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**SUPREME COURT NO. 89810-3**

(APPEAL NO. 67255-0-1; Consolidated w/ 67659-8-I)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

DIVISION ONE

(Whatcom County Court Case No. 09-4-00039-9)

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**In Re the Estate of:  
RANDALL J. LANGELAND,  
Deceased.**

**SHARON DROWN**

vs.

**JANELL BOONE**

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**RESPONDENT DROWN'S ANSWER TO BOONE'S PETITION FOR REVIEW**

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Shepherd and Abbott  
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March 7, 2014

 ORIGINAL

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## **IDENTITY OF RESPONDENT**

Sharon Drown (Drown) is the respondent to this Petition for Review; Drown was the Petitioner in the trial court and the Appellant/Cross-Respondent on appeal.

## **STATEMENT OF THE ISSUES**

1. Whether the Court of Appeals' ruling in *Estate of Langeland*, Appeal No. 67255-0-1, is consistent with Supreme Court precedent regarding property acquired by Randall J. Langeland (Langeland) and Drown during their committed intimate relationship. [Yes]

2. Whether the ruling of the Court of Appeals conflicts with the Division 2 Court of Appeals decision of *Estates of Palmer*, 145 Wn.App. 249, 187 P.3d 758 (Div. 2, 2008). [No]

## **STATEMENT OF THE CASE**

This case involves competing claims to the Estate of Randall J. Langeland, asserted by his daughter Janell Boone (Boone), and woman with whom he lived and shared a committed intimate relationship with from 1991 until his death in 2009. Boone has stipulated that Drown and Langeland lived in a committed intimate relationship. CP 275.

In 1983, Drown was 20 years old, single and living in California when she met and fell in love with Langeland. CP 297. At that time, Langeland was 33 years old. In 1991, she accepted a ring from Langeland, moved in with him and they began a lasting intimate committed relationship.<sup>1</sup> There were no children born of the relationship. CP 298. Langeland had one child, Boone, from a prior marriage.

In 1994, Drown and Langeland started a business known as J. Randall and Associates, Inc. (J. Randall). At that time, both of them worked at NT Enloe Hospital in Chico, California. RP 69. In 1998, they purchased a 36 foot sailboat in Washington. RP 79. Title to the sailboat was taken in the name of Langeland. Ex. 6. In 1999, they moved to Bellingham, Washington. RP 68.

In December of 1999, they purchased a home in Bellingham, Washington. CP 298. Title to the home was taken in the name of both Drown and Langeland. CP 302. After moving to Bellingham, Langeland worked only for J. Randall. Drown worked for PeaceHealth dba St. Joseph Hospital. CP 500.

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<sup>1</sup> "You and each of you will please take note that for the purposes of the proceedings herein, Janell Boone hereby stipulates that decedent and Sharon Drown were in an intimate committed relationship." CP 275.

In 1999, Langeland broke his leg and for the next 10 years suffered a number of difficult injuries and illnesses, which eluded diagnoses and treatment. CP 297-98. During those 10 years, Drown nurtured and cared for Langeland as his primary caregiver. CP 299. Drown traveled with him and assisted him with his business affairs; she cared for his personal hygiene needs and administered his medications; and she attended all his medical appointments and was very involved with his treatment. *Id.* On January 9, 2009, Langeland died after a long, complicated and painful series of illnesses. CP 338. Langeland did not have a will. CP 49.

On January 23, 2009, Langeland's adult daughter, Boone, filed a probate which is the origin of all issues in this appeal. CP 339. In her initial pleadings, Boone alleged that Langeland died intestate and that Drown was an heir, legatee and devisee. CP 340. Boone also petitioned the trial court as follows: "During their ICR (intimate committed relationship) decedent and Drown jointly acquired property that needs to be equitably divided." CP 247.

The trial court, relying on its presumption of correctness of inventory, required Drown to prove her ownership interest. *Estate*

*of Langeland*, No. 67255-0-1, at p. 2. The trial court determined that Drown had no interest in the 36 foot sailboat, no interest in J. Randall, a 24.7% interest in the home and entered judgment in favor of the estate and against Drown for \$70,000 for Boone's attorneys' fees and costs. CP 50-51. The trial court also ordered the two vehicles acquired by Drown and Langeland during the committed intimate relationship, titled in both names sold and the proceeds to be divided between Drown and Boone. CP 50.

The Court of Appeals found that the trial court "failed to apply the correct presumption to property acquired during Mr. Langeland and Ms. Drown's committed intimate relationship," and "reversed and remanded to the trial court to reconsider the proper distribution of the jointly acquired assets and the issue of attorney's fees." *Estate of Langeland*, at p. 17-18.

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## REVIEW SHOULD BE DENIED

A petition for review will be accepted by the Supreme Court **only**:

(1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or

(2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or

(3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or

(4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.<sup>2</sup>

**1. Boone's Petition for Review should be denied because the ruling is consistent with the decisions of the Washington Supreme Court in *Humphries v. Riveland* and *Hynes v. Hynes*.**

The Court of Appeals' holding in this case does not prohibit unmarried persons in a committed intimate relationship from entering into agreements. Rather, the Court of Appeals' opinion determined the presumption that property acquired during a committed intimate relationship is jointly owned should prevail over the trial court's presumption of correctness of inventory. *Estate of Langeland*, at p. 9. The opinion did not hold, or even discuss, the contractual rights of unmarried persons within a committed

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<sup>2</sup> RAP 13.4(b).



intimate relationship. *See Id.* Boone's basis for her petition is unfounded. This Court should not grant Boone's Petition for Review.

Boone cites *Humphries v. Riveland*, arguing that such separate property agreements were favored. 67 Wn.2d 376, 407 P.2d 967 (1965). What Boone fails to point out is that the court in *Humphries* puts the burden of proving such an agreement on the party asserting such an agreement exists.

In order to establish a contract such as here alleged to have been made, it is necessary that the person asserting it show by evidence that is conclusive, definite, certain and beyond legitimate controversy (1) that a contract as alleged was entered into between the deceased and the person asserting the contract; (2) that the services contemplated as consideration for such agreement have been actually performed; and (3) that such services were performed in reliance upon the agreement.

*Id.* at 380. Consistent with *Humphries*, the Court of Appeals determined that the trial court put the burden on Drown instead of Boone, who asserted such an agreement, and reversed and remanded to correct such error.

Boone next asserts that the Court of Appeals decision is inconsistent in some way to *Hynes v. Hynes*, 28 Wn.2d 660, 184

P.2d 68 (1947). *Hynes* did not analyze the property agreement in the context of a committed intimate relationship (then meretricious relationship), but instead involved a basic application of “[t]he rule of law in this state is that property acquired by a man and a woman not married but living together is not community property, but belongs to the one in whose name the title stands. . . .” *Id.* at 670. In that case, the property was in both the plaintiff and defendant’s name, giving each party a one-half interest in the property. *Id.* at 672.

Finally, Boone cites *Bay v. Estate of Bay*, 125 Wn.App. 468, 105 P.3d 434 (Div. 1, 2005), to support her unfounded claim that the Court of Appeals opinion restricts the contractual rights of an unmarried couple in a committed intimate relationship. Boone’s arguments are again not applicable to the facts of this case.

In *Bay*, the decedent’s will omitted his second (and then present) wife from his will, and left his two children as sole beneficiaries. *Id.* at 471. The court applied the “omitted spouse” statute and determined that there was sufficient evidence to rebut the presumption that the omitted spouse would receive the same

amount of separate property as if the decedent had died intestate. *Id.* at 474.

Drown and Langeland were in a committed intimate relationship, meaning the property acquired during the relationship is presumed to be joint property. *Bay* deals with the distribution of separate assets as an omitted spouse. *Id.* at 475. The presumption created by the omitted spouse statute is not applicable in this case as it deals with community property. *Estate of Langeland*, at 9.

**2. Drown did not commit fraud when she was named beneficiary of Mr. Langeland's Fidelity IRA, consistent with *Estates of Palmer*.**

The trial court properly determined that no fraud was committed regarding the Fidelity IRA. The trial court had the benefit of hearing Boone's handwriting expert David Sterling's testimony firsthand, including his inconsistencies. The trial court properly made its determination regarding the credibility of the expert testimony and gave it no weight. The weight and credibility of expert testimony regarding handwriting is reserved for the trier of fact. *In re Zimmerli's Estate*, 162 Wash. 243, 248, 298 P. 326 (1931).

Boone improperly asserts that the trial court and the Court of Appeals decisions are inconsistent with *Estates of Palmer*, 145 Wn.App. 249, 187 P.3d 758 (Div. 2, 2008). However, the facts of *Palmer* are not analogous to this case. In *Palmer*, the daughter of the decedent, while exercising her power of attorney transferred funds from her mother's account to a joint account in which the daughter had rights of survivorship. *Id.* at 254-55. The issues regarding the transfer of the funds were tied to the daughter's fiduciary duties as attorney-in-fact. *Id.* at 262-63.

In this case, the Fidelity IRA account beneficiary designation was determined by the trial court to be valid. The Court of Appeals ruled substantial evidence supported the trial court's ruling on this issue. *Palmer* does not apply to this case and therefore is not inconsistent with this case.

#### **REQUEST FOR ATTORNEY FEES AND EXPENSES**

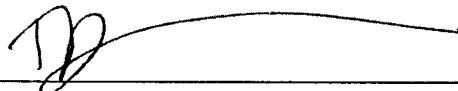
Drown respectfully requests this Court award reasonable attorney fees and expenses for the preparation and filing of this answer to Boone's Petition for Review pursuant to RCW 4.84.080 and RAP 18.1.

**CONCLUSION**

Drown respectfully request that Boone's Petition for Review  
be denied.

Respectfully submitted this 1<sup>st</sup> day of March 2014.

SHEPHERD AND ABBOTT



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**Cc:** dougshepherd@saalawoffice.com; 'Bethany Allen'; 'Kyle Mitchell'  
**Subject:** Supreme Court Case No. 89810-3  
**Attachments:** 03-07-14 Drown Dec of Svc.pdf; 03-07-14 Answer to Pet for Review.pdf

Re: In re the Estate of Randall J. Langeland  
Drown v. Boone  
Supreme Court No. 89810-3

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Attached please find the following documents for filing:

01. Respondent Drowns' Answer to Boone's Petition for Review
02. Declaration of Service

Please call or write with questions. Thank you.

Respectfully,

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