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COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

LEONARD C. DEWITT,

Appellant,

v.

KEVIN W. HANNAN,

Respondent

BRIEF OF RESPONDENT ESTATE OF KEVIN W. HANNAN

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I. INTRODUCTION

Appellant Leonard Dewitt (“Mr. Dewitt”) claims he was involved in a “committed intimate relationship” (“CIR”) with Kevin Hannan (“Mr. Hannan”) which lasted from July 2002 to June 2018.¹ However, Mr. Dewitt conceded to the trial court that the parties’ cohabitation was “on and off” and “intermittent” until sometime in 2016.² This and other concessions, along with undisputed evidence negating other factors relevant to the establishment of a CIR both before and after 2016, doom Mr. Dewitt’s claim as a matter of law. Moreover, even if there were material issues of fact regarding the creation of a CIR between Mr. Dewitt and Mr. Hannan in 2016, Mr. Dewitt fails to even allege that the parties acquired community property after that time. For all these reasons, the trial court properly granted summary judgment to Mr. Hannan, determined that there was no CIR, and restored to him property unlawfully possessed by Mr. Dewitt. This Court should affirm.

¹After this appeal commenced, Mr. Hannan passed away. *See* Exhibit A to Notice of Intent to Withdraw by David Corbett, filed with this Court on January 13, 2020 (redacted Certificate of Death of Mr. Hannan). By Order dated February 5, 2020, this Court ordered the Estate of Kevin W. Hannan (“the Estate”) substituted in as the Respondent in the Appeal. For convenience, this Respondent’s Brief, filed on behalf of the Estate, continues to refer to Mr. Hannan as a “party” to this matter.

² These quotations come, respectively, from CP 119, ¶ 2, and Mr. Dewitt’s Reply to Motions, dated July 18, 2019, at ¶ 2. The Reply to Motions has not yet been given a Clerk’s Papers (“CP”) pagination, but was designated in Respondent’s Second Supplemental Designation of Clerk’s Papers dated March 16, 2020, and will be referred to hereinafter as the *Dewitt’s Reply to Motions*.

II. RESPONDENT'S RESTATEMENT OF THE CASE

A. Factual background.

Mr. Hannan was approximately 63 years old, and had retired from the Boeing Corporation, when Mr. Dewitt filed his Complaint in July 2018. CP 1-4, 318, 1072 lines 21-23.³ Mr. Dewitt was 37 years old. CP 580 (showing date of birth). There is little if any evidence in the record of Mr. Dewitt's employment history over the years. The record shows that as of 2019, Mr. Dewitt was receiving Social Security disability benefits. CP 190.

Mr. Dewitt and Mr. Hannan first met at some point in the early 2000s. CP 2, CP 319, lns. 5-6. Their accounts of their subsequent association differ. Mr. Hannan summarized his overall position as follows:

I have known [Mr. Dewitt] for fifteen or sixteen years, and during that time we have occasionally been sexually intimate. However, we never lived together, or even dated. Our relationship was fundamentally a casual one, and certainly did not rise to the level of a committed intimate relationship. . . . In 2011 I moved to Tacoma and saw Mr. Dewitt somewhat more frequently, but still very rarely. Mr. Dewitt slept over at my house a few times, but we never moved in together, and we were never more than very casual (and infrequent) sexual partners. My last one-night stand with Mr. Dewitt was in May of 2018.

³ See also Appellant's Brief at p. 5 (Mr. Dewitt asserting that the parties "bec[a]me full time residents after his [Mr. Hannan's] retirement from Boeing").

CP 319, 322. Mr. Dewitt, by contrast, maintains that the parties formed a CIR in July 2002 which persisted until June 18, 2018. CP 1-4.

Because the trial court ultimately granted summary judgment to Mr. Hannan, the remainder of this statement of the factual background focuses on facts which were either expressly conceded by Mr. Dewitt below, or established by Mr. Hannan and not contested by Mr. Dewitt, but otherwise construes the evidence in the light most favorable to Mr. Dewitt.⁴ In the Argument section that follows below starting at page 19, the Respondent Estate will show that the conceded or undisputed facts support affirming the trial court's judgment in all respects.

1. Prior to at least mid-2016, Mr. Dewitt's cohabitation with Mr. Hannan was at best "intermittent," due in part to Mr. Dewitt's extensive cohabitation with another man, Mr. Leonard Haan.

Mr. Dewitt conceded to the trial court that prior to 2016, his cohabitation with Mr. Hannan was "on and off" or "intermittent." CP 119 at ¶ 2; *Dewitt Reply to Motions*, at ¶ 2.⁵ This concession was amply warranted by the undisputed evidence in the record showing extensive cohabitation between Mr. Dewitt and a Mr. Leonard Haan ("Mr. Haan") between at least 2005 and 2016.

⁴ As briefly pointed out in the Argument below, if the facts are construed in the light most favorable to Mr. Hannan, this defeats Mr. Dewitt's motion for summary judgment.

⁵ See also CP 1075, lines 16-17 (Mr. Dewitt stating, during summary judgment hearing, "Yes, we may in the beginning started off not being living together . . .").

After divorcing his wife in 2002, Mr. Dewitt began living with Mr. Haan in Seattle by no later than December 2005. CP 463, 478 at ¶ 1. The record does not conclusively establish how long that particular cohabitation with Mr. Haan lasted, but when Mr. Dewitt was being sentenced in Tacoma for various crimes in early 2009, Mr. Haan wrote to the trial judge on Mr. Dewitt's behalf, stating in part that "Leonard has been my partner for four years," that "[t]ogether we are raising his son," and that "[w]e live in Tacoma." CP 562. The address Mr. Dewitt was using by that time was 2106 [S.] 25th Street, Tacoma, WA 985405." CP 573, 609. The 2106 S.25th St. address indisputably was and still is a residence owned and used by Mr. Haan. CP 123, 544, 669-670.

By December 16, 2011 Mr. Dewitt was still living with Mr. Haan at the 2106 S. 25th Street residence. CP 496-497 (showing the address below Mr. Dewitt's signature). December 16, 2011 is the date Mr. Dewitt claims he was attacked by associates of his ex-wife while at his home in Tacoma. *Id.* In the ensuing litigation between Mr. Dewitt and his alleged attackers, Mr. Haan assisted in the representation of Mr. Dewitt. CP 504-505. Mr. Haan also filed a sworn declaration, dated December 5, 2014, in which he stated that "I reside at 2106 South 25th Street Tacoma" and that "Leo Dewitt has lived with me at this address for approximately 8 or 9 years." CP 509, at ¶¶ 2-3.⁶ This litigation eventually terminated in a

⁶ Mr. Haan's declarations dated December 16, 2005 (CP 478) and December 5, 2014 (CP 509) are at least roughly consistent, and suggest almost continuous cohabitation between Mr. Dewitt and Mr. Haan, since nine years prior to December 5, 2014 would be December 5, 2005.

published opinion by this Court, dated April 26, 2016, in which the Court noted in passing that Mr. Dewitt and Mr. Haan were “roommate[s].”⁷

2. The relationship between Mr. Dewitt and Mr. Haan was not just that of “roommates.”

It is also not genuinely disputed that the relationship between Mr. Dewitt and Mr. Haan was not just that of “roommates.” Almost exactly a month after this Court issued its opinion in *Dewitt v. Mullen*, Mr. Dewitt petitioned for and received a temporary protection order against Mr. Haan. CP 524 - 533. In his petition, Mr. Dewitt certified under penalty of perjury that Mr. Haan was his “current or former domestic partner.” CP 524. He also asked that Mr. Haan be excluded from their “shared residence” at 2106 S. 25th Street. CP 525, 844 at No. 7. The day after Mr. Dewitt filed for a protection order against Mr. Haan, Mr. Haan returned the favor, and filed for protection against Mr. Dewitt. CP 534-538. In his petition, Mr. Haan described Mr. Dewitt as his “current or former cohabitant as roommate,” and as “[n]ot the boyfriend I used to know.” CP 534, 537.⁸

Even in the current action, in which Mr. Dewitt claims he had a *committed* intimate relationship with Mr. Hannan spanning the entire period from 2002 to 2018, he continued to present evidence to the trial

⁷ *Dewitt v. Mullen*, 193 Wn. App. 548, 553, 375 P.3d 694, 697 (2016). The Court’s opinion in *Dewitt v. Mullen* was presented in evidence to the trial court below. CP 512-523.

⁸ In an affidavit accompanying his petition dated May 26, 2016, Mr. Haan asserted that “April 11, 2016 . . . [was] our 11th yr anniversary.” CP 544. This, too, is consistent with the dating discussed *supra*, note 6.

court of an intimate relationship *with Mr. Haan*. Mr. Haan submitted a declaration in the current action in which he acknowledged that “Mr. Dewitt and I attempted to be boyfriends.” CP 856, at ¶ 5. Mr. Dewitt’s friend David Boardman declared that by 2016, “the entire situation with Leonard Haan, i.e., being friends, attempting for a short time to be boyfriends, but ending up just friends had ended.” CP 880. Similarly, Mr. Dewitt’s friend Travis Clayton Tufts affirmed that Mr. Dewitt “used to live with Leonard Haan as friends, then possible boyfriends, then back to friends.” CP 924. The “back to friends” (at least) part of the prior statement is confirmed by the fact that Mr. Haan has played a visible role in assisting Mr. Dewitt in this litigation, not least by submitting two lengthy declarations on his behalf. CP 5-97,⁹ 855-878. Mr. Dewitt has resided with Mr. Haan as recently as late July 2019, and gives the 2106 S. 25th Street address as his address in his Appellant’s Brief.¹⁰

3. Unlike Mr. Dewitt and Mr. Haan, Mr. Dewitt and Mr. Hannan never held themselves out to the world as a couple.

As indicated above, the evidence presented to the trial court establishes that Mr. Dewitt and Mr. Haan repeatedly held themselves out to officials and courts as a couple, and were recognized as such by acquaintances. CP 524-525, CP 534-537, CP 478-479, CP 562, CP 558 at

⁹ Appellant’s Brief cites to and relies on this declaration. *See, e.g.*, Appellant’s Brief, at p. 2.

¹⁰ *See* Declaration of Leonard Haan in Support, filed November 1, 2019, at p. 2, lines 12-13. This declaration was designated in Respondent’s Second Supplemental Designation of Clerk’s Papers filed on March 16, 2020. *See also* Appellant’s Brief (cover page).

lines 18-19 (statement by Mr. Dewitt to police that Mr. Haan was his boyfriend), CP 924. There is no remotely comparable evidence in the record suggesting that Mr. Dewitt and Mr. Hannan ever held themselves out to the public as a couple. Even evidence submitted by Mr. Dewitt or on his behalf is to the contrary. *Dewitt Reply to Motions*, at p. 1 (asserting “[m]y cohabitation with Kevin was for his benefit and initially very private”); CP 886-887 (Mr. Dewitt declaring that “none of his [Mr. Hannan’s] supporters know about me”); CP 852 at ¶ 2 (an associate of Mr. Dewitt’s declaring “I have known Leonard C. Dewitt for approximately five years. I did not meet Kevin Hannan until approximately a year ago”); CP 856 at ¶ 5 (Mr. Haan stating that “in the early days . . . Kevin was too scared to be open”).¹¹ In his Appellant’s Brief to this Court, Mr. Dewitt effectively concedes that whatever relationship he may have had with Mr. Hannan was not widely known, by asserting that “the parties kept the relationship very private from the rest of society,” and alleging that “Hannan required secrecy of his sexual practice in direct relation to his high paying clearance at Boeing.”¹²

4. Mr. Dewitt implicitly acknowledges that by the time he and Mr. Hannan began living together “full time,” Mr. Hannan had retired from Boeing. Mr. Dewitt does not even allege that the parties pooled financial resources during or after 2016.

¹¹ The declarations submitted by Mr. Hannan’s family and friends uniformly disclaim knowledge of any abiding relationship between Mr. Dewitt and Mr. Hannan. *See* CP 780-782; CP 784-785; CP 787-788; CP 790.

¹² *See* Appellant’s Brief, at p. 2 and p. 5.

As noted above, according to Mr. Dewitt’s own account, he did not begin living with Mr. Hannan “on a regular full-time basis [until] . . . 2016.” CP 119. Mr. Dewitt explains this alleged change from intermittent to full-time cohabitation by referring to Mr. Hannan’s *previous* retirement from Boeing, which allegedly “made it possible for me [Mr. Dewitt] to always live with him [Mr. Hannan].” CP 119.

Mr. Dewitt does not even allege that either he or Mr. Hannan had any earned income from work after 2016. He affirmatively asserts in his petition for dissolution that the parties had no joint debts. CP 3, at ¶ 1.8. Finally, Mr. Dewitt neither offered any evidence that the parties pooled financial resources during or after 2016, nor contradicted Mr. Hannan’s declaration that “I purchased the Tacoma house in 2011.¹³ It is in my name, I paid for it with my separate funds. The home belongs (solely and exclusively) to me.” CP 131, 137, 784.¹⁴

B. Procedural Background.

Prior to commencing this action, Mr. Dewitt sought and obtained a temporary protection order against Mr. Hannan, prohibiting Mr. Hannan from entering Mr. Hannan’s home on North Lawrence Street. CP 756-765. Mr. Dewitt’s petition, which bears a substantial resemblance to his earlier

¹³ The “Tacoma house” referenced here is a residence located at 2916 N. Lawrence St., Tacoma, WA 98407, which Mr. Dewitt claimed should be awarded to him as part of his share of the parties’ alleged community property. CP 2, CP 137.

¹⁴ CP 784 references the Declaration of Morgan T. Murray, relevant here because of its statement that Mr. Hannan “purchased a home upon retirement in Tacoma.”

petition against Mr. Haan (CP 524-530) as well as to Mr. Haan's petition against Mr. Dewitt (CP 534-538, 544-545¹⁵), alleges in part that "[o]ver the last two years our relationship has become increasingly violent and out there mentally." CP 759. Mr. Hannan contested the protection order, arguing in part that he had never been served, and the protection order was eventually set aside on December 14, 2018. CP 397-398. However, Mr. Dewitt continued to reside at the North Lawrence Street property. CP 119, CP 275 lines 22-23.¹⁶

Mr. Dewitt filed the Complaint in this action on July 18, 2018. CP 1. Trial was initially set for June 25, 2019.¹⁷ By April 19, 2019, both parties had moved for temporary orders, and the trial court entered an order preserving the status quo on May 9, 2019. CP 180-183. On June 14, 2019, the trial court permitted Mr. Dewitt's attorney to withdraw, and conditionally permitted Mr. Dewitt to file for a trial continuance if ongoing settlement negotiations broke down.¹⁸

¹⁵ CP 545 shows Mr. Haan's familiarity with what he describes as Mr. Dewitt's "technique of getting judges to sign these orders to have more time to clean a person out."

¹⁶ *See also* Declaration of Leonard Dewitt in re Contempt, dated November 1, 2019, at ¶ 2 (stating "I moved out of the house on July 26, 2019"). This declaration was designated in Respondent's Second Supplemental Designation of Clerk's Papers dated March 16, 2020.

¹⁷ The Order Setting Case Schedule dated January 16, 2019 was designated in Respondent's Second Supplemental Designation of Clerk's Papers dated March 16, 2020.

¹⁸ The Order Allowing Withdrawal dated June 14, 2019 was designated in Respondent's Second Supplemental Designation of Clerk's Papers dated March 16, 2020.

In response to Mr. Hannan’s Motion to Compel Discovery, filed approximately two weeks before the scheduled trial date, the trial court granted an Order Compelling Discovery on June 21, 2019.¹⁹ The Order Compelling Discovery required Mr. Dewitt to pay \$765 as a discovery sanction, compelled him to fully answer discovery, and conditioned Mr. Hannan’s obligation to respond to discovery before trial on Mr. Dewitt’s prior production.²⁰ On June 24, 2019, Mr. Dewitt moved to continue the trial, and also sought to “consolidate” the trial court matter with new claims “of contract and tort” which he asserted he had served (but did not assert he had filed). CP 188.²¹ On June 25, 2019, the day originally set for trial, the trial court postponed the trial to July 22, 2019, and also allowed each party to move for summary judgment on shortened time.²²

Mr. Hannan filed his motion for summary judgment on July 2, 2019. CP 300. Mr. Dewitt did not file a response to Mr. Hannan’s motion, but filed his own motion for summary judgment on July 12, 2019.

¹⁹ Both the Motion to Compel Discovery, dated June 12, 2019 and the Order Compelling Discovery dated June 21, 2019 were designated in Respondent’s Second Supplemental Designation of Clerk’s Papers dated March 16, 2020.

²⁰ See the Order Compelling Discovery dated June 21, 2019.

²¹ CP 188 is actually the second time Mr. Dewitt filed the same “Motion for Order” seeking a continuance and other relief. As shown by the filing stamp on CP 188, this motion was initially filed on June 24, 2019, and was partially granted as to a continuance the next day (see note 22 below). Mr. Dewitt then re-filed the same Motion for Order as part of his Summary Judgment Motion on July 12, 2019 (CP 185).

²² See Clerk’s Minute Entry dated June 25, 2019, *and* the Order of the same date, both of which were designated in Respondent’s Second Supplemental Designation of Clerk’s Papers dated March 16, 2020.

CP 185-259. Mr. Hannan filed a response to Mr. Dewitt's motion on July 10, 2019. CP 1002-1013. On July 22, 2019, the trial court issued its Order Granting Respondent's Motion for Summary Judgment Dismissal and for Fees and Restoration of the Respondent's Property, and Denying Petitioner's Motions to Continue/Stay, Reconsider, for Discovery, and to Consolidate (the "Summary Judgment Order"). CP 273-276. The Summary Judgment Order granted Mr. Hannan's motion for summary judgment, and denied that of Mr. Dewitt. CP 275. It also denied all of Mr. Dewitt's other motions. *Id.*

Because the trial court's temporary order dated May 9, 2019 had allowed Mr. Dewitt to continue to reside at Mr. Hannan's Tacoma home until the CIR claim was resolved (CP 181), the Summary Judgment Order also ordered Mr. Dewitt to "vacate Respondent's Tacoma residence at 2916 N. Lawrence St, Tacoma . . . [b]y Friday July 26, 2019 at 5:00 pm." CP 275. Finally, the Summary Judgment Order awarded Mr. Hannan his attorney fees incurred "in preparation for and attending this hearing," and indicated that Mr. Dewitt "shall be liable to Respondent for any and all damages to the 2916 N. Lawrence St. Residence . . . in an amount to be determined at a subsequently scheduled hearing. CP 275-276. Mr. Dewitt filed a Notice of Appeal on July 24, 2019. CP 277-281.

When Mr. Hannan was able to access his N. Lawrence St. home on the evening of July 26, 2019, he found it "a mess." CP 1048 at line 18. Worse, Mr. Dewitt insisted that he continued to have the right to possess

the N. Lawrence St. home, as he stated in an email to Mr. Hannan's trial attorney:

Your order is void with respect to the property for various reasons. The court does not have jurisdiction over the N. Lawrence property for various reasons. The broader temporary order was never vacated. Pursuant to statute I am entitled to full possession of the property until the appeal (served on you two days before the unlawful eviction attempt) is determined.

CP 1049, 1093. Subsequently, persons unknown to Mr. Hannan moved into the house, apparently under color of right conferred by Mr. Dewitt. CP 1050, lines 6-11. In response to Mr. Dewitt's assertions and actions affecting the North Lawrence St. residence, Mr. Hannan filed a Motion for Immediate Restraining Order / Motion to Enforce Order on Summary Judgment on September 5, 2019. CP 1042-1046.

A trial court commissioner issued a temporary restraining order in Mr. Hannan's favor that same day, which stated in part that "Mr. Dewitt must not allow or attempt to allow any other person access to Mr. Hannan's house." CP 1099. Following up on this temporary order, Mr. Hannan filed a Motion for Contempt Hearing on September 13, 2019, and an Order to Show Cause was entered that same day, setting a hearing for the contempt issue for October 2, 2019.²³

In apparent response to the temporary restraining order and Mr. Hannan's motion for contempt, Mr. Dewitt wrote to this Court on

²³ See Motion for Order to Show Cause re Contempt, dated September 13, 2019, and Order to Show Cause of the same date, both of which were designated in Respondent's Second Supplemental Designation of Clerk's Papers dated March 16, 2020.

September 25, 2019, requesting that the Court determine “whether or not the current activity in the Superior Court is allowable under RAP 7.2 as well as whether or not the residence must be restored *to Appellant* pending appeal pursuant to RCW 59.12.220.”²⁴ On September 27, 2019, this Court denied Mr. Dewitt’s request, which it interpreted as a motion to stay trial court proceedings.²⁵

Meanwhile, the contempt hearing in the trial court was set for November 7, 2019. On November 1, 2019, Mr. Dewitt filed a declaration in response to the motion for contempt, in which he stated in part that “I have not moved back into the house and do not plan to. Ever. I have moved on and wish to live in peace”²⁶ The trial court denied Mr. Hannan’s motion for contempt by means of a Contempt Hearing Order dated November 7, 2019.²⁷ On the same day, however, the trial court also issued its Order Re Possession of Property, in which it reiterated that Mr. Dewitt is not entitled to any legal possession of the property at 2916 N. Lawrence St. Tacoma.” CP 285.

²⁴ See letter from Mr. Dewitt to this Court, dated September 25, 2019 (emphasis added).

²⁵ See Notation Ruling by this Court, dated September 27, 2019.

²⁶ See Declaration of Leonard Dewitt in re Contempt, dated November 1, 2019, which was designated in Respondent’s Second Supplemental Designation of Clerk’s Papers dated March 16, 2020.

²⁷ See Contempt Hearing Order, dated November 7, 2019. The Contempt Hearing was designated in Respondent’s Second Supplemental Designation of Clerk’s Papers dated March 16, 2020.

Mr. Dewitt filed a new notice of appeal related to the Order Re Possession of Property on December 4, 2019. CP 286. By letter to the Court of Appeals dated December 23, 2019, Mr. Dewitt requested that his two appeals be consolidated. This Court granted Mr. Dewitt's motion, and consolidated cause number 545267-6-II with this case, cause number 53794-II, by notation ruling dated December 30, 2019.

III. ARGUMENT

A. The judgment entered in this matter is effectively final, and properly before this Court on appeal.

The Summary Judgment Order reserves the possibility of an additional monetary judgment against Mr. Dewitt in the event he is shown to have caused damage to Mr. Hannan's residence at 2916 N. Lawrence Street in Tacoma. CP 275-276. As of the date of the filing of this Respondent's Brief, no such additional judgment has been entered. To avert the possibility that this renders the Summary Judgment Order not final under CR 54(b), the Estate filed a Waiver of Claims for Additional Attorney's Fees and Damages, and Motion for Entry of Final Judgment, accompanied by a supporting Declaration of Karen Owens on March 16, 2020.²⁸ These documents waive the Estate's right to any additional judgment against Mr. Dewitt, and therefore should remove any doubt

²⁸ See Respondent's Waiver of Claims for Additional Attorney's Fees and Damages, and Motion for Entry of Final, and the Declaration of Karen Owens in Support of Respondent's Waiver of Claims and Motion for Entry of Final Judgment, filed with the trial court on March 16, 2020. Both of these documents were designated in Respondent's Supplemental Designation of Clerk's Papers dated March 16, 2020.

about the finality of the Summary Judgment Order. This matter is properly before this Court on appeal under RAP 2.2(a)(1).

B. The standard of review for summary judgment

This Court reviews a summary judgment order *de novo*, engaging in the same inquiry as the trial court.²⁹ Summary judgment is proper if the records on file with the trial court show “there is no genuine issue as to any material fact” and “the moving party is entitled to a judgment as a matter of law.”³⁰ This Court, like the trial court, must construe all evidence and reasonable inferences in the light most favorable to the nonmoving party.³¹

However, if a defendant moving for summary judgment makes an initial showing that there are no genuine issues of material fact, the burden shifts to the plaintiff to establish that there is at least one genuine issue requiring trial.³² In making this showing, a plaintiff may not rely on speculation or on having his own allegations and affidavits accepted at

²⁹ *Highline Sch. Dist. No. 401 v. Port of Seattle*, 87 Wn.2d 6, 15, 548 P.2d 1085 (1976); *Mahoney v. Shinpoch*, 107 Wn.2d 679, 683, 732 P.2d 510 (1987). This standard remains the same when the parties file cross-motions for summary judgment, as they did here. *See, e.g., Lowe v. Foxhall Cmty. Ass'n*, No. 51898-8-II, 2020 WL 70795, at *2 (Wash. Ct. App. Jan. 7, 2020).

³⁰ CR 56(c).

³¹ *Barber v. Bankers Life & Cas. Co.*, 81 Wn.2d 140, 142, 500 P.2d 88 (1972); *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982).

³² *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989).

face value.³³ He must put forth specific facts showing the existence of a triable issue.³⁴ On review, this Court considers only the evidence and issues the parties called to the trial court's attention.³⁵

The parties to this case brought cross-motions for summary judgment. CP 300, 185. Some case law indicates that when parties file cross-motions for summary judgment, they “concede there were no material issues of fact.”³⁶ However, in this case, Mr. Hannan responded to Mr. Dewitt’s motion for summary judgment, and by so doing preserved his right to argue in the alternative that there are material issues of fact that bar summary judgment *for Mr. Dewitt*.³⁷ CP 1005-1013. In short, the Respondent Estate of Mr. Hannan maintains that this is a case where it is entitled to judgment as a matter of law, even when the evidence is construed in the light most favorable to Mr. Dewitt. But if this Court disagrees, it does not follow that Mr. Dewitt is entitled to judgment against the Estate. Mr. Dewitt is the petitioner/plaintiff in this matter, and when he moves for summary judgment, the evidence must be construed in the light

³³ *Seven Gables Corp. v. MGM/UA Entm't Co.*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986).

³⁴ *Id.*

³⁵ RAP 9.12

³⁶ *See, e.g., Pleasant v. Regence BlueShield*, 181 Wn. App. 252, 261, 325 P.3d 237, 242 (2014).

³⁷ *See, e.g., Taft v. Cent. Co-op*, 197 Wash. App. 1021, 2016 WL 7470088 at * 5 (unpublished but citable as per GR 14.1(a) (distinguishing *Pleasant* because one party “argued in the alternative that material issues of fact precluded summary judgment” for the other party).

most favorable to Mr. Hannan. In that event, there are genuine issues of material fact that bar summary judgment.

C. The trial court did not err by mentioning “good cause” in the Summary Judgement Order, nor did its rulings on Mr. Dewitt’s other motions constitute an abuse of discretion.

Mr. Dewitt’s first assignment of error asserts in part that the “trial court did not use the correct test for a summary judgment.”³⁸ In so far as this assignment of error rests on the claim that the trial court “used a good cause standard instead of determining whether or not there were material issues of fact,” it fails as a matter of both fact and law.³⁹

The Summary Judgment Order does state that “[t]he court finds good cause to approve this Order.” CP 274. But the order not only resolved the parties’ competing motions for summary judgment, it addressed and denied other motions brought by Mr. Dewitt, specifically for stay/continuance, discovery, reconsideration, and consolidation. CP 275. Those motions are governed by a “good cause” standard, or by the closely related concept of a trial court’s sound discretion.⁴⁰ As for the

³⁸ Appellant’s Brief, at p. 1.

³⁹ *Id.* at p. 1, 4.

⁴⁰ *See, e.g.*, CR 40(d) (setting “good cause” standard for trial continuance); *In re Marriage of Dunca*, No. 76235-4-I, 2018 WL 1801412, at *3 (Wash. Ct. App. Apr. 16, 2018) (unpublished but citable under GR 14.1) (applying abuse of discretion standard of review to denial of trial continuance); *W.R. Grace & Co.--Conn. v. State, Dep’t of Revenue*, 137 Wn.2d 580, 590, 973 P.2d 1011, 1015 (1999) (noting that “[c]onsolidation is within the discretion of the trial court”); *Rivers v. Washington State Conference of Mason Contractors*, 145 Wn.2d 674, 685, 41 P.3d 1175, 1180 (2002) (noting that a trial court’s decision on a motion for reconsideration “will be overturned only if the court abused its discretion”); and *Briggs v. Nova*

grant of summary judgment, the transcript of the judge’s ruling at the hearing on July 22, 2018 makes it clear that the trial court was properly focused on the issue of whether there were genuine issues of material fact. CP 1078 at line 24 to CP 1082 line 8.

Even if the trial court *had* employed the wrong standard in ruling on summary judgment (and it did not), that would not demonstrate reversible error. This Court “may affirm entry of summary judgment on grounds other than those relied on by the court below.”⁴¹ Indeed, “an appellate court may sustain a trial court on any correct ground, even though that ground was not considered by the trial court.”⁴²

Finally, the trial court did not abuse its discretion in denying Mr. Dewitt’s other motions for stay/continuance, discovery, reconsideration, and consolidation. CP 275 . Mr. Dewitt cites to no authority, and offers very little argument, in support of his assignments of error relating to the rulings on these motions.⁴³ Because this Court typically “will not consider assignments of error which are supported neither by argument nor authority,” it may properly reject Mr. Dewitt’s claims here with no further analysis.⁴⁴

Servs., 135 Wn. App. 955, 967, 147 P.3d 616, 622 (2006), *aff’d*, 166 Wn. 2d 794, 213 P.3d 910 (2009) (noting that “[w]e review the denial of a motion to compel discovery for an abuse of discretion”).

⁴¹ *Heath v. Uraga*, 106 Wn. App. 506, 515, 24 P.3d 413, 419 (2001).

⁴² *Id.* (internal quotations omitted).

⁴³ *See, e.g.*, Appellant’s Brief, at pp. 6-7.

⁴⁴ *State v. Wood*, 89 Wn.2d 97, 99, 569 P.2d 1148, 1149 (1977), overruled on other grounds by *Sw. Washington Chapter, Nat. Elec. Contractors*

If this Court decides to address these assignments of error in more detail, it should do so under the abuse of discretion standard of review.⁴⁵ A trial court abuses its discretion “only when its decision is manifestly unreasonable or is based on untenable reasons or grounds.”⁴⁶ It is not manifestly unreasonable, or otherwise an abuse of discretion, to deny a motion to consolidate when one of the complaints to be consolidated has never been filed. CP 1059 at line 19 to CP 1064, line 5. It is not an abuse of discretion to deny a second trial continuance submitted 10 days before the already once-rescheduled trial. CP 185, 188 (showing ancillary motions *re-filed* on July 12, 2019, after trial had already been moved back a month).⁴⁷ And it was not an abuse of discretion to compel Mr. Dewitt to provide overdue discovery responses before trial, to sanction him \$765 for his failure to respond timely, and to refuse to reconsider this order.⁴⁸

D. Based on the record here, the legal principles governing the existence of “committed intimate relationships” in Washington State defeat Mr. Dewitt’s claim to a CIR as a matter of law.

Under Washington law, a CIR is a “*stable*, marital-like relationship where both parties cohabit with knowledge that a lawful marriage between

Ass’n v. Pierce Cty., 100 Wn.2d 109, 128 note 3, 667 P.2d 1092, 1102 (1983)

⁴⁵ See authorities cited in note 38, *supra*.

⁴⁶ *State v. Borboa*, 157 Wn.2d 108, 121, 135 P.3d 469, 475 (2006).

⁴⁷ See also Order Setting Case Schedule, dated January 16, 2019 (pending CP pagination).

⁴⁸ See both the Motion to Compel Discovery, dated June 12, 2019 and the Order Compelling Discovery dated June 21, 2019, which are pending pagination for the Clerk’s Papers.

them does not exist.”⁴⁹ The CIR doctrine evolved to protect unmarried parties who acquire property during their relationships “so that one party is not unjustly enriched at the end of such a relationship.”⁵⁰

Relevant factors which determine whether a CIR exists include, but are not limited to, “[1] continuous cohabitation, [2] duration of the relationship, [3] purpose of the relationship, [4] pooling of resources and services for joint projects, and [5] the intent of the parties.”⁵¹ These factors are “neither exclusive nor hypertechnical. Rather, [they] are meant to reach all relevant evidence helpful in establishing whether a[CIR] exists.”⁵²

Mr. Dewitt makes a passing suggestion in his Appellant’s Brief that the *Connell* factors “are not applicable to gay men.”⁵³ Mr. Dewitt offers neither argument or authority in support of this suggestion, which in any case is contrary to the implicit holding of this state’s Supreme Court in *Vasquez v. Hawthorne*.⁵⁴ Moreover, gay marriage has been legal in

⁴⁹ *Connell v. Francisco*, 127 Wn.2d 339, 346, 898 P.2d 831 (1995) (citing *In re Marriage of Lindsey*, 101 Wn.2d 299, 304, 678 P.2d 328 (1984)) (emphasis added).

⁵⁰ *In re Marriage of Pennington*, 142 Wn.2d 592, 602, 14 P.3d 764 (2000) (citing to *Connell*, 127 Wn.2d at 349).

⁵¹ *Connell*, 127 Wn.2d at 346 (numbers in brackets added). These five factors are referred to below as the “*Connell* factors.” See, e.g., *In re Marriage of Pennington*, 142 Wn. 2d at 605, 14 P.3d 764 (using same terminology).

⁵² *Pennington*, 142 Wn.2d at 602.

⁵³ Appellant’s Brief, at p. 4 (subhead “B”).

⁵⁴ See *Vasquez v. Hawthorne*, 145 Wn.2d 103, 107-108, 33 P.3d 735, 737-38 (2001) (not expressly referencing *Connell*, but holding that “[e]quitable claims are not dependent on the ‘legality’ of the relationship between the

Washington State since 2012, a fact which undermines any argument for applying different standards to this case.⁵⁵

The *Vasquez* court did also note that “whether relationships are properly characterized as [CIRs] depends upon the facts of each case.”⁵⁶

This need for a fact-intensive inquiry sometimes makes summary judgment about the existence of a CIR inappropriate.⁵⁷ However, in this matter Mr. Dewitt’s concessions and crucial uncontested evidence are more than sufficient to warrant summary judgment for Mr. Hannan.

1. The almost total lack of any contemporaneous corroborating documentation severely undercuts Mr. Dewitt’s arguments regarding the *Connell* factors.

Before separately analyzing each of the *Connell* factors, it is important to identify a weakness common to all of Mr. Dewitt’s arguments and evidence. As the plaintiff facing Mr. Hannan’s defense motion for summary judgment, Mr. Dewitt has the burden of establishing that there is

parties, nor are they limited by the gender or sexual orientation of the parties,” and noting that it continued to “recognize ‘factors’ to guide the court's determination of the equitable issues presented”).

⁵⁵ See RCW 26.04.010. See also

<https://web.archive.org/web/20130130163117/https://wei.sos.wa.gov/agency/osos/en/initiativesReferenda/Pages/R74-FAQs.aspx> and

https://en.wikipedia.org/wiki/Same-sex_marriage_in_Washington_state.

⁵⁶ *Vasquez*, 145 Wn.2d at 107-108.

⁵⁷ *Id.* at 108 (noting that “[i]n a situation where the relationship between the parties is both complicated and contested, the determination of which equitable theories apply should seldom be decided by the court on summary judgment”). Compare, e.g., *Pennington*, 142 Wn.2d at 592 (holding, as a matter of law in two different cases, that the facts as found by the respective trial courts established that neither set of parties had been involved in a CIR).

at least one genuine issue requiring trial, and cannot rely on speculation or on having his own allegations and affidavits accepted at face value.⁵⁸ Given these well-known principles, it is tremendously damaging to Mr. Dewitt's overall position that there is virtually no contemporaneous documentary or photographic evidence in the record evidencing any relationship between Mr. Dewitt and Mr. Hannan.

It's not just that there are no *love* letters, emails, or texts between the two of them from any point in the alleged 16-year relationship. There are in fact no letters, emails, or texts *of any kind* between Mr. Dewitt and Mr. Hannan in the record.⁵⁹ There are *no* birthday or holiday cards. There are *no* photographs that show the two of them together, and *no* old social media postings hinting that they were a couple.⁶⁰ There are no reminders of doctors' appointments, no grocery lists, no joint account documentation, no insurance policies, no wills, *nothing*.⁶¹ Prior to the onset of this litigation, there isn't even any documentation of any

⁵⁸ See, e.g., *Young* 112 Wn.2d at 225, and *Seven Gables*, 106 Wn.2d at 13.

⁵⁹ Mr. Dewitt *did* introduce into evidence texts between *Mr. Hannan and another acquaintance of his*, *Byrun Bower*. CP 80-87.

⁶⁰ Mr. Dewitt *did* introduce a recent photograph showing Mr. Hannan alone. CP 71. That Mr. Hannan may have had issues suggested by the photograph does not strengthen Mr. Dewitt's case that he was a loving caregiver.

⁶¹ Mr. Dewitt *did* introduce into evidence documentation suggesting that Mr. Hannan had named *Byrun Bower* as a beneficiary under a term life insurance policy as of June 4, 2018. CP 89-90.

involvement by Mr. Hannan with Mr. Dewitt's numerous legal scrapes. CP 408-411, 558-666, 712-714.⁶²

This absence of evidence is of course consistent with Mr. Hannan's position that his relationship with Mr. Dewitt was extremely casual and sporadic. But it is very difficult to reconcile with Mr. Dewitt's assertion that he and Mr. Hannan were involved in a stable, marital-like relationship that lasted for 16 years (or even just two). And it substantially contributes to Mr. Dewitt's weak showing on each of the *Connell* factors, analyzed below.

2. Mr. Dewitt cannot show "continuous cohabitation" before some point in mid-2016, at the very earliest

As previously emphasized, Mr. Dewitt has conceded that his cohabitation with Mr. Hannan was "on and off" or "intermittent" prior to mid-2016. CP 119, ¶ 2; *Dewitt Reply to Motions*, at ¶ 2. And he nowhere presents any evidence that would create a genuine dispute about the fact that he resided for substantial periods of time with Mr. Haan, starting in 2005 and extending at least until May 2016. CP 478 at ¶ 1, CP 562, CP 509, at ¶¶ 2-3, and CP 524. Mr. Dewitt's concession, and his failure to genuinely dispute his extensive cohabitation *with Mr. Haan*, establish that he cannot show "continuous cohabitation" with Mr. Hannan before mid-2016, at the earliest.

⁶² On this last point, of course, the contrast with Mr. Haan is striking. *See, e.g.*, CP 478 at ¶ 1, 504-505, 509, 524 – 533, 562, and 558 at lines 18-19.

Under a plausible reading of Washington law, and in particular of *In re Marriage of Pennington*, 142 Wn.2d 592, 14 P.3d 764 (2000), the fact that Mr. Dewitt cannot show “continuous cohabitation” *relative to the entire period for which he claims a CIR in his Complaint* should end the inquiry regarding this factor. This arguably follows from *Pennington’s* discussion of continuous cohabitation in the two distinct matters which it consolidated.

In the matter of *Pennington and Pevenage*, the *Pennington* court analyzed this factor as follows:

Continuous Cohabitation : The trial court found Pennington and Van Pevenage began living together in August 1985. Pennington was married to another person until 1990. The parties continued to cohabit until March or April 1991, when Van Pevenage moved out for a period of time. She resumed cohabiting with Pennington until March 1993. Between March 1993 and October 1994, the court found both parties dated other people. The uncontested evidence also establishes Van Pevenage lived with another man during her separation from Pennington. Van Pevenage then moved back in with Pennington for a period of one year. We conclude the continuous cohabitation factor as contemplated by *Connell* has not been established. . . . *These facts suggest while Pennington and Van Pevenage did cohabit, their cohabitation was sporadic and not continuous enough to evidence a stable cohabiting relationship.*⁶³

Thus, the Supreme Court agreed that there was cohabitation, and that this cohabitation was uninterrupted for almost six years (“August 1985” through “March or April 1991”). The court nonetheless implicitly measured the length of the uninterrupted cohabitation against the length of

⁶³ *Pennington*, 142 Wn.2d at 603 (2000) (emphasis added).

the entire relationship, and concluded that “while Pennington and Van Pevenage did cohabit, *their cohabitation was sporadic and not continuous enough to evidence a stable cohabiting relationship.*”⁶⁴

Similarly, in the companion case of Chesterfield and Nash, the *Pennington* court stated:

Continuous Cohabitation: The trial court found Chesterfield and Nash moved in together in July 1989 and ceased living together in October 1993. The parties briefly reconciled in 1994 through 1995, when they made plans to marry. However, the parties never married as intended and terminated their relationship in November 1995. The trial court was correct in concluding the parties resided together continuously from July 1989 until October 1993. However, when taken as a whole, the parties' cohabitation was not continuous from 1989 through 1995, but was marked by separation and failed reconciliation.⁶⁵

Here, too, the Supreme Court acknowledged that the parties had “resided together continuously from July 1989 until October 1993” (more than four years), but nonetheless measured that cohabitation against the length of the entire relationship: “when taken as a whole, the parties’ cohabitation *was not continuous from 1989 through 1995, but was marked by separation and failed reconciliation.*”⁶⁶

⁶⁴ *Id.* (emphasis added).

⁶⁵ *Pennington*, 142 Wn.2d at 605–06.

⁶⁶ *Id.* However, the court subsequently introduced an element of ambiguity by stating, as part of its overall summary of the *Connell* factors in the Chesterfield and Nash case, that “the parties' continuous cohabitation and duration of their relationship *do* evidence a meretricious relationship.” *Pennington*, 142 Wn.2d at 607 (emphasis added). Despite this ambiguity, *Pennington* at least supports the proposition that it is relevant, if not

Applied to Mr. Dewitt, *Pennington*'s apparent logic requires the conclusion that his cohabitation with Mr. Hannan was also "sporadic and not continuous." Mr. Dewitt claims a CIR lasting from 2002 to 2018, but admits that before 2016 his cohabitation with Mr. Hannan was "on and off" and "intermittent." CP 1-4, CP 119, ¶ 2; and *Dewitt Reply to Motions*, at ¶ 2. The fact that there was *at most* continuous cohabitation for two years out of the 16 total years of the relationship means that "their cohabitation was sporadic and not continuous enough to evidence a stable cohabiting relationship."⁶⁷ The continuous cohabitation factor is simply not met.

The argument for the above conclusion does not rest simply on a plausible reading of ambiguous language in *Pennington*. Given the parties' roughly 14-year history of at-best sporadic cohabitation, it would be unfair and inequitable to allow Mr. Dewitt to convert their relationship into something "marital-like" just by moving into Mr. Hannan's home for a comparatively short period before suing for "dissolution." At the very least, it should take unusually strong evidence supporting the other *Connell* factors to show that their relationship was transformed in 2016 into something fundamentally different from what it had been for 14 years. As demonstrated in the sections that follow, Mr. Dewitt has no such evidence.

dispositive, to compare the length of the continuous cohabitation to the entire length of the relationship.

⁶⁷ *Pennington*, 142 Wn.2d at 603

In the alternative, if this Court determines that CR 8(f) or equity requires allowing Mr. Dewitt to redefine the alleged CIR as lasting only from mid-2016 (CP 524) to June 4, 2018 (CP 756), the Hannan Estate will concede for the purpose of this appeal that there is a genuine issue of fact as to whether there was continuous cohabitation for that period.⁶⁸ But as argued below, given the totality of the evidence, even a genuine issue regarding this one factor is not material to the outcome of this appeal.

3. The duration of the parties' relationship provides only weak support for finding a CIR.

The second *Connell* factor relevant to the existence of a CIR is “the duration of the relationship.”⁶⁹ This factor provides at best weak support for the existence of a CIR in this case. Here, it is undisputed that Mr. Dewitt and Mr. Hannan knew each other, and were occasionally sexually active, over a period of approximately 16 years. CP 2, 144 at lines 7-8. Technically, the duration factor appears to be satisfied.⁷⁰

⁶⁸ CR 8(f) states that “[a]ll pleadings shall be so construed as to do substantial justice.” *See also Kitsap Cty. v. Kitsap Cty. Corr. Officers' Guild, Inc.*, 179 Wn. App. 987, 994, 320 P.3d 70, 74 (2014) (noting that “[c]ourts must liberally construe complaints”).

⁶⁹ *Connell*, 127 Wn.2d at 346.

⁷⁰ This conclusion is consistent with the discussion of the duration factor in the two cases analyzed in *Pennington*. In particular, the court distinguished (albeit without extensive analysis) between the “duration of the relationship” which is expressly listed as a relevant factor, and *the duration of the CIR* itself. In both cases, the *Pennington* court found that the duration factor was satisfied, while also finding that there was no CIR (necessarily implying that the duration of each CIR was zero). *See Pennington*, 142 Wn. 2d at 604 (discussing duration in the *Pennington/Pevenage* case), and *id.* at 606 (discussing duration in the *Chesterfield/Nash* case).

However, the fact that two people have been acquainted for a long time, and even occasionally sexually active for a long time, is only remotely relevant to the underlying question of whether those people ever formed a committed intimate relationship sufficient to give each of them certain “marital-like” property rights upon dissolution. The *Pennington* court recognized the attenuated relevance of duration by noting that “a long-term relationship alone does not require the equitable division of property. Other factors must also justify the need for an equitable division of property acquired by the couple during their relationship.”⁷¹

It is also important to point out that *if* Mr. Dewitt and Mr. Hannan did engage in a CIR, the duration of the CIR itself was short. Mr. Dewitt has conceded that the parties did not continuously cohabit prior to mid-2016. CP 119, ¶ 2, CP 524. Since a committed intimate relationship “cannot . . . commence prior to the date the parties begin living together,” Mr. Dewitt cannot show that the alleged CIR here lasted more than approximately two years, from sometime after May 25, 2016 to June 4, 2018.⁷² CP 524, 756.

In *Connell*, the Washington Supreme Court appears to have recognized that the duration of the CIR itself, as well as the duration of the more general relationship, is relevant to the parties’ rights upon termination of the CIR:

⁷¹ *Pennington*, 142 Wn.2d at 604.

⁷² *Byerley v. Cail*, 183 Wn. App. 677, 689, 334 P.3d 108, 114 (2014).

In *Lindsey*, this court ruled a relationship need not be “long term” to be characterized as a meretricious relationship. *Lindsey*, 101 Wash.2d at 305, 678 P.2d 328. While a “long term” relationship is not a threshold requirement, duration is a significant factor. A “short term” relationship may be characterized as meretricious, but a number of significant and substantial factors must be present. *See Lindsey*, 101 Wash.2d at 304–05, 678 P.2d 328 (a less than 2–year meretricious relationship preceded marriage).⁷³

Because any CIR between Mr. Dewitt and Mr. Hannan lasted no more than two years, it qualifies as “short-term,” and therefore a number of other “significant and substantial factors” must be present to warrant granting equitable relief.⁷⁴

4. Mr. Dewitt offers only very weak support for his contention that the purpose of the relationship was for “intimacy and companionship.”

In his Appellant’s Brief, Mr. Dewitt asserts that “[t]he purpose of the relationship was clearly for intimacy and companionship,” and that “[t]here was not [sic] material issue of fact related to the purpose of the relationship as being for intimacy and companionship.”⁷⁵ This is the sum total of his discussion of this factor, and it is supported by neither

⁷³ *Connell*, 127 Wn.2d at 346 (emphasis added). The Respondent Estate submits it is difficult to read this passage any other way than as acknowledging that the duration of the CIR (“meretricious relationship”) itself is relevant to the rights of the parties upon termination.

⁷⁴ *Id.* *See also* 21 Wash. Prac., Fam. and Community Prop. L. § 57:8 (arguing that in *Connell* the Supreme Court held “by inference . . . that a relationship of less than two years is ‘short term’”).

⁷⁵ Appellant’s Brief, at pp. 2-3.

authority nor any accurate citation to the record.⁷⁶ The Estate submits that the record here is at least, if not more, supportive of Mr. Hannan's account that the real purpose of the relationship, from the perspective of Mr. Dewitt and Mr. Haan, was for them to take advantage of Mr. Hannan's vulnerabilities and to try to seize his property. CP 318-19, 322-327, CP 545.

5. There was no "pooling of resources."

According to Mr. Dewitt, the parties' "pooling of resources" took the form of a working 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."⁷⁷ The first thing to note about this assertion, and the declaration on which it relies, is its complete lack of corroborating detail. Second, if Mr. Dewitt really regarded sex with Mr. Hannan as work or a "chore," this undermines his claim that the parties were involved in a relationship the purpose of which was "intimacy and companionship." Finally, it is undisputed that Mr. Hannan had retired by 2016, which is when Mr. Dewitt alleges that the parties began

⁷⁶ The only citation to the record given by Mr. Dewitt on this point is to CP 119. There is no reference on that page of the Clerk's Papers to the purpose of the relationship. Perhaps Mr. Dewitt meant to refer to CP 123, which at least contains contentions to the effect that the purposes of the relationship included intimacy, companionship, and emotional support.

⁷⁷ Appellant's Brief, at pp. 2-3 (citing to CP 119).

cohabiting full time.⁷⁸ Thus, there was no “working partner” during the relevant time, and therefore no “stay at home partner,” either.

Mr. Dewitt did assist Mr. Hannan with finding and directing contractors to repair damage to Mr. Hannan’s Tacoma residence after a small kitchen fire. CP 322-323. But there is no evidence, and not even any allegation by Mr. Dewitt, that the parties ever combined finances, set up joint financial accounts, or filed joint tax returns. It is not reasonable, even construing the facts in the light most favorable to Mr. Dewitt, to find that a pooling of resources occurred.

This conclusion is arguably required by the discussion of the “pooling of resources” factor in *Pennington*. In the *Pennington / Van Pevenage* matter, the Supreme Court stated as follows:

The trial court found Van Pevenage spent money for food, household furnishings, carpeting and tile, and some kitchen utensils. The court also found she cooked meals, cleaned house, and helped with interior decoration. *While the evidence establishes the parties shared some living expenses, under Connell these facts are not sufficient to show a significant pooling of resources and services for joint projects.* As noted above, the relationship had gaps where no expenses were shared. Van Pevenage has no evidence to suggest she made constant or continuous payments jointly or substantially invested her time and effort into any specific asset so as to create any inequities. *Given the evidence presented at trial, we cannot conclude the parties jointly invested their time, effort, or financial resources in any specific asset to justify the equitable division of the parties' property acquired during the course*

⁷⁸ See, e.g., Appellant’s Brief, at p. 5 (asserting that the parties “eventually bec[a]me full time residents *after his [Mr. Hannan’s] retirement from Boeing*”) (emphasis added).

*of their relationship.*⁷⁹

Similarly, in the Chesterfield / Nash matter, the Supreme Court stated:

Pooling of Resources: The trial court found Chesterfield and Nash had a joint checking account for living expenses, into which they both deposited money. During their period of continuous cohabitation, Nash assisted Chesterfield with some work-related travel logs. Chesterfield assisted Nash with his office emergencies, his accounts payable, his role as secretary for his study club, and his office correspondence. The court found the parties resided in Chesterfield's home and shared the mortgage payments. However, the parties maintained separate bank accounts. They also purchased no property jointly. Each maintained his or her own career and financial independence, contributing separately to their respective retirement accounts. When these facts are examined as a whole, the trial court's findings do not fully establish the parties jointly pooled their time, effort, or financial resources enough to require an equitable distribution of property, as contemplated by *Connell*.⁸⁰

Here, even taking the evidence in the light most favorable to Mr. Dewitt, it falls well short of establishing the sort of facts that the Supreme Court found did not show sufficient pooling of resources “to justify the equitable division of the parties' property acquired during the course of their relationship.”⁸¹

6. There is no evidence that the parties had the mutual intent of assuming shared rights and responsibilities analogous to those of marriage.

The type of “intent” that matters under *Connell* is “the mutual intent of parties to be in a meretricious [or committed intimate]

⁷⁹ *Pennington*, 142 Wn.2d at 604–05 (emphasis added).

⁸⁰ *Id.*, at 606-607

⁸¹ *Id.*, at 605.

relationship.”⁸² “Intent” is probably the factor where the absence of contemporaneous documentary and photographic evidence in support of his claims weighs most heavily against Mr. Dewitt. Evidence of Mr. Dewitt’s own intent is clearly not probative of *mutual* intent, but apart from his own say-so, Mr. Dewitt doesn’t even have evidence of his *own* intent that pre-dates this litigation. Again, there are *no* love letters, pictures, texts, reminders, grocery lists, or any similar thing in the record from the first 15 years of the supposed relationship that might conceivably corroborate Mr. Dewitt’s allegedly abiding intent. Incapable of showing even his own intent except through self-serving affidavits, Mr. Dewitt necessarily fails to show any genuine issue of material fact regarding the parties’ *mutual* intent.

That Mr. Dewitt’s arguments about intent rely on speculation and unreasonable inferences is readily apparent. He asserts:

The intent of the parties is seen from the long relationship itself, and from the 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.⁸³

The first claim here is circular and therefore not probative, because the simple fact of a long relationship between two people (as friends, neighbors, work colleagues, parishioners, or even occasional sexual partners) in no way establishes their intent to form a CIR. As for the fact that Hannan did nothing over 16 years to “remove Dewitt,” it *might*

⁸² *Id.*, at 604 (emphasis added).

⁸³ Appellant’s Brief, at p. 3.

support a reasonable inference of intent to form and remain in a CIR *if* the parties had indeed been cohabiting for 16 years. But as Mr. Dewitt has conceded, prior to 2016 the parties' cohabitation was "on-and-off" and "intermittent." CP 119, ¶ 2, and *Dewitt's Reply to Motions*, at ¶ 2. Moreover, Dewitt does not effectively challenge the evidence showing extensive periods of cohabitation between him and Mr. Haan between 2005 and 2016.⁸⁴ There is no reasonable inference of intent by Mr. Dewitt *and Mr. Hannan* to form a CIR that can be based on the fact that Mr. Dewitt *and Mr. Haan* cohabited for at least 11 years. CP 544.⁸⁵

Finally, Washington's courts formerly treated the issue of whether "the partners appear to hold themselves out as husband and wife" as crucial to the existence of a meretricious relationship.⁸⁶ In this case, it is conceded, or at least not materially disputed, that Mr. Dewitt and Mr. Hannan did not hold themselves out to the public as a couple.⁸⁷ The Supreme Court's opinion in *Connell* may have diminished the salience of the issue of "hold[ing] themselves out," but it remains relevant to the factor of mutual intent.⁸⁸ Although one can certainly imagine couples who

⁸⁴ *See supra*, at pp. 3-5.

⁸⁵ *See also Pennington*, 142 Wn.2d at 604 (noting that "Van Pevenage's intent to live in a stable, long-term, cohabiting relationship is also negated by her own actions, particularly her repeated absences from the Yelm home and her relationship with another man").

⁸⁶ *See, e.g., In re Thornton's Estate*, 81 Wn.2d 72, 75, 499 P.2d 864, 866 (1972).

⁸⁷ *See supra*, at pp. 6-7. *See also* Appellant's Brief, at p. 2 (asserting that "the parties kept the relationship very private from the rest of society").

⁸⁸ *See, e.g., Pennington*, 142 Wn.2d at 606 (remarking on the parties' failure to "hold themselves out as spouses" as relevant to intent).

succeed in keeping their genuine mutual intention to cohabit in a stable “marital like” relationship secret from the world, to allow proof of such secret intent without strong corroborating evidence would be a recipe for injustice. Again, Mr. Dewitt has offered no such corroborating evidence of what he essentially concedes was a “secret” mutual intent.

For all of the above reasons, this Court should hold that Mr. Dewitt failed to show any genuine issue of material fact about the parties’ mutual intent.

7. Taking the evidence relating to the *Connell* factors as a whole in the light most favorable to Mr. Dewitt, he cannot establish the existence of a committed intimate relationship, and his claim fails as a matter of law.

As the Supreme Court noted in *Pennington*, “[o]ne *Connell* factor is not more important than another.”⁸⁹ The factors and the evidence related to them must be considered as a whole, in light of “the equitable principles recognized in *Connell*.”⁹⁰ Here, because, this case is before this Court on review of summary judgment in favor of Mr. Hannan, the evidence must also be construed in the light most to Mr. Dewitt.

The Estate submits that the analysis in the proceeding sections shows that Mr. Dewitt falls well short of identifying any genuine issue of material fact that requires trial. Mr. Dewitt has conceded that he cannot show continuous cohabitation prior to some point in 2016. The duration of any resulting CIR was therefore at most short-term. Mr. Dewitt offered

⁸⁹ *Id.* at 605.

⁹⁰ *Id.*

only self-serving assertions, unsupported by any corroborating documentary evidence, regarding the purpose of the relationship and the pooling of resources. Moreover, Mr. Dewitt concedes that Mr. Hannan had retired by 2016, so that there were no community earnings to share or pool during the only possible period for a CIR. The undisputed evidence showing that the parties did not hold themselves out as a couple, and the cursory and illogical nature of his arguments about intent on appeal, show that the parties did not have the requisite mutual intent to form a committed intimate relationship. In short, considering all of the factors and the evidence as a whole, Mr. Dewitt failed to carry his summary judgment burden to identify issues of material fact that would require trial.

As acknowledged by the trial court, the Supreme Court's ultimate decision in *Pennington* strongly supports granting summary judgment to Mr. Hannan.⁹¹ Although neither of the cases consolidated in *Pennington* had been resolved on summary judgment, in both cases the respective trial courts found after trial that a CIR did exist.⁹² Without challenging the facts found, the Supreme Court overruled the trial courts as a matter of law, holding that the facts did not support the legal conclusion that a CIR existed.⁹³

Crucially, the Supreme Court's summaries of the relevant factors in each of the consolidated cases, and its holding that no CIR existed,

⁹¹ See CP 1079, at lines 4-25.

⁹² *Pennington*, 142 Wn. 2d at 597, 599.

⁹³ *Id.*, at pp. 602-608.

establishes that facts far more supportive of the existence of a CIR than those alleged by Mr. Dewitt do not suffice to prove a CIR. In the matter of Pennington / Van Pevenage, the Supreme Court stated as follows:

[W]hen the factors and evidence are taken as a whole, the equitable principles recognized in *Connell* are not satisfied in this case. Therefore, we conclude the sporadic cohabitation, the instability of the relationship, Van Pevenage's insistence on marriage, Pennington's refusal to marry, Van Pevenage's absences from the home and relationship with another man, the gaps where no expenses were shared, and the absence of constant or continuous copayments or investment of time and effort in any significant asset neither evidence a meretricious relationship nor sufficiently justify the fair and equitable distribution of property acquired during the course of the relationship.⁹⁴

In the matter of Chesterfield and Nash, the Supreme Court summarized:

When the factors and evidence are balanced as a whole, the equitable principles recognized in *Connell* are not satisfied by the trial court's findings. While the parties' continuous cohabitation and duration of their relationship do evidence a meretricious relationship, the evidence supporting the mutual intent of the parties to be in such a relationship is too equivocal to support such a conclusion. Similarly, the parties maintained separate accounts, purchased no significant assets together, and did not significantly or substantially pool their time and effort to justify the equitable division of property acquired during the course of their relationship. Therefore, we conclude the relationship between Chesterfield and Nash did not constitute a meretricious relationship and the equitable principles recognized in *Connell* are not triggered by these facts.⁹⁵

⁹⁴ *Id.*, at 605.

⁹⁵ *Id.*, at 607.

Because Mr. Dewitt's evidence, and the reasonable inferences therefrom, fall far short of the facts the Supreme Court found to be inadequate as a matter of law in *Pennington*, Mr. Hannan is entitled to summary judgment on the CIR claim.

8. Even if the parties were involved in a "short term" CIR from 2016 through 2018, there was no community property acquired during that period, and this provides an alternative basis for granting summary judgment to Mr. Hannan.

In his Appellant's Brief, Mr. Dewitt never argues that the parties acquired *community property* after their cohabitation allegedly became "full time" in mid-2016. CP 119. Instead, Mr. Dewitt makes an assignment of error stating that "[t]he trial court did not follow the ruling related to *Connell with regard to separate property* and RCW 26-09-080."⁹⁶ He identifies a related issue as to whether "the trial court committed reversible error . . . because she thought that *separate property* was not divisible," and argues that according to *Connell v. Francisco*, 74 Wn. App. 306 (1994), "property that would be separate, as well as property that would be characterized as community . . . is subject to division."⁹⁷

Considered as assertions about the proper treatment of separate property upon dissolution of a CIR, Mr. Dewitt's claims are demonstrably wrong as a matter of law. In *Connell v. Francisco*, 74 Wn. App. 306

⁹⁶ Appellant's Brief, at p. 1 (emphasis added).

⁹⁷ *Id.* at p. 1 (first quote), and pp. 5-6 (second quote) (emphasis added).

(1994), Division I of the Court of Appeals did hold, while discussing “nonmarital relationships,” that

[t]o exclude from consideration certain assets, *i.e.*, those characterized as separate property, regardless of their extent, would render it impossible in many cases to address the “paramount concern” of a just and equitable division based on the economic circumstances of the parties.⁹⁸

But the Court of Appeals was directly overruled on this point by the state Supreme Court:

Once a trial court determines the existence of a meretricious relationship, the trial court then: (1) evaluates the interest each party has in the property acquired during the relationship, and (2) makes a just and equitable distribution of the property. . . . *The critical focus is on property that would have been characterized as community property had the parties been married.* This property is properly before a trial court and is subject to a just and equitable distribution. . . . *[P]roperty owned by one of the parties prior to the meretricious relationship and property acquired during the meretricious relationship by gift, bequest, devise, or descent with the rents, issues and profits thereof, is not before the court for division.*⁹⁹

Mr. Dewitt is therefore incorrect in asserting that the trial court erred by refusing to divide Mr. Hannan’s *separate property*.¹⁰⁰

⁹⁸ *Connell v. Francisco*, 74 Wn. App. 306, 316–17, 872 P.2d 1150, 1156 (1994), *aff’d in part, rev’d in part*, 127 Wn. 2d 339, 898 P.2d 831 (1995).

⁹⁹ *Connell v. Francisco*, 127 Wn. 2d 339, 349–351, 898 P.2d 831, 835–36 (1995).

¹⁰⁰ Because this Court is conducting *de novo* review, it is only marginally relevant—as an indication of Mr. Dewitt’s propensity to make faulty arguments—to note that the trial court did not conclude that there was a short CIR, but instead stated only that “I’m conceding that there *may be* a committed intimate relationship here; even so, it is short.” CP 1080 at lines 23–25 (emphasis added). *Compare* Appellant’s Brief, at p. 6 (asserting that “the [trial] [c]ourt conceded that there was a committed intimate relationship”). Similarly, the trial court did not conclude “that

In addition, this Court typically “will not consider assignments of error which are supported neither by argument nor authority.”¹⁰¹ Since Mr. Dewitt’s brief on appeal makes no reference at all to any alleged *community property* of the purported CIR, this Court may affirm the trial court on the alternative basis that even if the parties began a CIR in mid-2016, Mr. Dewitt has abandoned any argument that the parties acquired any *community property* during that period which should have been distributed.¹⁰²

Even if Mr. Dewitt has not waived any claim that the parties acquired community property after 2016, the undisputed record on review requires the conclusion that there was no such property. It is undisputed that Mr. Hannan had retired from Boeing sometime prior to 2016.¹⁰³ The only evidence of any income for Mr. Hannan over the period of the

only separate property was acquired” (*cf.* Appellant’s Brief, at p. 6), but instead determined that it was “not going to award any property to Mr. Dewitt because there is no committed intimate relationship.” CP 1082 at lines 16-18.

¹⁰¹ *State v. Wood*, 89 Wn.2d 97, 99, 569 P.2d 1148, 1149 (1977), overruled on other grounds by *Sw. Washington Chapter, Nat. Elec. Contractors Ass'n v. Pierce Cty.*, 100 Wn.2d 109, 128 note 3, 667 P.2d 1092, 1102 (1983)

¹⁰² The Estate understands that under *Connell*, there is a presumption that “all property acquired during a meretricious relationship is presumed to be owned by both parties.” *Connell*, 127 Wn.2d at 351. The Estate’s argument here is effectively that this presumption must be invoked, and that because Mr. Dewitt did not invoke it, it is waived. In the following paragraph below, the Estate argues that if not waived, the presumption is rebutted by the evidence in the record.

¹⁰³ *See, e.g.*, Appellant’s Brief, at p. 5 (asserting that the parties “eventually bec[a]me full time residents *after his [Mr. Hannan’s] retirement from Boeing*”) (emphasis added).

alleged short-term CIR relates to retirement earnings from his Boeing pension.¹⁰⁴ Because that pension was entirely earned before the alleged short-term CIR commenced, it was all Mr. Hannan’s separate property, as were of course other funds and properties in Mr. Hannan’s possession prior to 2016.¹⁰⁵ Because there is no evidence that Mr. Dewitt contributed any financial resources to the alleged community, any assets the parties acquired from 2016 forward must have been Mr. Hannan’s separate property.¹⁰⁶ This Court may thus affirm the trial court’s dismissal of Mr.

¹⁰⁴ See Sealed Financial Source Records for Mr. Hannan, dated July 3, 2019, at p. 2 (BECU statement, under “deposits”). The Sealed Financial Source Records for Mr. Hannan were designated in Respondent’s Second Supplemental Designation of Clerk’s Papers, dated March 16, 2020.

¹⁰⁵ See, e.g., *In re Marriage of Rockwell*, 141 Wash. App. 235, 251, 170 P.3d 572, 580–81 (2007) (noting that if a “pension was accumulated partly prior to marriage and partly after marriage, it is proportionately classified, with the portion acquired during marriage characterized as community property”). Here, the portion of the pension acquired during a hypothetical post-May 2016 CIR was zero, so none of it was community property.

¹⁰⁶ See *Connell*, 127 Wn. 2d at 351 (holding that “property owned by one of the parties prior to the meretricious relationship and property acquired during the meretricious relationship by gift, bequest, devise, or descent with the rents, issues and profits thereof, is not before the court for division”). There is evidence in the record that Mr. Dewitt had separate Social Security income (CP 190), but his own submissions to the trial court effectively disclaim that he made any *financial* contributions to the alleged community. See, e.g., CP 119 (asserting that “he [Mr. Hannan] was financially supportive throughout”), and *Reply to Motions*, dated July 18, 2019, at p. 2, ¶ 5 (asserting “I was a ‘stay at home’ who provided many benefits to Kevin including the chores he admits to and the work that he admits to”, but not alleging any financial contribution).

Dewitt's CIR claim on the alternative grounds that even if there was a short CIR, there were no community assets to distribute.

9. Mr. Dewitt is not entitled to summary judgment against Mr. Hannan.

Mr. Dewitt's opening brief to this Court implies in passing that the trial court erred by denying his motion for summary judgment.¹⁰⁷ All of the Estate's arguments above in favor of summary judgment for Mr. Hannan are of course also reasons why this Court should affirm the denial of Mr. Dewitt's motion for summary judgment. But even if this Court were to reject the Estate's arguments, and reverse the trial court, there would still be genuine issues of material fact that would bar summary judgment for Mr. Dewitt. Mr. Dewitt is the petitioner in this matter, and has the burden of proving his case. Mr. Hannan has never conceded that the parties were involved in a CIR, and in fact denies it in detail. CP 318-327. This Court should affirm the trial court's denial of Mr. Dewitt's summary judgment motion.

E. Mr. Dewitt's claim of unlawful eviction is legally untenable, and undercuts his claim to have been involved in a CIR.

When the trial determined that there was no CIR, it necessarily also determined that Mr. Dewitt had no right to ownership or possession of Mr. Hannan's property based on a CIR. CP 275, CP 1082, lines 16-19. Mr. Dewitt had never advanced any claim of right to reside at the Lawrence Street residence based on anything other than the alleged CIR.

¹⁰⁷ See, e.g., Appellant's Brief at p. 7 (asserting in Conclusion that this Court should "enter summary judgment in favor of DeWitt").

See, e.g., CP 1-4, CP 185-187. Indeed, during oral argument on summary judgment, Mr. Dewitt emphasized that “I have the right to figure that out if our relationship was based upon a CIR. . . . *I’m not trying to do nothing other than find that out.*” CP 1076, at lines 1-3 (emphasis added). During the pendency of this action in the trial court, Mr. Dewitt resided rent-free at the Lawrence Street residence under the authority of various temporary family law orders. CP 763-65, CP 397-98, CP 181. Thus, having determined that there was no CIR, the trial court properly concluded that there was no basis for Mr. Dewitt’s continued residence at 2916 N. Lawrence Street, and ordered him to move out by July 26, 2019. CP 275.

It was only after the trial court did so that Mr. Dewitt began to claim an “unlawful eviction,” and eventually started to cite to RCW 59.12.220 as purportedly entitling him “to full possession of the property until the appeal . . . is determined.” CP 1093-1094.¹⁰⁸ When the trial court subsequently issued its Order re: Possession of the Property, clarifying and emphasizing that “Mr. Dewitt is not entitled to any legal possession of the property at 2916 N. Lawrence St. Tacoma,” Mr. Dewitt filed a second notice of appeal. CP 285-287.

¹⁰⁸ *See also* Mr. Dewitt’s letter filed with this Court on September 25, 2019, which appears to be the first time Mr. Dewitt specifically referenced RCW 59.12.220. In light of Mr. Dewitt’s sworn declaration to the trial court to the effect that “I have not moved back into the house and do not plan to. Ever. I have moved on and wish to live in peace”, he has at least arguably waived any claim to be actually restored to possession of the house. *See* Declaration of Leonard Dewitt in re Contempt, dated November 1, 2019, which is pending Clerk’s Papers pagination.

In his Appellant’s Brief, Mr. Dewitt asserts in passing that the trial court’s “eviction language [is] contrary to RCW 59.12.220.”¹⁰⁹ RCW 59.12.220 states in its entirety as follows:

If a writ of restitution has been issued previous to the taking of an appeal by the defendant, and said defendant shall execute and file a bond as provided in this chapter, the clerk of the court, under the direction of the judge, shall forthwith give the appellant a certificate of the allowance of such appeal; and upon the service of such certificate upon the officer having such writ of restitution the said officer shall forthwith cease all further proceedings by virtue of such writ; and if such writ has been completely executed the defendant shall be restored to the possession of the premises, and shall remain in possession thereof until the appeal is determined.

This statute is part of the Title 59 RCW, which addresses landlord and tenant law. It applies to circumstances where either a landlord or a tenant has been issued a writ of restitution, and the defendant to the writ has posted a bond.¹¹⁰ It has absolutely no application here, where Mr. Dewitt offered no evidence to the trial court in any way suggesting that he was a “tenant” occupying the N. Lawrence Street property pursuant to a “rental agreement” with Mr. Hannan.¹¹¹ No “writ of restitution” was entered

¹⁰⁹ Appellant’s Brief, at p. 4.

¹¹⁰ See, e.g., RCW 59.12.090 (stating that a “plaintiff” may obtain a writ of restitution after alleging “forcible entry or detainer or unlawful detainer”). See also RCW 59.12.010 and RCW 59.12.020 (defining, respectively, “forcible entry” and “forcible detainer”).

¹¹¹ Under RCW 59.18.030(32), a “tenant” is “any person who is entitled to occupy a dwelling unit primarily for living or dwelling purposes *under a rental agreement*” (emphasis added). Under RCW 59.18.030(29) a “rental agreement” means “all agreements which establish or modify the terms, conditions, rules, regulations, or any other provisions concerning the use and occupancy of a dwelling unit.”

here, and Mr. Dewitt has posted no bond. The trial court's summary judgment order directing Mr. Dewitt to vacate the N. Lawrence Street was a proper consequence of its determination that there was no CIR, and the Order re Possession of Property was a lawful exercise of its authority to enforce the summary judgment order under RAP 7.2(c). There was no error by the trial court in any way implicating an "unlawful eviction."

In addition, Mr. Dewitt's belated attempt to assert a landlord-tenant relationship with Mr. Hannan undercuts his claim to be involved in a CIR with him. If the parties' relationship was mediated by a rental agreement, it would hardly seem "marital like," marked by a predominant purpose of shared intimacy and support, characterized by a pooling of resources (the point of a rental agreement is to assign the landlord and tenant *distinct* rights and responsibilities), or reflecting a mutual intent to committed intimacy.¹¹² The Respondent Estate recognizes that parties are typically entitled to plead in the alternative, and that on review of summary judgment, this Court does not evaluate the credibility of the parties. Here, however, Mr. Dewitt did not plead in the alternative (CP 1-4), and his argument on appeal based on a purported "unlawful eviction" is at least arguably an implicit *admission* that the parties did not satisfy the terms of a CIR. This Court may consider this admission as part of its decision here, and give it whatever weight it decides is proper.

¹¹² See, e.g., *Connell*, 127 Wn.2d at 346. Appellate counsel for the Estate is unaware of any Washington cases where a party claiming a CIR also claimed that the terms of their cohabitation were regulated by a rental agreement.

F. Mr. Hannan’s death does not fundamentally affect the proper outcome of this appeal, although application of the deadman’s statute may complicate the proceedings on any remand.

As previously noted, Mr. Hannan passed away after the trial court issued the orders on appeal.¹¹³ The Estate submits that Mr. Hannan’s passing neither undermines the validity of its arguments for affirmance, as presented above, nor offers an additional grounds for upholding the trial court’s decisions.¹¹⁴ If this Court decides that remand for trial is necessary, the trial will have to proceed without Mr. Hannan, and the trial court may well have to rule regarding the impact of the dead man statute on its proceedings.¹¹⁵ However, any issues related to that statute are best

¹¹³ See footnote 1, *supra*.

¹¹⁴ See, e.g., *In re Estate of Langeland*, 177 Wn. App. 315, 324–25, 312 P.3d 657, 662 (2013) (noting that the *Connell* factor analysis “applies when the relationship ends through the death of one partner and the deceased partner’s heirs have no greater rights than the decedent would have, if living) (citing to *Olver v. Fowler*, 161 Wn.2d 655, 670–71, 168 P.3d 348 (2007)).

¹¹⁵ The dead man statute, RCW 5.60.030, states in part as follows:

[I]n an action or proceeding where the adverse party sues or defends as executor, administrator or legal representative of any deceased person, or as deriving right or title by, through or from any deceased person, . . . then a party in interest or to the record, shall not be admitted to testify in his or her own behalf as to any transaction had by him or her with, or any statement made to him or her, or in his or her presence, by any such deceased . . . person . . . :
PROVIDED FURTHER, That this exclusion shall not apply to parties of record who sue or defend in a representative or fiduciary capacity, and have no other or further interest in the action.

addressed in the particular context in which they may arise on remand, if remand is necessary.¹¹⁶

IV. CONCLUSION

The Respondent Estate of Kevin Hannan (“the Estate”) believes that Mr. Dewitt’s actions in this matter were accurately predicted by Mr. Haan in 2016, when he asserted that Mr. Dewitt was using a “technique of getting judges to sign these [protective orders] orders to have more time to clean a person out.” CP 545. By also filing a complaint to dissolve an alleged committed intimate relationship with Mr. Hannan, Mr. Dewitt, who has a lengthy history of both civil and criminal litigation (CP 408-411, 558-666, 712-714), bought himself even more time to live rent-free in Mr. Hannan’s Tacoma residence.

This Court, however, need not accept the Estate’s view of this matter to uphold the trial court’s grant of summary judgment to Mr. Hannan. Mr. Dewitt’s concessions, and his failure to contest key evidence presented by Mr. Hannan, defeats Mr. Dewitt’s claim to have been involved in a CIR with Mr. Hannan as a matter of law. As a consequence, Mr. Dewitt has no right reside in Mr. Hannan’s property, nor any right to

¹¹⁶ See, e.g., *Vasquez v. Hawthorne*, 99 Wn. App. 363, 369, 994 P.2d 240, 243 (2000), as amended (Mar. 31, 2000), vacated on other grounds by *Vasquez v. Hawthorne*, 145 Wn.2d 103, 33 P.3d 735 (2001). See also *Olver v. Fowler*, 161 Wn.2d 655, 672, 168 P.3d 348, 357 (2007) (holding that the analogous issue of “the extent to which . . . potential creditors can reach [the] . . . estate would be more appropriately addressed in the context of a case against . . . [the] estate”).

any of Mr. Hannan's other property, at the very least not based on any theory presented to the trial court. This Court should affirm the trial court in all respects.

DATED this 16th day of March 2020.

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CERTIFICATE OF SERVICE

I certify that on March 16, 2020, I emailed the foregoing Brief of Respondent Estate of Kevin Hannan to Leonard C. DeWitt, Appellant *pro se*, at his email address of leostar5678@gmail.com. I also placed a copy in the United States mail, first class postage prepaid, for delivery to the following address:

Leonard C. DeWitt
2106 S. 25th St.
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Dated this 16th day of March 2020.

By: David A. Corbett
David Corbett

DAVID CORBETT PLLC

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