn.

App. 830 (emphasis added). While the trial court strictly adhered to this Court's mandate by reconsidering "whether" there was a basis upon which to find an equity relationship prior to 2005, this Court should have limited distribution to, at most, that property acquired during the parties' Washington registered domestic partnership.

Reynolds also unsuccessfully argued in her motion for discretionary review that the trial court had departed from the accepted and usual course of judicial proceedings pursuant to RAP 2.3(b)(3). She asserted that Walsh was not permitted to reargue issues in the trial court that were alleged to have been resolved against her by the Court of Appeals. (CP 759). This Court's Commissioner disagreed, citing the standard in *Folise v. Folise*, 113 Wn. App. 609, 613, 54 P.3d 222 (2002), *rev. denied*: "Under RAP 2.3(b)(3), the trial court departs from the accepted and usual course of judicial proceedings when it ignore[s] unambiguous language in the statutory scheme and case law on the subject." (CP 759).

Reynolds did not seek further review pursuant to RAP 17.7, making the ruling by Commissioner Schmidt a final decision of this Court. *Hough v. Ballard*, 108 Wn. App. 272, 278, 31 P.3d 6 (2001). Reynolds not only raises the same arguments again, but provides no citation for the assertion that the trial court, following remand, concluded that the parties

were *never* in an equity relationship. The trial court’s 2017 FF 7(C) is precise:

“...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.” (2017 FF 13, CP 642).

The trial court did not rely solely on its earlier findings, affirmed on appeal, to conclude that the parties were not in an equity relationship for purposes of property division prior to January 1, 2005. (2017 FF 2, CP 636) The trial court concluded that this Court had not analyzed the constitutional rights of the parties, or overturned or invalidated 2012 CL 4 and 5 (CP 373), (2017 FF 4, CP 636). Consequently, an award of property acquired prior to January 1, 2005 to the non-acquiring party, by later deeming it community property, when acquired, would be unconstitutional.¹⁰ (CP 636).

Application of the equity relationship doctrine to retroactively effect a taking of property acquired as early as 1988 is contrary to both contemporaneous statutory limitations and the parameters of the common-law doctrine at that time. This Court’s 2014 opinion purported to address the intent of the parties upon their registration as domestic partners in California in 2000, deeming it an “unimpeachable indicator” of their

¹⁰ Finding an earlier start date would violate the constitutional rights of the parties by retroactively divesting vested property rights without due process of law.

intent. *Walsh*, 183 Wn. App. at 848. Intent is ultimately a question of fact determined by the trial court. *Newport Yacht Basin Ass'n. of Condo. Owners v. Supreme NW, Inc.*, 168 Wn. App. 56, 64, 277 P.3d 18 (2012) (holding that the intent of the parties is a question of fact when deeds are construed and a legal consequence of intent is a question of law); *Harris v. Ski Park Farms, Inc.*, 120 Wn.2d 727, 738, 844 P.2d 1006 (1993) (determining intent is a question of fact when interpreting a contract). The 2000 California statute disclaimed community property rights. Washington common law at the time was in accord:

We find no legal basis for judicially extending the rights and protections of marriage to same-sex relationships. Such an extension of the law is for the Legislature to decide, not the courts.... We hold that a same-sex relationship cannot be a meretricious relationship because such persons do not have a “quasi-martial” relationship. Same-sex persons may not legally marry and such a relationship is not entitled to the rights and protections of a quasi-marriage, such as community property-like treatment.

Vasquez, 99 Wn. App. at 368-69.

The trial court found that that parties intended to maintain separate assets and liabilities. (CP 374, 615). The trial court further concluded on reconsideration that, as a whole, the parties’ relationship was not marital-like for application of community property law. (2017 FF 8, CP 639). There is no finding that the parties had “never been in an equity relationship”. Instead, “the parties’ intent was not to create a committed

intimate relationship *whereby each would have an interest in the property acquired during the relationship.*” (2017 FF 7(C), CP 639, (emphasis added)).

This Court did not rule on Walsh’s constitutional challenges to application of the equity relationship doctrine to any time prior to August 20, 2009. *Walsh*, 183 Wn. App. 830 n. 23. This Court did not invalidate its 2012 Conclusions of Law 4 and 5 (CP 373), regarding violation of Walsh’s right to due process. *See* 2017 FF 4, CP 636-637.

B. The law regarding oral prenuptial agreements was extended to parties in an equity relationship after the conclusion of the first trial.

The trial court’s first decision entered into the record on August 16, 2012. (CP 402-434). Division One decided *In re G.W.F.*, 170 Wn. App. 631, 285 P.3d 208 (2012) on September 17, 2012. In that case, this Court upheld the finding of an enforceable oral agreement between parties who had been in a committed intimate relationship for 25 years, allowing them to retain separate ownership of income and investments each had acquired. Prior to that, oral prenuptial agreements had been upheld in a marital dissolution. *DewBerry v. George*, 115 Wn. App. 351, 365, 62 P.3d 525 (2003). In *G.W.F.*, Dr. Finch and Dr. Wieder entered into an oral agreement in 1987 not to marry and to maintain separate financial lives. 170 Wn. App. at 635. Like Walsh and Reynolds, they observed the terms

of the agreement by maintaining separate accounts and investments, each saving and spending as they wished. *Id.* When they agreed to co-own their family residence, they did so intentionally and in writing. *Id.* The trial court properly recognized and enforced the oral agreement here. (2017 FF 9).

RAP 2.5(c)(2) permits this Court to review its earlier decision on the basis of the law at the time of review. There is no dispute that Walsh and Reynolds meticulously maintained separate financial lives, intentionally choosing not to engage in a “marital-like” relationship with regard to property and debt acquisition. (2017 FF 8).

The trial court here did not rely upon some “alternative” ground to conclude that the parties had an enforceable oral prenuptial agreement. The trial court’s 2012 Findings of Fact and Walsh’s additional evidence (i.e. 2016 RP 87-88, 93-94) support that ruling.

C. Substantial evidence supports the trial court’s reconsideration of application of the *Long* Equity Relationship Factors

1. The lack of intimacy between the parties was not limited to their sexual relationship.

Reynolds is incorrect that lack of a sexual relationship is the only basis for the finding that these parties did not intend to enter into an equity relationship for purposes of sharing property. The level of intimacy, and lack thereof, was testified to by the parties and considered by the trial

court, 2017 FF 7(B) (CP 639) and is supported by substantial evidence. *See also* 2016 RP 90-2 and Appendix D. Based upon the totality of the parties' relationship before January 1, 2005, the court found 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." (2017 FF 9).

2. The financial arrangement between the parties indicated their relationship was not "marital-like".

Reynolds again attempts to isolate one fact (payment by Walsh) from the entirety of the circumstances. Application of the five non-exclusive equity relationship factors is not to be done in a hyper-technical fashion, but must be based on the circumstances of each case. *Muridan, supra*, at 58. The weight to be given to each factor and how to balance those factors varies. A trial court has considerable discretion in this analysis. 21 Kenneth W. Weber, WASHINGTON PRACTICE: FAMILY AND COMMUNITY PROPERTY LAW, §57.8, at 396-402 (2nd ed. 2015). The overall record here supports the trial court's conclusion that these parties intentionally chose not to engage in a "marital-like" relationship with regard to property and debt acquisition (2017 FF 8, ¶3). Not only did they maintain property under separate ownership, but they did so knowing "at any given moment, somebody could walk out and they could take what

was theirs and go with them because we had no knowledge that we could rely on any court to be willing to adjudicate anything”. (2017 RP 93). These parties suffered legal and societal discrimination. They were not open about their relationship, even with family members. (2016 CP 92). Having served in the military in the 1980’s, Walsh knew the consequences of being “outed” (2016 CP 92). Part of this discriminatory environment was viewing the relationship as “transient” (2016 RP 246-247). While Reynolds claimed she did not share that view, the trial court weighed the evidence and judged the credibility of witnesses. *Greene*, 97 Wn. App. at 714.

3. Both parties evidenced mutual intent to control their own assets.

The trial court made specific findings regarding the parties’ mutual intent to keep their financial lives separate and to maintain separate property from the commencement of their relationship to its end (2017 FF 8, CP 639). Walsh’s constitutional argument is consistent with this finding. (2017 CL 16, CP 643-45).

The trial court found that the parties had a separate property agreement, akin to an oral prenuptial agreement, and observed the agreement throughout the relationship (2017 FF 9, CP 640). Reynolds received the benefit of that agreement and accepted payment by Walsh of over \$500,000. Reynolds acquiesced in Walsh paying all household

expenses, virtually all expenses for the children and all costs of Reynolds obtaining a college degree. Having accepted the “benefit of the bargain” and maintaining autonomous authority over “her” assets, Reynolds now inconsistently argues that the parties acquired only community-like property. All property acquired by the parties was mutually agreed to be separate property. “[W]hat was Kathy’s had to be Kathy’s. That’s why Kathy got \$500,000. That was her money”. (2016 RP 93).

4. The parties’ intent regarding domestic partner registration is a question of fact. Application of the equity relationship doctrine contravenes the intent of the parties.

Reynolds argues that the California statute under which the parties registered as domestic partners (while residents of California) on March 6, 2000 “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...” (Reynolds App. Br. 43-4). First, when testimony differs, the trial court determines credibility. Second, the statute under which the parties registered specifically disclaimed creation of any interest in, or rights to, any real or personal property owned by either domestic partner.¹¹ (2012 FF 16, CP

¹¹ “The filing of a Declaration of Domestic Partnership pursuant to this division shall not, in and of itself, create any interest in, or rights to, any property, real or personal, owned by one partner or the other partner, including, but not limited to, rights similar to property or quasi-community property.” AB 26, Pt 4(c) (1999). App. F.

367). California’s legislature did not include a clause reserving application of common-law or equity¹², providing instead:

Notwithstanding any other provision of law, this article shall not be construed to extend any vested rights to any person nor be construed to limit the right of the legislature to subsequently modify or repeal any provision of this article. *AB*, 26, pt. 9 (1999) (CP 177-84). App. F.

The trial court specifically “examined the facts and circumstances surrounding the parties’ registration as domestic partners on March 6, 2000 in the State of California”, (2017 FF 5, CP 637). The actions taken by the parties at the time were consistent with their intent to acquire and maintain separate property. (2017 FF 5, CP 637). Neither California’s statute nor Washington’s evolving equity relationship doctrine at that time contemplated extending community property rights to same-sex relationships.

The trial court did not rely upon the “legalities” of the parties’ relationship, but correctly concluded that equity follows the law and cannot provide a remedy where legislation expressly denies it. *Stephanus v. Anderson*, 26 Wn. App. 326, 334, 613 P.2d 533 (1980); (2017 CL 14, CP 642). Judicial actions are limited by prior adjudication and existing

¹² We presume the legislature does not engage in unnecessary or meaningless acts. *John H. Sellen Const. Co. v. Dep’t. of Revenue*, 87 Wn.2d 878, 883, 558 P.2d 1342 (1976).

legal principles. 27 Am. Jur. 2d, Equity §87 (2018). “Equity courts cannot disregard, or in effect repeal, statutory and constitutional requirements and provisions.” 27 Am Jur 2d, Equity §83 n.4 (2018). See also *Williams v. Duke*, 125 Wn. 250, 215 P. 372 (1923).

The trial court correctly determined that neither party either intended to, or did, acquire community or quasi-community property during the years prior to and including their registration as domestic partners in California. Furthermore, neither party had – or reasonably could have had – any expectation that the property each was acquiring commencing in 1988 would be deemed, decades later, to have been “community-like” as of the date of acquisition. It is inexplicable that a statute specifically disclaiming community property rights between same-sex domestic partners could be deemed instead to have become an unimpeachable indicator of their intention to be in an equity relationship for purposes of acquiring community property.

D. The trial court correctly denied Reynolds attorney fees in compliance with this Court’s mandate.

The trial court was mandated to limit its reconsideration to determining whether it could apply a pre-2005 start date for finding an equity relationship for purposes of property division. The only issue before the court related solely to an equity relationship. The domestic partnership here was dissolved in 2012. Still, Reynolds sought

redistribution of the proceeds of the Federal Way home and maintenance, demonstrating an inconsistent position regarding “law of the case.”¹³ Attorney fees are not awardable in an action to distribute property acquired during an equity relationship. *Connell v. Francisco*, 127 Wn.2d 339, 349, 898 P.2d 831 (1995) (quoting *Continental Casualty Co. v. Weaver*, 48 Wn. App. 607, 612, 739 P.2d 1192 (1987)). “RCW 26.09.140, which permits an award of attorney fees in a marriage dissolution action, is inapplicable in an action to distribute property following a meretricious relationship...” *Connell*, 127 Wn.2d at 349.

Furthermore, attorney fees are not awardable for any reason following a committed intimate relationship. *In re Kelly and Moesslang*, 170 Wn. App. 722, 741, 287 P.3d 12 (2012) (trial court erred in awarding attorney fees based on “need, ability, and intransigence.”)

The legislature has not since extended the attorney fees statute in a way that can be constitutionally applied here. The parties registered as domestic partners before the 2009 effective date of “everything but marriage.” That statutory extension of attorney fees should constitutionally apply to such registrations entered into only after the

¹³ This Court upheld the trial court’s “broad discretion in the manner in which it crafted the just and equitable division of the parties’ non-separate properties, including its allocation of the equity in the Federal Way property, after balancing the parties respective needs and contributions”. *Walsh*, 183 Wn. App. at 855 ¶52.

effective date (not to this pre-existing domestic partnership), absent notice and opportunity to opt-out. *See Asche, supra*.

The trial court in fact considered need and ability to pay. (2017 CL 19, CP 645). (“Ms. Reynolds has income and assets available to her to pay her own attorney’s fees and costs”). Although Reynolds refers to herself as economically disadvantaged, she had since purchased, and then sold, a house with a same-sex partner, an airline pilot (2016 RP 327)¹⁴ and she was awaiting receipt of sale proceeds. (2016 RP 332 - 337). Walsh has already paid attorney fees to Reynolds of at least \$108,000. During pendency of the trial on remand, Reynolds was awarded, and Walsh paid, temporary attorney fees of \$10,000. There is substantial evidence to support denial of attorney’s fees based on need and ability to pay.

E. This case should not be remanded to a different judge.

Reynolds requests remand to a different trial judge for distribution of property acquired by the parties since 1988.

¹⁴ Reynolds received \$500,000 from Walsh during their relationship (2012 FF8); \$207,088.78 from the sale proceeds of the Federal Way house; \$16,500 from the sale of other assets; the SEP IRA in her own name valued at \$45,853; \$248,000 to be awarded from retirement accounts in Walsh’s name; \$32,736 from bank accounts in Walsh’s name; the Steinway piano, her vehicle, her business/business equipment and household goods and furniture (2016 RP 479-80), App. C.

Remand to a different trial judge requires demonstration of personal bias or “unusual circumstances”. *Smith v. Mulvaney*, 827 F.2d 558, 562 (9th Cir. 1987). To find “unusual circumstances”, the court considers:

(1) whether the original judge would reasonably be expected that upon remand to have substantial difficulty in putting out of his or her mind previously-expressed views or findings determined to be erroneous or based on evidence that must be rejected, (2) whether reassignment is advisable to preserve the appearance of justice, and (3) whether reassignment would entail waste and duplication out of proportion to any gain in preserving the appearance of fairness.

Id. at 563 (citations omitted).

Regarding the first factor, the trial judge meticulously complied with this Court’s mandate, evidencing no difficulty in undertaking to reconsider. This Court already concluded the trial court followed the mandate and did not depart from the accepted and usual course of judicial proceedings. *Ruling Denying Review*, CP 759.

Reynolds has made no argument regarding the “appearance of justice,” the second factor. However, the argument that this trial judge has “demonstrate[d] its utter unwillingness to adhere to this Court’s mandate”, (Reynolds App. Br. 48), has already been rejected.

The third factor is compelling. Reassignment would entail waste and duplication where there is no appearance of unfairness. The facts are unique and the record voluminous, encompassing two trials and mixed

questions of law and fact. *Muridan*, supra, at 55 (citing *Pennington*, 142 Wn.2d, at 602 – 03). The remedy sought is unsupported and the request should be denied.

F. Attorney fees on appeal should be denied.

Attorney fees should not be awarded pursuant to RAP 18.9. Neither Walsh nor her counsel urged the trial court to violate this Court’s mandate, and it was not violated. On the other hand, Reynolds urged the trial court to redistribute the sale proceeds of the Federal Way house and award her maintenance, demonstrating inconsistent positions regarding the “law of the case”. Reynolds resurrects arguments on issues already decided by this Court, and then wants Walsh to reward her for doing so. Walsh has paid \$18,000 (\$6,000 less than requested) in Reynolds attorney fees for her motion to recall the mandate or for discretionary review. Enough is enough. Moreover, Reynolds has been found to have the ability to pay her own attorney fees. The fee request for this appeal should be denied.

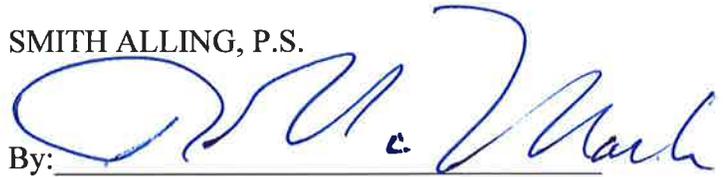
IX. CONCLUSION

This Court should reverse the distribution of property acquired after January 1, 2005, and remand to the trial court with instructions that only property acquired after August 20, 2009 is subject to division and each party should be awarded her separate property. This Court should

affirm the trial court's denial of attorney fees to Reynolds. Finally, this Court should deny the request for attorney fees on appeal.

Dated this 22nd day of June, 2018.

SMITH ALLING, P.S.

By: 

Barbara A. Henderson, WSBA No. 16175
Robert E. Mack, WSBA No. 6225

Attorneys for Respondent/Cross-Appellant
Jean M. Walsh

CERTIFICATE OF SERVICE

I hereby certify that I have this 22nd day of June, 2018, served a true and correct copy of the foregoing document, via the methods noted below, properly addressed as follows:

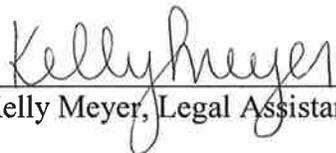
Catherine Wright Smith	<input type="checkbox"/>	Hand Delivery
Valerie A. Villacin	<input type="checkbox"/>	U.S. Mail
Smith Goodfriend PS	<input type="checkbox"/>	ABC Legal Messengers
1109 1st Ave., Suite 500	<input type="checkbox"/>	Facsimile
Seattle, WA 98101-2988	<input checked="" type="checkbox"/>	Email
<i>cate@washingtonappeals.com</i>		
<i>valerie@washingtonappeals.com</i>	<input type="checkbox"/>	

Ms. Miryana L. Gerassimova	<input type="checkbox"/>	Hand Delivery
McKinley Irvin, PLLC	<input type="checkbox"/>	U.S. Mail
1201 Pacific Ave. Ste. 2000	<input type="checkbox"/>	ABC Legal Messengers
Tacoma, WA 98402-4314	<input type="checkbox"/>	Facsimile
<i>mgerassimova@mckinleyirvin.com</i>	<input checked="" type="checkbox"/>	Email
<i>mdonaldson@mckinleyirvin.com</i>		

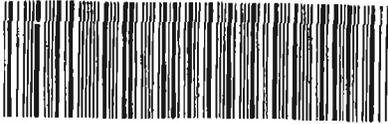
Washington State Court of Appeals	<input type="checkbox"/>	Hand Delivery
Division Two	<input type="checkbox"/>	U.S. Mail
950 Broadway, Suite 300		
Tacoma, WA 98402-4454		
<i>coa2filings@courts.wa.gov</i>	<input checked="" type="checkbox"/>	E-file

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED this 22nd day of June, 2018, at Tacoma, Washington.



Kelly Meyer, Legal Assistant



11-3-00924-5 39488285 FNFLC 11-07-12 D



3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

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.

ORIGINAL

SMITH ALLING
ATTORNEYS AT LAW
1102 Broadway Plaza, #403
Tacoma, Washington 98402
Telephone (253) 627-1091
Facsimile (253) 627-0123

App. A

1
2 The Respondent is a resident of the State of Washington, and resides in the county of King.

3 **2.2 Notice to the Respondent**

4 The Respondent appeared, responded or joined in the petition.

5 **2.3 Basis of Personal Jurisdiction Over the Respondent**

6 The facts below establish personal jurisdiction over the respondent.

7 The Respondent is currently residing in Washington.

8 **2.4 Date of Registration of Domestic Partnership and Parties' Residence**

9 The parties registered as Domestic Partners in the State of California in 2000 when
10 they resided in California. They registered ^{as domestic partners} ~~their domestic partnership~~ in Washington
11 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.

12 **2.5 Status of the Parties**

13 Petitioner and Respondent separated on March 14, 2010.

14 **2.6 Status of Domestic Partnership**

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

17 **2.7 Separation Contract or Domestic Partnership Agreement**

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

21 **2.8 Community Property**

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

- 23
- A. 2007 Sprinter Van, titled in both names.
 - B. Eagle Trailer titled in name of Respondent;

844 11/3/2012 48823
① Inheritance funds (\$30,000⁰⁰) 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. 37th 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 - 23rd 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.]

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

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

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

6 **2.9 Community Liabilities** *F. Steinway piano, gifted to her from Petitioner.*

7 There are no known community liabilities.

8 **2.10 Separate Liabilities**

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

<u>Creditor</u>	<u>Amount</u>
12 USAA Federal Mortgage on the property commonly known as 3917 N. 37 th St., Tacoma, WA 98407 (See Exhibit 34)	\$259,663 (original loan amount)
13 JPMorgan Chase Bank 14 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	\$256,729.23. – Prior to Petitioner

15 A. All liabilities incurred by her since March 14, 2010;

16 B. All credit card debt in her sole name.

17 The Respondent has incurred the following separate liabilities:

<u>Creditor</u>	<u>Amount</u>
18 Loan for purchase of Nissan truck 19 (See Exhibit 46)	\$8,000.00 (orig. loan amt.)

20 A. All credit card debt in her sole name;

21 B. \$2,000.00 owed to petitioner (business loan);
22 (See Exhibit 42)

23 C. All liabilities incurred by her since March 14, 2010;

D. All liabilities incurred for or by the business known as Les Scoop Too.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

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~~

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

3 The court finds the following:

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

8 The children listed below are dependent upon both domestic partners.

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

13 2.17 Jurisdiction Over the Children

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

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

18 This state is the home state of the children because:

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

22 2.18 Parenting Plan

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

24 2.19 Child Support

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

29 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.

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

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

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

1
2
3
4
14. On March 6, 2000, Petitioner and Respondent registered as a domestic partnership in the State of California. Their registration was pursuant to a statute which provided only limited, enumerated benefits to registered domestic partners including hospital visitation rights and rights to health insurance benefits if one partner was an employee of certain local governments. (*See Exhibit 41*).

5
6
15. The California Domestic Partnership certificate states in relevant part, "We agree to be jointly responsible for each other's basic living expenses incurred during our domestic partnership." (*See Exhibit 65*).

7
8
16. The primary benefit conferred by California Domestic Partnership law at the time of the parties' registration was related to healthcare and specifically excluded property rights. The law in effect at that time stated:

9
10
11
"The filing of a Declaration of Domestic Partnership pursuant to this division shall not, in and of itself, create any interest in, or rights to, any property, real or personal owned by one partner in the other partner including, but not limited to, rights similar to community property of quasi-community property.

12
13
14
15
Any property or interest acquired by the parties during the domestic partnership where title is shared shall be held by the partners in proportion or interest assigned to each partner at the time the property or interest was acquired unless otherwise expressly agreed in writing by both parties. Upon termination of the domestic partnership, this subdivision shall govern the division of any property jointly acquired by the partners."

16
(AB 26, Part 4, Sections (d) and (e).

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

19
20
21
18. When the parties relocated to Washington in June 2000, Petitioner sold the home she had owned in Fresno, and the proceeds from that sale were used as the down payment on the home Petitioner purchased at 2202 Davis Court Northeast, Tacoma, WA 98422 ("Davis Court property"). (*See Exhibits 30-31*).

22
23
19. Exhibit 4, prepared by CPA Richard Torosian, accurately traces the proceeds of the sale of Petitioner's Fresno home to the purchase of the Davis Court property. Petitioner was solely liable on the mortgage for the Davis Court property. The Davis 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-
27 inheritance or gift from her father. (See Exhibit 59).

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

33 "Registered domestic partners shall have the same rights, protections
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 expanded 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*).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

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 hours later, the parties subsequently confirmed, in writing, that they terminated their 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*).

36. On March 11, 2011, Petitioner filed a petition for dissolution of domestic 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 July 9, 2012, and continuing post trial.

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 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 Exhibit 2*).

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 Respondent during that time and Joseph resided with Petitioner.

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 children.

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

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.

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 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 Father.

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

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

1
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
she titled in her sole name. This transaction illustrates the way in which these parties
operated financially throughout their relationship. (See Exhibit 46).

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

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

12 III. Conclusions of Law

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

14 3.1 Jurisdiction

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

16 3.2 Granting a Decree

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

18 3.3 De Facto Parent

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

21 3.4 Pregnancy

22 Does not apply.

23 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,
 make provision for any necessary continuing restraining orders, and make provision
 for the change of name of any party. The distribution of property and liabilities as set
 forth in the decree is fair and equitable.

5 **3.6 Continuing Restraining Order**

6 Does not apply.

7 **3.7 Protection Order**

8 Does not apply.

9 **3.8 Attorney Fees and Costs**

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

12 **3.9 Other**

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

15 **CONCLUSIONS OF LAW**

- 16 1. Under the 2000 California domestic partnership registration, the parties enjoyed only
 17 limited rights relating to hospital visitation rights, and the ability for certain local
 18 governmental employers to offer health care coverage. Neither party acquired any
 19 community property rights or quasi community property interest in the property or
 20 income of the other party pursuant to their initial registration.
- 21 2. When the parties moved to Washington in June 2000, no registered domestic
 22 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.
- 23 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 sq). 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.
- 14 6. Notwithstanding, the Court has broad equitable powers to carry out the legislative
15 intent behind the domestic partnership statute (RCW 26.60.15), which is to treat
16 Washington's domestic partners the same as if they were spouses. The Court therefore
17 holds as a matter of law that an equitable relationship existed between Dr. Walsh and
18 Ms. Reynolds during the time from January 1, 2005 to August 20, 2009.
- 17 7. The equity relationship doctrine allows the Court to make a just and equitable division
18 of property "that would have been characterized as community property had the
19 parties been married." Connell v. Francisco, 127 Wn.2d. 339, 350, 898, P2d 831
20 (1995). Unlike the division of property upon dissolution of a marriage, where both
21 community and separate property are before the Court for equitable division, a Court
22 dividing property acquired during an equity relationship has discretion to equitably
23 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, 158Wn.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 ~~12~~6. 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 ~~13~~1. 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.

18 ~~14~~6. When the parties executed the deed to the Federal Way property, legally
19 described as , the south 390 feet of the north 938 feet of the west 330 feet of the east
20 457.875 feet of the southwest quarter of the southeast quarter of Section 1, Township
21 21 North, Range 3 East, W.M, in King County, Washington Except any portion
22 thereof with the west 15 feet of the east 142.875 feet of the south 500 feet of said
23 southwest quarter of the southeast quarter; and commonly known as 30210 23rd Ave.
SW, Federal Way, WA, it did not convert the home to community property. (See
Exhibit 32).

22 ~~15~~8. The Federal Way property is not held as joint tenants with right of
23 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*
 33).

4 **16** ~~X~~. The Federal Way property was acquired before January 1, 2005 and as such
 5 has both separate and community property interest. All contributions to the acquisition
 6 and construction of the Federal Way property are traceable to Petitioner's separate
 7 property, and Petitioner made all subsequent contributions to the mortgage, utilities,
 8 and other costs associated with the home. Petitioner's father's contributions of
 \$180,000 are allocable to Petitioner. She also contributed \$30,000 from inherited
 funds to pay down the mortgage obligation just prior to separation in March 2010.
 These amounts shall be awarded to Petitioner prior to determining the net proceeds
 available for equal division between the parties.

9 **17** ~~A~~. No maintenance should be awarded to Respondent for the following reasons:
 10 A. The Respondent has not provided sufficient facts required for analysis
 11 of the statutory factors necessary for the Court to award maintenance
 12 pursuant to RCW 26.09.090.
 13 B. Dr. Walsh has already paid for Ms. Reynolds to obtain an
 14 undergraduate college degree. Her request for unspecified additional
 15 money for education does not provide the Court with sufficient factual
 16 or legal basis for the award of maintenance.
 17 C. Ms. Reynolds has already started a business and has the ability to
 18 become self reliant. To the extent she has been awarded assets
 19 accumulated from the effective date of January 1, 2005 and her own
 20 separate assets she does not need maintenance.
 21 D. Dr. Walsh has made significant contributions to Ms. Reynolds since
 22 separation. Pursuant to the Temporary Orders entered in September
 23 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.

21 **18** ~~X~~. An award of attorney's fees in a dissolution proceeding is based on need and
 22 ability to pay. RCW 26.09.140 applies to the dissolution of domestic partnerships
 23 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.

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 \$33,117.50 reasonable in fees and \$2400.75 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:	(\$90,000.00)
	\$410,000.72 \$410,890.72
Balance as of January 1, 2005	(\$324,797.87)
	\$86,392.85 \$86,092.85
	43,046.42
	<u>\$43,196.43</u> to each party.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

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;

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

Lots 11 and 12 in Block 7 of March-McCandless 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.;

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

- 1) 2007 Sprinter Van;
- 2) 2007 Fleetwood Tent Trailer
- 3) Kubota Tractor
- 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.

Her share

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

Costs of resolving any dispute resolution shall be part of the costs of sale.

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

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

~~\$320,840.32~~

**Net PROCEEDS: 51.89% to Dr Walsh
48.11% to Ms Reynolds**

~~Half to each party.~~

Sale price less \$ 49,834.42 to Dr. Walsh

**Subject to conditions of sale set out herein.

L. Each party should be awarded the household goods, furniture, furnishings and their personal effects in her possession, except that Petitioner should be awarded the following personal belongings currently in the possession of Respondent: gifts to 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 TFI, page 20.

Respondent should be awarded the following:

- A. 2010 Nissan Frontier Truck, subject to indebtedness thereon;
- B. 50% of Petitioner's Group Health Permanent 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	
<i>Profit Sharing</i> Cash Balance Pension Plan	\$4,984.31	\$2,143.76
TOTAL:	\$160,920.55	\$163,064.39

- 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;
H.B. Her share

H.B. ~~One half of~~ the net proceeds from the sale of the home and real property commonly known as 30210-23rd 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. Waish'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

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

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

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

Conditions of Sale:

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

Liabilities to Respondent:

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

//
//
//
//

1 Dated: November 5, 2012.

Stephanie Arend
Judge Stephanie Arend



4 Presented by:

Approved for entry:

Notice of presentation waived: Pierce Clerk
By [Signature] DEPUTY

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

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

8 *Jean Walsh*
9 Jean Walsh, Petitioner

Kathryn Reynolds
Kathryn Reynolds, Respondent

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

0146
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25



Superior Court of Washington, County of PIERCE

In re the domestic partnership of:
Petitioner:

JEAN WALSH

And Respondent:

KATHRYN REYNOLDS

No. 11-3-00924-5

Findings and Conclusions on Remand
Following Dissolution of a Registered
Domestic Partnership
(FNFCL)

**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

SMITH | ALLING PS

1501 Dock St.
Tacoma, WA 98402
Phone: (253) 627-1091
Fax: (253) 627-0123

0147
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

0148
02
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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).

0149
02
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 of Commissioner



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. 4 of 16

SMITH | ALLING PS

1501 Dock St.
Tacoma, WA 98402
Phone: (253) 627-1091
Fax: (253) 627-0123

0150
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Petitioner and Respondent or their lawyers fill out below.

This document:

- is an agreement of the parties
- is presented by me
- may be signed by the court without notice to me



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

This document:

- is an agreement of the parties
- is presented by me
- may be signed by the court without notice to me

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

0151
02
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

11/28/2017 3219

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.

11/28/2017 3:21:52 0152

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 5th 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

01531
012
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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.~~ ^{PART} 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

0154
0219
3219
11/28/2017

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

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

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

25 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,

015
012
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

11/28/2017 2:10 PM

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 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

0196
012
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

11/28/2017 3219

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:~~ ^{BAA}

~~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.~~ ^{BAA}

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

- 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

0158
012
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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.

01
02
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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

0160
3219
11/28/2017

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

5 The right to contract exists for partners in committed intimate relationships. *In re GWF*,
6 170 Wn. App. 631, 638 (2012). Dr. Walsh has proven by clear, cogent, and convincing
7 evidence that the parties agreed to the characterization of all property acquired during
8 their relationship. Dr. Walsh and Ms. Reynolds both testified as to the existence of the
9 agreement. See Finding of Fact No. 6C. Ms. Reynolds herself suggested that she be
10 paid for household services and childcare. The testimony of both parties and the
11 exhibits (see exhibits 50 - 58, Ms. Reynolds tax returns) conclusively establish that the
12 parties observed the terms of the agreement throughout cohabitation. Neither party was
13 secretive about her finances. They did not share financial information with each other
14 because each had separate and independent control of her own finances. Here, as in
15 *GWF*, the record "reflects painstaking and meticulous effort to maintain separate
16 finances and property". See Finding of Fact No. 6D. Based on the record in this case,
17 the agreement of the parties will be observed for property acquired prior to January 1,
18 2005.

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

24 17. The property distribution contained in the Decree of Domestic Partnership entered
25 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.

COMPARISON OF REYNOLDS' STATEMENT OF FACTS TO RECORD

<p>The parties exchanged rings in a ceremony (Reynolds App. Br. 5).</p>	<p>There was no ring ceremony or any commitment ceremonies at any time (2016 RP 92).</p>
<p>Reynolds was the primary caregiver of all three of the children (Reynolds App. Br. 5).</p>	<p>Reynolds pay was increased when she began providing care for Julia and never reduced thereafter (2016 RP 233; 2012 FF 7, 9; CP 365-6). Walsh worked an accommodated schedule to be able to take the children to and from school on a regular basis. All three children were living with only Walsh at the time of trial, evidencing that all three regarded Walsh as their primary caregiver.</p>
<p>In March 2004, the parties had a marriage ceremony in Oregon (Reynolds App. Br. 5).</p>	<p>Both parties knew that same sex marriage was not legal in Oregon at the time (2012 RP 67). Walsh participated as a political statement (2012 FF 24; CP 368).</p>
<p>When the parties registered as domestic partners in Washington in 2009, it was shortly after the Washington legislature amended its domestic partnership law to ensure that domestic partners are “treated the same as married spouses” (Reynolds App. Br. 5).</p>	<p>The parties’ registration was pursuant to Ch. 156 Laws of 2007 (2012 FF 30; CP 369). Expanded right and responsibilities of domestic partners to “everything but marriage” was not effective until January 1, 2010. The August 20, 2009 Declaration of Registered Domestic Partnership provides “Any rights conferred by this registration may be superseded by a will, deed or other instrument signed by either party to this domestic registration.” (2012 FF 30; CP 369).</p>
<p>Trial court recognized that it would have found that the parties’ equity relationship had begun in 1988 if they were heterosexual (Reynolds App. Br. 6).</p>	<p>Refers to dicta in oral ruling and not to the facts of this case. The trial court made no Finding of Fact or Conclusion of Law in 2012 or 2017 to support this.</p>
<p>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 (Reynolds App. Br. 6).</p>	<p>There are no “joint retirement” accounts. During the entire relationship the parties had no joint accounts of any type (2012 FF 4, CP 365). Reynolds refers to “retirement in her name.” Similarly, Walsh’s retirement accounts are solely in her name. There were no deposits to Walsh’s SEP IRA predating the California registered domestic partnership (2012 FF 13, CP 366).</p>

<p>The trial court left Walsh... with all the remaining assets from an estate that exceeded \$2 million.</p>	<p>Reynolds received \$500,000 during the course of the relationship: 2012 FF 8; CP 366; 2016 RP 88; \$207,088.78 as her 48% of house sale “proceeds”, (without regard to \$400,000 overall loss on sale that only Walsh paid); share of retirement accounts in Walsh’s name (accumulated since 2005) of \$248,000. <i>Supplemental designation of clerk’s papers</i> CP____; \$45,853 SEP IRA in her name; \$16,500 from the sale of assets; \$32,763 from bank accounts in Walsh’s name; a Steinway piano and household goods and furnishings, cumulatively valued at \$35,000; and her business/business equipment.</p>
<p>This Court directed the trial court on remand to: (1) reconsider <u>when</u> the parties’ equity relationship started before 2005, and (2) reassess its property division based on the true length of the parties equity relationship (Reynolds App. Br. 1) (emphasis added).</p>	<p>The remand directs the trial court (1) to reconsider <u>whether</u> the parties had a common law “equity relationship” before January 1, 2005; and (2) <u>if so</u>, to redistribute the parties’ community assets accordingly. <i>Walsh v. Reynolds</i>, 183 Wn. App. 830, 859 (emphasis added)</p>
<p>The parties separated “a year later” following their domestic partnership registration in Washington in 2009 (Reynolds App. Br. 5)</p>	<p>The parties registered as domestic partners in Washington on August 9, 2009 (2012 FF 2.4; CP 360). They separated on March 14, 2010 (2012 FF 2.5; CP 360), a period of 7 months.</p>
<p>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.</p>	<p>This Court held, among other things, “that the trial court did not abuse its broad discretion in the manner in which is crafted a just and equitable division of the parties’ non-separate property, including its allocation of the equity in the Federal Way property, after balancing the parties’ respective needs and contributions. <i>Walsh</i>, 183 Wn. App. at 855, ¶52.</p>

ADDITIONAL EVIDENCE FROM 2016 TRIAL TESTIMONY ONLY

<u>Topic</u>	<u>2016 Trial</u>
At the time of trial, all three children lived only with Dr. Walsh.	2016 RP 80
Julia is unable to work in any field due to a seizure disorder. She is not very functional and will be residing with Dr. Walsh for the foreseeable future.	2016 RP 83-5
Walsh worked 16-20 hours per week in high school, saving money to pay for her own room, board and books at Baylor. When her college scholarship covering tuition at Baylor ran out, she lived at home and worked 16-20 hours per week to pay for tuition and books at Arizona State.	2016 RP 86
Walsh attended medical school on an Air Force scholarship and federal loan. She paid off her federal loan while a resident. From 1984-86 she served in the Air Force in Alabama.	2016 RP 86
Walsh had been financially self-sufficient for 13 years (since 1975) at the time she and Reynolds met.	2016 RP 87
Although the parties lived together again after they separated in 1992, the emotional connection was never the same. Any commitment to each other was replaced by a commitment to the child. There was no emotional intimacy nor any personal, emotional connection.	2016 RP 90
Examples of this lack of intimacy include neither party being the birth coach for the other; never going on vacation together without the children; Reynolds had major surgery in 2000 and asked her sister to be with her, not Walsh.	2016 RP 92
The parties were not open about being in a same-sex relationship, not even with family.	2016 RP 93
The lack of security in a same-sex relationship impacted the parties' financial agreement. At any moment, either party could walk out and could take with them what was theirs.	2016 RP 93
The parties were aware they could make a contract to co-own things. This was not the option they wanted.	2016 RP 93-4

App. D

At the time of registration as a California domestic partnership in 2000, Walsh believed it still wasn't safe to be a same-sex couple.	2016 RP 97
The Federal Way house sold in September 2013 for a gross sale price of \$755,000.	2016 RP 104
The parties sold vehicles and equipment with Reynolds receiving half the proceeds approximating \$16,500.	2016 RP 107-8
Reynolds received \$207,088 from the proceeds of the sale of the Federal Way house.	2016 RP 313, Exhibit 172
Reynolds also received her vehicle, Steinway piano and other household goods.	2016 RP 108-10
Of the \$500,000 paid by Walsh to Reynolds, only approximately \$45,000 had been saved by Reynolds (in her name) in identifiable accounts.	2016 RP 121-23
There is an overall loss on the Federal Way home. \$1.1 million (after reimbursements) had been spent to purchase and reconstruct it. It sold for \$755,000 (gross) for a net loss of approximately \$400,000.	2016 RP 172
Walsh's father moved into the Federal Way home to live independently. Until the near end of this life, he drove himself and would have dinner with the parties and the children on Sundays.	2016 RP 208-9
Walsh never intended to be in a marriage-like relationship or to share property in a community-like relationship.	2016 RP 215
Reynolds was designated as "life partner" under durable powers of attorney as opposed to business partner because the term "domestic partner" wasn't coined yet.	2016 RP 217
Emily was not living with Reynolds commencing August 2015. Walsh continued to pay child support for Emily to Reynolds through December 2015.	2016 RP 231
Same-sex relationships were deemed transient by the culture during much of the parties' relationship. There was no legal mechanism to recognize they weren't transient, such as domestic partnership. Walsh felt their relationship was transient.	2016 RP 246
Reynolds expected to receive \$20,000 in proceeds from the sale of the home she had purchased during her next same-sex relationship.	2016 RP 277
Although the children were baptized in the Lutheran church, Walsh and Reynolds did not go to church together, Walsh went mostly with Julia.	2016 RP 307
The expenses that Reynolds provided the court in her Financial Declaration included duplicative expenses, such as utility bills she was incurring for the home that had already been sold and expenses	2016 RP 320-21

for the apartment to which she had recently moved.	
Reynolds entered into a domestic partnership agreement with Lisa Brummond, allowing her to obtain benefits through Alaska Airlines and the City of Seattle. Both the Deed for the purchase of the home by Reynolds and Brummond and the Deed of Trust securing the mortgage on the home, describe the parties as Lisa Jeanene Brummond and Kathryn L. Reynolds, domestic partners under the Washington State Domestic Partnership Act #15023 filed on 8/27/13.	2016 RP 346-48
Reynolds claimed a loss on the Federal Way home in tax years 2013, 2014 and 2015.	2016 RP 352-56
It was not Walsh's handwriting, as alleged, on a copy of Reynolds resume (Exhibit 167). The items that were written thereon, such as "homemaker" or "spouse" were believed by Walsh to be inappropriate on a professional resume. Walsh did not write and would not have suggested that language.	2016 RP 376
<u>Testimony of Cary Deaton, C.P.A.</u>	
Distributions from Walsh's 401(k) and retirement accounts would be taxed to Walsh at her individual federal income tax rate. The tax code does not allow for tax free transfers for a former domestic partner.	2016 RP 136
A Qualified Domestic Relations Order (QDRO) is not available to these individuals because Reynolds does not qualify as an alternate payee under ERISA. Even if she did, the IRS code would deem it a distribution subject to federal tax payable by Walsh.	2016 RP 149
For federal income tax purposes, the benefits of being married are available only to individuals who are married as defined by the Internal Revenue Code. If they are not married for state law purposes, they receive none of the tax benefits of marriage.	2016 RP 152

U.S. CONSTITUTION – FOURTEENTH AMENDMENT

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Section 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

Section 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

UNITED STATES CONSTITUTION

Amendment 5 - Trial and Punishment, Compensation for Takings

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

PREAMBLE

We, the people of the State of Washington, grateful to the Supreme Ruler of the Universe for our liberties, do ordain this constitution.

**ARTICLE I
DECLARATION OF RIGHTS**

SECTION 1 POLITICAL POWER. All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.

SECTION 2 SUPREME LAW OF THE LAND. The Constitution of the United States is the supreme law of the land.

SECTION 3 PERSONAL RIGHTS. No person shall be deprived of life, liberty, or property, without due process of law.

SECTION 4 RIGHT OF PETITION AND ASSEMBLAGE. The right of petition and of the people peaceably to assemble for the common good shall never be abridged.

SECTION 5 FREEDOM OF SPEECH. Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right.

SECTION 6 OATHS - MODE OF ADMINISTERING. The mode of administering an oath, or affirmation, shall be such as may be most consistent with and binding upon the conscience of the person to whom such oath, or affirmation, may be administered.

SECTION 7 INVASION OF PRIVATE AFFAIRS OR HOME PROHIBITED. No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

SECTION 8 IRREVOCABLE PRIVILEGE, FRANCHISE OR IMMUNITY PROHIBITED. No law granting irrevocably any privilege, franchise or immunity, shall be passed by the legislature.

SECTION 9 RIGHTS OF ACCUSED PERSONS. No person shall be compelled in any criminal case to give evidence against himself, or be twice put in jeopardy for the same offense.

SECTION 10 ADMINISTRATION OF JUSTICE. Justice in all cases shall be administered openly, and without unnecessary delay.

SECTION 11 RELIGIOUS FREEDOM. Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience

hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment: PROVIDED, HOWEVER, That this article shall not be so construed as to forbid the employment by the state of a chaplain for such of the state custodial, correctional, and mental institutions, or by a county's or public hospital district's hospital, health care facility, or hospice, as in the discretion of the legislature may seem justified. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony. [AMENDMENT 88, 1993 House Joint Resolution No. 4200, p 3062. Approved November 2, 1993.]

Amendment 34 (1957) — Art. 1 Section 11 RELIGIOUS FREEDOM — *Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment: Provided, however, That this article shall not be so construed as to forbid the employment by the state of a chaplain for such of the state custodial, correctional and mental institutions as in the discretion of the legislature may seem justified. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony.* [AMENDMENT 34, 1957 Senate Joint Resolution No. 14, p 1299. Approved November 4, 1958.]

Amendment 4 (1904) — Art. 1 Section 11 RELIGIOUS FREEDOM — *Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment. Provided, however, That this article shall not be so construed as to forbid the employment by the state of a chaplain for the state penitentiary, and for such of the state reformatories as in the discretion of the legislature may seem justified. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony.* [AMENDMENT 4, 1903 p 283 Section 1. Approved November, 1904.]

Original text — Art. 1 Section 11 RELIGIOUS FREEDOM — *Absolute freedom of conscience in all matters of religious sentiment, belief, and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person, or property, on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for, or applied to any religious worship, exercise or instruction, or the support of any religious establishment. No religious qualification shall be required for any public office, or employment, nor shall any person be incompetent as a witness, or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony.*

SECTION 12 SPECIAL PRIVILEGES AND IMMUNITIES PROHIBITED. No law shall be passed

granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens, or corporations.

SECTION 13 HABEAS CORPUS. The privilege of the writ of habeas corpus shall not be suspended, unless in case of rebellion or invasion the public safety requires it.

SECTION 14 EXCESSIVE BAIL, FINES AND PUNISHMENTS. Excessive bail shall not be required, excessive fines imposed, nor cruel punishment inflicted.

SECTION 15 CONVICTIONS, EFFECT OF. No conviction shall work corruption of blood, nor forfeiture of estate.

SECTION 16 EMINENT DOMAIN. Private property shall not be taken for private use, except for private ways of necessity, and for drains, flumes, or ditches on or across the lands of others for agricultural, domestic, or sanitary purposes. No private property shall be taken or damaged for public or private use without just compensation having been first made, or paid into court for the owner, and no right-of-way shall be appropriated to the use of any corporation other than municipal until full compensation therefor be first made in money, or ascertained and paid into court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived, as in other civil cases in courts of record, in the manner prescribed by law. Whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such, without regard to any legislative assertion that the use is public: *Provided*, That the taking of private property by the state for land reclamation and settlement purposes is hereby declared to be for public use. [AMENDMENT 9, 1919 p 385 Section 1. Approved November, 1920.]

Original text — Art. 1 Section 16 EMINENT DOMAIN — Private property shall not be taken for private use, except for private ways of necessity, and for drains, flumes or ditches on or across the lands of others for agricultural, domestic or sanitary purposes. No private property shall be taken or damaged for public or private use without just compensation having first been made, or paid into court for the owner, and no right of way shall be appropriated to the use of any corporation other than municipal, until full compensation therefor be first made in money, or ascertained and paid into the court for the owner, irrespective of any benefit from any improvement proposed by such corporation, which compensation shall be ascertained by a jury, unless a jury be waived as in other civil cases in courts of record, in the manner prescribed by law. Whenever an attempt is made to take private property for a use alleged to be public, the question whether the contemplated use be really public shall be a judicial question, and determined as such without regard to any legislative assertion that the use is public.

SECTION 17 IMPRISONMENT FOR DEBT. There shall be no imprisonment for debt, except in cases of absconding debtors.

SECTION 18 MILITARY POWER, LIMITATION OF. The military shall be in strict subordination to the civil power.

SECTION 19 FREEDOM OF ELECTIONS. All Elections shall be free and equal, and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.

SECTION 20 BAIL, WHEN AUTHORIZED. All persons charged with crime shall be bailable by sufficient sureties, except for capital offenses when the proof is evident, or the presumption great. Bail may be denied for offenses punishable by the possibility of life in prison upon a showing by clear and convincing evidence of a propensity for violence that creates a substantial likelihood of danger to the community or any persons, subject to such limitations as shall be determined by the legislature. [AMENDMENT 104, 2010 Engrossed Substitute House Joint Resolution No. 4220, p 3129. Approved November 2, 2010.]

Original text — Art. 1 Section 20 BAIL, WHEN AUTHORIZED — All persons charged with crime shall be bailable by sufficient sureties, except for capital offenses when the proof is evident, or the presumption great.

SECTION 21 TRIAL BY JURY. The right of trial by jury shall remain inviolate, but the legislature may provide for a jury of any number less than twelve in courts not of record, and for a verdict by nine or more jurors in civil cases in any court of record, and for waiving of the jury in civil cases where the consent of the parties interested is given thereto.

SECTION 22 RIGHTS OF THE ACCUSED. In criminal prosecutions the accused shall have the right to appear and defend in person, or by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to meet the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public trial by an impartial jury of the county in which the offense is charged to have been committed and the right to appeal in all cases: *Provided*, The route traversed by any railway coach, train or public conveyance, and the water traversed by any boat shall be criminal districts; and the jurisdiction of all public offenses committed on any such railway car, coach, train, boat or other public conveyance, or at any station or depot upon such route, shall be in any county through which the said car, coach, train, boat or other public conveyance may pass during the trip or voyage, or in which the trip or voyage may begin or terminate. In no instance shall any accused person before final judgment be compelled to advance money or fees to secure the rights herein guaranteed. [AMENDMENT 10, 1921 p 79 Section 1. Approved November, 1922.]

Original text — Art. 1 Section 22 RIGHTS OF ACCUSED PERSONS — In criminal prosecution, the accused shall have the right to appear and defend in person, and by counsel, to demand the nature and cause of the accusation against him, to have a copy thereof, to testify in his own behalf, to meet the witnesses against him face to face, to have compulsory process to compel the attendance of witnesses in his own behalf, to have a speedy public

Assembly Bill No. 26

CHAPTER 588

An act to add Division 2.5 (commencing with Section 297) to the Family Code, to add Article 9 (commencing with Section 22867) to Chapter 1 of Part 5 of Division 5 of Title 2 of the Government Code, and to add Section 1261 to the Health and Safety Code, relating to domestic partners.

[Approved by Governor October 2, 1999. Filed
with Secretary of State October 10, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 26, Migden. Domestic partners.

(1) Existing law sets forth the requirements of a valid marriage, and specifies the rights and obligations of spouses during marriage.

This bill would provide that a domestic partnership shall be established between 2 adults of the same sex or, if both persons are over the age of 62 and meet specified eligibility criteria, opposite sexes, who have a common residence and meet other specified criteria and would provide for the registration of domestic partnerships with the Secretary of State. The bill would also specify procedures for the termination of domestic partnerships. The bill would prohibit a person who has filed a Declaration of Domestic Partnership from filing a new declaration until at least 6 months has elapsed from the date that a Notice of Termination of Domestic Partnership was filed with the Secretary of State in connection with the termination of the most recent domestic partnership, except where the previous domestic partnership ended because one of the partners died or married.

The bill would require the Secretary of State to prepare forms for the registration and termination of domestic partnerships, distribute these forms to each county clerk, and require the Secretary of State to establish, by regulation, and charge fees for processing these forms. The bill would require these forms to be available to the public at the office of the Secretary of State and each county clerk. A Declaration of Domestic Partnership would be required to be accompanied by a specified declaration of veracity. Violation of this requirement would be a misdemeanor. By creating a new crime and by increasing the duties of the county clerk, the bill would impose a state-mandated local program.

The bill would also preempt, on and after July 1, 2000, any local ordinance or law that provides for the creation of a domestic partnership, as specified, except that a local jurisdiction may retain or adopt policies or laws that offer rights to domestic partners within

the jurisdiction and impose duties that are in addition to the rights and duties established by state law, as specified.

(2) Existing law does not specify requirements concerning patient visitation in all health facilities.

This bill would require a health facility to allow a patient's domestic partner and other specified persons to visit a patient, except under specified conditions.

(3) The existing Public Employees' Medical and Hospital Care Act authorizes the Board of Administration of the Public Employees' Retirement System to provide health benefits plan coverage to state and local public employees and annuitants and their family members.

This bill would authorize the state and local employers to offer health care coverage and other benefits to domestic partners, as defined, who have submitted certificates of eligibility or Declarations of Domestic Partnership to the board.

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, with regard to certain mandates, no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature to retain the right of hospitals and other health care facilities to establish visitation policies in reasonable and appropriate circumstances. In enacting this legislation, it is the intent of the Legislature to provide hospitals and other health facilities with the authority to administer those policies in a manner that applies equally to spouses, registered domestic partners, and other immediate family members.

SEC. 2. Division 2.5 (commencing with Section 297) is added to the Family Code, to read:

DIVISION 2.5. DOMESTIC PARTNER REGISTRATION

PART 1. DEFINITIONS

297. (a) Domestic partners are two adults who have chosen to share one another's lives in an intimate and committed relationship of mutual caring.

(b) A domestic partnership shall be established in California when all of the following requirements are met:

(1) Both persons have a common residence.

(2) Both persons agree to be jointly responsible for each other's basic living expenses incurred during the domestic partnership.

(3) Neither person is married or a member of another domestic partnership.

(4) The two persons are not related by blood in a way that would prevent them from being married to each other in this state.

(5) Both persons are at least 18 years of age.

(6) Either of the following:

(A) Both persons are members of the same sex.

(B) Both persons meet the eligibility criteria under Title II of the Social Security Act as defined in 42 U.S.C. Section 402(a) for old-age insurance benefits or Title XVI of the Social Security Act as defined in 42 U.S.C. Section 1381 for aged individuals. Notwithstanding any other provision of this section, persons of opposite sexes may not constitute a domestic partnership unless both persons are over the age of 62.

(7) Both persons are capable of consenting to the domestic partnership.

(8) Neither person has previously filed a Declaration of Domestic Partnership with the Secretary of State pursuant to this division that has not been terminated under Section 299.

(9) Both file a Declaration of Domestic Partnership with the Secretary of State pursuant to this division.

(c) "Have a common residence" means that both domestic partners share the same residence. It is not necessary that the legal right to possess the common residence be in both of their names. Two people have a common residence even if one or both have additional residences. Domestic partners do not cease to have a common residence if one leaves the common residence but intends to return.

(d) "Basic living expenses" means, shelter, utilities, and all other costs directly related to the maintenance of the common household of the common residence of the domestic partners. It also means any other cost, such as medical care, if some or all of the cost is paid as a benefit because a person is another person's domestic partner.

(e) "Joint responsibility" means that each partner agrees to provide for the other partner's basic living expenses if the partner is unable to provide for herself or himself. Persons to whom these

expenses are owed may enforce this responsibility if, in extending credit or providing goods or services, they relied on the existence of the domestic partnership and the agreement of both partners to be jointly responsible for those specific expenses.

PART 2. REGISTRATION

298. (a) The Secretary of State shall prepare forms entitled “Declaration of Domestic Partnership” and “Notice of Termination of Domestic Partnership” to meet the requirements of this division. These forms shall require the signature and seal of an acknowledgment by a notary public to be binding and valid.

(b) (1) The Secretary of State shall distribute these forms to each county clerk. These forms shall be available to the public at the office of the Secretary of State and each county clerk.

(2) The Secretary of State shall, by regulation, establish fees for the actual costs of processing each of these forms, and shall charge these fees to persons filing the forms.

(c) The Declaration of Domestic Partnership shall require each person who wants to become a domestic partner to (1) state that he or she meets the requirements of Section 297 at the time the form is signed, (2) provide a mailing address, (3) sign the form with a declaration that representations made therein are true, correct, and contain no material omissions of fact to the best knowledge and belief of the applicant, and (4) have a notary public acknowledge his or her signature. Both partners’ signatures shall be affixed to one Declaration of Domestic Partnership form, which form shall then be transmitted to the Secretary of State according to the instructions provided on the form. Violations of this subdivision are punishable as a misdemeanor.

298.5. (a) Two persons desiring to become domestic partners may complete and file a Declaration of Domestic Partnership with the Secretary of State.

(b) The Secretary of State shall register the Declaration of Domestic Partnership in a registry for those partnerships, and shall return a copy of the registered form to the domestic partners at the address provided by the domestic partners as their common residence.

(c) No person who has filed a Declaration of Domestic Partnership may file a new Declaration of Domestic Partnership until at least six months after the date that a Notice of Termination of Domestic Partnership was filed with the Secretary of State pursuant to subdivision (b) of Section 299 in connection with the termination of the most recent domestic partnership. This prohibition does not apply if the previous domestic partnership ended because one of the partners died or married.

PART 3. TERMINATION

299. (a) A domestic partnership is terminated when any one of the following occurs:

(1) One partner gives or sends to the other partner a written notice by certified mail that he or she is terminating the partnership.

(2) One of the domestic partners dies.

(3) One of the domestic partners marries.

(4) The domestic partners no longer have a common residence.

(b) Upon termination of a domestic partnership, at least one former partner shall file a Notice of Termination of Domestic Partnership with the Secretary of State by mailing a completed form to the Secretary of State by certified mail. The date on which the Notice of Termination of Domestic Partnership is received by the Secretary of State shall be deemed the actual termination date of the domestic partnership, unless termination is caused by the death or marriage of a domestic partner, in which case the actual termination date shall be the date indicated on the Notice of Termination of Domestic Partnership form. The partner who files the Notice of Termination of Domestic Partnership shall send a copy of the notice to the last known address of the other partner.

(c) A former domestic partner who has given a copy of a Declaration of Domestic Partnership to any third party in order to qualify for any benefit or right shall, within 60 days of termination of the domestic partnership, give or send to the third party, at the last known address of the third party, written notification that the domestic partnership has been terminated. A third party who suffers a loss as a result of failure by the domestic partner to send this notice shall be entitled to seek recovery from the partner who was obligated to send it for any actual loss resulting thereby.

(d) Failure to provide the third-party notice required in subdivision (c) shall not delay or prevent the termination of the domestic partnership.

PART 4. LEGAL EFFECT

299.5. (a) The obligations that two people have to each other as a result of creating a domestic partnership are those described in Section 297. Registration as a domestic partner under this division shall not be evidence of, or establish, any rights existing under law other than those expressly provided to domestic partners in this division and Section 1261 of the Health and Safety Code.

The provisions relating to domestic partners provided in this division and Section 1261 of the Health and Safety Code shall not diminish any right under any other provision of law.

(b) Upon the termination of a domestic partnership, the partners, from that time forward, shall incur none of the obligations to each

other as domestic partners that are created by this division and Section 1261 of the Health and Safety Code.

(c) The filing of a Declaration of Domestic Partnership pursuant to this division shall not change the character of property, real or personal, or any interest in any real or personal property owned by either domestic partner or both of them prior to the date of filing of the declaration.

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

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

(f) The formation of a domestic partnership under this division shall not change the individual income or estate tax liability of each domestic partner prior to and during the partnership, unless otherwise provided under another state or federal law or regulation.

PART 5. PREEMPTION

299.6. (a) Any local ordinance or law that provides for the creation of a “domestic partnership” shall be preempted on and after July 1, 2000, except as provided in subdivision (c).

(b) Domestic partnerships created under any local domestic partnership ordinance or law before July 1, 2000, shall remain valid. On and after July 1, 2000, domestic partnerships previously established under a local ordinance or law shall be governed by this division and the rights and duties of the partners shall be those set out in this division, except as provided in subdivision (c), provided a Declaration of Domestic Partnership is filed by the domestic partners under Section 298.5.

(c) Any local jurisdiction may retain or adopt ordinances, policies, or laws that offer rights within that jurisdiction to domestic partners as defined by Section 297 or as more broadly defined by the local jurisdiction’s ordinances, policies, or laws, or that impose duties upon third parties regarding domestic partners as defined by Section 297 or as more broadly defined by the local jurisdiction’s ordinances, policies, or laws, that are in addition to the rights and duties set out in this division, and the local rights may be conditioned upon the agreement of the domestic partners to assume the additional obligations set forth in this division.

SEC. 3. Article 9 (commencing with Section 22867) is added to Chapter 1 of Part 5 of Division 5 of Title 2 of the Government Code, to read:

Article 9. Domestic Partners

22867. It is the purpose of this article to provide employers the ability to offer health care coverage through this part to the domestic partners of their employees and annuitants.

22868. For this part only, and only for the purposes of providing health care coverage pursuant to this part, a domestic partner is an adult in a domestic partnership, as defined in Section 22869, with a person enrolled as an employee or annuitant of an employer contracting with the board for health benefits coverage, who has submitted to the system a certificate of eligibility pursuant to Section 22872 or a valid Declaration of Domestic Partnership filed pursuant to Division 2.5 (commencing with Section 297) of the Family Code.

22869. For purposes of this part, a "domestic partnership" shall be two people who meet all of the criteria set forth in Section 297 of the Family Code.

22871. Notwithstanding any other provision of law, a domestic partner shall be included in the definition of a family member for purposes of Sections 22777, 22778, subdivision (a) of Section 22791, Sections 22811, 22811.5, 22812, 22813, 22815, subdivision (c) of Section 22816, Sections 22816.3, 22817, 22819, 22823, subdivision (a) of Section 22825, subdivision (a) of Section 22825.1, Section 22825.7, paragraph (1) of subdivision (b) of Section 22840.2, subdivision (f) of Section 22840.2, subdivision (b) of Section 22856, and Section 22859.

22871.1. Notwithstanding Section 22871 or any other provision of law, a domestic partner shall not be included in the definition of a family member for purposes of subdivisions (e) and (f) of Section 22754, subdivision (a) of Section 22811.6, and Section 22821.

22871.2. Notwithstanding subdivision (f) of Section 22754 or any other provision of law, a domestic partner shall be considered to be a family member for purposes of Section 22810, except that a domestic partner shall not be considered a family member for purposes of continued health coverage eligibility upon the death of the employee or annuitant.

22871.3. If an employee or annuitant has a domestic partner who is an employee or annuitant, each domestic partner may enroll as an individual. No person may be enrolled both as an employee or annuitant and as a family member. A family member may be enrolled with respect to only one employee or annuitant.

22872. (a) In order to receive any benefit provided by this article, an employee or annuitant shall present the board with proof in a manner designated by the board that the employee or annuitant and his or her domestic partner have filed a valid Declaration of

Domestic Partnership pursuant to Division 2.5 (commencing with Section 297) of the Family Code.

(b) The employee or annuitant shall also provide a signed statement indicating that the employee or annuitant agrees that he or she may be required to reimburse the employer, their designated health services plan, and the system, for any expenditures made by the employer, their designated health services plan, and the system, for medical claims, processing fees, administrative charges, costs, and attorney's fees on behalf of the domestic partner if any of the submitted documentation is found to be incomplete, inaccurate, or fraudulent.

(c) The employee or annuitant shall notify the employer or CalPERS when a domestic partnership has terminated, as required by subdivision (c) of Section 299 of the Family Code.

22873. (a) Any employer or contracting agency may, at its option, offer health benefits pursuant to this article, to the domestic partners of its employees and annuitants.

(b) The employer or contracting agency shall notify the board, in a manner prescribed by the board, that it is electing to provide health care coverage through this article to the domestic partners of its employees and annuitants.

(c) The employer or contracting agency shall provide to the system any information deemed necessary by the board to determine eligibility under this article.

22874. Notwithstanding any other provision of law, this article shall not be construed to extend any vested rights to any person nor be construed to limit the right of the Legislature to subsequently modify or repeal any provision of this article.

22875. This article shall apply to any of the following:

(a) Represented state employees who are members of a bargaining unit or who retired from a bargaining unit only if (1) there is a signed memorandum of understanding between the state and the recognized employee organization to adopt the benefits accorded under this article and (2) the Department of Personnel Administration makes this article simultaneously applicable to all eligible annuitants retired from the bargaining unit. This article shall not apply to active state employees who are members of a state bargaining unit unless it also applies to eligible annuitants retired from that bargaining unit.

(b) Members of the Public Employees' Retirement System who are employed by the Assembly, the Senate, and the California State University only if the Assembly Rules Committee, the Senate Rules Committee, and the Board of Trustees of the California State University, respectively, make this section applicable to their employees.

(c) Members of the Public Employees' Retirement System who are state employees of the judicial branch, and judges and justices

who are members of the Judges' Retirement System or the Judges' Retirement System II, if the Judicial Council makes this section applicable to them.

(d) Employees excluded from the Ralph C. Dills Act (Chapter 10.3 (commencing with Section 3512) of Division 4 of Title 1) upon adoption by the Department of Personnel Administration of regulations to implement employee benefits under this article for those state officers and employees excluded from, or not otherwise subject to the Ralph C. Dills Act. Regulations adopted or amended pursuant to this section shall not be subject to review and approval of the Office of Administrative Law pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2). These regulations shall become effective immediately upon filing with the Secretary of State.

22876. The board may establish a one-time special enrollment period to permit currently enrolled employees and annuitants whose domestic partners will be eligible for family member status pursuant to this article to enroll those domestic partners.

22877. An employer may require an employee or annuitant or his or her domestic partner to be financially responsible for any increased cost of covering the domestic partner that exceeds the normal employer contribution rate resulting from the decision of that employer to offer health coverage to domestic partners of employees and annuitants pursuant to this article.

SEC. 4. Section 1261 is added to the Health and Safety Code, to read:

1261. (a) A health facility shall allow a patient's domestic partner, the children of the patient's domestic partner, and the domestic partner of the patient's parent or child to visit, unless one of the following is met:

(1) No visitors are allowed.

(2) The facility reasonably determines that the presence of a particular visitor would endanger the health or safety of a patient, member of the health facility staff, or other visitor to the health facility, or would significantly disrupt the operations of a facility.

(3) The patient has indicated to health facility staff that the patient does not want this person to visit.

(b) This section may not be construed to prohibit a health facility from otherwise establishing reasonable restrictions upon visitation, including restrictions upon the hours of visitation and number of visitors.

(c) For purposes of this section, "domestic partner" has the same meaning as that term is used in Section 297 of the Family Code.

SEC. 5. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates

a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.



FINAL BILL REPORT

2SHB 3104

C 6 L 08

Synopsis as Enacted

Brief Description: Expanding rights and responsibilities for domestic partnerships.

Sponsors: By House Committee on Finance (originally sponsored by Representatives Pedersen, Hankins, Moeller, Walsh, Linville, Takko, Upthegrove, Kessler, Jarrett, Ericks, Wallace, Grant, Eickmeyer, Quall, Clibborn, Dunshee, Lantz, Sullivan, Simpson, Blake, Hunter, Roberts, Rolfes, Williams, Sells, Schual-Berke, Springer, Eddy, Hunt, Hudgins, Santos, Cody, Seaquist, Fromhold, Nelson, McIntire, Chase, Hasegawa, Appleton, Darneille, Haigh, Sommers, Dickerson, Kirby, Wood, Flannigan, Conway, Goodman, Kenney, Kagi, Ormsby, Loomis, McCoy, Barlow, O'Brien, Pettigrew, Morris, Lias and VanDeWege).

House Committee on Judiciary

House Committee on Finance

Senate Committee on Government Operations & Elections

Background:

In 2007 the Legislature created a domestic partnership registry in the Office of the Secretary of State (Secretary), specified eligibility requirements for same-sex couples and qualifying different-sex couples to register, and granted certain rights and responsibilities to registered domestic partners. Those rights and responsibilities generally involved areas of law dealing with health care decision-making; powers of attorney; and the death and burial of a domestic partner.

A state registered domestic partnership may be terminated by either party filing a signed, notarized notice of termination with the Secretary and paying a filing fee. If the notice of termination is not signed by both parties, the party seeking termination must also file an affidavit stating that service of the notice on the other party has been made.

Upon receipt of the notice of termination, filing fee, and affidavit, the Secretary must register the notice of termination and provide a certificate of termination to each party. The termination is effective 90 days after the date of filing the notice. A state registered domestic partnership is automatically terminated if either party subsequently enters into a marriage with each other or another person that is recognized as valid in this state.

Summary:

Various statutory rights and responsibilities provided to spouses are extended to state registered domestic partners. The process for terminating a domestic partnership is changed. Before the effective date of the act, the Secretary must send a letter to registered domestic partners notifying them that laws affecting domestic partnerships have changed. A legal union between a same-sex couple, other than a marriage, that is created in a different state and that is

substantially equivalent to a Washington domestic partnership will be recognized in Washington.

Termination of Domestic Partnerships.

To terminate a domestic partnership, a domestic partner must file a petition for dissolution in superior court and follow the same procedures applicable to dissolution of marriages, unless the parties qualify to use the nonjudicial termination process. Once a month, the State Registrar of Vital Statistics must submit a list of persons who have dissolved their domestic partnerships to the Secretary.

Parties may use a nonjudicial termination process by filing a notice of termination with the Secretary if, at the time of filing the notice:

- (1) both parties want the domestic partnership to be terminated and both have signed the notice of termination;
- (2) neither party has minor children, whether born or adopted before or after the domestic partner registration and neither party is pregnant;
- (3) the domestic partnership is not more than five years in duration;
- (4) neither party has any ownership interest in real property and neither party leases a residence (except a lease of a residence occupied by either party that terminates in a year and does not include an option to buy);
- (5) there are no unpaid obligations over \$4,000 incurred by either or both parties after the domestic partnership registration, except for debts on a vehicle (this threshold amount will be adjusted for inflation every two years);
- (6) the total fair market value of community property assets, minus any encumbrances, is less than \$25,000 and neither party has separate property assets over \$25,000 (this amount will be adjusted for inflation every two years);
- (7) the parties have executed an agreement establishing the division of assets and debts and have executed any documents to effectuate the agreement; and
- (8) the parties waive any rights to maintenance by the other party.

A domestic partnership is no longer automatically terminated if the parties enter into a marriage with another person that is recognized in this state.

Rights and Responsibilities.

Rights and responsibilities provided to spouses in various areas of law are extended to state registered domestic partners. The amended statutes generally involve: dissolutions; community property; estate planning; taxes; court process; services to indigent veterans and other public assistance; conflicts of interest for public officials; and guardianships. The following is a list of the broad categories and a short description of some of the changes made in each category.

Dissolution, Parenting Plans, and Child Support.

- Procedures for dissolution apply to domestic partners.
- Child support, maintenance, and parenting plan obligations, and procedures for enforcing such orders, apply to domestic partners.

Community Property and Other Property Rights.

- Property of domestic partners are subject to community property laws.
- A domestic partner's property is obligated to family expenses and education of the children.
- The slayer statute prohibits inheritance by a domestic partner perpetrator.
- A homestead may consist of property owned by domestic partners.

Judicial Process and Victim's Rights.

- A domestic partner may sue on behalf of the community.
- Testimonial privilege for spouses applies to domestic partners.
- A domestic partner is a "family or household member" for purposes of the domestic violence laws.

Taxes.

- Property assigned from one domestic partner to another under a dissolution decree is exempt from real estate excise tax.
- Property tax deferrals for eligible persons, such as senior citizens meeting certain criteria, extend to the person's surviving domestic partner.

Public Officials.

- Appointed and elected officials must disclose financial affairs of their domestic partners.
- Gifts received by an elected official's domestic partner are subject to public disclosure reporting requirements.
- A domestic partner of an elected official may not be a member of the State Commission on Salaries.

Public Assistance.

- The Department of Social and Health Services must consider hardship to a person's domestic partner, to the same extent hardship is considered for spouses, when filing a lien against a person's property as reimbursement for receiving medical assistance.
- Domestic partners who are residents in long-term care facilities or nursing homes may share the same room under certain circumstances.
- An abused same-sex domestic partner is considered a "victim" for purposes of services provided by domestic violence shelters.

Veterans.

- State colleges and universities must waive tuition for domestic partners of deceased or disabled veterans if certain conditions are met.
- Services for honorably discharged indigent veterans, such as residency in a veteran's home, are available to veterans' domestic partners.

Guardianship and Powers of Attorney.

- Procedures under guardianship laws, such as who is entitled to notice, apply to domestic partners of incapacitated persons.

- Domestic partners may file a petition to determine the effectiveness of a power of attorney, receive an accounting, and request other information regarding the power of attorney.

Probate and Trust Law.

- A domestic partner not named in a will that was created before registration of the domestic partnership is an omitted domestic partner for purposes of intestate distribution.
- Letters testamentary go to the surviving domestic partner to administer community property.
- Procedures under probate involving transfer of community property apply to domestic partners.
- The court may award a certain amount from the estate to the decedent's domestic partner for purposes of family support.

Notice to Registered Domestic Partners.

Sixty days before the effective date of the act, and again 30 days before the effective date, the Secretary must send a letter to the mailing address of each registered domestic partner notifying the person that Washington's laws will change. The letter must state that persons who do not wish to be subject to the new rights and responsibilities must terminate their domestic partnership before the effective date of the act.

Votes on Final Passage:

House	62	32
Senate	29	20

Effective: June 12, 2008
January 1, 2009 (Section 1044)
July 1, 2009 (Section 1047)

SMITH ALLING, P.S.

June 22, 2018 - 3:29 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 51125-8
Appellate Court Case Title: Jean Walsh, Respondent/Cross-Appellant v. Kathryn Reynolds, Appellant/Cross-Respondent
Superior Court Case Number: 11-3-00924-5

The following documents have been uploaded:

- 511258_Briefs_20180622152402D2473563_5740.pdf
This File Contains:
Briefs - Respondents/Cross Appellants
The Original File Name was WALSH Brief.pdf
- 511258_Designation_of_Clerks_Papers_20180622152402D2473563_9363.pdf
This File Contains:
Designation of Clerks Papers - Modifier: Supplemental
The Original File Name was Supplemental Designation of Clerks Papers.pdf

A copy of the uploaded files will be sent to:

- andrienne@washingtonappeals.com
- cate@washingtonappeals.com
- mdonaldson@mckinleyirvin.com
- mgerassimova@mckinleyirvin.com
- valerie@washingtonappeals.com

Comments:

Sender Name: Julie Perez - Email: julie@smithalling.com

Filing on Behalf of: Barbara Anne Henderson - Email: bhenderson@smithalling.com (Alternate Email:)

Address:
1501 Dock Street
TACOMA, WA, 98402
Phone: (253) 627-1091

Note: The Filing Id is 20180622152402D2473563