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NO. 64117-4-I

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

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LINDA SEVEN,

Appellant,

v.

STOEL RIVES, LLP, an Oregon Limited Liability Partnership;  
GEORGE W. STEERS and LUCY STEERS, husband and wife, and  
the marital community comprised thereof, Individually, and  
GEORGE W. STEERS in his capacity as Personal Representative  
of the Estate of Robert Resoff and as Trustee of the Shelford  
Family Trust, the Dean Family Trust, and the Resoff Family Trust;  
SUSANNA DEAN SUTTON, in her capacity as trustee of the Resoff  
Testamentary Trust for the benefit of the Dean Family; ROBERT N.  
HOPE, in his capacity as Trustee of the Resoff Testamentary Trust  
for the benefit of the Resoff family,

Respondents.

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**BRIEF OF APPELLANT**

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FILED  
COURT OF APPEALS  
STATE OF WASHINGTON  
2010 JAN 29 10:10 AM

**TABLE OF CONTENTS**

INTRODUCTION..... 1

ASSIGNMENT OF ERROR..... 2

ISSUES PERTAINING TO ASSIGNMENT OF ERROR..... 2

STATEMENT OF THE CASE..... 3

A. Procedural history..... 3

B. 1985 through 1992: On appeal, Linda Seven abandons her claim to a committed intimate relationship during the first eight years of her relationship with Bob Resoff. .... 6

C. 1993 through 2001: Linda Seven appeals from the summary judgment that her monogamous relationship with Bob Resoff was not a committed intimate relationship for the nine years until Resoff died..... 11

D. Defendant Steers told Linda she had no claim to a share of Bob's estate based on her relationship with Bob..... 13

ARGUMENT..... 15

A. Standard of Review: This Court reviews the evidence *de novo* to determine whether a jury could determine that a reasonable judge would have found a committed intimate relationship under the facts of this case. .... 15

B. The evidence would support a jury verdict that a reasonable judge would find that Linda Seven and Bob Resoff were in a committed intimate relationship from 1993 through 2001. .... 18

1. The trier of fact must evaluate and balance the evidence and the five *Connell* factors to determine whether there was a committed intimate relationship. .... 18

2. The trial court granted summary judgment on the theory that the evidence failed to

establish the factors of pooling of resources and intent of the parties. ....	21
3. Continuous cohabitation and duration of the relationship both support finding a committed intimate relationship.....	21
4. The purpose of the relationship was to live together and enjoy one another's company and activities in the same way in which a married couple would live.....	22
5. Linda Seven and Bob Resoff did not pool significant resources because Bob would not let Linda pay for anything, but Linda contributed her services.....	23
6. The intent of the parties was to be in a permanent intimate relationship until parted by death. ....	24
7. Viewing the factors as a whole, a jury could find that a reasonable judge would find a committed intimate relationship.....	29
C. The evidence would support a jury verdict that a reasonable judge would find that Linda Seven was entitled to an equitable share of Bob Resoff's interest in the Russian joint venture crab fishing operation.....	31
CONCLUSION .....	38

## TABLE OF AUTHORITIES

	<b>Page(s)</b>
<b>CASES</b>	
<b><i>Brust v. Newton</i>,</b> 70 Wn. App. 286, 287, 852 P.2d 1092 (1993), <i>rev. denied</i> , 123 Wn.2d 1010 (1994).....	16, 29
<b><i>Connell v. Francisco</i>,</b> 127 Wn.2d 339, 346, 898 P.2d 831 (1995) .....	passim
<b><i>Creasman v. Boyle</i>,</b> 31 Wn.2d 345, 196 P.2d 835 (1948) .....	18, 19
<b><i>In re Pennington</i>,</b> 142 Wn.2d 592, 14 P.3d 764 (2000) .....	passim
<b><i>Koher v. Morgan</i>,</b> 93 Wn. App. 398, 968 P.2d 920 (1998) <i>rev. denied</i> , 137 Wn.2d 1035 (1999) .....	36, 37
<b><i>Latham v. Hennessey</i>,</b> 87 Wn.2d 550, 554, 554 P.2d 1057 (1976) .....	19
<b><i>Marriage of Lindemann</i>,</b> 92 Wn. App. 64, 960 P.2d 966 (1998).....	37, 38
<b><i>Marriage of Lindsey</i>,</b> 101 Wn.2d 299, 304, 678 P.2d 328 (1984) .....	18, 19
<b><i>Olver v. Fowler</i>,</b> 161 Wn.2d 655, 657 at n.1, 168 P.3d 348 (2007) .....	1
<b><i>Vasquez v. Hawthorne</i>,</b> 145 Wn.2d 103, 107-108, 33 P.3d 735 (2001) .....	1, 17, 20, 30
<b><i>VersusLaw, Inc. v. Stoel Rives, L.L.P.</i>,</b> 127 Wn. App. 309, 319, 111 P.3d 866 (2005), <i>rev. denied</i> , 156 Wn.2d 1008 (2006).....	15

**STATUTES**

RCW 5.60.030 ..... 5  
RCW 26.09.080 ..... 19

## INTRODUCTION

Linda Seven brought this action against defendants George Steers and the law firm of Stoel Rives for malpractice in telling Linda that she had no rights to any share of the estate of Bob Resoff because Washington does not recognize common law marriage. Steers admitted in discovery that he had no understanding whatsoever of the doctrine of meretricious relationships, now known as committed intimate relationships.<sup>1</sup>

The trial court granted summary judgment that Linda and Bob<sup>2</sup> were not in a committed intimate relationship, despite the Supreme Court's admonition that equitable relief in committed intimate relationships "should seldom be decided by the court on summary judgment." *Vasquez v. Hawthorne*, 145 Wn.2d 103, 107-108, 33 P.3d 735 (2001). Summary judgment was error as the facts were disputed, the trial court should have allowed a jury to decide the case after hearing all relevant evidence, and the trial court misapplied the factors governing these relationships. Linda and Bob lived together from January 1993 until Bob's death in

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<sup>1</sup> Our Supreme Court substituted the term "committed intimate relationship" for meretricious relationship in *Oliver v. Fowler*, 161 Wn.2d 655, 657 at n.1, 168 P.3d 348 (2007).

<sup>2</sup> Meaning no disrespect, this brief frequently refers to Linda Seven and Bob Resoff by their first names for ease of reference.

December 2001, almost nine years; they were faithful to one another; they functioned for all intents and purposes like any married couple; and they had promised each other they would stay together permanently. This Court should reverse and remand for trial by jury.

### **ASSIGNMENT OF ERROR**

The trial court erred in granting summary judgment that Linda Seven was not in a committed intimate relationship with Bob Resoff between 1993 and 2001, and that Linda Seven would not have a claim to any of Bob Resoff's estate even if there were a committed intimate relationship. CP 1390-92.

### **ISSUES PERTAINING TO ASSIGNMENT OF ERROR**

1. Would the evidence presented on summary judgment support a jury verdict that a reasonable judge would find that Linda Seven and Bob Resoff were in a committed intimate relationship from 1993 through 2001?

2. Would the evidence on summary judgment support a jury verdict that a reasonable judge would find that Linda Seven was entitled to an equitable share of Bob Resoff's Estate?

## STATEMENT OF THE CASE

### A. Procedural history.

Appellant Linda Seven filed this action in January 2008 alleging a long-term committed intimate relationship (sometimes referred to as a “meretricious relationship”) with Robert Resoff before his death. CP 3-4. The complaint alleged legal malpractice against defendants Law Firm of Stoel Rives, LLP, and George Steers. CP 13. Linda asked Steers, her co-personal representative of Bob’s Estate and one of the Estate’s attorneys, if she had any claim against Bob’s Estate based on their long-term intimate relationship. CP 10. Steers responded that Linda had no rights because “Washington law did not recognize common law marriage.” *Id.* Linda Seven also alleged that defendants committed misrepresentation and breached their fiduciary duty. CP 14-15.

Linda also named as defendants the trustees and beneficiaries of testamentary trusts established by the Last Will and Testament of Robert Resoff, claiming an equitable portion of Bob Resoff’s estate. CP 5, 16-17.

The complaint alleged a committed intimate relationship between Linda and Bob from October 1985 until Bob’s death on

December 23, 2001, interrupted by two separations when Linda moved back to her own house for 11 months and then again for 7 months. CP 6.

Defendants moved for partial summary judgment that Linda and Bob were not in a committed intimate relationship prior to 1993 because Linda had relationships with two other men between 1985 and 1993. CP 211, 213, 234.

Linda opposed the motion, arguing, among other things, that genuine issues of material fact precluded summary judgment, that the existence of a committed intimate relationship must be based on the facts of each case, which are not susceptible to summary judgment, and that the relationship spanned the entire period from October 1985 until Bob's death in December 2001. CP 298, 299-300.

Linda's declaration in opposition to summary judgment explained that both separations ended when Bob asked her to move back in with him (CP 284):

3.3 On both occasions, 1991 and 1993, Bob asked me to move back in with him and resume our live-in relationship. When Bob asked me to move back in with him in January of 1993, he made me promise that I would not leave. I made that promise to him and I kept that promise until the day he died. We were a close and loving couple from that time, indeed, earlier, as I have stated, until the day he died.

Defendant trustees moved to strike Paragraph 3.3 on the ground that it violated the dead man's statute. CP 381. The trustees expressly stated that the motion only related to Linda Seven's claim against the trustees, not to her legal malpractice claim. *Id.* at n. 1. RCW 5.60.030 only precludes testimony against a representative of the estate or one who derived title through a deceased person. Defendants Steers and Stoel Rives never joined in the motion.

In response to the motion to strike, Linda noted that Paragraph 3.3 of her declaration included evidence other than statements made by Bob. CP 491-92. The trial court granted the motion as to Bob's statements. CP 1415-16. This ruling has no effect on the legal malpractice claims, and Linda Seven does not appeal from this order.

After hearing oral argument, the trial court granted partial summary judgment on the absence of the committed intimate relationship before 1993. CP 563-66.

The defendants then filed a second motion for partial summary judgment, (CP 567, 1169) arguing: Linda and Bob did not have a committed intimate relationship from 1993 through 2001; and, even if a relationship existed, Linda is not entitled to recover an equitable share of Bob's estate because it was all separate

property. CP 569. Linda Seven again opposed the motion on the ground that relevant facts were disputed and that Bob's involvement in the businesses in which he owned a share gave rise to Linda's claim for equitable division. CP 1183, 1184-85.

After hearing oral argument, the trial court granted the motion on both grounds. CP 1390. This is the order from which Linda appeals.

The parties subsequently stipulated that the second summary judgment order effectively terminated Linda's claims against all defendants, subject to a possible claim for fees by the trustees. CP 1405, 1406. The trial court accepted the stipulation, found that there was no just reason for delay of entry of judgment, and ordered the entry of final judgment dismissing Linda's claims. CP 1407-08.

**B. 1985 through 1992: On appeal, Linda Seven abandons her claim to a committed intimate relationship during the first eight years of her relationship with Bob Resoff.**

Linda Seven and Bob Resoff both worked in the fishing industry in Washington and Alaska. CP 282. Bob was "a legend in the Pacific Northwest and Alaska fishing industry." CP 282. Linda first met Bob in 1975 through their work with the fishing industry. CP 282.

Neither Bob nor Linda had ever been married. CP 94, 122. Bob and Linda began their personal relationship in September 1984. CP 282. Linda owned her own home in Magnolia,<sup>3</sup> CP 75, 285, and was employed. CP 282. At some point in 1985, Bob asked Linda to move in with him. *Id.* She refused initially because she had to go to Alaska in the summer of 1985. *Id.* But on her return from Alaska, she moved in with Bob at his home on Highland Drive in Seattle. *Id.* She rented out her Magnolia home to a series of renters over a five-year period. CP 75.

From October of 1985 onward Bob and Linda had an “intimate relationship” (CP 282) and they slept in the same bed. CP 76. Linda stated, “[d]uring the period October, 1985 through March 18, 1989, Bob and I had a monogamous, committed, loving relationship.” *Id.* In 1987, Bob had triple-bypass surgery, which rendered him impotent. CP 76. They continued to sleep together, but did not have sexual relations again except for one occasion in 1995. CP 283. Nonetheless, there was much more to their

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<sup>3</sup> Linda sold the Magnolia house in 1990 and used the proceeds, plus a loan from Bob, to purchase a home in Ravenna. CP 77, 285. She put the Ravenna house on the market when she and Bob were living together in 1993, and sold it in 1994. CP 285.

relationship than sexual intimacy, and they were “close physically, emotionally, and in all respects.” *Id.*

Linda and Bob discussed marriage on several occasions. CP 122-23. The first was early in their relationship, and was quite uncomfortable because neither had ever been married. CP 122. Linda told Bob, “You know, I don’t need to get married.” CP 122-23. The subject arose on another occasion in Las Vegas. CP 123. Bob said to Linda, “You know I love you. We should get married.” Linda discounted the comment because they had had “a few drinks.” CP 124. “I responded that I loved him very much, but that I didn’t need to get married.” CP 283. At one party, as was customary, they wore name tags, and her name tag, as always, was “Linda Resoff,” CP 283. They again discussed marriage. Linda testified in her deposition (*id.*):

I didn’t want to make him uncomfortable. He – I think if I really pushed it, he would have done it. But I just didn’t.

On another occasion they had dinner with another couple and the woman told Linda they should get married. Linda responded, “What for? Not necessary.” CP 124.

Bob referred to Linda as his wife on several occasions. For example, in early 1990 he wrote to the Fairwood Golf and Country

Club, asking to add “my wife, Linda Seven” to his membership. CP 285. *See also* CP 270.

Linda worked for Bob as his bookkeeper, for which she was initially paid \$36,000 a year. CP 97-98, 103. Bob later gave her a raise to \$50,000 a year. CP 98.

As Linda stated in her Complaint and in her depositions, she moved back into her own home twice: August 28, 1990 through June 16, 1991; June 5, 1992 through January 16, 1993. CP 283. Linda “carved that out” from the period during which she claimed a committed intimate relationship. *Id.* Linda was involved with two different men during these interruptions. CP 77-79.

Neither of these relationships diminished or negatively impacted “the close husband and wife type relationship that Bob Resoff and I kept, maintained, and cherished.” CP 284. Linda and Bob maintained an intimate relationship during this time (CP 284-85):

During the two interruptions I still talked to him everyday; I still went to his house about three or four times a week; I still cooked for him; I still paid his bills; I still reconciled his checking account; I still oversaw his investments; I still went with him as a couple to his Christmas parties; I still went to Las Vegas with him; I still went to the desert with him; I still played golf with him; and I still walked three miles with him every Sunday morning. We still did everything together. In fact, Bob came to my house in Ravenna on Thanksgiving,

1992 and I to his Washington Athletic Club Christmas party in December 1992. We were very close, we simply did not during those two interruptions, sleep in the same bed.

Both of these interruptions ended when Bob asked Linda to move back in with him (CP 284):

When Bob asked me to move back in with him in January of 1993, he made me promise that I would not leave. I made that promise to him and I kept that promise until the day he died. We were a close and loving couple from that time, indeed, earlier, as I have stated, until the day he died.

(Bob's statement was stricken as to defendant trustees, but not as to the malpractice claim, CP 1415-16.) Linda explained that except for the two periods, they were a close, loving committed couple (CP 286):

We were a close, loving, committed couple with the exceptions of the two interruptions. In all respects, we were "married" but without the formality of a marriage ceremony. I take personal offense to the misrepresentations, aspersions, and bad light that the defendants are trying to cast about our relationship. We loved each other. During this period of time, for reasons that I can expand on at the time of trial, I truly did not want to get married. Bob did want to get married, but was satisfied with the closeness and the intimacy of our relationship and our being a couple.

Despite this evidence, the trial court granted partial summary judgment that Linda and Bob were not in a committed intimate relationship prior to 1993.

**C. 1993 through 2001: Linda Seven appeals from the summary judgment that her monogamous relationship with Bob Resoff was not a committed intimate relationship for the nine years until Resoff died.**

Even during her separation from Bob, Linda continued to visit Bob regularly at his home and care for his personal needs. CP 284-85. On January 15, 1993, Linda brought groceries to Bob's house in order to make dinner for him. CP 617. Bob was in bed with a high fever, and Linda immediately took him to the emergency room. CP 617-18. Although the doctors wanted him to remain overnight, at Bob's insistence Linda took him home. CP 618.

Linda told Bob that she wanted to move back in, and Bob responded, "Please." *Id.* Bob made Linda promise that she would never leave him (statement stricken as to defendant trustees), and she promised she would not leave. CP 284. Linda kept that promise until the day Bob died. *Id.*

Linda was asked during her deposition whether moving back in with Bob was connected with terminating her relationship with another man. CP 617. Linda answered that it "had more to do with Bob's health." *Id.* Defendants argued from this answer that Linda and Bob did not have a committed intimate relationship. CP 581-82. Linda answered in her declaration (CP 1207):

I really take offense at that. Neither they, nor anyone else, was in our relationship. I know what Bob and I intended and we intended to be together for the rest of our lives. We had a warm, close, loving relationship and I did not move back in with Bob solely because of his health[;] I moved back in because I loved him.

Linda and Bob's relationship was "absolutely monogamous" from the time she moved back in with Bob in January 1993. CP 1201. For the rest of his life, Bob suffered from Parkinson's disease, which gradually progressed until his death. CP 621-22. The wife of one of Bob's close friends described Linda's "unbelievable" devotion to Bob, explained that Linda was very caring and concerned about Bob, and that in her opinion, "Linda Seven took better care of Bob Resoff than did I of my own husband." CP 1194. Bob's good friend Lloyd Cannon testified in his deposition to Bob's close relationship to Linda. CP 1255-62.

Bob reciprocated Linda's care when she was diagnosed with lung cancer in October of 2000. CP 1202. Bob cared for and nurtured Linda, and had she not survived, she "had every intention of dying being with Bob." *Id.*

Bob and Linda engaged in sexual intercourse in 1995. CP 1202. They also shared their own intimacies as a couple until Bob's death. *Id.* They slept together in the same bed every night

from 1993 until Bob was hospitalized in his last illness. *Id.* They were affectionate and loving and held themselves out as husband and wife. CP 1202-03. In short, Linda “devoted a good portion of [her] life from 1984 until December 23, 2001 to Bob.” CP 1208.

Despite this evidence, the trial court granted partial summary judgment that Linda and Bob were not in a committed intimate relationship after 1993, and that even if they had shared such a relationship, Linda would not have acquired an equitable interest in Bob’s estate. CP 1390. The facts relating to summary judgment are more fully explained in the argument below.

**D. Defendant Steers told Linda she had no claim to a share of Bob’s estate based on her relationship with Bob.**

Bob’s will named Linda and defendant Steers as personal representatives and testamentary trustees. CP 129-30. Bob left to Linda a house on Queen Anne, which she sold for a little over \$1 million, and a condo in Palm Springs that she sold for \$270,000. CP 125. She also received \$500,000 in cash and a monthly annuity of \$8,333.00. CP 126. In addition, she received a residue of personal property. CP 126.

Stoel Rives attorney John Veblen represented both Linda and defendant Steers as personal representatives under the will.

CP 262. Veblen noted that he wanted someone to research Washington law relating to “common law marriage, meretricious relationship, committed intimate relationship, whatever words you want to use . . . .” CP 262. Veblen wanted to point out to Linda that she might have a claim. *Id.*

Linda asked defendant Steers if she had any right to Bob’s estate because they had lived together, to which Steers responded, “Washington does not recognize common law marriage.” CP 287. Neither Steers nor Veblen ever told Linda about the doctrine of committed intimate relationships. *Id.* She first learned the term from attorney Dean Sargent in 2006. *Id.*; *see also* CP 467-68.

Defendant Robert Hope, one of the trustees of Bob’s testamentary trust, testified that he asked defendant Steers whether there was any way to treat Linda as a common law spouse for purposes of taking the marital deduction and reducing taxes. CP 273. Steers responded that there was no common law marriage in Washington. *Id.* Neither Mr. Veblen nor defendant Steers ever mentioned the term committed intimate relationship with respect to Bob and Linda. CP 272. Hope recalled discussing the fact that if Washington recognized common law marriage then

the estate would have a marital deduction and would save significant taxes. CP 274.

During discovery, defendant Steers confirmed that he did not understand the law relating to committed intimate relationships or meretricious relationships. CP 259. Steers testified in his deposition about his understanding of meretricious relationships: “I don’t know that I had an understanding. I don’t think I had occasion to deal with the concept ever since the bar exam, and I remember the term from the bar exam but not much more about it.” CP 259. He had never had any professional dealing of any sort with meretricious relationships. CP 259-60. Steers testified, “I actually don’t think I had an understanding. It’s just something I hadn’t thought about.” CP 260.

## ARGUMENT

**A. Standard of Review: This Court reviews the evidence *de novo* to determine whether a jury could determine that a reasonable judge would have found a committed intimate relationship under the facts of this case.**

The Court reviews the partial summary judgment order *de novo*. *VersusLaw, Inc. v. Stoel Rives, L.L.P.*, 127 Wn. App. 309, 319, 111 P.3d 866 (2005), *rev. denied*, 156 Wn.2d 1008 (2006). The moving party must show that there is no genuine dispute as to any material fact, all facts and reasonable inferences must be

viewed in the light most favorable to the non moving party, and, “[o]nly when reasonable minds could reach but one conclusion on the evidence should the Court grant summary judgment.” *Id.* at 319-20.

The issue in a trial of Linda’s claims would be whether a reasonable judge would have found a committed intimate relationship. ***Brust v. Newton***, 70 Wn. App. 286, 287, 852 P.2d 1092 (1993), *rev. denied*, 123 Wn.2d 1010 (1994). ***Brust*** was a legal malpractice action alleging that defendant attorney was negligent in preparing a prenuptial agreement. This Court held that even though the underlying dissolution action would have been tried to a judge, the issue in the malpractice case was what a reasonable judge would have decided (*Id.* at 293):

[T]he purpose of the “trial within a trial” that occurs in a legal malpractice action is not to recreate what a particular judge or factfinder would have done. Rather, the jury’s task is to determine what a reasonable judge or factfinder would have done, *i.e.*, what the result should have been.

Accordingly, the task before Judge Shaffer in this case was not to decide whether she would have found a committed intimate relationship. Rather, the question on summary judgment was whether the jury could have returned a verdict that a reasonable

judge would have found a committed intimate relationship. This Court reviews that same issue *de novo*.

Linda Seven argued to the trial court that characterization of a committed intimate relationship depends on the facts of each case, CP 1185, and is “not susceptible to summary judgment.” CP 299-300. Our Supreme Court has cautioned that determination of a committed intimate relationship is an equitable inquiry and can seldom be resolved on summary judgment:

Rather than relying on analogy, equitable claims must be analyzed under the specific facts presented in each case. Even when we recognize “factors” to guide the court’s determination of the equitable issues presented, these considerations are not exclusive, but are intended to reach all relevant evidence. In 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. In this case, the trial court must weigh the evidence to determine whether Vasquez has established his claim for equitable relief.

***Vasquez v. Hawthorne***, 145 Wn.2d 103, 107-108, 33 P.3d 735 (2001). This is not one of the rare committed intimate relationship cases justifying summary judgment. The duration of the relationship the complexity of the factual record, and the general nature of the relevant factors cry out for trial by jury.

**B. The evidence would support a jury verdict that a reasonable judge would find that Linda Seven and Bob Resoff were in a committed intimate relationship from 1993 through 2001.**

**1. The trier of fact must evaluate and balance the evidence and the five *Connell* factors to determine whether there was a committed intimate relationship.**

Our Supreme Court developed the meretricious relationship/committed intimate relationship doctrine as a tool to allow trial courts to make a just and equitable distribution of property acquired during a non-marital family relationship. ***Marriage of Lindsey***, 101 Wn.2d 299, 304, 678 P.2d 328 (1984). ***Lindsey*** abandoned the “Creasman presumption” that parties in a non-marital relationship are presumed to have intended the ownership of their property to follow the title in which the property was held. ***Creasman v. Boyle***, 31 Wn.2d 345, 196 P.2d 835 (1948).

Even before ***Lindsey***, the Court signaled its willingness to abandon the Creasman presumption and substitute a consideration of relevant factors in determining the existence of what is now called a committed intimate relationship:

There also appears to be a viable alternative approach to the *Creasman* presumption and its exceptions. A court could ascertain whether there exists a long-term, stable, nonmarital family relationship. Such relevant factors include

continuous cohabitation, duration of the relationship, purpose of the relationship, and the pooling of resources and services for joint projects. If a relationship exists, it is reasonable to assume that each member in some way contributed to the acquisition of the property. A court could then examine the relationship and the property accumulations and make a just and equitable disposition of the property. Also, if warranted by the facts of a particular case, the court could apply the community property laws by analogy to determine the rights of the parties.

***Latham v. Hennessey***, 87 Wn.2d 550, 554, 554 P.2d 1057 (1976).

In ***Marriage of Lindsey***, the Court expressly overruled ***Creasman***, adopting the five-factor test of ***Latham v. Hennessey***. 101 Wn.2d at 304-05.

The Court reaffirmed the five-factor test in ***Connell v. Francisco***, 127 Wn.2d 339, 346, 898 P.2d 831 (1995). The Court made clear in ***Connell*** that the factors are significant, but are not inflexible: “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.” *Id.* at 346.

***Connell*** held that the laws involving distribution of marital property under RCW 26.09.080 do not directly apply to division of property following a committed intimate relationship. *Id.* at 349. However, “[t]he property acquired during the relationship should be

before the trial court so that one party is not unjustly enriched at the end of such a relationship.” *Id.* The Court limited the distribution of property following a committed intimate relationship “to property that would have been characterized as community property had the parties been married. This will allow the trial court to justly divide property the couple has earned during the relationship through their efforts without creating a common-law marriage or making a decision for a couple which they have declined to make for themselves.” *Id.* at 349-50.

The leading case applying the **Connell** factors to a disputed relationship is *In re Pennington*, 142 Wn.2d 592, 14 P.3d 764 (2000). Two cases were consolidated in *Pennington*, in each of which the trial court had found a committed intimate relationship – *Pennington* and *Chesterfield v. Nash*. In both cases, the Court balanced the factors and evidence as a whole and asked whether the equitable principles recognized in **Connell** were satisfied by the trial court’s findings. *Id.* at 605, 607. In both cases, the Court found at least two of the **Connell** factors to be missing.

Following *Pennington*, the Court noted in *Vasquez, supra*, that the five **Connell** considerations are “not exclusive, but are intended to reach all relevant evidence.” 145 Wn.2d at 108.

**2. The trial court granted summary judgment on the theory that the evidence failed to establish the factors of pooling of resources and intent of the parties.**

After hearing oral argument, the trial court analyzed the *Connell* factors. RP 52-78 (8/21/09). The trial court found that three *Connell* factors were satisfied – continuous cohabitation, duration of the relationship, and purpose of the relationship. *Id.* at 59-62. But the trial court concluded that two of the factors were not satisfied – pooling of resources and the intent of the parties. *Id.* at 62, 71-72. The trial court held that the absence of two of the *Connell* factors, “is alone fatal to the existence of a committed, intimate relationship.” *Id.* at 72. The court expressed her “suspicion” that the absence of any one factor is “probably fatal but certainly the absence of two of them, it seems to me, is.” *Id.*

We turn now to a discussion of the *Connell* factors.

**3. Continuous cohabitation and duration of the relationship both support finding a committed intimate relationship.**

The trial court correctly held that continuous cohabitation and duration of the relationship were satisfied in Linda’s relationship with Bob. From early 1993, Linda did not go out with any other man until Bob’s death. CP 99. Linda characterized her relationship at “emotionally monogamous.” *Id.* The duration of the

relationship was almost nine years. This nine year continuous relationship compares favorably with Pennington's non-continuous relationship, spanning twelve years, which adequately satisfied the duration element. *Pennington*, 142 Wn.2d at 604. It is also twice as long as the relationship of Chesterfield and Nash, which lasted four years and three months, and was found long enough to support a committed intimate relationship. *Pennington*, *Id.* at 606.

**4. The purpose of the relationship was to live together and enjoy one another's company and activities in the same way in which a married couple would live.**

The trial court correctly found that the evidence sufficiently established the *Connell* element of the purpose of the relationship. RP 61 (8/21/09). Linda Seven and Bob Resoff were physically and emotionally intimate in all respects. CP 283, 1202. Linda took care of Bob in the same way that a wife might care for a husband in a traditional relationship: she cooked, did laundry, bought groceries, did errands, drove with him, and slept with him. CP 76, 96, 1197-98, 1261. When they traveled together with friends, they rented one room as would a married couple. CP 286, 1197, 1200, 1261. They were together for social occasions and important parties. CP 286, 1200, 1258-59.

When business associates visited Bob Resoff at his home, Linda was present. CP 269-70. Bob's business associate Jim Long described visiting Bob's home in the morning and observing "Linda sitting peacefully in her pajamas, reading a book, and enjoying a cup of coffee with Bob." CP 1197. If Long stopped by after work, "Linda would act as the perfect hostess in offering me a beverage of my choice." *Id.* Long perceived that "Bob and Linda were indeed in love" and "that these two people cared for and loved each other very much." CP 1198.

Clearly, the evidence strongly supports the finding that the purpose of this relationship was to live together and enjoy one another's company and activities in the same way in which a married couple would live.

**5. Linda Seven and Bob Resoff did not pool significant resources because Bob would not let Linda pay for anything, but Linda contributed her services.**

Linda and Bob had no joint bank accounts. CP 103. After all, Linda was the bookkeeper and maintained Bob's checking and savings accounts. CP 103, 626. Linda was reimbursed for most expenses she paid, such as repairs for Bob's car, groceries, dry cleaning, and linens. CP 108. However, Linda did pay for minor entertainment expenses such as movies, and when she sold her

home, she contributed furniture purchased for \$30,000 to \$40,000.  
CP 1206.

It would have been anomalous had Linda and Bob pooled their resources. Bob's net worth was between \$60 million and \$70 million, while her net worth was "miniscule" compared to Bobs. CP 1207. Bob was generous and would not let Linda pay for anything. CP 111, 1207.

The trial court artificially limited the pooling factor to tangible assets, ignoring services. Linda contributed her personal services to the relationship, caring for Bob and the household, nursing him in illness and running errands. This is the most common form of pooling in many marriages and committed intimate relationships should be no exception.

**6. The intent of the parties was to be in a permanent intimate relationship until parted by death.**

The evidence would strongly support a jury's verdict that Linda and Bob intended to be in a permanent marriage-like relationship, lacking only the formality of a marriage certificate.

Linda explained (CP 1206):

We considered ourselves a couple, in essence, a husband and wife lacking only a marriage certificate. I had no need, for a variety of reasons involving my upbringing, to be married. I was more than content in the relationship that we had, which I considered exactly like a marriage.

Bob insisted that their relationship must be permanent (CP 284):

When Bob asked me to move back in with him in January of 1993, he made me promise that I would not leave. I made that promise to him and I kept that promise until the day he died. We were a close and loving couple from that time, indeed, earlier, as I have stated, until the day he died.<sup>4</sup>

As Linda stated elsewhere, "I know what Bob and I intended and we intended to be together for the rest of our lives. We had a warm, close, loving relationship and I did not move back in with Bob solely because of his health[;] I moved back in because I loved him." CP 1207.

The intent of the parties is probably the most important of the five **Connell** factors. Our Supreme Court has described the committed intimate relationship as a "stable, marital-like relationship where both parties cohabit with knowledge that a lawful marriage between them does not exist." **Pennington**, 142 Wn.2d at 601 (quoting **Connell**, 127 Wn.2d at 346). The requisite intent is accordingly the intent to be in a stable relationship that is like marriage, while the parties know that they are not married. Linda's relationship with Bob was certainly stable for the last nine years of Bob's life. Bob insisted, and Linda agreed, upon a permanent

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<sup>4</sup> As explained above, Bob's statement that Linda must promise not to leave was stricken as to defendant trustees, but not as to defendant law firm and lawyer.

relationship, which is one factor that sets marriage apart from many casual relationships of convenience: “till death do us part.”

Both couples in *Pennington* lacked the requisite intent to be in a stable marital-like, *i.e.* permanent, relationship. Pennington denied his intent to be in a meretricious relationship, and indeed, was married to a different woman for the first five years of his relationship with Van Pevenage. 142 Wn.2d at 604. Even after his divorce, Pennington refused to marry Van Pevenage despite her insistence on marriage. *Id.* During this time, Van Pevenage moved out several times and lived with another man. *Id.* Accordingly, the Court concluded that the combination of Pennington’s marriage to another woman and his resistance to Van Pevenage’s requests to marry “belies the existence of the parties’ mutual intent to live in a meretricious relationship.” *Id.* As for Van Pevenage, her “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.” *Id.*

*Pennington* also rejected the argument that Chesterfield and Nash satisfied the intent element. Their relationship was half as long as Linda’s and Bob’s relationship, Chesterfield was married to another man during most of the relationship, and Nash dated

other women: “These facts are too equivocal to conclusively establish that the parties mutually intended to be in a meretricious relationship.” 142 Wn.2d at 606.

The trial court here wrestled with the intent requirement, expressing her view that the caselaw “is somewhat blank from this Court’s point of view.” RP 68 (8/21/09). The Court concluded that the intent cannot be “the intent to have a committed, long-term relationship because, frankly, I think that’s already subsumed by the purpose inquiry.” *Id.* With due respect to the trial court, her conclusion does not follow. The purpose of the parties might be, as the Court stated, “companionship, friendship, love, sex, mutual support and caring,” *Id.*, with or without the intent to be in a committed intimate relationship, *i.e.* a long term marital relationship. The intent factor should focus on the commitment to form a permanent union, which is not subsumed by the purpose inquiry.

The trial court ultimately concluded that there was no intent to be in a committed intimate relationship, because, “there is nothing here to indicate that there was a desire in this case to go beyond an intimate and committed and lasting relationship.” *Id.* at 70. This is a *non sequitur*. What is required is an intent to form “an

intimate and committed and lasting relationship,” not the desire “to go beyond” that relationship.

The trial court based her conclusion on two specific factors, that Bob paid a salary to Linda, and that there was no pooling of assets. *Id.* at 71. The salary does not disprove an intent to form a committed intimate relationship. Bob paid Linda a salary for working as a bookkeeper, not for what they did as a couple. CP 1205. The salary began at the beginning of their relationship in 1985 when there was no committed intimate relationship and continued during the period of their separations, when Linda continued to work for Bob, and throughout the term of their relationship. Linda would have received the salary whether or not she had agreed to move back in with Bob and promised to remain with him for the rest of their lives.

The trial court’s reliance on the lack of pooling collapses the pooling of assets factor into the intent factor. Linda had very little to pool, she already had signing authority over Bob’s checkbook and savings account. Linda and Bob could not pool their resources because Bob would not let Linda pay for anything.

**7. Viewing the factors as a whole, a jury could find that a reasonable judge would find a committed intimate relationship.**

The trial court overlooked two fundamental principles in granting partial summary judgment that Linda and Bob were not in a committed intimate relationship. First, the Court seems to have neglected that the issue for the jury would be “to determine what a reasonable judge or fact finder would have done, *i.e.*, what the result should have been.” *Brust, supra*, at 293. Instead, Judge Shaffer seems to have resolved summary judgment based on what she herself would have done in the case. RP 53-72 (8/21/09). But even if Judge Shaffer might not have found a committed intimate relationship, other judges might find such a relationship. Linda was not required to prove that every single judge would find a committed intimate relationship but only to prove by a preponderance of evidence that a hypothetical reasonable judge could find one.

The trial court overlooked the admonition of our Supreme Court that the *Connell* factors “are not exclusive, but are intended to reach all relevant evidence,” and “in 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.” *Vasquez, supra*, 145 Wn.2d at 108. The purpose of trial is to put all of the relevant evidence on the table, subject to cross-examination, and to allow the jury to reflect on and decide the issue.

The Supreme Court has also cautioned that the *Connell* factors and evidence must be “taken as a whole,” and that, “[o]ne *Connell* factor is not more important than another.” *Pennington, supra*, 142 Wn.2d at 605.

If the trial court had doubts about the truth of Linda’s testimony that the relationship was committed, permanent, and like a marriage in every way but for the certificate, the court should have denied summary judgment and ordered a trial by jury. In that way, 12 impartial jurors could have applied their collective wisdom and experience to decide whether a trial judge would have recognized a committed intimate relationship under all the facts presented.

The trial court was unreasonably focused on the “pooling” element. It is not unusual for a husband and wife to maintain separate assets as a matter of convenience or choice. Moreover, the trial court overlooked that Linda gave what she had that was of most value to Bob – her time and services. The *Connell* factor is

“pooling of resources and services for joint projects . . . .”  
*Pennington*, 142 Wn.2d at 601 (quoting *Connell*, 127 Wn.2d at 346) (emphasis supplied).

Bob’s major project during these years was the Russian joint venture, discussed more fully below. Linda’s contribution to the Russian joint venture was to act as a traditional wife, cooking, doing laundry, buying groceries, running errands. CP 96. Linda entertained business associates who dropped into the home to discuss business matters. CP 269-70, 1197. During Bob’s later years, Linda drove Bob back and forth from the office so that he could continue to work. CP 1197-98.

The complexity and infinite variety of human relationships cannot be artificially confined to affidavits and deposition extracts focused on five terse factors. Rather, the Court should have denied summary judgment and allowed the case to proceed to trial. This Court should reverse and remand for trial by jury.

**C. The evidence would support a jury verdict that a reasonable judge would find that Linda Seven was entitled to an equitable share of Bob Resoff’s interest in the Russian joint venture crab fishing operation.**

The trial court granted partial summary judgment on the alternative ground that even if Linda and Bob had a committed

intimate relationship, Bob's interest in the Russian joint venture crab fishing operation was his separate property and that Linda was entitled to no part of the investment. This was error because during the committed intimate relationship, Bob contributed his labor to planning and negotiating the terms of the joint venture even before Bob invested in the joint venture. Bob's investment was either partially or completely community-like, even if the funds he invested were his separate property.

Bob became involved in the Russian joint venture through his investment in All Alaskan Seafoods. Bob was a pioneer in the Alaska crab processing industry. CP 1203. Bob was a good friend of Lloyd Cannon, whom he had known since 1951 through the fishing industry. CP 1255. Cannon was a part owner of All Alaskan Seafoods, which was in a liquidity crisis because a large foreign stockholder of the company was willing to sell its interest only if the entire company were sold. CP 1268-69. Cannon approached his old friend Bob and asked his help in buying out the foreign stockholder. Bob agreed to buy the entire company and then resell some of the stock to allow the old shareholders to buy their proportionate interest back leaving Bob with 1/3 of the recapitalized All Alaskan Seafoods (AAS). CP 1203-04. Bob met with Cannon

and the AAS accountant, asked a few questions, then pulled out his personal checkbook and authorized a check for \$3.2 million. CP 1268-69. Bob and Linda then left for Las Vegas with Cannon and Cannon's wife. CP 1234-35, 1203-04. Bob did not become an employee of AAS, but as the largest stockholder he and Cannon talked regularly, probably every day or every other day. CP 1165, 1277, 1280.

A severe decline in the Alaska crab catch prompted AAS to seek out a Russian joint venture partner to fish for crab in Russian waters. CP 1041-42. Cannon spent a great deal of time discussing a potential joint venture with Bob. CP 1280. Eventually, a Russian company called Dalmore Product came to Seattle in the fall of 1993 to negotiate a joint venture. CP 1280-81. Cannon spent "a lot of time with Bob talking about what we were striving for as far as structure goes." *Id.* Cannon even had Bob sit in on a couple of sessions with the Russians; no other stockholder outside of active management was involved in negotiation. *Id.* Bob provided input to Cannon and to AAS's CPA about issues to be considered, political risk, and the risk of moving substantial assets into foreign waters. CP 1281-82.

In short, Bob and Cannon talked about “the major deal points” and Bob questioned Cannon on many of the details about the joint venture. CP 1293-94. Once the AAS-DMP joint venture was formed, Bob continued advising Cannon and making decisions for the joint venture. CP 1288. The joint venture CPA, Mr. Jeff DeBell, testified to numerous examples of Bob’s involvement in management decisions. CP 1288-1292.

Linda presented the declaration and report of expert witness and CPA George Johnson of Brueggman, Johnson and Yeanoplos. CP 1303, 1306. Johnson analyzed four different types of community-like property that could arise from Linda’s relationship with Bob (CP 1311-12):

1. Actual wages paid to Mr. Resoff which were community-like property.
2. Imputed wages for labor performed by Mr. Resoff without compensation, for which corresponding wages (i.e., community-like property) may be imputed.
3. Community-like Labor. The labor performed by Mr. Resoff for companies which distributed profits to him. Specifically, Mr. Resoff participated in the management of AAS and this labor may have changed the character of the ownership interest and the profit distributions of AAS and DMP to community-like property. Mr. Resoff was also on the Board of Directors of AAS.

4. Comingling of funds – We understand that the comingling of separate funds and the community-like funds of the parties in a CIR, may change the characterization of the separate assets to community-like funds.

Johnson computed the imputed value of Bob's wages for services performed without pay for AAS and AAS-DMP, calculating the value at \$235,804, as a community-like investment in AAS. CP 1312. Johnson also calculated the community-like property resulting from the investment in AAS-DMP if Bob's cash investment of \$333,333 was converted into community property by passing through Bob's household account used for Bob's and Linda's communal expenses. CP 1313. Combining the cash investment with the value of the community-like labor, Johnson calculated that the value of the community-like assets in AAS-DMP totaled \$5.109 million. CP 1313-14.

Judge Shaffer concluded that Bob's \$333,000 cash investment in AAS-DMP remained his separate property despite having been routed through the household account. RP 72-73 (8/21/09). She also held that Bob contributed his labor to AAS-DMP, and if there were a committed intimate relationship, then the contribution of labor would be community. *Id.* at 74. But the trial court held that Linda had failed to show that Bob's labor contributed

to the increase in the value of his investment in the Russian joint venture. *Id.* at 75-76.

The trial court erred in ignoring the value of Bob's community-like labor. The trial court ignored that "Bob Resoff and his trust in Lloyd Cannon was the genesis of All Alaskan and AAS-DMP," as Linda argued in opposing summary judgment. CP 1189. In short, it is unclear whether there would have been any joint venture, let alone a successful joint venture, absent Bob's community-like efforts. Moreover, Bob's community-like labor was contributed to the joint venture before Bob invested any separate cash in the joint venture. Accordingly, Bob's interest in the joint venture was acquired through both community-like labor and separate cash. The joint venture investment was either community-like or at least a mixed asset from the beginning.

This case is like ***Koher v. Morgan***, 93 Wn. App. 398, 968 P.2d 920 (1998) *rev. denied*, 137 Wn.2d 1035 (1999). Koher and Morgan were in a meretricious relationship in which Koher failed to pay himself a fair salary for his labor conducting a business he had owned before the relationship. The trial court found that Koher had commingled profits from his business with his earned income and used the commingled funds to acquire additional property, and

could therefore no longer establish a separate property interest. *Id.* at 401. This Court affirmed, explaining, “[b]ecause Koher had not taken a reasonable salary during the relationship, the court found that he had commingled his profits with the income owned by the meretricious relationship as compensation for his labor and had continuously intermixed large sums of separate and relationship income in his personal and business accounts.” *Id.* at 403. This Court held that Koher had commingled accumulated income and profits, creating a right to a just and equitable distribution of all property considered to be owned by both parties. *Id.*

Linda’s claim for an equitable share of Bob’s investment in the Russian joint venture is even stronger than in *Koher*. Bob’s community-like labor was “invested” in the joint venture before the joint venture was even formed and before Bob invested any of his funds. The resulting investment was accordingly community-like in character and the trial court erred in granting summary judgment.

Defendants argued in their reply in support of summary judgment that *Marriage of Lindemann*, 92 Wn. App. 64, 960 P.2d 966 (1998) supported their argument that Linda had the burden of proving that Bob’s labor added value to the joint venture

investment. CP 1342. But under the circumstances of this case, **Lindemann** holds the opposite (*id.* at 70);

And in situations where income from the separate property has been commingled with income from community labor to produce an increase in value of the property, the community claimant may invoke a presumption that unless there has been a segregation at the time the income arises, the increase in value belongs to the community.

Here there was no contemporaneous segregation in value between the value of Bob's community-like labor and the separate funds he invested, and the increase in value is presumed to belong to the community.

In any event, the trial court's reasoning was flawed for the additional reason that Linda would have the burden on summary judgment of proving that Bob's labor resulted in increasing the profits from the joint venture. Defendants had the burden of proving there was no dispute about the increase in value, which defendants failed to prove.

### **CONCLUSION**

If Linda Seven is honest, this was a committed intimate relationship. If Linda Seven is a liar, then it probably was not. It's as simple as that. Trial courts (and appellate courts) cannot decide on summary judgment whether someone is telling the truth. Twelve jurors must hear all the evidence, observe Linda's demeanor, see

and hear cross-examination, and decide whether Linda was a gold-digger or a committed intimate lover. Linda respectfully asks the Court to reverse the summary judgment and remand to allow her to present her case to the jury.

RESPECTFULLY SUBMITTED this 28 day of January, 2010.

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**CERTIFICATE OF SERVICE BY MAIL**

I certify that I mailed, or caused to be mailed, a copy of the foregoing **BRIEF OF APPELLANT** postage prepaid, via U.S. mail on the 28 day of January 2010, to the following counsel of record at the following addresses:

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