

FILED
COURT OF APPEALS
DIVISION II
2019 DEC -9 AM 9:01
STATE OF WASHINGTON
BY MS
DEPUTY

Case No. 53794-0-II

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

Leonard C. Dewitt
v.
Kevin W. Hannan

On Appeal from the Pierce County Superior Court
Cause No. 18-3-02728-3
The Honorable Shelly K. Speir, Judge

APPELLANT'S BRIEF

Leonard C. Dewitt
2106 S. 25th Street
Tacoma, WA 98405
(253) 307-1102

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I. ASSIGNMENTS OF ERROR

1. The trial court did not use the correct test for a summary judgment and went beyond her authority in assisting in an unlawful eviction.
2. The trial court erred by not taking the relationship as a whole when determining whether or not there was a material issue of fact related to the cohabitation prong of the Connell five.
3. The trial court did not follow the ruling related to Connell with regard to separate property and RCW 26-09-080.
4. The trial court erred by exhibiting prejudice toward the non-represented party.
5. The trial court awarded fees and sanctions without authority.

II. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

1. Whether the trial court committed reversible error when she used a good cause standard instead of determining whether or not there were material issues of fact and rather than restore the residence on appeal signed eviction language without an unlawful detainer action ever being filed?
2. Whether the trial court committed reversible error when she got caught up in periods of separation within the 16-year relationship and did not take the relationship as a whole to determine the full length of the committed intimate relationship?
3. Whether the trial court committed reversible error when she determined that there was a short committed intimate relationship but then dismissed the petition because she thought that separate property was not divisible?
4. Whether the trial court committed reversible error by showing concern for the represented parties discovery and no concern for the non-represented parties discovery?
5. Whether the trial court committed reversible error by granting sanctions and fees to the financially disadvantages party without authority?

III. STATEMENT OF THE CASE

Parties have been in an undisputed sexual relationship for approximately 16 years. TP23, line 10¹. The Court concedes that there was a committed intimate relationship (CIR) from at least 2016. TP23, line 23². The Court failed to distribute any property but rather ordered an unlawful eviction of the financially disadvantaged party. The Court did not analyze each of the five *Connell* factors to determine whether or not there was a material issue of fact with respect to each of the factors but determined that “the parties really didn’t dispute facts.” TP23, line 3.

During the 16-year duration of the relationship, DeWitt lived with Hannan with the exception of the periods when it was convenient or necessary for Hannan to appear to be alone. CP 5-97. This was required due to his need to get FBI clearance at Boeing so that he could work on the caliber of position that he had. CP [Supplemental: Declaration of Scott Liles.] Additionally, due to the type of relationship, i.e. homosexual, the parties kept the relationship very private from the rest of society while Hannan reaped all the benefits of the relationship which catered to his personal sexual needs. CP 5-97.

The purpose of the relationship was clearly for intimacy and companionship. CP 119. The pooling of resources took the form of a working

¹ “COURT: in the course of the roughly 16 or 15 years that the parties knew each other.”

² “COURT: I’m conceding that there may be a committed intimate relationship here; even so, it’s short.”

partner, Hannan, and a “stay at home” partner, DeWitt. DeWitt performed many chores for Hannan including catering to his eccentric BDSM sexual needs together with taking care of the household and other more “stay at home” duties. CP 119. The intent of the parties is seen from the long relationship itself, and from actions that Hannan did not take with respect to the interactions, such as Hannan never in the 16 years attempted to remove DeWitt or file any type of unlawful detainer action against DeWitt. The trouble in the relationship occurred after Hannan became abusive and there was domestic violence about the time that there were concerns that he was being subjected to undue influence by his “new boyfriend” and his brother. CP 119, CP 5-97.

IV. ARGUMENT AND AUTHORITIES

- A. The trial court did not follow the test for summary judgment and assisted with an unlawful eviction.

The Court determined that the only material issue of fact was related to the cohabitation. There were no material issues of fact related to the duration of the relationship which was 16 years. There was not material issue of fact related to the purpose of the relationship as being for intimacy and companionship. There was no material issue of fact related to the nature of the pooling of resources between the parties. This led to the service of additional claims for work done and personal injury. Finally, there was no material issue of fact related to the factors which indicate the intent of the parties. Hannan had never attempted to file an unlawful detainer against DeWitt. Hannan

maintained the sexual relationship for 16 years until he became violent and appeared to be under undue influence of his "new boyfriend" and his brother. The intent was clearly to satisfy human needs on a long term basis.

In the Court's signed order, the Court determined that "the Court finds good cause to approve this order." CP 277, line 19. The Court did not properly determine the lack of material issues of fact related to the presence of the Connell factors which would result in a summary judgment in favor of DeWitt.

RCW 59.12.220 states in pertinent part:
[DeWitt] shall be restored to the possession of the premises,
and shall remain in possession of thereof until the appeal is
determined.

The Court went on to sign "eviction language" contrary to RCW 59.12.220 which requires that the property be restored to the resident, DeWitt during the pendency of the appeal. CP [Supplemental: Secondary property issue order.]

- B. The trial court used factors that are not applicable to gay men and failed to follow the rule for periods of separation in a relationship which appear to affect the continuousness of the cohabitation such that the court may properly consider the overall length and purpose of the relationship instead.

The Court seemed to get hemmed up on the fact that there were periods of separation over the 16 years. The only alternative address was staying with a friend who DeWitt didn't even meet until five years into the relationship with Hannan. The reasons for the separation were given and

actually fit with the factor of making “residential moves based upon their committed relationship”. *Pennington v. Pennington*, 93 Wash. App. 913 (1999). Hannan required secrecy of his sexual practices in direct relation to his high paying clearance at Boeing. The seeming material issue of fact related to the cohabitation and periods of separation and therefore length of the committed intimate relationship becomes less of a material issue of fact within the framework of a developing relationship over 16 years where the parties stay together with separations for the protection of Hannan but eventually become full time residents after his retirement from Boeing where his sexuality, specifically BDSM, had to be kept secret so he could keep his FBE clearance to work on governmental contracts.

C. The Court failed to distribute the property according to *Connell*.

Hannan argued that within the admitted committed intimate relationship which started in 2016 when DeWitt became more full time at that residence that there was no community property to distribute and that there was only separate property not subject to distribution. This is not the ruling of *Connell v. Francisco*, 74 Wn. App. 306 (1994). According to *Connell* all property is subject to distribution pursuant to RCW 26.09.080.

Upon the termination of a long-term meretricious relationship, property that would be separate, as well as property that would be characterized as

community, had the person been married, is subject to division. Therefore, when the Court conceded that there was a committed intimate relationship, regardless of how short, the distribution would be made in accordance with RCW 26.09.080 and consider all property. For the Court to determine that there was a short committed intimate relationship but then dismiss the action because it was argued that only separate property was acquired during the last period of uninterrupted cohabitation and that such property was not subject to distribution. TP15, line 4³. The judge not only does not have any concern for the failure of Hannan to provide his discovery, or the fact that DeWitt's attorney has failed to propound any discovery, and then signs language purporting to "evict" DeWitt when no unlawful detainer action had ever been filed against DeWitt. CP 119.

D. The trial court's prejudice against the non-represented party becomes obvious.

The trial showed its prejudice in favor of the represented party when it did not facilitate discovery in favor of the non-represented party. Instead, the Court passed over motions that were filed and refused to hear these motions that were filed by DeWitt. DeWitt sought discovery from Hannan which was not forthcoming in addition with a consolidation of issues. As a reason for not

³ "HANNAN: there is no community property to distribute."

consolidating the issues the Court showed concern for the represented parties due process and access to discovery even when he had been withholding discovery. TP7, TP8.

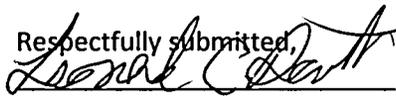
E. The trial court awarded fees and sanctions without authority.

The Court awarded sanctions and fees without authority. The attorney represented party controls millions of dollars. The attorney represented party never claimed any fraud until the dissolution papers were handed to him related to his domestic violence and becoming the victim of additional undue influence from two brothers one who had already begun to get financial gain from Hannan by telling him what to do to get his brother as a "new boyfriend". CP 81.

V. CONCLUSION

Wherefore, the Court should reverse the order entered on July 22, 2019 and either send the matter back for trial to determine the length of the committed intimate relationship, or follow the Connell rule for separation in cohabitation and enter the summary judgment in favor of DeWitt and remand for a proper distribution according to RCW 26.09.080.

Dated this 6th day of December, 2019.

Respectfully submitted,

Leonard C. DeWitt

VI. CERTIFICATE OF SERVICE

Appellant certifies that a true copy of the foregoing brief was served on counsel immediately after filing the same.

Leon C. Dent

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