

No. 39887-7-II

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

ROBERT ROSS

Respondent

vs.

TONI HAMILTON

Appellant

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COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY MA DEPUTY

ON APPEAL FROM THE SUPERIOR COURT FOR WAHKIAKUM COUNTY
The Honorable Michael Sullivan
Superior Court No. 07-2-00002-9

APPELLANT'S OPENING BRIEF

MARK W. MUENSTER, WSBA #11228
1010 Esther Street
Vancouver, WA 98660
(360) 694-5085

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I. ASSIGNMENTS OF ERROR

1. Appellant assigns error to the trial court's finding that Hamilton and Ross were in a marital like relationship.
2. Appellant assigns error to the trial court's finding that Ross used a portion of his monthly paycheck to support the alleged meretricious community.
3. Appellant assigns error to the trial court's finding that Ross contributed \$90,000 from loans to support the alleged meretricious community.
4. Appellant assigns error to the trial court's characterization of "quasi-community property. (Finding of Fact 2.8)
5. Appellant assigns error to Finding of Fact 2.17
6. Appellant assigns error to the trial court's conclusion of law that a meretricious relationship existed between Robert Ross and Toni Hamilton.
7. Appellant assigns error to the trial court's division of property between the parties.
8. Appellant assigns error to the denial of her motion for a directed verdict at the close of Mr. Ross's case.
9. Appellant assigns error to the denial of the motion for new trial/for reconsideration.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did substantial evidence support the trial court's findings of fact concerning the nature of the relationship, and Ross's alleged financial contributions to Ms. Hamilton's real estate? (Assignments of Error 1-5)
2. What standard of review applies to the trial court's conclusion regarding the existence of meretricious relationship? (Assignment of Error 6)
3. Did the trial court err in concluding there was a meretricious relationship when the parties did not cohabit on a continuous

basis, one party flatly refused to marry the other, the parties maintained both joint and separate accounts, and the evidence of pooling of resources was not documented with tangible evidence?(Assignment of Error 6)

3. What standard of review applies to a trial court's division of property in a meretricious relationship? (Assignment of Error 7)

4. In making its characterization of property, did the trial court err in not taking into account the tracing of assets from one property to another in the acquisition of real estate?(Assignment of Error 7)

5. When the trial court's division of property depended significantly on testimony regarding Ross' alleged loan contributions, did the court err in denying the motion for reconsideration/new trial based on the post-trial discovery regarding the non-existence of loans from Mr. Ross's 401 K account?(Assignment of Error 9)

III. STATEMENT OF THE CASE

A. Procedural History

Robert Ross filed an action in the Superior Court of Wahkiakum County, asking for judicial recognition of an alleged meretricious relationship with Appellant Toni Hamilton, and for an equitable division of property from the relationship. CP 5-8. The case was tried on July 2, July 7 and July 15, 2008 before the Honorable Michael Sullivan, sitting without a jury. After a memorandum decision in favor of Ross, CP 30-36, there were post-trial hearings held on May 4, 2009, and June 22, 2009, after which the court entered its final decree and Findings and Conclusions. CP 237-246. From the final decree and judgment, Ms. Hamilton filed a timely notice of appeal. CP 247-275.

B. Trial Testimony

1. Ross's case in chief

Tim Abena was a commercial fisherman who was the former owner of 18 Island View Lane in Cathlamet, Washington in Wahkiakum County. RP I 20.¹ Abena had preliminary negotiation with Toni Hamilton about the purchase of his property. They ended up settling on a price. RP I 21-22. Ms. Hamilton did all of the negotiations for the purchase of the property. RP I 37-38. Before the sale closed, he allowed Toni Hamilton and Ross to move onto the property in a fifth wheel trailer that belonged to Ross. RP I 23-24. The purchase price of the property was \$230,000. The quitclaim deed gave title only to Ms Hamilton. Abena said he did not know why Ross was not on the deed. RP I 25, 27; CP 17-18 (Ex. 1).

While Ms. Hamilton and Ross were living on the property in the fifth wheel, Ms. Hamilton asked Abena if he would loan her money to repair the property. He refused. He disliked Ms. Hamilton because he felt she tried to evict him from the property as soon as the sale closed. RP I 40.²

¹ The report of proceedings will be referred to as follows:

RP I will refer to trial testimony taken on July 2, 2008.

RP II will refer to trial testimony taken on July 7, 2008.

RP III will refer to trial testimony taken on July 15, 2008

RP IV will refer to the conclusion of trial testimony on July 15, 2008, and the post trial proceedings on May 4, 2009 and June 22, 2009.

² The dislike was apparently mutual. Ms. Hamilton complained during her testimony that Abena had refused to move out after the closing so that she could not move in. RP III 106.

The property had water damage and needed a new roof. The carpet needed replacement, the pool needed repair, and the landscaping needed considerable work. RP I 34. Ms. Hamilton told Abena that she would have to get it from Ross's retirement account. RP I 29.

Abena testified that Ross was away working to a considerable extent, but when he was in Washington, Ross and Hamilton were together. RP I 30. Abena had seen the property after the sale in 2000, and a fair amount of work had been done to repair and improve the property. RP I 37. He did not, however, know who had put up the money for the repairs and improvements. RP I 38. He did know that Ross did some of the landscaping work. RP I 39.

Robert Ross was a heavy equipment operator, bush pilot and mechanic. At the time of trial he had been diagnosed with larynx cancer and spoke at trial through a "trach tube." RP I 45, 46, 47. When he was working, he worked for Veco Oil Field Service and later Peak Oil Field Service from the 1990s until 2007. RP I 47.

Ross first met Hamilton in 1990. He rented an apartment in Anchorage, and lived with her there for six or seven months. Afterward, they moved to a duplex she owned on Nichols Street. When she sold the Nichols Street duplex, she purchased a property at 1412 Valerian in Anchorage and they lived there as well. Ms. Hamilton sold the Valerian property to finance the sale of 18 Island View in Cathlamet, where he and Hamilton lived until he left in 2005. RP I 51.

When Ross first met Hamilton, she was working as dancer, and also owned and managed rental real estate in Anchorage. He helped her with painting and wallpaper at one of her condos, and they became friends. RP I 53. A sexual relationship blossomed, which Ross maintained lasted until 2005, a point vigorously disputed by Ms. Hamilton. RP I 54; RP III 32-33.

Ross testified that he lived with Hamilton when not working and living at the oil fields. RP I 55. He viewed the relationship as like that of husband and wife. RP I 53. They discussed building a future together, wanted to live in a nicer property and together renovated the property at 1412 Valerian in Anchorage. RP I 56.

When they first met, Ross was in bad financial shape, because he had a child support arrearage, and was in serious trouble with the IRS. For almost three years, he was never sure if he would realize anything out of his paycheck. He filed for bankruptcy, which he claimed wiped out his debt to the IRS. RP I 58-59; 151-152. Later on in their relationship, he would give Ms. Hamilton money to cover the bills. RP I 58. Because of his bad experience with the IRS, he thought it was a good idea to leave any property in Hamilton's name to avoid a lien being placed on it by the IRS. RP I 58, 151. He never disclosed to the bankruptcy court that he had any financial interest in Ms. Hamilton's properties. RP I 152.

Ross put Hamilton on his health insurance with Peak Oil and also made her the sole beneficiary of his life insurance. The two had a joint

bank account with the National Bank of Alaska, out of which bills were paid. RP I 69-70.

After the purchase of 18 Island View in Cathlamet, there was another bank account in Hamilton's name, albeit as a business account for the bed and breakfast business they attempted to run out of the property. RP I 73. They had no formal partnership agreement for this business. RP I 74. He intended any income from the business to go to Hamilton, but as the business steadily lost money, he took the loss as a tax deduction against his own income tax. RP I 78-79. It was his intention that if the property sold, the proceeds would go for their retirement, along with his 401 K from his work with Peak Oil. RP I 79.

Before he met Ms. Hamilton, Ross stayed in hotels when he was not working at the oil fields. RP I 81. He testified that they lived together in an efficiency apartment he had rented for a few months, and then moved in to a duplex Ms. Hamilton owned at 1334 Nichols Street. She owned this property before their relationship began. He did not do much of anything for this property. RP I 84.

Ms. Hamilton bought the Valerian Street property for \$45,000. Ross claimed to have borrowed money for renovation of this property by taking money from his 401 K and getting a loan with his travel trailer for collateral. RP I 85. The two lived at Valerian Street until their move to Cathlamet in the fall of 1999. RP I 85. When the Valerian property was sold Ms. Hamilton realized \$195,000 from the sale, which went into the

purchase of 18 Island View, which cost \$230,000. Ms. Hamilton incurred a loan of \$35,000 for the difference between the Valerian sale (\$195,000) and the purchase price of \$230,000. RP I 88.

Ross claimed that he again borrowed \$15,000 from the bank using his trailer as collateral and \$25,000 from his 401 K plan to assist in the maintenance of the Island View property. RP I 88. He claimed to have paid off both of his previous loans that had been taken out when the couple was living at the Valerian property. RP I 88.

Ross testified that the roof of the Island View property needed work, which was done by professionals. He helped with the tear-off of the old roof. Professional carpenters also put in a new deck around the house. He repaired the roof on the pool house himself, and rebuilt the boiler for the pool himself. He put new toilets in the house, and did landscaping work. He testified that the money for these repairs came from the loans he took out. He provided no documentation concerning either loan, however. RP I 81-96.

Work continued on the house from 2000 through 2005. He was in Washington on a three weeks on, three weeks off basis while he split time with his Alaska oil job. RP I 98. He claimed a one-half interest in the property, based on the work he put in on it, and that its purchase price was funded principally by the sale of the Valerian property in Alaska, which he said he had helped maintain and renovate. RP I 104. He would not have

taken out the loans and done the work he did if he had known Ms. Hamilton as going to claim the entire property as her own. RP I 106-107.

Mr. Ross also claimed a one-third interest in property on Greenwood Road in Wahkiakum County (Ex. 3, CP 17-18); RP I 111. Ms. Hamilton had been granted a portion of the property from her previous marriage and then had bought the rest with a loan from Curly Cochran. RP I 108-09. He did not believe Ms. Hamilton had other sources of funds during this time other than income from the struggling bed and breakfast business, so he suspected the money to pay off Cochran's loan had come from money he sent Hamilton from his paycheck. RP I 108-09. He had also planted trees on the property, rented a rototiller, and did some road work and cleared some lots for building. RP I 110. He knew Ms. Hamilton had sold some of the lots from this parcel and asked for part of the sale proceeds. RP I 112.

Ms. Hamilton also owned a property in Alaska at 11531 West Meadow Wood Drive, which was in Big Lake. Ms. Hamilton had bought the property in May of 1984. He had cleared the lots and put in road access, a well and power. Ms. Hamilton sold the land to Ross's daughter and her boyfriend, but ended up repossessing it RP I 114, RP II 13-14. He felt the lot was worth \$15,000 before his work and \$40,000 afterward. He asked for 1/3 of its value. RP I 115 , and later amended that figure to 50%. RP II 15.

Ms. Hamilton also owned a property in Big Lake known as 5813 South J-Sedor Street. (Ex. 5, CP 17-18) This was purchased in April of 2000. Ross believed Hamilton had borrowed the money to buy this property from Curly Cochran. He thought this property was to be part of their joint retirement plan. The property was put in her name only because he was unsure about what the IRS might do to him. Allegedly, Ms. Hamilton told him that it was half his anyway so he should not worry. RP I 118. He felt, in a roundabout way, that he had been making the payments, in that he gave her money in her account. He did not do any work on this property but claimed a one-half interest in it. RP I 117-118.

Ms. Hamilton also owned a property known as 5095 South J-Sedor. As she owned this before Ross met her, he was not making a claim on this property, unless she was making a claim on his 401 K. To make things fair, he felt she should get a half interest in his truck, trailer, and 401 K. RP I 120, 166-67.

Ross admitted he had signed rental agreement (Ex 12, CP 17-18) for 14122 Valerian Street in 1999, but did not know why he had done so. RP I 131. He was not sure how many bank accounts he had between 1990 and 2000. RP I 132. He was not sure how much money he had deposited into the joint account they had at the National Bank of Alaska. RP I 133-34. This joint account was for both their bills and so Ms. Hamilton could pay his bills when he was at the North Slope working. RP I 140.

Ross said that the funds he borrowed to help with the renovation of the Valerian Street property went into a bank account so that Hamilton could pay for the renovation. He thought she may have paid \$10,000 of the costs of the renovation herself. He thought this money came from the sale of her Nichols Street condo, which she had owned before he met her. RP I 149-50.

In 2000, 2001, 2004 and 2005, Ross took deductions on his tax returns for the loss attributable to the bed and breakfast business Ms. Hamilton ran on the Island View property. These losses led to tax refunds of \$1636, 5342, \$7854 in the first three of these years, and a similar amount in 2005. He claimed he gave some of this money to Ms. Hamilton, except in 2005. RP I 162, 164-165; RP II 8-9. In 1999, before he was able to offset his income with the losses from the bed and breakfast, he had owed money at the time of his return. RP II 9.

At the time he first met Ms. Hamilton he was still married to his second wife. The divorce became final some time in 1990 or 1991. His child support obligation was finished in 1991. RP I 168-69.

In Ross's mind, the money he gave to Ms. Hamilton was not rent, but to pay "excess bills". He was supposed to pay between \$700 and \$1,000 per month toward the operating costs of the bed and breakfast business, but there were months when he did not make such payments. He also acknowledged that Ms. Hamilton gave him credit toward this monthly obligation for labor he did on her Greenwood property. RP I 173-177.

Ross did not know whether he had put money into the rental of equipment for the improvement of the Greenwood Road property. He agreed that the cost of the “cat” was about \$1200 to \$2000, and the value of his time was about \$720, a figure he quickly amended to about \$5000. He felt he was entitled to half the value of the Greenwood Road property that she had purchased from her ex-husband because of the value of his labor on the property, even though he conceded the work he did had no major value. RP I 178, 182-184.

Ross did not have any documentation on the loan he said he took out for the Valerian Street property. He also told Ms. Hamilton he was borrowing from his 401 K but never entered into a written agreement with her concerning this. He also did not report the distribution he received from his 401 K on his income tax statement. RP II 21, 22, 26. When asked in court to provide documentation for any of the loans he said he had incurred for either the Valerian property or the Island View property, he could not, but said that the documentation “could be acquired.” RP II 33. He later reiterated that he had no documentation for either of the loans he said he had taken out against his 401 K or the ones taken out with his trailer as collateral. RP III 149.³ He acknowledged that he and Ms. Hamilton had never been through a marriage ceremony. RP II 35.

³ The trial court tried to clarify how many loans Ross said he had taken out. Ross testified that there were three: one for Valerian Street, one for Island View Lane, and one for the business venture with his son-in-law to be. RP III 165-166.

Virgil Cothren has known Toni Hamilton for about 30 years, and met Robert Ross in 1991, when he stayed with them in Anchorage. RP II 62-63. In 2000 through 2005, he saw them nearly every day. RP II 63. After they bought Tim Abena's house, 18 Island View Drive, he helped them with the roof and paint. RP II 64. To him it appeared they were husband and wife. RP II 64. He believed that they slept together based on his observation of them watching TV on a fold-out couch in their bedroom. RP II 65. They kissed and were affectionate with one another. RP II 65. They did a lot of work together on the house on Island View Drive. RP II 67. About a year after the purchase of the property, they talked about making it into a bed and breakfast. RP II 66, 71. He did not know if Ross was giving Ms. Hamilton rent or operating funds for the bed and breakfast. RP II 77. He knew they were not actually married and that the property was in Toni Hamilton's name. RP II 82. He had suggested to Ross that he get his name on the property but it led to an argument with Ms. Hamilton. Cothren said he made the suggestion because he did not want Ross to lose out on anything. RP II 84.

After Ross rested his case, Hamilton moved for a directed verdict, limited to Ms. Hamilton's property holdings in Alaska. RP II 87-91. The court denied the motion. RP III 5.

2. Hamilton's case in chief

At the time of trial, Toni Hamilton was 65 years old. At the time of trial, she lived at Island View Lane, and her previous residences were

1412 Valerian, and Nichols Street in Anchorage. Before living in Alaska, she had lived in Cathlamet, when she was married to William Hamilton. RP III 7-8. In her divorce from Mr. Hamilton, she was awarded two properties on Columbian Drive in Cathlamet. RP II 9. With money that she received in her divorce settlement, she bought property at 1334 Nichols Street in Anchorage. RP III 21.

She acquired two properties in Alaska in Big Lake, one in 1984 and the other in 2000. The purchase money for the property acquired in 1984 came from her savings, and Ross did not contribute to this, as they had not met. RP III 24-25.

She met Robert Ross in 1989. He was a patron of the place where she worked. He offered to help her with her property. They began a romantic relationship some three months later. RP III 27-28. He rented a studio apartment near where she worked and they lived together there for about 4 months. Their sexual relationship lasted about 8 months to a year. RP III 29. She ended the sexual relationship because Ross was still married and had a “lot of girlfriends”. RP III 32. They did not have a sexual relationship at either the Nichols Street property, nor at the Valerian property, although they cohabited in each place. RP III 33.

Ross did not help pay for the purchase price of the Valerian property, but did help up with its upkeep and renovation such as painting and insulation. Ms. Hamilton paid contractors for the major remodeling. Ross received room and board at Valerian Street in exchange for his work

there. RP III 35,36. Ms. Hamilton paid cash for the Valerian Street property out of the proceeds of the sale of her two properties on Columbia Drive in Cathlamet. RP III 35, 68-69. She also sold the Nichols Street property she had in Anchorage after the acquisition of Valerian Street. RP III 35-36.

She and Ross had a signed rental agreement. (Ex 24, CP 17-18). The rent was supposed to be \$1000 per month but often came out to be \$700 month due to his work schedule. RP III 36-37. There was an extension of the first agreement signed in 1999, Ex. 25, CP 17-18.

Ross asked her to marry him on three occasions. She turned him down each time. She did not feel he was marriage material, and was cautious about marrying again after her first experience. RP III 40.

She bought the Valerian Street property with the intention of making it into a rental. It was nearby her duplex. RP III 41. The purchase price of this property was \$58,000. The sale closed in May of 1992. None of the purchase money came from Mr. Ross. Ex. 38, CP 24-25, RP III 63, 6597. When the property was ultimately sold, she still owed \$17,997 on it, and realized \$163,000 from the sale. RP III 96-97; ex 44, CP 24-25.

When she and Ross moved into the Valerian Street property, they each had a bedroom. RP III 41-42. When they moved to Cathlamet during the winter of 1999, they lived together in Ross's travel trailer, but had separate beds. After they were able to move into Island View, they had separate bedrooms and did not sleep together there either. RP III 43-44.

Ross tried to get her to put the real estate she owned in his name. She tried to ignore these requests, but he was persistent. RP III 45. Finally, in 2005 he told her if she did not give him an interest in her estate, he would throw her off the cliff on the edge of the property. She told him to leave, and he left. RP III 45-46.⁴

When she first moved back to Cathlamet she did not know about the availability of 18 Island View Drive and was planning on building on 11 acres she owned a partial interest in on Greenwood Road. She had a 25-33% interest and decided to buy out her ex-husband's interest. She did this with \$15,000 of her own funds and the balance borrowed from James and Delores Cochran⁵. RP III 51. Ross did not provide any of these funds. RP III 51. She made monthly payments on the loan of \$350.00 per month. Ross did not make any of these payments. RP III 54-55. Ross did do some work on Greenwood Road. Hamilton paid for the rental of the machinery and he ran them. He also helped with planting trees on the property. RP III 55.⁶

Ms. Hamilton decided not to build on Greenwood Road when Tim Abena suggested she buy his house on Island View. When he eventually lowered his price to \$230,000 she decided to buy it. The funds for the sale price came from the sale of her Alaskan duplex on Nichols Street Ex 37,

⁴ Ross denied threatening her. While talking about the beneficiary issue with her, he said he told her, "What would you expect me to do, grab you by the hair and throw you off the cliff or something?" RP III 142-43.

⁵ In the transcript, this is misspelled as Cothren.

⁶ According to the tax assessment for Greenwood Road, the property was worth \$96,100. The second parcel as assessed at \$95,300 in 1998.

CP 24-25 and the sale of her Valerian Street property, Ex.41, CP 24-25; RP III 57-58, 63, 74 and money from her Merrill Lynch account. RP III 77. There was no loan taken out to purchase the property.

She later took out a loan, to pay off her earlier loans from Cochran, and the Alaskan bank that held her note for the Big Lake property, with the security being the Island View Lane property. RP III 61, Ex 36, CP 24-25. Ross was not obligated on this loan but was aware of it. RP III 61.

Ross and Hamilton took out a business license to run a bed and breakfast in the Island View Property in July of 2000. RP III 78, Ex. 42, CP 24-25. Ross did give her some start up money for this business, which she testified was somewhere between \$20,000 and \$25,000. RP III 79, 80. This money was to be used for repairs and getting the business up and running. RP III 80. They did not have a written partnership agreement for the business. RP III 80. While Mr. Ross did some of the repair work, the majority was contracted out to Ed Cochran, son of "Curly" Cochran. RP III 82. Unfortunately, while the average monthly expenses of the business ran between \$2000 and \$3000, it usually generated only \$500 in income. Ross did get the tax benefit of this business loss, and also was able to live at the property when he was not working in Alaska. RP III 91-92.

Ms. Hamilton provided evidence of the current tax assessed value of her real estate holdings. One Greenwood Road parcel was assessed at \$96,100. The other was assessed at \$95,300. The Island View property

was assessed in 2008 at \$586,700 and the year before had been assessed at \$334,000. Her 15-acre parcel at Big Lake was assessed at \$63,800. The smaller 2 ½ acre parcel was assessed at \$23,800. RP III 98, 100-01.

Ms. Hamilton was aware that Ross had taken out a loan against his 401 K, but this was to go into a business with his son-in-law to be, Danny Harrison. RP III 102. He did not put any of this into any of her property. RP III 103. After Mr. Ross left in 2005, she had been making all the loan payments for the Island View property, which were \$300/ month. RP III 103.

Ms. Hamilton went out for dinner and dancing with Mr. Ross at the beginning of their relationship. She had not done that with any other tenant. RP III 111-112. She was on Mr. Ross' health insurance from 1998-2007 and used his dental coverage. RP III 112. He had volunteered to put her on his insurance. RP III 138. Ms. Hamilton testified that after her sexual relationship with Mr. Ross was over, she had not been celibate, but had "occasional encounters" with other men over the years. RP III 105. Other than Mr. Ross, she did not allow anyone else to use her business loss as a tax write off. RP III 117-118.

On her 1998 tax return EX 18 , CP 17-18 she listed \$8427 in income. However, her bank statement for the National Bank of Alaska for 1998 to 1999 showed \$28,615 in deposits. She thought that was attributable to a property sale. RP III 132, 136.

C. Post-trial hearings

On July 17, 2008, the trial court filed a memorandum opinion finding that there was a meretricious relationship between the parties, and making a division of their property. CP 30–36. On December 16, 2008, Ms Hamilton filed a motion for reconsideration or in the alternative for a new trial, based on the fact that Ross’s employer had provided documentation about his 401 K that showed he had not taken out any loans against his 401 K in the 1990s. CP 69-75. The documentation also showed that the value of the 401 K, which the court had proposed dividing as an asset of the meretricious relationship, was far greater than Mr. Ross had testified. CP 69-75. The court denied the motion in a memorandum opinion dated Feb. 23, 2009. CP 109.

Mr. Ross proposed findings and conclusions which were discussed but not entered at the hearing held on May 4, 2009. Generally, RP IV 2-18.⁷ On June 22, 2009, the court held a hearing on the presentation of findings and conclusions. Subsequently, the court filed another memorandum decision, dated October 12, 2009, CP 222-223 and entered its findings, conclusions and decree the same day. CP 224-246.

⁷ The court reporter started a new numbering system for the two post trial hearings, both of which are contained in Vol. IV of the report of proceedings.

IV. ARGUMENT AND AUTHORITY

- A. The trial court erred in concluding that a meretricious relationship existed between Mr. Ross and Ms. Hamilton.

A meretricious relationship is a stable, marital-like relationship where both parties cohabit with knowledge that a lawful marriage between them does not exist. *Connell v. Francisco*, 127 Wn.2d 33, 898 P.2d 831 (1995); *In re Marriage of Lindsey*, 101 Wn.2d 299, 304, 678 P.2d 328 (1984); Relevant factors establishing a meretricious relationship include, but are not limited to: continuous cohabitation, duration of the relationship, purpose of the relationship, pooling of resources and services for joint projects, and the intent of the parties. *Lindsey*, 101 Wn.2d at 304-05; *In re Marriage of DeHollander*, 53 Wn. App.695, 699, 770 P.2d 638 (1989).

The trial court in this case found that a relationship commenced in 1990 and lasted approximately 15 years, with the parties separating in 2005. FOF and COL, CP 225. The basis for the court's findings are set out in the Memorandum Opinion that was filed July 17, 2008, CP 30-36. The court found that both sides contributed money and labor to the relationship and to some extent commingled their funds. The court also found that Ross and Hamilton cohabited based on its credibility determination of the parties' testimony, and the testimony of Mr. Cothren, who testified for Ross. The court determined that the relationship did not have to be "intimate" if it was stable and marriage-like.

The trial court's findings of fact are entitled to deference on appeal, if unchallenged or if supported by substantial evidence. Substantial evidence is "evidence in sufficient quantum to persuade a fair-minded person of the truth of the declared premise." *Gormley v. Robertson*, 120 Wn. App. 31, 83 P.3d 1042 (2004). The trial court's conclusion that the facts indicate there was a meretricious relationship is reviewed *de novo*, using the tests set out above in *Connell, supra*, and *In re Pennington*, 142 Wn.2d 592, 14 P.3d 764 (2000).

While the court was justified in concluding that there was cohabitation, in the sense that the parties lived under one roof for a number of years, there was no substantial evidence to support a finding that the relationship was either "intimate" or "marriage-like" during this period of time. Ms. Hamilton acknowledged she had had other sexual partners during this period and strongly suspected Mr. Ross of the same. During the beginning of their sexual relationship, Mr. Ross was still married, and hence the parties could not consider their relationship marriage-like. Since Ross was still married, it was bigamous. Moreover, since Ross worked half the year in the Alaska oil fields, the period of cohabitation was not continuous and was sporadic.

The finding that the couple co-mingled their finances and contributions to Ms. Hamilton's land purchases is also not supported by substantial evidence. Ross never provided a shred of documentation at trial from his 401 K account to substantiate his claim that he had dipped

into it to loan money to Ms. Hamilton. Post-trial, when Ms. Hamilton's lawyer finally got access to these records, it was demonstrated that there was no basis for his claim that the loans derived from his 401 K. CP 69-75.⁸ However, the trial court was justified in finding that Mr. Ross contributed some labor to the improvement and upkeep of the 18 Island View property.

Assuming *arguendo* that the court's finding of cohabitation that was "marriage like" and the mingling of financial resources was supported by substantial evidence, its conclusion that there was a meretricious relationship was incorrect using the factors from *Connell and Pennington, supra*.

As noted above, the cohabitation in this case was not continuous, but was regularly interrupted by substantial absences by Mr. Ross. The purpose of the relationship, while apparently originally sexual, became modified over time. Mr. Ross needed a cheaper place to hang his hat, other than at a hotel, during his off time from the oil fields. Ms. Hamilton benefited by having a steady tenant who apparently had some talent as a handyman and landscaper. The intent of the parties was also quite different from an early stage. While Mr. Ross apparently felt that the two were trying to build a future retirement nest egg, Ms. Hamilton had decided early on that the relationship was never going toward marriage. Her three refusals of Ross' proposals made clear her intent was not to live

⁸ Ross did provide documentation that there had been some loans he had taken out. See discussion at Page 35, *infra*.

as husband and wife. The pooling of resources and services for joint projects is a close question here, but from Ms. Hamilton's point of view, Ross's contributions to the upkeep of her real estate was generally in lieu of rent and board which she furnished when Ross was not at the oil fields. Also, his labor contributions to the improvement of Island View Drive, while not completely negligible, were not significant compared to the work done by other hired contractors. A comparison of the present case with the facts of the two recent cases collected under *In re Pennington* is helpful when evaluating the trial court's conclusion.

Continuous cohabitation

As in this case, the Supreme Court noted that Pennington was already married to another person when the couple began to cohabit, and that the period of cohabitation was broken up by periods of time.

Length of relationship

The Pennington couple cohabited for a period of about 12 years, so the longevity requirement was satisfied, although the court also observed that "a long-term relationship alone does not require the equitable division of property."

Intent of the parties

Ms. Van Pevenage presented evidence that she intended the relationship to be long term and leading to marriage. Pennington, on the other hand, refused to marry Van Pevenage even after his divorce became final, a fact that the court found significant in assessing the intent of the

parties. The Supreme Court found that this factor did not support the trial court's conclusion that there was a meretricious relationship that should be recognized.

Pooling of resources

Van Pevenage presented evidence that she had contributed labor for the benefit of the relationship and had contributed funds towards food, household expenses, and some interior improvements in the house. There was no evidence to suggest Van Pevenage made constant or continuous payments jointly or substantially invested her time and effort into any specific asset.

Purpose of the relationship

The trial court found that the purpose of the relationship was companionship, friendship, love, sex, and mutual support and caring. Although this was disputed, the Supreme Court agreed this factor supported the trial court's conclusion of law.

The Supreme Court noted that no one of the *Connell* factors was controlling, and concluded that overall, the trial court's conclusion that a meretricious relationship existed was not justified:

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 co-payments 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.

Pennington, supra at 605.

Based on these facts, the Supreme Court concluded the trial court had erred in finding there was a meretricious relationship that required an equitable division of the property, and affirmed the Court of Appeals decision, which had reversed the trial court.

The court next analyzed the evidence from the other couple (Chesterfield and Nash) in the case. It found that, with gaps, the couple was together between 1989 and 1995. In evaluating the total duration of the relationship, the court took into account that the couple dated for three years before beginning cohabitation, although Nash dated other women, and Chesterfield was still married, albeit separated. Overall, the duration of the relationship did support the existence of a meretricious relationship. In reviewing the intent of the parties, the Supreme Court looked to the fact that Chesterfield was still married during the initial phases of the relationship. Even though the couple functioned as one would expect a husband and wife to function, the Supreme Court held that this factor was too equivocal to support the trial court's conclusion. The parties in Chesterfield shared a joint bank account, and each contributed to the mortgage payments for the house they lived in. Each also kept a separate bank account, and contributed to his/her own retirement accounts. They purchased no significant assets together. Each did work for the other. Despite these facts, and taking into consideration the other factors described above, the Supreme Court found that there was not sufficient

pooling of financial resources to support an equitable distribution of property acquired during the relationship.

The two cases discussed in *Pennington* do not support the trial court's conclusion in the case at bar that there was a meretricious relationship between Ross and Hamilton. Although the length of the relationship would support such a finding, the period that they lived together was not continuous, due to Mr. Ross's regular absences. The relationship was not exclusive, either. Ross was also still married when the relationship began, as in *Chesterfield* and *Pennington*. Ms. Hamilton's steadfast refusal to marry, as in *Pennington*, also undercuts the trial court's conclusion about the intentions of the parties and the nature of the relationship.

As in *Chesterfield*, although the parties here did have a joint checking account, they also maintained their own accounts. The joint account in Alaska was opened in part to accommodate the payment of Ross's personal bills during his absence from Anchorage. The joint account opened later was the business account for the bed and breakfast. Importantly, Mr. Ross was the only one with a retirement account of his own.

The evidence about pooling of resources was also sharply contested. Although Mr. Ross claimed at trial he made contributions toward the purchase of the Valerian Street property by means of a loan from his 401 K, he was unable to document this or the claimed loan with

his truck as collateral. The purchase money for the Island View property was a product of the sale proceeds from Valerian and the proceeds of her earlier sale of her Nichols Street condo, which went into her Merrill Lynch account. As was the case with both couples discussed in *Pennington*, there was insufficient evidence of the *Connell* factors to support the trial court's conclusion that a meretricious relationship existed. This court should reverse the trial court's judgment and award of property to Ross.

B. The trial court erred in its characterization and distribution of property.

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. *In Re Rhone*, 140 Wn. App. 600, 166 P.3d 1230 (2007); *Lindsey*, 101 Wn.2d at 307. 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. *Connell v. Francisco*, 127 Wn.2d 339, 898 P.2d 83 (1995). However, a trial court may not distribute property acquired by each party *prior* to the relationship at the termination of a meretricious relationship. *Connell v. Francisco*, supra at 349. In other words, unlike the distribution in a divorce, the *separate* property of the parties in a dissolving meretricious relationship is *not* subject to distribution. *Soltero v. Wimer*, 159 Wn.2d 428, 150 P.3d 552 (2007).

Based on its incorrect conclusion that a meretricious relationship existed between Ross and Hamilton, the trial court awarded Ross an interest in three pieces of real estate: a 50% interest in Island View, a 30% interest in the Greenwood Road property, and a 40% interest in the 15 acre parcel in Big Lake Alaska. He also awarded Ross a judgment in the amount of \$17,500. Even assuming that the trial court was correct in finding the existence of a meretricious relationship, this division of the property was deeply flawed and not equitable because the court mischaracterized whether these parcels of real property were separate property, due to the court's failure to trace the source of the funds used to purchase the real property in question.

A trial court's characterization of property as community or separate is reviewed *de novo* as is a question of law. *In re Marriage of Skarbek*, 100 Wn. App. 444, 447, 997 P.2d 447 (2000). Income and property acquired during a meretricious relationship should be characterized in a similar manner as income and property acquired during marriage. Therefore, all property acquired during a meretricious relationship is presumed to be owned by both parties. However, this presumption can be rebutted. The fact that title has been taken in the name of one of the parties does not, in itself, rebut the presumption of common ownership. *Soltero, supra*, at 436; *Connell*, 127 Wn. 2d at 351. However, property acquired during a meretricious relationship has the same character as the funds used to buy it. *In re Marriage of Zahm*, 138 Wn.2d

213, 223, 978 P.2d 498 (1999); *In re Marriage of Short*, 125 Wn.2d 865, 870, 890 P.2d 12 (1995). The burden is on the party claiming separate funds to clearly and convincingly trace them to a separate source. *Skarbek*, 100 Wn. App at 448.

If the property is separate property, then the burden is on the party asserting that separate property has transferred to the community to prove the transfer by clear and convincing evidence, usually a writing evidencing mutual intent. *In re Marriage of Shannon*, 55 Wn. App. 137, 140, 777 P.2d 8 (1989); *Skarbek*, surpa at 448. Under *In re Marriage of Elam*, 97 Wn.2d 811, 650 P.2d 213 (1982), any increase in the value of separate property is also presumed to be separate. This presumption may be rebutted by direct and positive evidence that the increase is attributable to community funds or labors. The community receives that portion of the increase attributable to community contributions. *Elam*, 97 Wn.2d at 816-17. In addition, any increase due to inflation is divided consistently with the proportion of community and separate contributions. See also *Marriage of Pearson–Maines*, 70 Wn. App. 860, 855 P.2d 1210 (1993).

Separate property will remain separate property through changes and transitions, if the separate property remains traceable and identifiable; however, if the property becomes so commingled that it is impossible to distinguish or apportion it, then the entire amount becomes community property. *In Re Chumbley and Beckman*, 150 Wn.2d 1, 74 P.3d 129 (2003); *In re Marriage of Pearson-Maines*, 70 Wn. App. 860, 865, 855

P.2d 1210 (1993).⁹ The character of separate property continues through transfers if it can be traced and identified; the separate property is not rendered community property unless the separate property is commingled to the extent that it may not be distinguished or apportioned. *Marriage of Marzetta*, 129 Wn. App. 607, 120 P.3d 75 (2005); *In re Marriage of Pearson-Maines* supra.

1. Characterization of Island View property

During the trial, Ms. Hamilton traced the funds used to purchase her real estate. The Valerian Street house in Anchorage, which was purchased while the couple were living under one roof, but were no longer intimate according to Ms. Hamilton's testimony, was bought with funds that derived from her sale of separate property, namely from the lots she owned in Cathlamet at 340 and 390 Columbian Drive. The Valerian Street house should have been characterized by the trial court as Ms. Hamilton's separate property. While she acknowledged Mr. Ross participated in its renovation, his labor in doing painting and insulation did not strip the property of its separate character. Since there was no evidence that she intended to make him a gift of her real estate property,¹⁰

⁹ "When it is once made to appear that property was once of a separate character, it will be presumed that it maintains that character until some direct and positive evidence to the contrary is made to appear." *In re Dewey's Estate*, 13 Wn. 2d 220, 226-27, 124 P.2d 805 (1942) (quoting *Guye v. Guye*, 63 Wn. 340, 352, 115 P. 731 (1911))

¹⁰ See *In re Borghi*, _____ Wn. 2d _____, 219 P.3d 932 (2009), holding that there must be clear evidence to transform separate property into community property, and rejecting the notion of a gift presumption arising from a change in title.

under the principles outlined above, the Valerian Street house retained its character as separate property. There was no evidence of commingling to the extent that the value of Ross' labor could not be apportioned. Any increase in the value of the property from the time of its purchase is also presumed to be separate property, under *Marriage of Elam, supra*. If Ross did acquire any interest in it due to his work, his interest should be limited to the reasonable value of his labor.¹¹ There was no evidence presented about this either in terms of time, or what the cost of similar work would have cost.

When the Valerian property was sold, its proceeds were used to purchase the Island View property. The Island View purchase was also financed with the sale of Ms. Hamilton's Nichols Street property, which was also acquired before she met Mr. Hamilton, and was thus separate property also.¹² Thus the income streams which purchased the Island View property derived from or were traceable to Ms. Hamilton's separate real estate. Ms. Hamilton thus met her burden to prove the separate property character of the real estate acquired while she and Mr. Ross were

¹¹ There was no evidence presented about this either in terms of time, or what the cost of similar work would have cost. In contrast, Ross offered evidence of the value of his work on the Greenwood Road property as being \$30/hour for rototilling and "cat" work. See *supra* at page 10.

¹² Ross testified that the third component of the purchase was a loan for \$35,000, for which Ms Hamilton was the sole obligee. Ms. Hamilton testified that the sources of funds were the sale of the Nichols Street property, which had gone into her Merrill Lynch account, and the sale of her Valerian Street property.

cohabiting but not intimate by tracing the source of the funds to her separate property.

There was evidence that Mr. Ross had contributed his labor to the improvement of the Island View Property, after its purchase and had also contributed money to the operating expenses of the bed and breakfast business Ms. Hamilton was trying to run on the property. However, he received benefits in exchange for these. He did not have to pay the fair rental value for his occupancy of the property, and he was also able to enjoy the tax write-off for the business losses suffered by the bed and breakfast. His contributions to the property were not such as to change its character from separate to quasi-community property. The trial court clearly erred in awarding him a 50% interest in the Island View Property.¹³

2. Judgment for \$17, 500

The court gave Ross a judgment in the amount of \$17, 500. Although it is far from clear, the court apparently derived this figure from Mr. Ross's testimony that Ms. Hamilton had incurred a loan obligation of \$35,000 as part of the purchase of the Island Lane property.¹⁴ Ross

¹³ This property has been sold. The proceeds of the sale are being held by the Superior Court clerk, with the exception of \$30,000 which the trial court ordered released to Mr. Ross. CP 113-14. The amount deposited with the court apparently included ½ of the loan payoff for the loan Ms. Hamilton obtained after the purchase to pay off her Alaska loan and the loan to Mr. Cochrane. CP 108 and 303-304.

¹⁴ Neither party produced any documentary evidence of this loan. Ms. Hamilton testified that the funds to purchase Island View had come from her Valerian property and the Nichols Street property.

admitted he was not obligated on this loan. As noted above, the court had already given Ross a 50% interest in the Island Lane property.

The court's memorandum decision gives no other explanation for this award, other than acknowledging that the other portion of the purchase price of Island Lane was derived from the sale of the Valerian Street property. There was no basis in the evidence presented at trial to award Ross a cash judgment for half of the loan amount allegedly used to purchase the same property in which the court already gave him a 50% interest, particularly when he was not obligated to pay anything on it. As trial counsel observed, this was clearly double dipping. RP IV 7 ((May 4, 2009). Under any standard of review, this was a clear abuse of the court's discretion.

3. Characterization of Greenwood Road property

The court also awarded Ross an interest of 30% in the portion of that Greenwood Road property that Ms. Hamilton had purchased from her former husband for \$40,000.¹⁵ The purchase price was financed from Ms. Hamilton's separate property and by a loan of \$25,000 from Curly Cochran, on which she was the sole obligee. RP III 51.¹⁶ There was testimony that Ross had supplied labor for improvement of the property, including rototilling and planting of trees. He did not even pay the cost of the rental of the equipment for doing this, however.

¹⁵ She had received a partial interest in this property at the time of their divorce.

¹⁶ If Ross had actually been bankrolling this purchase, there would have been no need for Ms. Hamilton to seek a loan from Cochran.

Since this property was acquired during the time that Ross and Hamilton were living under the same roof, it was presumptively quasi-community property, absent evidence it was acquired with funds traceable to separate property. Ms. Hamilton provided evidence that satisfied her burden to show this property was acquired with her separate funds and hence was separate property. The trial court erred in characterizing this as quasi-community property subject to an equitable division.

Even if the portion of the Greenwood property Ms. Hamilton bought had become transformed into quasi-community property by the effect of Mr. Ross's labor there, the court still erred in awarding him a 30% interest. There was no basis in the record to allocate this much equity to him when according to his own testimony the work he did there had no major value, and that the value of the time he spent was either \$720 or \$5000.¹⁷ Even assuming that at the time of trial, the property was still only worth what Ms. Hamilton purchased it for, the trial court's award gave him an interest worth \$12,000,¹⁸ far more than any improvement attributable to the value of his labor.

¹⁷ The estimate of \$720 was based on \$30 hour for 24 hours of work. His guess, upon further reflection, of the value of his work was \$5000. This was the basis for his claim of a 50% interest in the property. RP I 182-184. Ross also acknowledged that Ms. Hamilton gave him a credit toward the amount he was to pay for the bed and breakfast operating expentsees for the work he did on the Greenwood property. RP I 176-77.

¹⁸ The property was purchased for \$40,000. The court awarded a 30% interest, or \$12,000.

4. Characterization of Big Lake parcel

The trial court granted Ross a 40% interest in the 15 acre parcel located at 5813 South J. Sedor Road in Big Lake, Alaska. The property was purchased in 2000, during the time that Ross and Hamilton were living under one roof but were not intimate. Under the principles announced above, it was presumptively quasi-community property, absent evidence that it was purchased with clearly separate property of Ms. Hamilton's. However, she met this burden. Her testimony established that there was a mortgage on this property on which she was the sole obligee. RP III 31. Ross agreed that the purchase money came from a loan she had personally taken out from "Curly" Cochran. RP I 116. He did not do any work on this property, but testified the property was bought as part of their retirement plan. RP I 118. He also felt he had indirectly paid for some of the loan if Ms. Hamilton had been short of money to pay the loan. RP I 117. Again, however, he produced no documentation to support this claim.

The trial court erred in characterizing this property as quasi-community, given the fact that Ms. Hamilton had provided evidence that it was purchased with separate funds (the loan on which she was sole obligee) and the fact that unlike the other parcels, Ross made no claim of improvements. Under any standard of review, the court erred in making an award of a 40% interest in this property.

C. The trial court erred in denying the motion for new trial or for reconsideration.

The trial court's memorandum decision, which concluded there was a meretricious relationship and divided the property accordingly relied heavily on the fact that Ross had testified he had taken out substantial loans against his 401K to assist with both the Valerian and Island Lane properties. CP 30-36. Ross produced no documents to support this testimony at trial. Post-trial, Ms. Hamilton's lawyer obtained documentation for Ross' 401 K which demonstrated that no such loans had been taken out from his 401 K. CP 69-75.

In response, Ross filed a declaration which attached a number of documents regarding loans. A Wells Fargo spreadsheet showed there was a "Loan Conversion" in June of 2001, in the amount of \$18, 732, but there was a corresponding payment on the loan the same day of \$14, 098.29. An account record from Alaska Federal Credit Union shows a "previous balance" of \$13,000 for the February 2002 statement for a loan. A second account statement, from June of 1998, shows a loan balance of \$8066.95. Even taken together, these loan documents do not support Ross' assertion made at trial that he had taken out at least two, and possibly three loans against his 401 K totaling \$80,000, in addition to two loans taken out with his trailer as collateral totaling \$30,000. CP 94-101.

Ross also presented a declaration from Jim Roberts, which had as an exhibit two documents that showed loans against Mr. Ross's Merrill Lynch account. One was originated in September of 2000, in the amount

of \$25,000, and the other was originated in July of 2003 in the amount of \$31,554. Ross had previously testified that he had taken out a loan against his 401 K between 2000 and 2005 to assist his son-in-law. RP III 170.

The September 2000 loan clearly had no part in the purchase or renovation of the Valerian Street property, since that was sold in July of 2000. Nor was it used to assist in the purchase of the Island Lane property, since the source for the purchase price was the Valerian Street proceeds, the loan from Mr. Cochran, and the sale of the Nichols Street property. The second loan, in 2003 also does not appear to have been used to benefit Ms. Hamilton and appears to be the loan he obtained to help his son-in-law.

The trial court denied the motion for a new trial. In so doing, the trial court abused its discretion. Without documentary evidence of substantial loans to the community, Ross's assistance with regard to the Valerian property was limited to his bare claim that he had assisted with its renovation. There was no evidence which would overcome its characterization as Ms. Hamilton's separate property, based on the tracing of its purchase funds to her earlier separate property in Washington.

Similarly, without the alleged loans to the community regarding the Island View property, Ross's assistance was relegated to his testimony of his contribution of labor toward the maintenance and improvement of the property. This would not outweigh the tracing of the property's purchase funds to the sale of Valerian Street, the sale of her Nichols Street

duplex, and the loan she alone incurred. At most, Mr. Ross's labor on behalf of the property would entitle him to an interest in proportion to the value of his labor.

Ross' testimony that he had loaned substantial amounts of money from his 401 K to Hamilton affected both the trial court's finding that a meretricious relationship existed (the pooling of funds for a common purpose), in assessing the character of the property as quasi-community vs. separate, and in making a distribution of the property. The trial court's apparent failure to take into consideration the substantial showing that Ross had misrepresented the nature and extent of the alleged loans at trial was a denial of its discretion and calls into question its conclusions on both the existence of the relationship, and the court's division of the property. This court should reverse the judgment and property division and remand for further proceedings to determine the existence or not of a meretricious relationship, and if one is found, to reevaluate the distribution of the property.

V. CONCLUSION

The trial court erred in concluding on these facts that a meretricious relationship existed between Robert Ross and Toni Hamilton that required an equitable division of real estate Ms. Hamilton had

acquired during the course of the time that the couple lived under one roof. This court should reverse the judgment, and the court's property division .

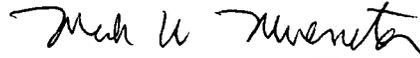
Even assuming the correctness of the trial court's conclusion regarding the existence of a meretricious relationship, the trial court erred in its division of the property. Ms. Hamilton met her burden to show that the real estate she purchased was traceable to her separate property, or a loan obligation where she was the sole obligee. The trial court thus erred in its characterization of the 3 parcels in question as quasi-community. This court should reverse the judgment and remand to the trial court to re-evaluate the interest, if any, the meretricious community had in the Island Lane property, the Greenwood Road property, and the Big Lake property.

The trial court erred in granting Mr. Ross a judgment of \$17,5000 against Ms. Hamilton. Other than Ross's testimony there was no evidence of such a loan for the purchase of the Island View property. There was no evidence Mr. Ross made payments to service this alleged loan. Even if such a loan existed, the court's award of a 50% interest in the property involved in the loan more than protected any interest he had. This court should vacate this portion of the trial court's judgment.

Given the fact that Ms. Hamilton showed in her post-trial motion that Mr. Ross had not taken out loans against his 401 K, the court erred in both its conclusion that there was a meretricious relationship, and its attempt to make an equitable division of the property. This court should vacate the judgment, and remand to the court for further proceedings.

Dated this 1st day of MARCH, 2010

LAW OFFICE OF MARK W. MUENSTER



Mark W. Muenster, WSBA 11228

Attorney for Toni Hamilton

1010 Esther Street

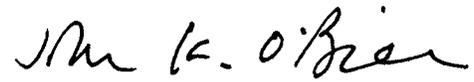
Vancouver, WA 98660

(360) 694-5085

CERTIFICATE OF SERVICE

RE: Robert Ross v. Toni Hamilton, No. 39887-7-II

I hereby certify that I personally served a copy of the appellant Toni Hamilton's opening brief in the above-referenced case on Craig McReary, Attorney at Law, 1555 Third Avenue, Suite B, Box 2340, Longview, WA 98632 on the 3rd day of March, 2010 by means of United States First Class Mail.



John K. O'Brien

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STATE OF WASHINGTON

BY 
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RE: Robert Ross v. Toni Hamilton, No. 39887-7-II

I hereby certify that I personally served a copy of the appellant Toni Hamilton's opening brief in the above-referenced case on Craig McReary, Attorney at Law, 1555 Third Avenue, Suite B, Box 2340, Longview, WA 98632 on the 2nd day of March, 2010 by means of United States First Class Mail.



John K. O'Brien