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

Case No. 67734-9-1

In Re the Meretricious Relationship of:

SUSAN M. CALDWELL
Appellant

And

JOHN C. HANSELMAN
Respondent

**APPEAL FROM THE SUPERIOR COURT FOR ISLAND COUNTY
THE HONORABLE VICKIE CHURCHILL**

BRIEF OF APPELLANT

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COURT OF APPEALS
DIVISION I
CLERK OF COURT
KIMBERLY L. HARRIS

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I. INTRODUCTION

Ms. Caldwell appeals the trial court's orders regarding a Committed Intimate relationship did not exist between the parties and additional orders that prohibited Ms. Caldwell from receiving a fair and unbiased trial. On appeal, Ms. Caldwell challenges the trial court's findings as follows:

- 1) That the couple was not in a Committed Intimate Relationship, i.e. a Meretricious Relationship,
- 2) Ms. Caldwell was not entitled to full Discovery
- 3) That emails pertaining directly to the business were not an exception to hearsay
- 4) That the businesses were Mr. Hanselman's sole and separate property and therefore all income derived from these businesses are his sole and separate property
- 5) That there was no need to evaluate the interest each party had in the property acquired during the relationship in a just and equitable manner
- 6) That Ms. Caldwell was not entitled to a continuance of the trial date

- 7) That the court order regarding the damage to Ms. Caldwell's personal property was changed to accommodate Mr. Hanselman at a Notice of Presentation appearance.
- 8) That Mr. Hanselman was not in further contempt for disposing of or concealing Ms. Caldwell's personal property
- 9) That Ms. Caldwell's hearing for the Default Motion was dismissed
- 10) That Mr. Hanselman was improperly served with the Motion for Production of Documents/Discovery
- 11) That Ms. Caldwell was ordered to pay Ms. McPherson \$300 for malicious litigation
- 12) That Ms. Caldwell was not entitled to recover any costs incurred in relation to this litigation
- 13) That Ms. Caldwell was not entitled to a new trial

II. ASSIGNMENTS OF ERROR

Ms. Caldwell disputes that the trial court relied on evidence and or sworn testimony submitted in the below proceedings when reaching a fair and impartial decision regarding these issues.

1. The trial court erred in finding “The relationship began to deteriorate within six months.” (FF 8)
2. The trial court erred in finding “By early 2009, Defendant communicated to Plaintiff that he did not want to get married; after that, the relationship went downhill in all aspects.” (FF 10)
3. The trial court erred in finding that “Plaintiff moved out for three months in 2009.” (Finding of Fact 13)
4. The trial court erred in finding “Plaintiff later moved back in and did not leave permanently until March 2010.” (FF 15)
5. The trial court erred in finding “Plaintiff stayed in Nevada for three months from April through June 2008.” (FF 21)
6. The trial court erred in finding “The relationship was long over before Plaintiff moved out permanently. The parties did not continually cohabit.” (FF 23)
7. The trial court erred in finding “The relationship deteriorated to the point that the Plaintiff devoted herself primarily to buying and selling used furniture and other property on *Craig’s List* with her mother.” (FF 28)
8. The trial court erred in finding “Plaintiff did not have access to or use of any of Defendant’s accounts, bank accounts, credit card accounts, investment accounts, etc.” (FF 30)

9. The trial court erred in finding “The parties did not own any property together.” (FF 32)
10. The trial court erred in finding “Plaintiff did not pay rent or utilities on the property.” (FF 33)
11. The trial court erred in finding “Plaintiff did not make any payments on the house.” (FF 34)
12. The trial court erred in finding “Plaintiff did not make any payments on any asset that was purchased during the relationship.” (FF 35)
13. The trial court erred in finding “The parties did not hold themselves out to others as married.” (FF 42)
14. The trial court erred in finding the “Defendant loaned Plaintiff money to purchase a vehicle, Plaintiff did not repay the loan.” (FF43)
15. The trial court erred in finding “The travel trailer was purchased by defendant on September 14, 2009, after the parties’ relationship was over.” (FF 57)
16. The trial court erred in finding “The boat “Boots” was purchased in January 2010 by Defendant and his stepfather after the parties’ relationship was over.” (FF 58)

17. The trial court erred in its finding that Mr. Hanselman had not been properly served the Motion for Order to Compel Discovery.
18. The trial court erred in finding Ms. Caldwell was not entitled to Discovery pertaining to the personal bank account information, the fish tickets related to the business known as Epic Seafood, and to copies of cancelled checks relating to the Epic Seafood business.
19. The trial court erred in finding that Ms. Caldwell was not entitled to a continuance of the trial date and refusing to hear oral argument as to why she should be entitled to a continuance.
20. The trial court erred in awarding Ms. McPherson/Mr. Hanselman a judgment in the amount of \$300 for malicious litigation.
21. The trial court erred in finding that Ms. Caldwell was not entitled to a New Trial/Motion for reconsideration. (EX 1)

III. ISSUES RELATED TO ASSIGNMENT OF ERROR

1. Did the trial court err by denying Ms. Caldwell access to Discovery?
2. Did the trial court err by assuming facts not in evidence when reaching the conclusion that a Committed Intimate Relationship i.e. Meretricious Relationship did not exist based on the Findings of Facts and Conclusion of Law.

3. Did the trial court err by finding that all assets acquired during the relationship were the sole and separate property of Mr. Hanselman.
4. Did the trial court err in denying Ms. Caldwell a fair and just opportunity to argue for a continuance of trial date on the date of the Readiness Hearing?
5. Did the trial court err in reaching its decision, based on the sole credibility of Mr. Hanselman?
6. Did the trial court err by reaching its decision using findings contrary to meretricious law?
7. Did the trial court err in expecting Ms. Caldwell to obtain a burden of proof higher than that of the preponderance of the evidence requirement?
8. Did the trial court err in finding Ms. Caldwell guilty of malicious litigation resulting in an award of \$300 to the Defendant?
9. Did the trial court err in denying Ms. Caldwell the right to enter into evidence under the hearsay exception rule, business related e-mails between Ms. Caldwell and customers of the businesses kept as normal business records up to and after the parties' separated in March of 2010?

10. Did the trial court err in finding that the relationship was over within six months?

IV. STATEMENT OF THE FACTS

A. The parties' intent of the relationship.

Although the Judgment On Trial (JOT) does not accurately reflect the court's Letter Opinion (LO) both parties' agreed they met online in the fall of 2006. The relationship progressed quickly and in early December of 06, Mr. Hanselman flew Ms. Caldwell from where she was living in Mesquite Nevada, to Whidbey Island for the sole intent of purchasing a home for the parties' to reside in. "He flew Ms. Caldwell to Washington and the two of them picked out a home together. She went back to Nevada, gave a two-week notice at a job she had kept for six years, and prepared for her move." (LO pg. 2 paragraph 2) "The court finds that the parties initially intended the relationship to be permanent." (LO pg. 2 paragraph 5)

When asked under cross if between February of '07 and March of '10 if he had been involved with anyone other than Ms. Caldwell, he answered "No." When asked if he was aware if Ms. Caldwell had seen anyone other than him during that time, he answered "No." When questioned as to his statement he had begun seeking another relationship in the Fall of '09, he

indicated he had “thought” about it but had not acted on it. The follow up question was if the couple had remained monogamous throughout the duration of their relationship beginning in February of ‘07 to its completion in March of ’10 and he answered, “Yes.” (VRP pg. 206; 16-24 & pg. 207; 11)

B. Pooling of resources and services for joint projects

The court found that Ms. Caldwell provided the majority of the labor on the residence as well as maintained the family home and that she was not paid for these efforts. (FF 24-27) The court found that Ms. Caldwell “...provided a large portion of the labor.” (LO pg. 3 paragraph 3)

The court further found, “Later on, though, the relationship deteriorated to the point that Ms. Caldwell devoted herself primarily to buying and selling used furniture and other property on Craig’s List with her mother.” (LO pg. 3 paragraph 3)

Ms. Caldwell contends that she worked extensively for Hanselman Enterprises (landscaping and tree removal), The Hammer Time, (commercial crabbing boat) and Epic Seafood. (Purchasing and selling crab)

She maintained that she contributed not only physical labor towards these businesses, but also dealt on a personal basis with the customers scheduling jobs, lining up the crew for work as well as handling any customer complaints.

Although he substantially minimizes Ms. Caldwell's involvement with the businesses, when asked if Ms. Caldwell had ever worked for him he testified, "When Ms. Caldwell first arrived in '07, she helped me for a couple weeks in the tree business." (VRP 126; 17-18) When asked if she worked for Epic Seafood, he testified, "She was not hired as an employee for Epic Seafood. I know that she rode along with an employee of mine." (VRP 126; 20-21) When asked for how long she did this, he testified, "...And that started in October of '07. And we were done, I would say, in January of '08." (VRP 127; 1-2)

When asked if Ms. Caldwell ever purchased fishing gear, Mr. Hanselman testified, "She stopped a couple times and picked up supplies for myself and my father." When asked if she used her own money, he testified, "Her own money." (VRP 158 11-19)

Mr. Hanselman testified that Ms. Caldwell could not work for the crabbing business or Epic Seafood because she did not have a license to do so. Under cross Mr. Hanselman confirmed a statement he had made in

a previous sworn affidavit which read, "...Ms. Caldwell has provided two checks where she purchased crab for me." (VRP 203-204; line 25 and line 1)

Ms. McPherson argued, "So she went and got some fish for two months in – in 2007. It doesn't matter. The Court's already said the businesses are his separate property." (VRP M/Compel & M/PO, pg. 21; line 2-6)

C. Purpose of the relationship

The court found, "...that while the parties intended to have a permanent relationship, they were not successful." (LO pg. 3 paragraph 5) The court further found "Mr. Hanselman to be credible when he says he began having doubts about the relationship within six months..." (LO pg. 2 paragraph 6)

Under cross Mr. Hanselman was asked, "So when you say that our relation [sic] basically ended within six months, that's not an accurate statement then; is it?" He testified, "I didn't say six months. I said it went bad after a year." (VRP 202; 5-9)

Under direct examination when asked about vacations, Mr. Hanselman testified that, "She went to Vegas with me twice and Reno once. You know, that's it- that was during the relationship." (VRP 163; 11-12)

Mr. Hanselman was asked under cross if he recalled a trip he and Ms. Caldwell took to Reno for New Year's Eve '09-'10 and he testified, "Yes." When asked if anyone accompanied them on this trip, he testified "No. It was New Year's." When asked if he recalled the May '09 trip he and Ms. Caldwell took to Las Vegas for his daughter's wedding, he testified, "I do." When asked if he recalled the trip he and Ms. Caldwell took in August of '07 to Las Vegas, he testified, "I do." When asked if he recalled the trip he and Ms. Caldwell took to Reno with his daughter in June of '08, he eventually testified, "Then I do recall that trip." (VRP 198; 19-25 and 199; 1-12)

D. Continuous Cohabitation

The court found, "Plaintiff was out of the house and at her mother's house two or three times a month for two or three days at a time between February 2007 and early 2009." (FF 20) "Plaintiff stayed in Nevada for three months from April through June 2008." (FF 21) "Plaintiff moved out for three months in 2009." (FF 13)

When asked under direct if Ms. Caldwell moved out the residence in 2009, Mr. Hanselman testified that "She was gone for approximately two-and-a-half to three months." (VRP 164 line 12-13) He also testified that his

daughter, granddaughter and son-in-law moved in and stayed for “Three or Four months.” (VRP 164 line 21)

Referring to the court’s findings that Ms. Caldwell moved from the family home in April, May and June of 2008, Mr. Rice’s testimony contradicts that finding. Under cross, he corrects this testimony that she had moved out in ’08 when asked “So are you correct, it was April, May, June of ’09?” (VRP 235 line 21) and says that “I believe that I was correct, yes.” (VRP 235 line 22)

Although Mr. Rice testified that Ms. Caldwell was not living in the family residence while he was living there and that she had removed all of her belongings, under cross, he testified that his family was in fact using her personal belongings. When asked what was in the room they were staying in, he testified, “Your bed was still in that room.” (VRP 236 line 24) “Dresser, TV.” (VRP 237 line 1) and when asked who those items belonged to he testified, “You, I believe.” (VRP line 3)

When asked if Ms. Caldwell was present while he and his family were staying at the family residence, Mr. Rice testified that, “You weren’t living there, but you were, you know, still present in the house off and on. You were at your mom’s a lot, also.” (VRP 236 line 3-5)

When asked if it was common that the spare bedroom was made available for company, Mr. Rice testified, "Yes." (VRP 238 line 5-7) Mr. Rice concedes he had no first-hand knowledge that Ms. Caldwell had moved from the family residence other than, "That you weren't there. That's it." When reminded he had just testified she had been there, he responded, "Off and on." When asked for clarification, he testified, "Well, you were there occasionally. I mean, you were at your mom's most of the time when me and Heather and my daughter lived there." (VRP 239 10-16)

When referring to Mr. Hanselman's prior testimony that Ms. Caldwell had moved in and out "several" times, he was asked, "And you base that, if I remember correctly, on my visiting my mother twice a month for a couple days at a time?" Mr. Hanselman replied, "Yes, it was." (VRP 188; 12-17)

Under cross, Mr. Hanselman was asked, "Do you recall the May 19th trip, 2009 to Las Vegas for Heather and Jesse's wedding?" He testified, "I do."

When asked if Ms. Caldwell was present with him for the wedding he testified, "Yes, you were." (VRP 198 21-25)

Mr. Hanselman was asked under cross if he recalled a trip he and Ms. Caldwell took to Reno for New Year's Eve '09-'10 and he testified, "Yes."

E. Duration of the relationship

The court found that “On January 28, 2007, Ms. Caldwell rented a U-Haul with money sent to her by Mr. Hanselman and moved her belongings to Washington. She unloaded the U-Haul at his house and lived there until March 2010.” (LO pg. 2 paragraph 3) The duration of the relationship was approximately 39 months.

Under direct, Mr. Hanselman testified that, “I met her on an online dating site and, hmm, she lived at my home for two-and-a-half, three years. (VRP pg. 120 line 23-24) He also testified that, “She lived in the house from January, '07 until March of '10.” (VRP pg. 121 line 5-6)

F. Discovery

The trial court read from Local Court Rule SP 9408.1 which provides “...access to all tax, financial, legal and household records. Reasonable access to records shall not be denied.”

During oral ruling on 12/16/10, the court noted:

However, there seems to be an issue as to whether or not she did – they pooled resources; whether that’s financial resources and whether or not she was involved in the business and whether or not she can prove that by showing her signature on various statements on 0 her handwriting perhaps on the income tax preparation or other tax forms that were out there, or even work orders. And that some of those items are within his control.

Now, that doesn't go to whether or not she would get those documents – she would get the property that they're concerning, but whether or not it helps her prove her case- or her allegation that they pooled resources by her working in the business.

So she does have entitle - - She is entitled to have those types of documents. (Excerpted VRP (Ruling) 12/16/10; pg. 4; line15-25 & pg. 5; 1-6)

Argument Motion for Order to Compel

Ms. Caldwell argues for access to the only active bank account stating:

...he provides two defunct bank accounts that have no activity in them other than the one year that I have reported to the Court that is not beneficial. When he provides ten months' worth of the active bank account and just through those ten months it's glaringly obvious that there's something more to the picture. I can't put the puzzle together without the other years of that account. That's the account where the money is in.

He is the one that told the Court I have never contributed financially. How can I prove whether I did or didn't if I'm denied access to this? If I can't take that money and determine what's income, determine what came from here, what came from there, as I point out before, the funds are all commingled. So I fail to see how that's a threat when – when I have '07's taxes and I have the bank account and nothing is jelling, nothing is matching and you're talking in excess of \$150,000, then why am I being, you know, chastised for simply wanting to separate or attempt to separate this out to prove my case, which is I did contribute financially. (VRP M/Compel, pg. 16; line 12-25 & pg. 17; lines 1-6)

Ms. Caldwell argues that she is entitled to a copy of all fish tickets generated during the '07 and '08 season that Epic Seafood was operated.

The Court asks, "To show what?" Ms. Caldwell replies, "My handwriting

is on the fish tickets and my handwriting is on the checks that were made out.” (VRP M/Compel, pg. 22; line 22-25)

Ms. Caldwell further argued that without benefit of this discovery she will have no way of proving her contribution towards pooling of resources and labor of the businesses. The court questions whether or not it is to prove Mr. Hanselman is lying and therefore would be lying about the meretricious relationship. Ms. Caldwell explains:

Absolutely. Because why else would he – Why would he say that I did not have anything to do with the businesses whatsoever when he knows that I did? Because he’s denying that we had a meretricious.

I have to prove that we pooled joint resources and labor. While for him to just say, ‘No she didn’t. She was a roommate and never worked for me. I never let her anywhere near my business.’ (VRP M/Compel, pg. 24; line 14-22)

The Court stated:

The issues that are in dispute is whether or not there’s a meretricious relationship and if there is a meretricious relationship, whether or not you have claim, not to the business – not to any of these other things that he had prior to it, but perhaps to an increase in value of the house. And if he says that, ‘Well, I increased the value of the \$60,000,’ then we’d like to see how he did so. So that one I can see. And – and then there are others. (VRP M/Compel pg. 25; line 20-25 & pg. 26; line 1-5)

May 6, 2011 trial court's written ruling:

While the parties may obtain discovery regarding any matter that is not privileged, nevertheless, the discovery must be relevant to the subject matter involved in the pending action. CR(26(b)(1). The motions before the court regard discovery that relates the businesses, Epic Seafood's and Hanselman Enterprises. The court has previously held that these businesses are Mr. Hanselman's separate property.

Ms. Caldwell argues that the discovery she is seeking will go to Mr. Hanselman's credibility as to her involvement in his business matters, and, thus, is relevant for that purpose.

Even if the evidence is relevant for the purpose that Ms. Caldwell indicates...In the current situation, the discovery requested by Ms. Caldwell is unduly burdensome and oppressive and is not reasonably intended to lead to discoverable evidence. (LO dated May 6, 2010)

G. Readiness Hearing

The Readiness Hearing was scheduled on 04/25/11, the same day as the arguments for Motion to Compel and Motion for Protection. At the conclusion of the arguments, the court took them under advisement. Ms. Caldwell reminded the court that it was also the Readiness Hearing and she requested a continuance in light of the issue of discovery not being settled.

The Court's oral ruling was, "Well, I'm not going to continue it..." The court offered that there may be an automatic continuance due to another trial, but finished by stating: "So whether or not I give you a continuance, which I'm not, you may in fact have a continuance because of that. But I

don't know. So no continuance.” (VRP M/Compel, M/PO, pg. 27; line 6-9)

H. Exception to Hearsay

Ms. Caldwell attempted to enter into evidence e-mails from various customers from all of the businesses that were solely work related. She testified, “I'd like to offer into evidence emails that are directly to me from customers, which shows that I was highly involved in the work there from 2009 and 2008.” (VRP pg. 242; line 2-5)

They were objected to as hearsay and Ms. Caldwell called an exception to hearsay under Rule 801, records kept in the normal course of business. Ms. McPherson argued Ms. Caldwell was not the record keeper for the businesses and therefore, “These emails that she's referring to are pure hearsay.” (VRP pg.242; lines 17-19) Ms. Caldwell countered by reminding the court, “The emails were not considered hearsay when Ms. McPherson wanted to use them...” (VRP pg. 242; lines 20-21) The court ruled that Ms. Caldwell was not the record keeper and therefore the e-mails were hearsay.

V. ARGUMENT

A. Pro se litigants

In the oral ruling dated 12/16/10, the court stated, “You’re a very bright woman. You’ve explained law that’s – that I don’t think that most pro ses would be able to understand, and you’ve been able to do that. So I think that you’re capable of doing that discovery.

In any event, you’re held to the same standard as an attorney.” (VRP Ruling, pg. 6; line 6-11.

“The Supreme Court has held that non-lawyers pro se litigants cannot be held to the same standard as a practicing attorney.” (Haines v. Kerner 92 Sct 594, also See Power 914 F2d 1459 (11th Cir 1990) (Husley v Ownes 63 F3d 354 (5th Cir 1995) (In re: Hall v Bellmon 935 F. 2d 1106 (10th Cir. 1991))

During these proceedings I have felt I have been held to a higher standard than a practicing attorney and was financially punished in the amount of \$300 when the court determined early in the proceedings that I intentionally brought about malicious litigation. At the time of that ruling, I was not aware of what “malicious litigation” was. I was only trying to present my case.

B. BURDEN OF PROOF

In a civil case, the person doing the complaining (the plaintiff) has the burden of proof. This means he/she must convince the judge or jury that the facts are correct by a preponderance of the evidence, meaning their evidence is slightly more convincing than the evidence of the defendant. That means that at least 51 percent of the evidence supports the plaintiff's side.

C. RULE 60

The final judgment of the Court should be vacated under Rule 60 (B). The Court is requested to weigh the interest in substantial justice against the simple need for preserving finality of the judgment. (See *Expenditures Unlimited Aquatic Enterprises, Inc. v Smithsonian Institute*, 1974, 500 F. 2d 808, 163 U.S. App. D.C. 140. See also *Brown v. Clark Equipment Co.*, D.C. Mc. 1982, 961 F.R.D. 166)

"Where a plaintiff pleads pro se in a suit for protection of civil rights, the court should endeavor to construe the Plaintiff's pleading without regard to technicalities" (In *Walter Process Equipment v. Food Machinery* 382 U.S. 172 (1965))

D. MERETRICIOUS DEFINED

LINDSEY

“In Lindsey, the court set several factors to be considered when determining if a meretricious relationship existed, they include, but are not limited to, continuous cohabitation, duration of the relationship, purpose of the relationship and the pooling of resources and services for joint projects.” (Lindsey, 101 Wash.2d at 304) “However, the Lindsey court emphasized that the issue of meretricious relationship should be determined by the court based on the facts of each case, and that these criteria were not a rigid set of requirements to be strictly followed.” (Id. At 305)

The trial Court found that Ms. Caldwell had moved to Nevada in April, May and June of 2008, so therefore the relationship was not continuous. This is contrary to the actual sworn testimony taken at trial.

Jesse Rice, testified that that was incorrect, that I moved in April, May and June of 2009. When asked why he felt I had moved from the home, he answered because I was spending time with my mother.

Mr. Hanselman testified that we were on vacation attending his daughter’s and Jesse Rice’s wedding in Las Vegas in May of 2009. Mr. Rice also testified that he and his family moved from the residence in June of 2009. Common sense dictates that if I was attending their wedding in Las Vegas in May of 2009 and they moved out in June of 2009, that I was present

and they were using my belongings, then, with the exception of when I was visiting my mother, I must have been living there during that time.

Even if we take the light most favorable to Mr. Hanselman, the Court has to decide what exactly constitutes a non-continuous relationship. The trial court found that I primarily bought and sold used furniture with my mother, Ms. Lefler. Although there was no testimony to support this finding, even if this was the case, Mr. Hanselman testified I would go see my mother one or two times a month for 2 or 3 days, so if I was using this as a profession to earn a living, how can that become a mitigating factor in whether or not the relationship was continuous?

The trial Court found that Mr. Hanselman hired a housekeeper in the fall of 2009 and somehow that was a mitigating factor as to a continuous relationship. Although I deny this even occurred, even if it had, there is nothing in meretricious law that says if someone doesn't perform domestic duties or hires a housekeeper, then the relationship is deemed to be non-continuous.

IN SUTTON V WIDNER

“Mr. Widner and Ms. Sutton lived together and had a sexually intimate relationship from April 1989 until August of 1994. During that

relationship, both contributed to the cost of housing and to the effort to finish and then move into a new home. They generally supported each other in both work and leisure activities. Although both maintained separate identities and accounts, the length of cohabitation, the contribution to the house, and their joint efforts on behalf of their relationship amply support the court's conclusion that this was a meretricious relationship..." (In re Sutton and Widner, 85 Wash. App.487, 933 P.2d 1069 (1997))

The trial Court found that we did not have any accounts in common. This is not a requirement in deciding whether or not a committed intimate relationship existed. Furthermore, the trial court found that I had done the "majority" of the labor on the family residence, but yet assigned it to be of no value, even though Mr. Hanselman had taken out a second mortgage, depleting the residence of the equity at that time.

The trial Court found that I did not pay rent or utilities. I am not aware of any meretricious case law that suggests or implies that one party or the other has to pay "rent" or "utilities" for a relationship to be considered an Intimate Committed Relationship. This assumes facts not in evidence.

I have consistently maintained through sworn declarations and testified that I worked for the businesses, I submitted 2 years' worth of emails of

correspondence between myself and customers of the businesses, all business related and was told they were hearsay. Under Rule 803 (6), business records are an exception to hearsay. Mr. Hanselman testified I worked. Without Discovery to the bank account that all the money was deposited in, how can there be an assumption that I did not contribute financially to the relationship?

MARRIAGE OF LINDEMANN

“When income from a business owned as separate property is commingled with income from community labor to produce an increase in the value of the business during the term of the community, it is presumed that unless the income was segregated at the time it was earned, the increase in the business’s value belongs to the community.” (92 Wn. App. 64,

MARRIAGE OF LINDEMANN (1998)

During the relationship, several assets were acquired both for personal enjoyment as well as for the businesses. These are not items Mr. Hanselman had prior to the relationship nor are they items purchased solely by Mr. Hanselman. The money for these items came from the same personal bank account that all monies were deposited in.

Mr. Hanselman has business bank accounts, but he opts to use his personal account for all transactions. He did not draw a wage or salary, nor did I. All bills, personal or business related and all monies used for personal enjoyment such as gifts, vacations, dining out etc. were all in the same account and withdrawn from the same account, which is a personal bank account.

LINDSEY

“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.” (101 Wn.2d 299, 678 P. 2d 328 MARRIAGE OF LINDSEY)

The trial Court found that my name did not appear on any titles or accounts. This is not a requirement of meretricious law to either prove or disprove a committed intimate relationship.

CONNELL V. FRANCISCO:

“We hold 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.” (127 Wn 2d 339, CONNELL V. FRANCISCO JULY 1995)

KOHER V MORGAN

“Koher had indiscriminately used relationship funds for his investments and was unable to trace any portion of the disputed assets to his separate profits.”

“Similarly, the community property-like status of the couple’s investments became fixed when Koher acquired the assets with funds that included his actual earnings, his business profits and earnings he had foregone. We recently rejected the claim that a party’s labor during his meretricious relationship was a separate contribution to a business he owned before the relationship began, stating that “labor performed during a marital or quasi-marital relationship has a community character from its inception. (93 Wn. App. 398, KOHER V MORGAN)

I have contended since the inception of this lawsuit in June of 2010 that I worked for the businesses during the duration of the relationship and was still receiving emails from customers who did not know the relationship had ended, long after I left. I have contended all along that all monies from all sources were deposited into one personal bank account and that all monies for all expenditures were taken from the same account. Neither

party ever drew a set wage or a set salary during the entire relationship.

The monies were used indiscriminately as needed.

The Court found that I contributed the majority of the labor put towards the family residence; Mr. Hanselman agreed that I had. Mr. Hanselman testified that in approximately June of 2007, he took out a second mortgage in the amount of \$59,500. He also testified that he used \$45,000 of his personal money for the down payment on our home. (VRP pg. 137; lines 11-15)

This leaves a balance of \$14,500 of community money that was derived from the improvements to the property, of which I did the majority of the labor. Mr. Hanselman testified that he invested this money back into the home and the businesses. Since this was deposited into the same account as all other monies, it is commingled funds and not possible to trace.

LATHAM

“Rather than adopt rigid standards, the court eventually asked five questions to establish a partnership. Was the cohabitation continuous? What was the duration of the relationship? What was the purpose of the relationship? Did the parties pool resources and services for joint projects?” (Latham, 87 Wn2d at 554; (Connell, 127 Wn.2d at 346) *“Did*

the parties intend to enter a committed intimate relationship?” (Connell, 127 Wn.2d at 346)

Based on what the trial Court found, the only discrepancy at issue is whether or not the relationship was continuous. The trial Court found the intentions of the parties' were to be in an intimate committed relationship. They found that the parties cohabitated from February of 2007 until March of 2010. They found that I supplied the majority of the labor put towards the family residence.

It was established through sworn testimony that the parties were intimate throughout 2009 (Mr. Hanselman) or March of 2010, (Ms. Caldwell) It was established that the parties' vacationed together, had holidays together, attended each other's family functions together and that family and friends visited often and sometimes for extended periods of time.

The only finding contrary to meretricious law is whether or not the cohabitation was continuous or if my visiting my mother a few days a month is considered to be an indication that the relationship was non-continuous.

The rest of the testimony, as well as the trial Court's finding, that I moved from my residence for three months should not be a factor when reaching

a decision. I am accused of leaving my home, but not one person can cite the same dates, the same years or where I moved to. Not one person has said my belongings were ever packed or removed from the family residence prior to April of 2010.

Of the dates that are alluded to, it turns out Mr. Hanselman and I were on vacation together during these same times. The testimony of Mr. Hanselman and Mr. Rice is too convoluted and inconsistent to be considered credible and should not have been given any weight in deciding this case.

XIII. PRO SE DISCRIMINATION

On December 16, 2010 after the trial court hearing 5 motions, Ms. McPherson's Motion for Summary Judgment, Order of Protection, and Contempt Motion and my Motion for Partial Summary Judgment and Motion for Contempt, the Court dismissed both Summary Judgment Motions, found that I was not in contempt and took the other two under advisement.

I did not receive the written ruling on this Hearing until after Christmas at which time Ms. McPherson was on maternity leave and had filed a request that no action be taken on my case.

I had to wait until February when Ms. McPherson came back to work to file for my Discovery. I received an answer two days past the deadline basically denying all of my discovery requests and the next day, a letter from Ms. McPherson stating she was withdrawing effective March 21, as Mr. Hanselman's attorney of record. She provided Mr. Hanselman's P.O. Box as the address to send any further court papers to.

I set a Hearing date for Motion to Compel Discovery for April 4th. I sent Mr. Hanselman a certified copy at his P.O. Box Ms. McPherson had provided, I over-nighted a copy to him to be hand delivered to his residential address and I sent Ms. McPherson a courtesy copy. On April 4th I went to my scheduled Court hearing, Ms. McPherson had reappeared as his attorney of record to ask for a continuance so she could file another Motion of Protection. Her appearance was limited to the 25th of April.

Ms. McPherson asked for a continuance on the grounds that her client had been improperly served. I responded by telling the court what great steps I had taken to ensure service, I provided the court with all of my receipts of proof of mailing dated March 17th, I provided the court with a signed receipt from the one I over-nighted for hand delivery and I gave the court the signed receipt from Ms. McPherson's office.

Ms. McPherson argued that she received this on March 21, which was the day she was withdrawing as the attorney on record. I had until March 23 to have him served and he chose to pick up the certified letter from his mail on March 25. The Court found that I had served Mr. Hanselman improperly but failed to explain why or how I was expected to serve him in the future, in spite of me begging for understanding. Ms. McPherson was granted a continuance until April 18, 2011.

On April 18th, after sitting in the courtroom all day again, the Court requested we come back at 1, 2 or 3 p.m. because the Court had run out of time. Ms. McPherson could not accommodate any of these times, so it was continued until April 25, the same day as the Readiness Hearing and approximately two weeks to trial.

These actions ultimately caused me to have limited time to prepare my case for trial. Combined with a denial of my right to have a continuance of trial date, the court forced me to go into a trial I could not be prepared for. This caused irreparable damage in my ability to present my case. The trial court finding I had no right to pertinent Discovery a few days before trial is to begin; left me no time to file for or set for hearing, a Motion for Reconsideration.

I am a pro se litigant with no access to any records that support my case and he has access to all records and an attorney. The only option left to me was to attempt to impeach Mr. Hanselman's testimony with his own sworn statements from the previous hearings. I was able to successfully do that, in addition to proving he had submitted a fraudulent document into evidence. (VRP pg. 216, line 16 through pg. 220; Line 8)

At no time was my testimonies impeached or was the testimonies of my witnesses impeached or their credibility challenged yet, the court found Mr. Hanselman to be credible and ruled against the meretricious relationship.

The Court erred in ruling that Mr. Hanselman had been improperly served with the Motion to Compel Discovery. He was served in accordance with CR 5(2) Service by mail section (A) and (B) and in accordance with his counsel instructions on how to serve him. This ruling caused an additional month's delay in ruling on the issue of Discovery. By the time the ruling was offered, it was only a few days before the first day of trial. This is a violation of CR 59 (a) (1, 2, 3, 5, 7, and 9)

The Court erred in denying me the right to reimbursement for costs incurred through Ms. McPherson's actions in not notifying me when she could not attend a previously scheduled hearing, for malicious litigation,

or for findings of contempt against Mr. Hanselman. Yet, the Court is able to award Ms. McPherson \$300 for what was considered malicious litigation when I presented a case that the Court determined they had already heard, “most” of. Under Civil Rights Attorney’s Fee Award Act of 1976, 90 Stat. 2641, as amended 42 USC 1988, I am entitled to recover my costs and can be awarded attorney fees or damages.

I live in Port Angeles. For me to attend a hearing in Coupeville I have to drive 50 miles one-way to Port Townsend to catch a ferry and 50 miles back to home. Since the Court’s schedule does not coincide with the ferry schedule, my day starts at 6:00 a.m. The only ferry I can take that fits into the Court’s docket, causes me to be an hour and a half early for the proceedings. The actual expenses incurred for each trip is approximately \$50 between ferry costs and gas.

Once court commences, it is normal for my case to be heard last. Since Court breaks at noon, I was either allowed a few minutes to present my case or I was asked to come back after juvenile court around 3 p.m. or my case was continued for another two weeks. Because of the return ferry schedule, I often had to wait for one or more ferries depending on the traffic to come back home. Each ferry wait is approximately an hour. It

takes approximately 14-16 hours to travel and attend one hearing, vs. Ms. McPherson's two minute drive to the courthouse.

I could not even put a close estimate as to the time I have in researching and preparing for each hearing. The high standards set for representing myself caused me to learn as much as I could and attempt to correctly apply the laws and to follow all of the Court's rules. As it turns out, it simply did not matter, because Ms. McPherson was not held to the same standards that I was.

Ms. McPherson's actions in being too busy to attend a hearing or having to catch a plane are not valid reasons for a continuance. Ms. McPherson's intentional refusal to communicate with me and save me the time and expense in making this trip is unacceptable behavior. The Court consistently allowed this behavior to continue and yet no sanctions or admonishments were given. When I did not attend my Default hearing in Judge Hancock's courtroom, my case was dismissed. When Ms. McPherson did not attend a scheduled hearing she was given a continuance.

The Court allowed Ms. McPherson two continuances after she had withdrawn and then reappeared approximately a week later as the attorney on record, by determining I had improperly served Mr. Hanselman with

papers. The Court did not explain how or why he had been improperly served or how I was to serve him in the future. This hearing cost me approximately \$150 to attend and the ruling was solely for the benefit of accommodating Ms. McPherson and her client, with no consideration as to what it may have cost me.

Under what theory can the trial Court justify sanctioning a pro se litigant and then determine that the pro se litigant cannot recover under any aspect of the laws of the Constitution or of the United States for the same and even more egregious behavior perpetrated by an actual practicing attorney?

The Court not allowing me a continuance of the trial date when the issue of discovery had not been ruled on, may have been all right for a practicing attorney with trial experience and assistants to help, but for a Pro se litigant, this is simply too much to expect them to overcome.

With the hours of research and travel time involved in attempting to obtain discovery in addition to the continuances and the ruling coming a few days before trial, it was simply unreasonable for the Court to expect a pro se litigant to be prepared for a trial.

The Court's refusal to sanction or admonish Ms. McPherson or her client for obvious disregard of the law or rules of the Court is incomprehensible to me. The blatant favoritism shown between the Court and Ms. McPherson was based on my being a pro se litigant and Ms. McPherson being an officer of that court as well as Judge Pro Tem.

The Court's preferential treatment and biased rulings in favor of Ms. McPherson and her client, are a violation of my civil rights. Ms. McPherson appearing on the bench the day of my Default hearing, when she knew I was in the courthouse waiting, was a deliberate and calculated method of having my case dismissed, denying me the right to have it heard.

Title 18, U.S.C., Section 241, Conspiracy Against Rights, "*it is unlawful for two or more persons to conspire to injure, oppress, threaten or intimidate any person of any state, territory or district in the free exercise or enjoyment of any right or privilege secured to him/her by the Constitution or the Laws of the United States.*"

Title 18, U.S.C., Section 242, Deprivation of Rights Under Color of Law: "*This statute makes it a crime for any person acting under color of law, statute, ordinance, regulation, or custom to willfully deprive or cause to*

be deprived from any person those rights, privileges, or immunities secured or protected by the Constitution and laws of the U.S.”

Title 42 USC 1983 provides in relevant part that: *“every person who, under color of any statute, ordinance, regulation, custom, or usage of any State...subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution...shall be liable to the party injured.”*

Title 42, Section 1985 (3), There is actionable cause from the treatment of a non-lawyer pro se litigant as a distinct *“class-based subject”* of the court, if the denial of equal protection of the laws, and denial of due process was clearly the product of bias and prejudice of the Court. (Griffen v. Breckenridge, 403 U.S 88, 102 (1971).

Warren held that, *“...the concepts of equal protection and due process, both stemming from our American ideal of fairness, are not mutually exclusive.”* While equal protection is a more explicit safeguard against discrimination, the Court recognized that, *“...discrimination may be so unjustifiable as to be violative of due process.”*

XIV. CONCLUSION

My civil rights were violated and my rights as a pro se litigant to have a fair and impartial opportunity to present my case were denied to me. I request the following relief:

1. I respectfully request that the court find that Mr. Hanselman and Susan Caldwell were in an Intimate Committed Relationship beginning in December Of 2006 when Mr. Hanselman flew Ms. Caldwell to Washington to purchase their home.

2. I respectfully request that there be a full financial accounting of all assets acquired during the relationship including the wages earned from the businesses and that there be an equitable distribution of said assets.

3. I respectfully request that Mr. Hanselman be required to pay compensation for the damage, disposition of or concealment of my personal property.

Because the trail court found these actions to contemptuous, malicious and deliberate, I am asking for a judgment of \$15,000.

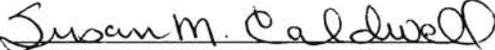
4. I respectfully request that the court dismiss the \$300 judgment awarded to Mr. Hanselman and Ms. McPherson for malicious litigation on the grounds that the acts have to be deliberate and intentional with malicious aforethought.

5. I respectfully request the court award me a judgment against Ms. McPherson for her unethical, unprofessional and outrageous actions in causing me undue hardship when she failed to attend scheduled hearings or notify me of her intentions not to attend, her deliberate deception in having the Default Motion dismissed and her unscrupulous actions in withdrawing, reappearing as council of record, for the sole purpose of postponing crucial hearing dates and for submitting a fraudulent document into evidence. (Under Civil Rights Attorney's Fee Award Act of 1976, 90 Stat. 2641, as amended 42 USC 1988)

Because the behavior was so egregious I am requesting the amount of \$25,000 for costs incurred and my time involved in attending the hearings she failed to attend and punitive damages for emotional stress.

6. Any and all other relief or compensation that is within this Court's jurisdiction to award, that they may deem reasonable.

Dated this 23RD of Sept, 2012


SUSAN M. CALDWELL, Pro se

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

JOHN C. HANSELMAN

SUSAN M. CALDWELL

Respondent,

Appellant.

Court of Appeals Cause No. 67734-9-1

Affidavit of Proof of Service

I, JOSEPH JAMES BUCHOLTZ, Declare as follows:

1. I am over the age of 18 years, and I am not a party to this action.

PURSUANT TO RCW 9A.72.08, I certify under penalty of perjury under the laws of the State of Washington, that I, JOSEPH JAMES BUCHOLTZ, caused a true and correct copy of Brief of Appellant to be hand delivered to Court of Appeals Division 1, and to Molly McPherson at the address of 1 Front Street, Coupeville WA, 98239-1677 on September 24, 2012.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at Port Angeles, WA, on September 24, 2012



JOSEPH JAMES BUCHOLTZ