Case #: 1042116

In the Court of Appeals of the State of Washington, District 1

Case Number: 85755-0

Petition for Review by the Supreme Court of Washington

Lee Jorgensen, ***Petitioner***

v.

Natalie Sears, NKA Yuse, ***Respondent***

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Community Property Interests in Separate Property Businesses in Washington
J. Mark Weiss

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In re Harris, No. 84501-2-I (Wash. Ct. App. July 1, 2024)

After trial, the court weighed the competing testimony and found Harris' version of events more credible. The court explained that Harris "testified in a straightforward, calm, and forthright manner" and that his "claims about his relationship with [Brimlow] were reasonable in the context of the other evidence." The court also found Harris' witnesses credible. Accordingly, in its findings of fact and conclusions of law, the court found:

(a) [T]he parties continually cohabitated for nearly 16 years; (b) the relationship existed for nearly another two years prior to that, for a total of 18 years; (c) the purpose of the relationship was primarily a romantic one, though they had business interests together; (d) the parties pooled their resources and services for the many joint projects they engaged in; and (e) the intent of the parties, including [Brimlow]'s to the end was to live together as a mostly committed and exclusive relationship.

As a result, the court concluded that the evidence supported the existence of a CIR.
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Harry M. Cross, Community Property Law in Washington (Revised 1985), 61 Wn. L. Rev. 13, 23 (1986)

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Koher v Morgan, 93 Wn. App.398, 402 (Wash. Ct. App. 1998)

Under *Connell,* Koher's earnings during his relationship with Morgan are analogous to the earnings of a spouse during marriage, which are traditionally characterized as community property. *See* Harry M. Cross, *The Community Property Law in Washington,* 61 Wn. L. Rev. 13, 30 n.84 (1986). We have recently held that under *Connell,* a party's labor is an asset of the meretricious relationship and any earnings during the relationship similarly belong to the marriage-like community. *In re Marriage of Lindemann,* 92 Wn. App. 64, 72, 960 P.2d 966, 971 (1998). Here, the trial court determined that the relationship had not received adequate compensation for Koher's work because Koher had taken an artificially low salary. Koher testified that he had worked hard during the relationship to rebuild his businesses and that they were profitable because he was able to buy cheaper, older equipment which he repaired himself or trained others to repair. The trial court

determined that given the profits generated by the businesses over the course of the relationship, Koher had undercompensated himself by approximately $196,700.

Out of the $355,516 Koher drew as wages during the relationship, Koher gave approximately $80,000 to Morgan for relationship expenses. With the remainder of his salary and profits, Koher acquired property and equipment and funded other investments. Under *Connell,* courts apply a community property-like presumption to property acquired during a meretricious relationship regardless of how title was taken. *Connell,* 127 Wn.2d at 351. A party asserting his separate interest may rebut the presumption with evidence that the assets were acquired with funds that would have been characterized as his separate property if he had been married. *See Connell,* 127 Wn.2d at 352. Although Koher had used both his salary and separate business profits to acquire these assets, he could not identify the type of funds used for each acquisition. Because Koher had not taken a reasonable salary during the relationship, the court found that he had commingled his profits with the income owned by the meretricious relationship as compensation for his labor and had continuously intermixed large sums of separate and relationship income in his personal and business accounts.
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Koher argues that the court improperly applied the commingling rule to his accumulated income and profits, contending that the court should have found only a right to reimbursement for the earnings he had foregone. Under *Lindsey* and *Connell,* the court has a duty to make a just and equitable distribution of all property considered to be owned by both parties in a meretricious relationship. *Connell,* 127 Wn.2d at 351, *citing Lindsey,* 101 Wn.2d at 307. Koher had indiscriminately used relationship funds for his investments and was

unable to trace any portion of the disputed assets to his separate profits. In these circumstances, we find that it was not an abuse of the trial court's discretion to conclude that it was more appropriate and fair to find that the assets Koher had acquired were subject to distribution, applying by analogy "the basic presumption that an asset on hand during marriage is community property[.]" Cross, 61 Wn. L. Rev., *supra,* at 56; *see also Lindemann,* 92 Wn. App. at 79 (affirming the trial court's application of the commingling rule to funds deposited in a joint account during a meretricious relationship).

Koher also argues that the trial court's application of the presumption is inequitable because it retroactively recharacterizes his profits and acquisitions, which he contends were his separate assets during the relationship. 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. In our community property system, there is no basis for allocating one party's labor to a separate property account." *Lindemann,* 92 Wn. App. at 73. Here, the parties' ownership interests in Koher's income accrued contemporaneously, as it was earned. 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. *See In re Estate of Binge,* 5 Wn.2d 446, 484, 105 P.2d 689 (1940) ("It is the rule in this state that the status of property, whether real or personal, becomes fixed as of the date of its purchase or acquisition[.]"). We conclude that the trial court did not abuse its discretion in finding that Morgan had an ownership interest in the property Koher acquired during their relationship.
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Latham v. Hennessey, 87 Wn.2d 550, 554, 554 P.2d 1057 (1976)

The law of implied partnership is accurately stated in *Nicholson v. Kilbury,* 83 Wn. 196, 202, 145 P. 189 (1915):

The existence of a partnership depends upon the intention of the parties. That intention must be ascertained from all of the facts and circumstances and the actions and conduct of the parties. While a contract of partnership, either expressed or implied, is essential to the creation of the partnership relation, it is not necessary that the contract be established by direct evidence. The existence of the partnership may be implied from circumstances, and this is especially true where, as here, the evidence touching the inception of the business and the conduct of the parties throughout its operation, not only tends to show a joint or common venture but is in the main inconsistent with any other theory. *Bridgman v. Winsness,* 34 Utah 383, 98 P. 186. It is well settled that no one fact or circumstance will be taken as the conclusive test. Where, from all the competent evidence, it appears that the parties have entered into a business relation combining their property, labor, skill and experience, or some of these elements on the one side and some on the other, for the purpose of joint profits, a partnership will be deemed established.

p.44 of Brief

In re Marriage of Lindemann, 92 Wn. App. 64, 72, 79, 960 P.2d 966, 971 (1998)

David claims Kimi failed to prove that the increase in value of his business was due to community effort. But again, there is adequate support for the court's finding that the increase in value of the business was entirely attributable to Davids labor. The business initially was marginal and did not prosper until 1991, when David overcame a drug addiction and was able to be more

effective and productive. David testified that he worked about 65 hours a week and that the business would fail without his presence and his personal efforts. There was no evidence that the business would have survived, appreciated or earned any income due to its inherent qualities. David made no showing that the increase in value of his business was due to rents, issues, or profits. **[8, 9]** Ordinarily, a marital community is entitled to the fruits of all labor performed by either party to the relationship because each spouse is the servant of the community. David argues that this rule should not apply to a quasi-marital relationship because the parties have decided not to commit themselves formally to the mutual obligations of a marital community. But if the labor of each party during a quasi-marital relationship were to be presumptively regarded as separate in character, little would remain of the Supreme Court's holding in *Connell.* The courts intention in *Connell* was to "allow the trial court to justly divide property the couple has earned during the relationship through their efforts." The "community" in that case was held entitled to reimbursement for the value of one members labor. We similarly conclude that David owed his efforts to his quasi-marital community to the same extent as if they had been married.
P.44 of Brief

Matter of Marriage of Lindemann, 92 Wn. App. 64, 92 Wash. App. 64, 960 P.2d 966 (Wash. Ct. App. 1998)
-Directly quoted in Brief, p.52-53-

Morgan v. Briney, 200 Wash. App. 380

In Re The Marriage of Pearson-Maines, 70 Wn. App. 860 (Wash. Ct. App. 1993)
--Relevant portion directly quoted in Brief, p.53-54-

In re Pennington, 142 Wn. 2d 592 (Wash. 2000)

Our Legislature requires a solemnized "civil contract" in order for a marriage to be valid. RCW 26.04.010(1); *see also* RCW 26.04.050, .120, .130; *Meton v. Indus. Ins. Dep't*, 104 Wn. 652, 655, 177 P. 696 (1919); *In re Estate of McLaughlin*, 4 Wn. 570, 588-89, 30 P. 651 (1892); *Roe v. Ludtke Trucking, Inc.*, 46 Wn. App. 816, 819, 732 P.2d 1021 (1987). Common-law marriage is not recognized under Washington law. *Peffley-Warner v. Bowen*, 113 Wn.2d 243, 249, 778 P.2d 1022 (1989); *In re Estate of Gallagher*, 35 Wn.2d 512, 514-15, 213 P.2d 621 (1950). Wholly unrelated to either kind of marriage, courts have recognized the existence of meretricious relationships, which this court has determined to be stable, cohabiting relationships. *See Connell*, 127 Wn.2d at 346.

Washington will recognize common-law marriages validly entered into in other states, but this exception is not applicable to the present cases. *Peffley-Warner*, 113 Wn.2d at 249 (citing *In re Welfare of Warren*, 40 Wn.2d 342, 344, 243 P.2d 632 (1952); *Gallagher*, 35 Wn.2d at 514-15).

For nearly a century, Washington law presumed all property acquired by unmarried cohabitants belonged to the holder of the legal title. *See, e.g., Latham v. Hennessey*, 87 Wn.2d 550, 552-53, 554 P.2d 1057 (1976); *Creasman v. Boyle*, 31 Wn.2d 345, 358, 196 P.2d 835 (1948); *Engstrom v. Peterson*, 107 Wn. 523, 530, 182 P. 623 (1919); *Stans v. Baitey*, 9 Wn. 115, 119, 37 P. 316 (1894). However, even when this presumption applied, courts recognized a variety of exceptions to this presumption. *See Latham*, 87 Wn.2d at 553-54. Among these exceptions were: (1) tracing source of funds, *West v. Knowles*, 50 Wn.2d 311, 313, 311 P.2d 689 (1957); (2) implied partnership/joint venture, *In re Estate of Thornton*, 81 Wn.2d 72, 78-81, 499 P.2d 864 (1972); (3) resulting trusts, *Walberg v. Mattson*, 38

Wn.2d 808, 812-14, 232 P.2d 827 (1951); (4) constructive trusts, *Humphries v. Riveland*, 67 Wn.2d 376, 389-90, 407 P.2d 967 (1965); (5) tenancy in common, *Shull v. Shepherd*, 63 Wn.2d 503, 506, 387 P.2d 767 (1963); and (6) contract theory, *Dahlgren v. Blomeen*, 49 Wn.2d 47, 50-52, 298 P.2d 479 (1956).

In 1984, this court discarded this presumption. *Lindsey*, 101 Wn.2d 299. *Lindsey* involved a couple who commenced an intimate relationship in 1974, legally married in 1976, and divorced in 1982. *Lindsey*, 101 Wn.2d at 300. The court declined to presume that property acquired *before* the legal marriage belonged to the holder of title, instead holding "that courts must `examine the [meretricious] relationship and the property accumulations and make a just and equitable disposition of the property.'" *Lindsey*, 101 Wn.2d at 304 (quoting *Latham*, 87 Wn.2d at 554).
p.45 of Brief

Warden v. Warden, 36 Wn. App. 693 (Wash. Ct. App. 1984)

Identity of Petitioner

This Petition for review is made by Lee Jorgensen, Petitioning party in a Committed Intimate Relationship matter dating back to April of 2020 in The Superior Court of the County of King.

Petitioner seeks review by The Supreme Court of a decision made in District 1 of The Court of Appeals to affirm the decision of The Superior Court dismissing the Petitioner's case with prejudice on a **CR 41(b)(3)** motion, made by the Respondent, after review by that Court filed by Mr. Jorgensen.

Citation of Court of Appeals Decision

Said decision was filed on 21 April, 2025 in The Court of Appeals, District 1 under No. 857550 in that Court, and states:

> *Smith, J. – Lee Jorgensen appeals from a trial court decision granting a CR 41(b)(3) motion and dismissing his petition to dissolve an alleged committed intimate relationship with his former*

romantic partner, Natalie Sears. Jorgensen contends the trial court's decision is not supported by substantial evidence in the record, challenges several trial management decisions, and contends he was deprived of a fair trial because of his status as a pro se litigant and bias. Substantial evidence in the record supports the trial court's findings and Jorgensen's other assertions of error do not provide a basis for reversal.

We affirm

Issues for Review

Petitioner enumerates the specific issues as follows:

1. The Court's opinion, *O.P. 1,* does not completely and accurately express my reasons for appealing the decision of the lower Court.
2. I believe my assertions of error of the lower Court to be substantiate.

3. No oral argument was heard by the appellate Court to aid it in understanding the totality of my position and experience in the lower Court during the trial.
4. The Court's decision, finding(s) and subsequent decision(s) are in conflict with published Court of Appeals finding(s) and decision(s).
5. The Court's finding(s) and opinion/decision(s) are in direct conflict with review of the same case in the same Court, (Albeit by a panel of different Judges in District 1, *unanimous*.), prior to this review. *See: Op. [emphasis ex.: P. 10]*

   Also see: In re Jorgensen v Sears, No. 82556-9-I, slip op. at 14 (Wash. Ct. App. Mar. 14, 2022) (unpublished),

   https://www.courts.wa.gov/opinions/pdf/825569.pdf

   [emphasis ex.: P. 14]
6. The Court found as, "fact", assertions made by the Respondent which were supported without evidence. *Op. P. 2 - 6*

7. The Court describes as different in nature and in conflict of one another, details of a certain event(s) in the record and testimony. *Op. P.3 & 9*
8. The admits prior prejudice against bifurcation in its statement. *See: Op. P.13*
9. "Due Process of Law" under the fifth and fourteenth amendments were impeded by Court decision(s) and administrative management during the case.
10. Ultimately, Petitioner believes the findings and opinion of the Court are in error.

Statement of the Case

This case was brought before the Court after an almost fourteen and a half year relationship between the parties. The case history is clearly described in the record documents, briefs filed, and opinion(s)/decision(s) of the Courts it has been in over its five years now. For the history of this case and its events, it's been before two Superior Court judges.

Under retired Judge Catherine Shaffer, see: appellants' brief, August, 2021 P. 1 – 3

Under Judge Chad Allred see: appellants' brief, P. 14 - 19

This case was examined as a, "frivolous", act on the part of the Petitioner, Lee Jorgensen in review by the Court of Appeals. However, the Court found it not to be, and, thus, the Petitioner seemed to have had basis for the appealing of the case to be heard, as the Court found in favor of the Petitioner on that issue. Then declined to award fees to the Respondent as sanctions against the Petitioner. *Op. P. 20*

It has been in litigation for five years as a case of a committed intimate relationship, as asserted by the Petitioner, Lee Jorgensen in April of 2020 after the uncontested breakup of the parties in January of that year. It only comes to litigation in the Court after a couple of months or so of attempted negotiations by the parties to fairly settle the matters pertaining to the

successful building of a business, (Which was near failing when the parties met.). The acquisition of properties where the parties cohabited over the years of the relationship. (For which, the Respondent would not have been able to maintain financially without the funds earned by the efforts contributed to the buildup by the Petitioner in the business, Deckhand Detailing, LLC. Then hopelessly comingled without objection by the Petitioner as the intent of him was that the relationship was for the duration of his lifetime. Which, in all appearances to the Petitioner, family and friends, and the community was shared mutually by the parties. There are volumes of evidence, and testimony given during the trial and in the record supporting the existence of a CIR, (Committed Intimate Relationship), in this case.

Petitioner respectfully stands by his assertions that the relationship between the parties was a CIR. And that procedural and discretionary errors were made leading up to the trial, as well as during it.

Some of these discretionary errors prejudiced the Petitioner, denying him the opportunity to prove, through discovery, the issue of hopelessly comingled funds. Establishing that the significant contributions in unpaid and underpaid labor for all those years during the relationship helped build, pay for, improve the value of, and maintain the assets and properties. Specifically, the business and the two properties in question. A cabin in Cle Elum, and a condominium in Seattle.

Another discretionary error, in my opinion, denied me, basically forcing me into a position where the attorney I had retained to handle presenting my case to the trier, Honorable Judge Chad Allred, was refused a brief continuance even though, I believe, he showed good cause for one. First on a motion, then on a motion for reconsideration. And had to withdraw from my case. With about one month or less to the trial date at that point, even though I tried frantically, no attorney I called, (And I called many.), would touch my case knowing a continuance would be refused. And inadequate time

remained for any attorney to properly prepare for a trial to present my case.

Though I cannot say for certain. It did prompt me, though, to call into question whether or not the trier foreknew the consequences I would face, (Presenting my case *pro se*.), in light of a refusal on his part to grant the requested continuance. As well as the questioning of whether or not there was intent and/or purpose in so doing. Again, I cannot say for certain. But the mere existence of the question is remarkable. As well as bothersome.

This was a lengthy relationship, and very complex in nature with all the build up of the assets, business, and properties. Especially considering the funds were hopelessly comingled and no records existed recording the separate contributions of the parties. Nor had I ever kept track of, or reviewed those details over the course of the relationship. I was completely motivated by my love for Natalie, and didn't really put to matter that things like the business and properties were not identified as jointly

owned, nor was I motivated by having money paid to me for my efforts and labor in our joint projects.

So, when we split up, and couldn't come to a fair agreement between us, I had to attempt to do it in the Courts.

The case has seen two decisions to dismiss it, and has been to the Court of Appeals twice. The first dismissal, under a Motion for Summary Judgement decision was reversed in the Court of Appeals. The second time affirmed, upholding the decision to dismiss the case with prejudice in the Superior Court under a **CR 41(b)(3)** motion.

This is a preponderance of evidence case, neither time Respondents' case/position was presented and/or heard.

Wherefore, I continue to believe that, in light of all the evidence in the record, and the testimony of the seven third party witnesses heard. And, in that the credibility of her testimony is, at best, obviously in serious question

when looked at. I have justified my assertions, without question, to the reasonably thinking mind.

It is due to this that I now exercise the option of bringing my case before the highest Court in The State of Washington – Washingtons' Supreme Court for review of the opinion/decision of The Court of Appeals in District One.

As a common citizen seeking justice in a case where a doctrine instead of a codified law is used, making the matter much more difficult to determine accurately due to the nature of interpreting this kind of relationship by the jurist interpreting it, without the element of subjectiveness and/or perception of the interpreter overcoming objectiveness. Using truth and fact as an ultimate authority, in concert with similar prior judgement and opinions. To which I believe I presented enough of during the trial, (Albeit, I could have used more time to fully present my case.), and submitted in the record to convince and justify my case.

I don't understand how one can look at the sum of all these five years of proceedings, and not recognize the existence of a CIR here in this case. Especially in light of the fact that the Court found in 2022 it was, indeed, a CIR we were in for twelve years, and the facts and evidence in the record supported it.

If this Court looks at this case and affirms the decision(s) of the lower Courts…, I feel a gross miscarriage of justice will have been allowed to occur. And one party, here, will be unjustly enriched. Contrarily to the purpose and intent of the doctrine governing the recognition of its adoption to stave off such a happening when two umnarried parties end such a relationship.

I would challenge this last effort of mine in this Court to obtain justice in this matter, to examine this case in somewhat *de novo* fashion in the interest of justice. Instead of allowing the efforts invested in a married-like relationship to be flushed down the proverbial toilet.

Argument

This case should be reviewed by The Supreme Court for the following reasons pursuant to **RAP 13.4(b)**.

(1) The decision of the Court of Appeals is in conflict with Supreme Court decisions.

(2) The decision of the Court of Appeals is in conflict with a published Court of Appeals decision.

(3) A significant question of law under the Constitution of the State of Washington or of the United States is involved.

(4) This Petition involves an issue(s) of substantial public interest that should be determined by the Supreme Court.

Considering the record including the two briefs, and comparing the findings and decisions in each. And reviewing the record in the appellants' brief, and the testimony of the witnesses and the parties during the trial, the decision to uphold and affirm the decision to dismiss

my Petition conflicts with Supreme Court decisions Connell v. Francisco; In re Marriage of Pennington; *et al.*

As well, the Court of Appeals affirmation of the Superior Court's decision to dismiss the Petition for reasons in the findings by the Court is in conflict with published opinion(s) establishing stable relations and continuous cohabitation of the parties in a CIR in *Morgan v. Briney, 200 Wash. App. 380*. Which the Court focused on significantly in determining the existence, or non-existence of the CIR in this case.

The Court also eluded to a minor issue the parties had in 2009 using, 'could have been', verbiage describing the minor issue as a serious infraction of, "actual or suspected infidelity in 2009, … ." *Op. P.3* . Then describing the same incident/issue as, "…a significant disruption and "discord" in 2009, … .". *Op. P. 8*. When, in fact, it was almost a nothing issue between the parties. It was settled almost immediately by them with no significant long, drawn-out recovery process involved.

The more serious of the two issues addressed by the Court it used to determine a lack of stability and continuous cohabitation happened in 2014. However the evidence in the record, testimony of the parties, and the exhibits showed significant proof that although they each occupied a different resident home owned by them, (In Ms. Sears' name.), there was evidential proof shown that they engaged immediately in marriage/couples counseling with a local counseling agency, read books on recovering a marriage or marriage-like relationship from such incidences. Restored the relationship to one of mutual love and commitment, and moved on as a committed intimate partnership couple would normally. All within about one third the time found as, "… not very significant … .", in the Morgan v. Briney case. As well as found in the opinion of the Court when in the Court of Appeals for the first time. *See: Op. under No. 82556-9-I, P. 9.*

At the same time, the Respondent claimed to have been engaged in marriage counseling with her now ex-

spouse Dan Sears, attempting to restore that marriage giving no evidence in any form of the counseling she claimed to be engaged in. While having multiple affairs with the Petitioner and, at least, one other male individual. And sending emails to the Petitioner communicating how hopeless it was her husband, Dan Sears, thought it was that the marriage was salvageable. Expressing her intent to be with the Petitioner in as soon as possible for a long-term serious, committed relationship. Even one time agreeing to a proposal for marriage.

In the end, both agreeing on the dissolving of the hopelessly, irretrievably broken marriage. Which the Court found not to be defunct long before they both agreed to the dissolving of the marriage.

Other testimonies made by the Respondent, yet accepted on the basis of her words are baffling as well.

Take, for instance the $15,000.00 payment made in early 2020, when the parties were involved in trying to

negotiate a fair and equitable settlement of the financial gains made by the joint efforts and contributions of the parties for joint purposes.

At first, it was a pre-settlement payment. Meant to help the Petitioner move on after working so hard all the years without compensation at all. Or being so grossly undercompensated, his minimal income provided for the long hours of work he performed didn't come close to a living wage at all.

Then, reporting to the Kittitas County Sheriff that the petitioner was a blackmailer and extortionist. The payment became a criminally imposed act by the Petitioner on the Respondent.

And, during the trial, it became evident during questioning her, the Respondent had reported it on her books for the purposes of showing L & I, during an investigation of an unpaid wages claim.

NOTE: *In which L & I found that 1.5 years of overtime wages alone were owed me in the amount of*

approximately $101,000.00. (L & I can only go back 1.5 years in such a claim.) Imagine what the amount of unpaid wages would be accrued over the course of 14.5 years in normal and overtime hours. And question where did those wages go? And what did they actually pay for when used by the one in control of and did not pay them?

Those funds identified as "severance pay" were marked as such so as to make it appear I was a mere employee of Deckhand Detailing, LLC, and not the committed intimate partner I actually was, and establish I left D.D., LLC. As well as to help the Respondent/owner on paper of Deckhand Detailing, LLC appear as if she actually paid me reasonably at the end of my tenure with D.D, LLC. The Petitioner marked those monies as "severance pay", so as to justify her story to them that he had been paid, at least some wages for appearances and the other reasons, I believe.

The $15,000.00 payment had now been shown to be given the Petitioner as three different type payments. One reasonably possible in light of everything, One, a

serious crime abandoned when the officer reported he needed to conduct a complete investigation of the allegations. The last one, pretty far fetched considering the amount in wages reportedly paid to the Petitioner as a mere, "employee" of the Respondents. None of the other employees of Deckhand Detailing, LLC ever got that kind of severance pay when leaving the company after making more money in compensation than the Petitioner did.

And, when it was pointed out to her that she had characterized that one payment, in description, as three different types or reasons, and she was asked to please tell the Court which one of the three it actually was. Her answer was basically; "… all of them.".

And the rest of the way the Respondent hesitated in answering almost every question without forcing the Petitioner to call up exhibits to have her deny the evidence showing the questions asked her brought merit to the Petitioner's case in her admitting in answer to

them, somewhat speak to the questionability of her credibility in her overall testimony throughout this case.

I contend that if the Court at the trial level accepts such testimony, recognizing it as credible when it obviously is not. And there's no remedy for that at the appellate level. Putting in question other testimony and statements entered by her, sworn to be true, in documents and declarations. Perhaps there should be. At least somewhere in the Courts.

I remember I my motion for more time to present my case. Primarily, the main reason was it was taking so incredibly long to question her. A witness who seemed unwilling to answer. Conveniently forgetting the entirety of the time and experiences we had together. Forcing me to call up documentary evidence of the answers for each and every question, prompting her to admit to the truthful answers to the questions I posed her. I believe I stated in my six page motion that; "… not even a seasoned trial attorney could have anticipated that kind of thing.".

Apparently, the trier agreed to my motions' reasons. But only granted me a part of what I had requested. Then continued to hold the trial to a stopwatch-like time limit. And though I had the lions' share of evidence and all the third party witnesses to get testimony from. The total sum of the 'estimated time of the trial' was split 50%/50%. Even the additional time allotted for the trial on the motion was split it in that way.

I had, originally, more than 20 witnesses designated as those I might call to question for testimony. Some of them being family members, of both parties involved with us during the course of our relationship.

Some of them, when I asked if they'd be willing to show up and just tell the truth, answered that they would rather not. But would if compelled to.

I felt it best to preserve the relations they had with the Respondent, and spare them the undesirable feelings they might have in being put in that position and situation. And chose instead to choose less than the entire

list of people I could have had on the stand, thinking it would also save Court time to just choose the fewest credible and most reliable people close to us when we were a couple to testify. And the truth would be recognized.

Today, I'm asking myself; "In the Courts of this day, in this land, could that kind of thought and consideration be misplaced?" "Could it be that for a citizen to obtain justice today, having a mountain of evidence and 23 witnesses who all will testify the truth in like kind and manner you, without reserve for anyone else's feelings or what it might do to them make them come even if they don't necessarily want to regardless of the consequences to them? Including how much of the Court's time you might need to consume?"

Then have your character attacked and put into question by 'professionals' who know that people are people. Even those who occupy the office of a judicial office as a judge. And that the character of an opponent in a Courtroom you can assassinate the character of,

means black marks on him or her, and points against them to all the people that can possibly be swayed in their thinking by those kinds of attacks and questions regarding their character if successfully raised. Even if they have no relevance as to the actual matter before the Court.

This was a preponderance of evidence case won by a party to the cause without presenting any credible evidence as to whether or not a CIR existed in the form of first hand, third party witnesses denying what they saw in our behaviors as unbecoming of that type of a relationship. Not in testimony or in declarative document form.

And against all that was presented the Court by me, to the Respondents' nothing. The Court found it more likely that it was more likely to have happened the way the Respondent said things happened, than the way the seven third party witnesses testified to. Not to discount the 85 plus exhibits called by me to the Respondent's 15 during the trial.

And, speaking of the trial. The trial was to determine only if a CIR was existent or not. The question(s) about community-like property(ies) and how they are to be split, if there are any, (Perhaps they exist only in appreciation of value due to improvements and other economic factors such as equity built by collective contributions to the payoff of the properties. Or merely time/economic appreciation per inflation, or other factors affecting property values. (Conversely, depreciation can also occur. Affecting property values to the negative.)

However, it appears the Courts have considered yet undetermined community-like properties in helping to determine if, indeed, a CIR was existent. Thereby using yet to be determined community-like properties to aid in whether or not a CIR existed. And, at the same time ruled the appeal of this case was "not frivolous". Logically, then, one would also have to presume the original Petition was also "not frivolous".

And, finally, a sixth factor/element was added to this CIR case, not found in the five Connell v. Francisco

factors establishing, when found, a "meretricious", or married-like relationship historically used in determining the existence of a CIR. That is when a spouse, or quasi-spouse partner acts autonomously on behalf of the other partner. Which is a fairly common occurrence in a married, or married-like relationship situation.

Evidence in the record and testimony heard show that to be a fact more than once in this case. Many others in similar/identical situations relationally do this all the time without reserve.

When a spouse or spouse-like partner sees an opportunity the other partner might benefit from, and the other partner is out of touch or unreachable. Then, weighing the possible benefits to the other partner, knowing if they don't act on the opportunity immediately or it would pass away.

Then, weighing that there would be no negative impact on the other partner, or the relationship. And that their action(s) could easily without trouble to either

partner be undone. The one weighing whether or not to act on the opportunity to improve things on behalf of the other acts without discussion on behalf of the other in hopes that his/her action(s) will net improvement in some way or form for the other.

Then, should, on discussion with the other partner, it's discovered that they don't want to follow it on? Whatever action was taken to enable, or give the opportunity the chance to benefit the other partner is merely undone. No harm. No foul.

I believe this kind of behavior, "Acting Autonomously on Behalf of the Other", is a recognizable signal/sign/factor in a married or married-like relationship when performed by a spouse or committed intimate partner.

Authorities Re: CIR

Connell v. Francisco, 127 Wn. 2d 339, 346 (Wash. 1995)

[1] A meretricious relationship is a stable, marital-like relationship where both parties cohabit with knowledge that a lawful marriage between them does not exist. *In re*

Marriage of Lindsey, 101 Wn.2d 299, 304, 678 P.2d 328 (1984)

[2] 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; *Latham v. Hennessey*, 87 Wn.2d 550, 554, 554 P.2d 1057 (1976); *In re Marriage of DeHollander*, 53 Wn. App. 695, 699, 770 P.2d 638 (1989).

In re Harris, No. 84501-2-I (Wash. Ct. App. July 1, 2024)

Koher v Morgan, 93 Wn. App.398, 402 (Wash. Ct. App. 1998)

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

In re Marriage of Lindemann, 92 Wn. App. 64, 72, 79, 960 P.2d 966, 971 (1998)

Morgan v. Briney, 200 Wash. App. 380

In re Pennington, 142 Wn. 2d 592 (Wash. 2000)

Warden v. Warden, 36 Wn. App. 693 (Wash. Ct. App. 1984)

See also: **Trial Brief, *CP, 907-916***

Extra Element(s)/Factor(s) to be Considered in a CIR

Acting autonomously on behalf of the other:

When relationships of this nature are built, codified by commitment the couple has for one another, and maintained mutually. Times and instances come into the lives of them, where one, or the other sees a positive benefit to act on behalf of the other, without prior consultation, planning, or agreement.

They see the benefit by doing it on behalf of the other in such a way, recognizing that no negative effector impact will occur as a result of doing it. And the good benefit, knowing the other intimately, would not be an offense to the other, (Even if they didn't necessarily agree with it.), and would, if nothing more, appreciate the

motive and intent to do good to them, knowing it was done for the sake of love towards them.

In a few instances, as in any relationship of this nature, this occurred.

Hopelessly commingled funds:

It is both apparent, and evident that the parties both generated the income they received from the revenue generated by the business, Deckhand Detailing, LLC exclusively. That the sweat-efforts and extremely significant time invested by the parties saved what was a business close to failure. And sustained, maintained, and grew it into what should be looked at as a roaring success story. Accomplished by their joint efforts and services to that end. Quite a statement as to their commitment to invest of themselves, in, at least the ability to work in joint concert with one another towards a common goal according to a common plan. Which succeeded in spades when viewed from any angle.

The income generated from these efforts, which use is stated herein, was quite probably 99.9% deposited into bank accounts bearing Ms. Sears' name, The business governor/owner/operator, on paper, was also Ms. Sears.

In Washington State, the various governing statutes regarding who is a business partner in an LLC, basically states that if one is acting and performing the many duties of a partner in such a business of this type. He, or she is, in fact, recognized as a business partner in that venture. And, that in situations, such as this case present themselves, where legal partnership is a more fitting description of a functioning member, or a mere 'employee' in the daily operations of the business. He, or she is ascribed that title and position for such purposes.

I believe that is evident here, in this case, in relation to the business, Deckhand Detailing, LLC.

It has also been recognized, and established in this Court the first time it came through it in 2021 under No.

82556-9. In this Court's decision and opinion, I believe the three Judge panel who ruled unanimously in the Appellants' favor, firmly established that.

And, since there are no records to separate who's funds were who's, and/or where they were generated from, and who was responsible for generating them. But literally paid for everything the parties acquired, and paid for in their lives, at every level. Those funds must be, then, considered hopelessly commingled as well.

And, in that the properties were acquired due to the recognized, and apparent immediate and future successes seen ahead of them. And/or for joint reasons to the benefit of both parties mutually. And, the ongoing payments, equity, and property appreciation over the course of the relationship. Are, also, to be considered as commingled into the assets as "community-like assets".

Therefore, the entirety of what was acquired, and placed only on paper, in Ms. Sears' name, at that time, during the relationship become commingled, hopelessly. Both

funds, and assets. *See: Contents of article in Gonzaga Law Review by J. Mark Weiss titled Community Property Interests in Separate Property Businesses in Washington, [Vol 40:1], pages 205 thru 233. et al; (Including case law cited therein.).*

Testimony of the third party witnesses of the Petitioner v. Sworn Declarations in the Record given by them:

The witnesses called by the Appellant were as follows:

Faith Swenson-Rowe:	*See: Declarations filed CP, P.606-608; R.P. p.29, ln.17 thru p.44, ln.9, R.P. p.58 thru p.61, ln.9*
Ben Yawitz	*See: Declarations filed CP, p.609-611; R.P. p.65 thru p.75, ln.13; R.P. p.79, ln13 thru p.80, ln24; R.P.81, ln10 thru p.81, ln.5*

Tim Horton	*See: Declaration filed as CP, p. 624-627; R.P. p.93, ln.8 t thru p.105, ln.15; R.P. p.113 thru ln.11 thru p.116, ln. 24; R.P. p.121, ln.16 thru p.122, ln.15; R.P. p.123, ln.13 - 22; R.P. 125, ln.11 thru p.126, ln.3*
Carlos Smith	*See: Declarations filed CP, p.612-615; R.P. p.136, ln.12 thru p.141, ln25*
Dale Partna	*See: Declarations filed CP, p, 628-631 ; R.P. p.144, ln.18 thru p.165, ln.14; R.P. p,174,oln.9 thru p.177, ln.25*
Ronald Chase	*See: Declarations filed CP, p. 616-619; R.P. p.179, ln.20 thru p.193, ln.6; p.193, ln.17 - 21; R.P. p.196, ln.8 thru p.197, ln.24*

Graham Baldwin — *See: Declaration filed CP, p. 850-852; R.P. p.385, ln.8 thru p.395, ln.4*

Testimony of the Parties to this Case:

Natalie Seara, NKA Yuse: — *R.P. p.201, ln.6 thru p. 311, ln.8; R.P. p.328, ln8 thru p.380, ln.12; R.P. p.396, ln.10 thru p.421, ln.12; R.P. p.461, ln. 8 thru p.486, ln.10; R.P. p.493, ln.3 thru p.496, ln.9*

Lee Jorgensen: — *R.P. p.497, ln.19 thru p.530, ln.20; R.P. p.580, ln.18 thru p.584, ln.2*

Authorities Re: Commingled Funds

Separate property brought to this state by a married man and intermingled with funds accumulated here, with no effort to keep them separate, becomes community property. Mumm v. Mumm, 63 Wn.2d 349, 352, 387 P.2d 547 (1963). Commingled funds are thus presumed

to be community property. And the burden is on the spouse claiming separate funds to clearly and convincingly trace them to a separate source. In re Estate of Binge, 5 Wn.2d 446, 466, 105 P.2d 689 (1940); Harry M. Cross, Community Property Law in Washington (Revised 1985), 61 Wn. L. Rev. 13, 55-56, 62 (1986).

However, only when money in a joint account is hopelessly commingled and cannot be separated is it rendered entirely community property. Pearson-Maines, 70 Wn. App. at 866.

The name under which property is held does not constitute direct and positive evidence determinative of whether the property is community or separate. Hurd, 69 Wn. App. at 51.

• Separate property acquired before marriage remains separate unless its character is changed. Id.

• Commingled funds become community property when they cannot be traced or identified. Id.

• The name under which property is held is not determinative of a change of character. Id. at 51.

PROPERTY AQUIRED DURING THE MARRIAGE

Property acquired during the marriage 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); Cross, supra, at 27-28. The presumption is that it is community property. And the party asserting

otherwise has the burden of proving it was acquired with separate funds. Pearson-Maines, 70 Wn. App. at 868 (citing Cross, supra, at 62).

In Re The Marriage of Pearson-Maines, 70 Wn. App. 860 (Wash. Ct. App. 1993)

[4] Community Property — Separate Property — Commingling With Community Property — Effect. Separate funds deposited into an account containing community funds do not become community property unless the funds are so commingled that they cannot be distinguished or apportioned.

[7] Community Property — Separate Property — Increase in Value — Community Contribution. The value of community services that increase the value of separate property may be fixed either by determining an equivalent of a reasonable wage or by the resulting increase in value.

GROSSE, J.

The property was improved over the duration of the parties' relationship by both separate funds and community effort.

The factual background of this case is complex ……. .

In a dissolution proceeding, the trial court is authorized under RCW 26.09.080 to exercise its discretion in awarding property, and all property is before the court for distribution, whether community or separate. The

characterization of property alone is not controlling; the trial court must dispose of the property in a just and equitable manner considering all the circumstances.

When money in a single account cannot be apportioned to separate and community sources, the community property presumption will render the entire fund community property.

"When separate and community property become commingled, the entirety is presumed to be community property." *Id.* This is one of several key presumptions that are applicable. First, any increase in the value of separate property is presumed to be separate property. *In re* Marriage of Elam, 650 P.2d 213, 216 (Wash. 1982). That presumption may be rebutted by "direct and positive evidence" that the increase is attributable to community funds or labor. ***Id*** When funds are hopelessly commingled and cannot be separated, the funds are presumed to be community property. *Marriage of Skarbek* 997 P2d at 450. A spouse claiming the funds to be separate property bears the burden, by clear and convincing evidence, to trace the funds to a separate source.

In Re: The Marriage of Flagella and Flagella, No. 49066-8-II Consolidated With 49763-8-II

The trial court has broad discretion in awarding property, and we will reverse only for manifest abuse of discretion. *In re Marriage of Zier*, 136 Wn. App. 40, 45, 147 P.3d 624 (2006).

We review a trial court's characterization of property as community or separate de novo, but we review the findings of fact

on which that characterization was based for substantial evidence. *In re Marriage of Skarbek*, 100 Wn. App. 444, 447, 997 P.2d 447 (2000).

Commingling of separate and community funds may give rise to a presumption that all are community property. *Schwarz*, 192 Wn. App. at 190. "This is not commingling in the ordinary sense, however; it must be hopeless commingling." *Schwarz*, 192 Wn. App. at 190 (footnote omitted). "It is '[o]nly if community and separate funds are so commingled that they may not be distinguished or apportioned is the entire amount rendered community property.'" *Schwarz*, 192 Wn. App. at 190 (quoting *In re Marriage of Pearson-Maines*, 70 Wn. App. 860, 866, 855 P.2d 1210 (1993)). "If the sources of the deposits can be traced and identified, the separate identity of the funds is preserved." *Skarbek*, 100 Wn. App. at 448.

Matter of Marriage of Lindemann, 92 Wn. App. 64, 92 Wash. App. 64, 960 P.2d 966 (Wash. Ct. App. 1998)

[10] The Supreme Court rejected a similar argument in, *In re Estate of Witte*, 21 Wn.2d 112, 127-128, 150 P.2d 595 (1944). The husband came into the marriage with separate property but failed to maintain a segregation between what he earned from his labor and what he realized as rent, issue or profit of his separate property. *In re Estate of Witte*, 21 Wn.2d at 121. The trial court characterized as the husband's separate property the land he acquired during the marriage with

his commingled income. The Supreme Court, reversing, declared itself unwilling to let the characterization of property turn on how much each spouse helped around the house. Whether the wife did or did not contribute significantly to housekeeping or child-raising was immaterial, "for even if she did not, the personal earnings of the husband nevertheless belonged to the community. *In re Estate of Witte*, 21 Wn.2d at 128. David's industry in home improvement projects is similarly irrelevant; his earnings, like Kimi's, belonged to the community. Unlike money, which can be separate in character when it is acquired before the relationship, labor performed during a marital or quasi-marital relationship has a community character from its inception. In our community property system, there is no basis for allocating one party's labor to a separate property account.

Koher v Morgan, 968 P.2d 920, 922 (Wash. Ct. App. 1998) (Finding a commingling of profits due to under compensation.)

Gonzaga Law Review
[Vol. 40:1]

Community Property Interests in Separate Property Businesses in Washington
J. Mark Weiss

Harry M. Cross, Community Property Law in Washington (Revised 1985), 61 Wn. L. Rev. 13, 23 (1986)

Conclusion

Petitioner pleas and prays this Court accept and review this case, and the sum of the evidence in the record, and the testimony of all the witnesses in *de novo* manner - in the interest of justice. Reverse the decision to affirm the dismissal of this case with or without prejudice, also in the interest of justice. And remand it for discovery to assess the accuracy of my assertion of hopelessly comingled funds which were used by the Respondent without hinderance or question during the relationship to build and acquire, improve and maintain business and properties. (Those records must be made open to examination/discovery to determine the validity of my claim(s).) And support a lifestyle of enjoyment, acquiring of possessions whenever the need and/or want arose, travel, and free of lacking in most every area a person could need.

Then, move to the third stage of the CIR after the community-like property(ies), or the gain in value(s) of them are identified, and valued. (*If found.*) And set the

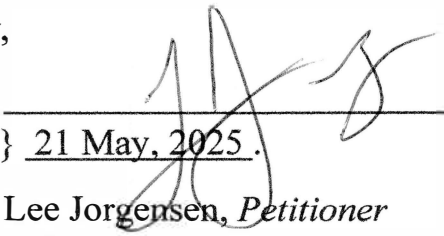
fair and equitable settlement split of those property(ies), or value gain of them over the course of the CIR, if so determined by the Supreme Court.

Certification

I certify that, pursuant to RAP 18.17, this brief contains 8,698 words using word processing software.

I swear, under penalty of perjury of the law(s) of The State of Washington, that all assertions made herein are true and correct to the best of my knowledge and belief.

Respectfully,



{*Date*} 21 May, 2025 .

Lee Jorgensen, *Petitioner*
P.O. Box 345
Chelan, Washington 98816

Signed at; Chelan {*city*} Washington {*state*}

Appendix to Petition

Contents:

U.S. Constitution; Fifth Amendment, 8 pages

U.S. Constitution; Fourteenth Amendment, 2 pages

Unpublished Opinion; No. 85755-0-I, 20 pages

Unpublished Opinion; No. 82556-9-I, 18 pages

United States Constitution - Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, *without due process of law*; nor shall private property be taken for public use, without just compensation.

Due Process

What is due process?

Due process (or due process of law) primarily refers to the concept found in the Fifth Amendment to the US Constitution, which says no one shall be "deprived of life, liberty or property without due process of law" by the federal government. The Fourteenth Amendment, ratified in 1868, uses the same eleven words, called the Due Process Clause, to extend this obligation the the states. These words have as their central promise an assurance that all levels of American government must operate within the law ("legality") and provide fair procedures.

There are at least three other uses of the phrase "due process" in American constitutional law, and this article will also touch on each briefly.

Incorporation

The Fifth Amendment's reference to "due process" is only one of many promises of protection the Bill of Rights gives people against the federal government. Originally these promises had no application at all against the states; the Bill of Rights was interpreted to only apply against the federal government, given the debates surrounding its enactment and the language used elsewhere in the Constitution to limit State power. (see *Barron v City of Baltimore* (1833)). However, this changed after the enactment of the Fourteenth Amendment and a string of Supreme Court cases that began applying the same limitations on the states as the Bill of Rights. Initially, the Supreme Court only piecemeal added Bill of Rights protections against the States, such as in Chicago, *Burlington & Quincy Railroad Company v. City of Chicago* (1897) when the court incorporated the Fifth Amendment's Takings Clause into the Fourteenth Amendment. The Court saw these protections as a function of the Due Process Clause of the Fourteenth Amendment only, not because the Fourteenth Amendment made the Bill of Rights apply against the states. Later, in the middle of the Twentieth Century, a series of Supreme Court decisions found that the Due Process Clause "incorporated" most of the important elements of the Bill of Rights and made them applicable to the states. If a Bill of Rights guarantee is " incorporated " in the "due process" requirement of the Fourteenth Amendment, state and federal obligations are exactly the same. For more information on the incorporation doctrine, please see this Wex Article on the Incorporation Doctrine .

Substantive due process

The words "due process" suggest a concern with procedure rather than substance, and that is how many—such as Justice Clarence Thomas, who wrote "the Fourteenth Amendment's Due Process Clause is not a secret repository of substantive guarantees against unfairness" —understand the Due Process Clause. However, others believe that the Due Process Clause does include protections of substantive due process—such as Justice Stephen J. Field, who, in a dissenting opinion to the Slaughterhouse Cases wrote that "the Due Process Clause protected individuals from state legislation that infringed upon their 'privileges and immunities' under the federal

Constitution" (see this Library of Congress Article: https://www.loc.gov/exhibits/magna-carta-muse-and-mentor/due-process-of-law.html)

Substantive due process has been interpreted to include things such as the right to work in an ordinary kind of job, marry, and to raise one's children as a parent. In *Lochner v New York* (1905), the Supreme Court found unconstitutional a New York law regulating the working hours of bakers, ruling that the public benefit of the law was not enough to justify the substantive due process right of the bakers to work under their own terms. Substantive due process is still invoked in cases today, but not without criticism (See this Stanford Law Review article to see substantive due process as applied to contemporary issues).

The promise of legality and fair procedure

Historically, the clause reflects the Magna Carta of Great Britain, King John's thirteenth century promise to his noblemen that he would act only in accordance with law ("legality") and that all would receive the ordinary processes (procedures) of law. It also echoes Great Britain's Seventeenth Century struggles for political and legal regularity, and the American colonies' strong insistence during the pre-Revolutionary period on observance of regular legal order. The requirement that the government function in accordance with law is, in itself, ample basis for understanding the stress given these words. A commitment to legality is at the heart of all advanced legal systems, and the Due Process Clause is often thought to embody that commitment.

The clause also promises that before depriving a person of life, liberty or property, the government must follow fair procedures. Thus, it is not always enough for the government just to act in accordance with whatever law there may happen to be. People may also be entitled to have the government observe or offer fair procedures, whether or not those procedures have been provided for in the law on the basis of which it is acting. Action denying the process that is "due" would be unconstitutional. Suppose, for example, state law gives students a right to a public education, but doesn't say anything about discipline. Before the state could take that right away from a student, by expelling her for misbehavior, it would have to provide fair procedures, i.e. "due process."

How can we know whether process is due (what counts as a "deprivation" of "life, liberty or property"), when it is due, and what procedures have to be followed (what process is "due" in those cases)? If "due process" refers chiefly to procedural subjects, it says very little about these questions. Courts unwilling to accept legislative judgments have to find answers somewhere else. The Supreme Court's struggles over how to find these answers echo its interpretational controversies over the years, and reflect the changes in the general nature of the relationship between individuals and government.

In the Nineteenth Century government was relatively simple, and its actions relatively limited. Most of the time it sought to deprive individuals of life, liberty or property it did so through criminal law, for which the Bill of Rights explicitly stated quite a few procedures that had to be followed (like the right to a jury trial) — rights that were well understood by lawyers and courts operating in the long traditions of English common law. Occasionally it might act in other ways,

for example in assessing taxes. In *Bi-Metallic Investment Co. v. State Board of Equalization* (1915), the Supreme Court held that only politics (the peoples' "power, immediate or remote, over those who make the rule") controlled the state's action setting the level of taxes; but if the dispute was about a taxpayer's individual liability, not a general question, the taxpayer had a right to some kind of a hearing ("the right to support his allegations by arguments however brief and, if need be, by proof however informal"). This left the state a lot of room to say what procedures it would provide, but did not permit it to deny them altogether.

Distinguishing due process

Bi-Metallic established one important distinction: the Constitution does not require "due process" for establishing laws; the provision applies when the state acts against individuals "in each case upon individual grounds" — when some characteristic unique to the individual is involved. Of course there may be a lot of people affected; the issue is whether assessing the effect depends "in each case upon individual grounds." Thus, the due process clause doesn't govern how a state sets the rules for student discipline in its high schools; but it does govern how that state applies those rules to individual students who are thought to have violated them — even if in some cases (say, cheating on a state-wide examination) a large number of students were allegedly involved.

Even when an individual is unmistakably acted against on individual grounds, there can be a question whether the state has "deprive[d]" her of "life, liberty or property." The first thing to notice here is that there must be state action. Accordingly, the Due Process Clause would not apply to a private school taking discipline against one of its students (although that school will probably want to follow similar principles for other reasons).

Whether state action against an individual was a deprivation of life, liberty or property was initially resolved by a distinction between "rights" and "privileges." Process was due if rights were involved, but the state could act as it pleased in relation to privileges. But as modern society developed, it became harder to tell the two apart (ex: whether driver's licenses, government jobs, and welfare enrollment are "rights" or a "privilege." An initial reaction to the increasing dependence of the public on the government was to look at the seriousness of the impact of government action on an individual, without asking about the nature of the relationship affected. Process was due before the government could take an action that affected people in a grave way.

In the early 1970s, however, many scholars accepted that "life, liberty or property" was directly affected by state action, and wanted these concepts to be broadly interpreted. Two Supreme Court cases involved teachers at state colleges whose contracts of employment had not been renewed as they expected, because of some political positions they had taken. Were they entitled to a hearing before they could be treated in this way? Previously, a state job was a "privilege" and the answer to this question was an emphatic "No!" Now, the Court decided that whether either of the two teachers had "property" would depend in each instance on whether persons in their position, under state law, held some form of tenure. One teacher had just been on a short term contract; because he served "at will" — without any state law claim or expectation to continuation — he had no "entitlement" once his contract expired. The other teacher worked

under a longer-term arrangement that school officials seemed to have encouraged him to regard as a continuing one. This could create an "entitlement," the Court said; the expectation need not be based on a statute, and an established custom of treating instructors who had taught for X years as having tenure could be shown. While, thus, some law-based relationship or expectation of continuation had to be shown before a federal court would say that process was "due," constitutional "property" was no longer just what the common law called "property"; it now included any legal relationship with the state that state law regarded as in some sense an "entitlement" of the people. Licenses, government jobs protected by civil service, or places on the welfare rolls were all defined by state laws as relations the person was entitled to keep until there was some reason to take them away, and therefore process was due before they could be taken away. This restated the formal "right/privilege" idea, but did so in a way that recognized the new dependency of the public on relations with government, the "new property" as one scholar influentially called it.

When process is due

In its early decisions, the Supreme Court seemed to indicate that when only property rights were at stake (and particularly if there was some demonstrable urgency for public action) necessary hearings could be postponed to follow provisional, even irreversible, government action. This presumption changed in 1970 with the decision in *Goldberg v. Kelly*, a case arising out of a state-administered welfare program. The Court found that before a state terminates a welfare recipient's benefits, the state must provide a full hearing before a hearing officer, finding that the Due Process Clause required such a hearing.

What procedures are due

Just as cases have interpreted when to apply due process, others have determined the sorts of procedures which are constitutionally due. This is a question that has to be answered for criminal trials (where the Bill of Rights provides many explicit answers), for civil trials (where the long history of English practice provides some landmarks), and for administrative proceedings, which did not appear on the legal landscape until a century or so after the Due Process Clause was first adopted. Because there are the fewest landmarks, the administrative cases present the hardest issues, and these are the ones we will discuss.

The *Goldberg* Court answered this question by holding that the state must provide a hearing before an impartial judicial officer, the right to an attorney's help, the right to present evidence and argument orally, the chance to examine all materials that would be relied on or to confront and cross-examine adverse witnesses, or a decision limited to the record thus made and explained in an opinion. The Court's basis for this elaborate holding seems to have some roots in the incorporation doctrine.

Many argued that the *Goldberg* standards were too broad, and in subsequent years, the Supreme Court adopted a more discriminating approach. Process was "due" to the student suspended for ten days, as to the doctor deprived of his license to practice medicine or the person accused of being a security risk; yet the difference in seriousness of the outcomes, of the charges, and of the institutions involved made it clear there could be no list of procedures that were always "due."

What the Constitution required would inevitably be dependent on the situation. What process is "due" is a question to which there cannot be a single answer.

A successor case to *Goldberg* , *Mathews v. Eldridge* , tried instead to define a method by which due process questions could be successfully presented by lawyers and answered by courts. The approach it defined has remained the Court's preferred method for resolving questions over what process is due. *Mathews* attempted to define how judges should ask about constitutionally required procedures. The Court said three factors had to be analyzed:

- First, the private interest that will be affected by the official action;
- Second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;
- Finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Using these factors, the Court first found the private interest here less significant than in *Goldberg* . A person who is arguably disabled but provisionally denied disability benefits, it said, is more likely to be able to find other "potential sources of temporary income" than a person who is arguably impoverished but provisionally denied welfare assistance. Respecting the second, it found the risk of error in using written procedures for the initial judgment to be low, and unlikely to be significantly reduced by adding oral or confrontational procedures of the *Goldberg* variety. It reasoned that disputes over eligibility for disability insurance typically concern one's medical condition, which could be decided, at least provisionally, on the basis of documentary submissions; it was impressed that Eldridge had full access to the agency's files, and the opportunity to submit in writing any further material he wished. Finally, the Court now attached more importance than the *Goldberg* Court had to the government's claims for efficiency. In particular, the Court assumed (as the *Goldberg* Court had not) that "resources available for any particular program of social welfare are not unlimited." Thus additional administrative costs for suspension hearings and payments while those hearings were awaiting resolution to persons ultimately found undeserving of benefits would subtract from the amounts available to pay benefits for those undoubtedly eligible to participate in the program. The Court also gave some weight to the "good-faith judgments" of the plan administrators what appropriate consideration of the claims of applicants would entail.

Matthews thus reorients the inquiry in a number of important respects. First, it emphasizes the variability of procedural requirements. Rather than create a standard list of procedures that constitute the procedure that is "due," the opinion emphasizes that each setting or program invites its own assessment. The only general statement that can be made is that persons holding interests protected by the due process clause are entitled to "some kind of hearing." Just what the elements of that hearing might be, however, depends on the concrete circumstances of the particular program at issue. Second, that assessment is to be made concretely and holistically. It is not a matter of approving this or that particular element of a procedural matrix in isolation, but of assessing the suitability of the ensemble in context.

Third, and particularly important in its implications for litigation seeking procedural change, the assessment is to be made at the level of program operation, rather than in terms of the particular needs of the particular litigants involved in the matter before the Court. Cases that are pressed to appellate courts often are characterized by individual facts that make an unusually strong appeal for proceduralization. Indeed, one can often say that they are chosen for that appeal by the lawyers, when the lawsuit is supported by one of the many American organizations that seeks to use the courts to help establish their view of sound social policy. Finally, and to similar effect, the second of the stated tests places on the party challenging the existing procedures the burden not only of demonstrating their insufficiency, but also of showing that some specific substitute or additional procedure will work a concrete improvement justifying its additional cost. Thus, it is inadequate merely to criticize. The litigant claiming procedural insufficiency must be prepared with a substitute program that can itself be justified.

The *Mathews* approach is most successful when it is viewed as a set of instructions to attorneys involved in litigation concerning procedural issues. Attorneys now know how to make a persuasive showing on a procedural "due process" claim, and the probable effect of the approach is to discourage litigation drawing its motive force from the narrow (even if compelling) circumstances of a particular individual's position. The hard problem for the courts in the *Mathews* approach, which may be unavoidable, is suggested by the absence of fixed doctrine about the content of "due process" and by the very breadth of the inquiry required to establish its demands in a particular context. A judge has few reference points to begin with, and must decide on the basis of considerations (such as the nature of a government program or the probable impact of a procedural requirement) that are very hard to develop in a trial.

While there is no definitive list of the "required procedures" that due process requires, Judge Henry Friendly generated a list that remains highly influential, as to both content and relative priority:

1. An unbiased tribunal.
2. Notice of the proposed action and the grounds asserted for it.
3. Opportunity to present reasons why the proposed action should not be taken.
4. The right to present evidence, including the right to call witnesses.
5. The right to know opposing evidence.
6. The right to cross-examine adverse witnesses.
7. A decision based exclusively on the evidence presented.
8. Opportunity to be represented by counsel.
9. Requirement that the tribunal prepare a record of the evidence presented.
10. Requirement that the tribunal prepare written findings of fact and reasons for its decision.

This is not a list of procedures which are required to prove due process, but rather a list of the kinds of procedures that might be claimed in a "due process" argument, roughly in order of their perceived importance.

Author:

The original text of this article was written and submitted by Peter Strauss

[Last reviewed in October of 2022 by the Wex Definitions Team]

United States Constitution – Fourteenth Amendment

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, *without due process of law*; *nor deny to any person within its jurisdiction the equal protection of the laws*.

Substantive Due Process

Substantive due process is the principle that the Fifth and Fourteenth Amendments of the U.S. Constitution protect fundamental rights from government interference. Specifically, the Fifth and Fourteenth Amendments prohibit the government from depriving any person of "life, liberty, or property without due process of law." The Fifth Amendment applies to federal action, and the Fourteenth Amendment applies to state action.

The words *"due process"* suggest a concern with *procedure* rather than substance. *Substantive* due process has been interpreted to include things such as the right to work in an ordinary kind of job, to marry, and to raise one's children as a parent. Compare with procedural due process.

The Supreme Court's first foray into defining which government actions violate substantive due process was during the Lochner Era. In *Lochner v New York* (1905), the Supreme Court found a New York law regulating the working hours of bakers to be unconstitutional, ruling that the public benefit of the law was not enough to justify the substantive due process right of the bakers to work under their own terms. The Court determined that the freedom to contract and other economic rights were fundamental, and state efforts to control employee-employer relations, such as minimum wages, were struck down.

In 1937, the Supreme Court rejected the Lochner Era's interpretation of substantive due process in *West Coast Hotel v. Parrish*, 300 U.S. 379 (1937) by allowing Washington to implement a minimum wage for women and minors.

Following *Carolene Products*, 304 U.S. 144 (1938), the Supreme Court has determined that fundamental rights protected by substantive due process are those deeply rooted in U.S. history and tradition, viewed in light of evolving social norms. These rights are not explicitly listed in the Bill of Rights, but rather are the penumbra of certain Amendments that refer to or assume the existence of such rights. This has led the Supreme Court to find that personal and relational rights, as opposed to economic rights, are fundamental and protected. Specifically, the Supreme Court has interpreted substantive due process to include, among others, the following fundamental rights:

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Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of the Committed Intimate Relationship of LEE JORGENSEN, Appellant, and NATALIE SEARS, Respondent.	No. 85755-0-I DIVISION ONE UNPUBLISHED OPINION

SMITH, J. — Lee Jorgensen appeals from a trial court decision granting a CR 41(b)(3) motion and dismissing his petition to dissolve an alleged committed intimate relationship with his former romantic partner, Natalie Sears.[1] Jorgensen contends the trial court's decision is not supported by substantial evidence in the record, challenges several trial management decisions, and contends he was deprived of a fair trial because of his status as a pro se litigant and bias. Substantial evidence in the record supports the trial court's findings and Jorgensen's other assertions of error do not provide a basis for reversal.

We affirm.

[1] We refer to the respondent by her former surname in accordance with the pleadings below and her briefing in this court.

FACTS

According to testimony presented at trial, Lee Jorgensen and Natalie Sears met around October 2005. Sears was married at the time. Sears owned and operated her own boat detailing company. Jorgensen split his time between his Chelan residence and Seattle, where he was a deckhand aboard a yacht moored at a dock where Sears often worked. Sears was transitioning from doing all the boat detail work herself, to hiring independent contractors so she could focus on other aspects of running the business. Around this time, Sears also converted her business, Deckhand Detailing, from a sole proprietorship to a limited liability company (LLC). Also around the same time, Sears hired Jorgensen to do boat detailing work.

By early 2006, the relationship between Sears and Jorgensen became romantic. In the early part of the relationship, Jorgensen proposed marriage to Sears, who initially accepted, but then retracted. All the while, Sears shared a home with her then spouse, with whom she was still intimate, engaged in marriage counselling, and in December 2006, purchased a cabin in Cle Elum. Toward the end of 2006, Jorgensen was primarily living in Chelan, but would return to Seattle periodically and sometimes stayed at Sears's townhome when her spouse was away. Sears and her spouse petitioned for dissolution in late 2007.

In January 2008, while the divorce was pending, Sears purchased a condominium (condo) in the Queen Anne neighborhood of Seattle with separate funds and a loan co-signed by her then-spouse. Sears's marriage was dissolved

in February 2008 and her former spouse quitclaimed the Queen Anne condo to her. Sears was awarded the Cle Elum cabin, the condo, and her business in the dissolution.

In July 2008, Jorgensen and Sears began living together full time, primarily at Sears's condo. During the time that they lived together, Sears was solely responsible for paying all housing expenses, including mortgages and utilities. The relationship suffered a significant disruption because of Jorgensen's actual or suspected infidelity in 2009, and again in 2014. For a period of time after the 2014 incident, Jorgensen and Sears alternated residences so as not to share the same space. Although they gradually resumed their relationship, for the most part they were no longer intimate after 2014 and all intimacy ended in 2017. Sears and Jorgensen broke up around 2019 and thereafter Jorgensen stayed only at the Cle Elum cabin. By then, Jorgensen was no longer working for Deckhand Detailing. In January 2020, Sears demanded that Jorgensen vacate the cabin.

After they separated, Jorgensen petitioned in superior court seeking to dissolve the parties' committed intimate relationship (CIR). Jorgensen alleged that the condo, Cle Elum cabin, and Deckhand Detailing, were community-like assets that should be equitably divided. Jorgensen also brought a separate claim for back overtime pay against Deckhand Detailing with the Department of Labor and Industries (L&I). L&I determined that the company owed Jorgensen overtime pay, and Sears settled the claim.

Sears sought summary judgment dismissal of Jorgensen's petition. The superior court granted the motion, concluding that, as a matter of law, the relationship was not a CIR. Lee appealed.

In a March 14, 2022 unpublished decision, this court reversed because, construing the evidence submitted by the parties in Jorgensen's favor, reasonable persons could reach different conclusions as to the existence of a CIR. *See In re Jorgensen v. Sears*, No. 82556-9-I, slip op. at 14 (Wash. Ct. App. Mar. 14, 2022) (unpublished), https://www.courts.wa.gov/opinions/pdf/825569.pdf.

In the months leading up to the August 2023 trial on remand, Jorgensen moved to bifurcate the trial and to continue it to allow newly-hired counsel to prepare. The court denied both motions, and Jorgensen's counsel withdrew from the case. Based on the anticipated witnesses and evidence, the trial court allocated three days for trial and 14 total hours of trial time for the examination of witnesses.

During the four-day trial, Jorgensen presented the testimony of nine witnesses, including himself and Sears. During trial, Jorgensen moved for additional time to examine witnesses. The court granted additional trial time, but less than the amount Jorgensen requested. Although the parties designated more than 100 exhibits for trial between them, the trial court admitted only 15 exhibits, all offered by Sears on cross-examination.

At the conclusion of Jorgensen's case, Sears moved for dismissal under CR 41(b)(3), arguing that the evidence Jorgensen presented failed to establish

the existence of a CIR, the existence of community-like assets subject to division, or the value of any alleged assets. Ruling as the trier of fact, the court orally discussed and weighed various factors and concluded that a CIR between the parties did not exist. Even if such a relationship did exist, the court found that the parties acquired no property during the relationship that was subject to division. And the court ruled that equitable division was not possible, even if required, because there was no evidence of the value of any property at any specific time that would provide a basis for division. The court entered a written decision that is consistent with, and incorporates, its oral ruling. Jorgensen appeals.

ANALYSIS

In a bench trial, when the trial court hears a case as the trier of fact, after the plaintiff rests, the defendant may move for the trial court to dismiss the plaintiff's claim on "the ground that upon the facts and the law the plaintiff has shown no right to relief." CR 41(b)(3). The trial court may dismiss the claim as a matter of law or "weigh the evidence and make a factual determination that the plaintiff has failed to come forth with credible evidence of a prima facie case." *In re Dependency of Schermer*, 161 Wn.2d 927, 939, 169 P.3d 452 (2007). If the trial court weighs the evidence, it must make findings to support its decision and we review the findings for substantial evidence. CR 41(b)(3); *Schermer*, 161 Wn.2d at 940. "Substantial evidence exists if, when viewing the evidence in the light most favorable to the prevailing party, a rational trier of fact could find the fact more likely than not to be true." *In re Welfare of X.T.*, 174 Wn. App. 733, 737, 300 P.3d 824 (2013).

We will not substitute our own judgment for that of the fact finder, so we defer to the trier of fact to resolve conflicting testimony, evaluate the persuasiveness of the evidence, and assess witness credibility. *In re Parentage of G.W.-F.*, 170 Wn. App. 631, 637, 285 P.3d 208 (2012). Unchallenged findings of fact are verities on appeal. *Muridan v. Redl*, 3 Wn. App. 2d 44, 62-63, 413 P.3d 1072 (2018).

Committed Intimate Relationship (CIR)

A CIR 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 339, 346, 898 P.2d 831 (1995). The doctrine stems from equitable principles and protects the interests of unmarried parties who acquire property during their relationship by preventing the unjust enrichment of one at the expense of the other when the relationship ends. *Connell*, 127 Wn.2d at 349; *In re Marriage of Pennington*, 142 Wn.2d 592, 602, 14 P.3d 764 (2000). Dividing property at the end of a marital-like relationship entails a three-pronged analysis. *Pennington*, 142 Wn.2d at 602. First, the trial court must establish whether a CIR exists. *Pennington*, 142 Wn.2d at 602. Second, if a CIR exists, the trial court evaluates each party's interest in property acquired during the CIR. *Pennington*, 142 Wn.2d at 602. And third, the court then makes a "just and equitable distribution of such property." *Pennington*, 142 Wn.2d at 602.

Five nonexclusive factors guide a trial court's determination of the existence of a CIR: "continuous cohabitation, duration of the relationship, purpose of the relationship, pooling of resources and services for joint projects,

and the intent of the parties." *Connell*, 127 Wn.2d at 346. These factors do not apply in a "hypertechnical" fashion and one factor is not more important than another. *In re Long & Fregeau*, 158 Wn. App. 919, 926, 244 P.3d 26 (2010). We review a trial court's determination that a CIR existed as a mixed question of law and fact. *Pennington*, 142 Wn.2d at 602-03.

Jorgensen challenges the trial court's factual findings as to each of the CIR factors.

a. Continuous Cohabitation

The trial court found that the parties' cohabitation was not continuous. Specifically, the court found that the parties lived together from approximately July 2008 until 2014, then lived separately for a period of time, and resumed cohabitation until 2019 or 2020.

Jorgensen argues that because the evidence showed that the parties spent "many full nights" together between 2006 and mid-2008, their cohabitation began at an earlier point in time. According to Jorgensen, the fact that Sears was legally married did not prevent a finding that she cohabited with him in 2006 or 2007 because the marriage was "defunct" and the Issaquah townhome Sears shared with her spouse was merely a "crash pad" and a place for her to receive mail.[2]

[2] Below, Jorgensen took the position that the parties began living together around March 2007 because e-mail exchanges between them became less frequent around this time, suggesting they were in the same place from that point onward. Even assuming evidence was admitted at trial to substantiate this claim, cohabitation was not a necessary inference from decreased e-mail correspondence.

Neither Jorgensen's opinion that Sears's marriage was unsalvageable nor the undisputed fact that Sears and Jorgensen spent a number of nights together before they officially lived together undermines the substantial evidence in the record supporting the finding of that Sears and Jorgensen did not *continuously* cohabitate until mid-2008. Before this date, Sears was living at properties she owned with her then spouse. It was not until after Sears divorced and moved to her condo, that Jorgensen fully vacated his Chelan residence, changed his mailing address, moved his pets, and began cohabiting with Sears full-time. *See Burchfield v. Burchfield*, 5 Wn.2d 359, 361, 105 P.2d 286 (1940) (cohabitation means living together "continuously and publicly, and with some degree of permanency"); *Pennington*, 142 Wn.2d at 603 (sporadic cohabitation while one party remained married did not amount to "stable cohabiting relationship").

b. Duration and Purpose of the Relationship

As to the second and third factors, the trial court found, contrary to Jorgensen's claim on appeal, that the nature of the parties' relationship was "romantic" and the purpose of the relationship was "companionship, love, friendship, sex, mutual support, and caring." However, as to both factors, the court determined the relationship was "interrupted," and a preponderance of the evidence did not establish that it was a "stable marital-like relationship for any specific period of time." The court pointed out that early on, when Sears was still married, the parties' relationship was not exclusive or monogamous. The court found that the relationship became "more committed" when the parties began living together, but there was a significant disruption and "discord" in 2009, and

again in 2014, because of "infidelity or perceived infidelity." And the court found that all intimacy between the parties ended by 2017.

c. Pooling of Resources and Services for Joint Projects

Jorgensen challenges the trial court's finding that the evidence demonstrated a "limited pooling of resources and services." The court found that Jorgensen's contributions of labor to Sears's condo and cabin were "not extraordinary" and merely part and parcel of living "where he was not paying rent or mortgage." The court further found that Jorgensen's work for Sears's company was "not part of a romantic or marital-like pooling of resources," because Jorgensen was compensated. And the court noted a lack of evidence that the parties opened or maintained any joint financial accounts.

While Jorgensen claims he was not compensated "on a consistent basis" for labor in support of the "jointly operated" detailing business, the trial court expressly found otherwise. The court stated, "[a] preponderance of the evidence does not show that [Jorgensen] was under-compensated for his work at Deckhand Detailing." Jorgensen points to no evidence, let alone substantial evidence in the record, that contradicts this finding. Likewise, Jorgensen fails to identify the evidence supporting his characterization of the parties' financial assets as "hopelessly comingled."

d. Intent of the Parties

While Jorgensen asserts that the parties' mutual intent was to build and maintain a "permanent, married-like relationship," the trial court found that the intent to have a permanent, committed relationship was neither sustained nor

mutual. The court found that Jorgensen initially intended an "ongoing" relationship, but his intent was only "partial" or "conflicted" because he was soon distracted by other romantic interests. The court found that Sears also intended a stable, permanent relationship early on, but she changed her mind and ultimately "questioned their ability to have a long-term relationship." While Jorgensen points to the testimony of witnesses who perceived the relationship as stable and marriage-like, the trial court observed that this evidence was not determinative, noting that witnesses who were not "privy" to the parties' private interactions and communications would not be fully aware of their intent.

In sum, the court's findings as to the CIR factors are supported by substantial evidence in the record, and those findings, in turn, support its conclusion that the parties' relationship did not constitute a CIR.

Property Characterization and Value

As the trial court recognized, even if it had concluded that a CIR existed, that would not end the analysis. As explained, a finding that a CIR existed would require the court to proceed to the required second and third steps to determine whether and how to divide property. *Pennington*, 142 Wn.2d at 602. For purposes of the second step, property acquired before a CIR began is presumptively separate. *Morgan v. Briney*, 200 Wn. App. 380, 390, 403 P.3d 86 (2017).

The trial court concluded that Jorgensen's claim for equitable division of property would fail as to the second step because no community-like assets were acquired after July 2008, when the court found that the parties began to

cohabitate. *See Byerley v. Cail*, 183 Wn. App. 677, 689, 334 P.3d 108 (2014) (because a CIR cannot commence before parties reside together, the court erred in treating real property acquired before cohabitation began as subject to equitable division, without evidence that the party "intentionally transmuted [the property's] status from separate to community property"). As discussed, substantial evidence supports the court's finding that Jorgensen and Sears began living together, full time and openly, in July 2008. The evidence also conclusively established that all three assets Jorgensen sought to equitably divide were acquired before July 2008. Sears started her business in 1990 and converted it to an LLC in early 2006. Sears acquired the Cle Elum cabin in 2006 with her former spouse and was awarded the property in the February 2008 dissolution. Sears acquired the Queen Anne condo in January 2008.

Jorgensen appears to contend that Deckhand Detailing became a joint asset during the relationship because although Sears was the only official member of the LLC, he had an ownership interest by virtue of his "acting and performing" the role of a business partner. But we are aware of no legal authority that supports Jorgensen's claim of an equitable ownership interest in the business, given that membership in an LLC requires formal admission. *See* RCW 25.15.116 (LLC membership requirements). And insofar as Jorgensen claimed an equitable ownership interest based on his efforts that added value to the business or Sears's real property, as the trial court noted, Jorgensen presented no evidence of the value of any asset "at any time," for the court to make such a determination. And, even if Jorgensen established that Deckhand

Detailing increased in value during a period of time when a CIR existed, proved the amount of the increase, and demonstrated that the increase was attributable to his community-like efforts, the trial court found that Jorgensen failed to show that he was not compensated. *See Marriage of Pearson-Maines*, 70 Wn. App. 860, 869, 855 P.2d 1210 (1993) ("valuation of the community services invested in separate property may be approached by either determining the equivalent of a reasonable wage or by fixing the resulting increase in value.").

In short, even if the trial court erred when it found that a CIR did not exist, Jorgensen's claim for an equitable division of assets would fail on multiple other grounds.

Motion to Bifurcate

Turning next to Jorgensen's claims regarding trial management decisions, several months before the scheduled trial date, Jorgensen filed a one-page motion to bifurcate the trial. He requested that the trial court address his claim in two separate trials: an initial trial to determine the existence of a CIR and a second trial to address "financial aspects." Sears opposed the motion, pointing out that evidence about the parties' finances would be critical to determining whether the relationship was a CIR and arguing that Jorgensen failed to articulate why bifurcation would result in greater accuracy or efficiency. In reply, Jorgensen asserted that bifurcation would allow the parties to conduct additional discovery after an initial trial with a view to a "financial settlement," and indicated that he saw "no evidence that bifurcation wouldn't help." The trial court denied the motion and later denied reconsideration.

Jorgensen maintains that bifurcation would have been "expeditious," suggests he could have hired "expert witnesses and valuators" to testify at the second trial, and complains that the court denied his motion without explanation.

Bifurcation is generally "disfavored" as it may result in piecemeal litigation, judicial inefficiency, and delays in the ultimate resolution of case. *Brown v. Gen. Motors Corp.*, 67 Wn.2d 278, 282, 407 P.2d 461 (1965); *In re Marriage of Hughes*, 128 Wn. App. 650, 658, 116 P.3d 1042 (2005). While bifurcation is to be applied "cautiously," its application remains in the discretion of the trial court. *Brown*, 67 Wn.2d at 282; *In re Det. of Mines*, 165 Wn. App. 112, 124, 266 P.3d 242 (2011). A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds. *Mines*, 165 Wn. App. at 124.

Jorgensen provides no authority suggesting that the trial court was required to enter findings to support its decision on his motion. And there is no apparent reason why a bifurcated trial would have led to a more accurate resolution of the facts or why Jorgensen could not have presented expert testimony in a non-bifurcated trial. The trial court acted well within its discretion in denying the motion because Jorgensen failed to cogently explain the benefit of bifurcation, and because bifurcation is not favored, especially when, as here, some of the same evidence would be relevant to issues adjudicated in the proposed separate trials. *Brown*, 67 Wn.2d at 282 (bifurcation not appropriate when "the evidence bearing upon the respective issues is commingled and overlapping").

Motion to Continue

On June 20, 2023, approximately seven weeks before the scheduled trial date, Jorgensen's newly-retained counsel sought a 90-day continuance of the trial date. Counsel mentioned Jorgensen's difficulty securing funds to hire counsel, stated that he would be in trial on another matter on the scheduled trial date, and explained that he would need additional time to prepare, supplement discovery, and secure an expert witness.

Sears opposed a continuance. She citied, among other reasons, (1) the case had been pending since April 2020; (2) the trial date had already been continued; (3) Jorgensen could have retained counsel earlier, certainly following the March 2023 payment on his L&I claim; and (4) Jorgensen had ample opportunity to engage in discovery in 2020, when he was represented by counsel, and again in 2022, when the court issued a new case schedule.

Shortly after Jorgensen sought a continuance, the case was reassigned to a different superior court judge, and about two weeks later, on July 12, 2023, the trial court denied the motion. The trial court later declined to reconsider its ruling.

Jorgensen claims the trial court's ruling forced him to proceed without counsel because it failed to allow sufficient time for any new attorney to adequately prepare for trial. Jorgensen further suggests that the short period of time between reassignment and the ruling on the motion suggests that the court failed to sufficiently review the record and apprise itself of the complexity and seriousness of the case.

Here also, we review a trial court's ruling on a continuance motion for an abuse of discretion. *Wood v. Milionis Constr., Inc.*, 198 Wn.2d 105, 133, 492 P.3d 813 (2021). In exercising this discretion, courts should consider "the totality of the circumstances brought to the trial court's attention." *Balandzich v. Demeroto*, 10 Wn. App. 718, 721, 519 P.2d 994 (1974). Relevant considerations include the necessity of a prompt disposition; the needs of the moving party; possible prejudice to the nonmoving party; and history of the litigation, including prior continuances. *Balandzich*, 10 Wn. App. at 720; *see also State v. Downing*, 151 Wn.2d 265, 273, 87 P.3d 1169 (2004) (courts "may consider many factors, including surprise, diligence, redundancy, due process, materiality, and maintenance of orderly procedure").

There were valid reasons to deny a continuance. The case had been pending since 2020, the parties had engaged in discovery in 2020, and opposing counsel was prepared to proceed. *See Willapa Trading Co. v. Muscanto, Inc.*, 45 Wn. App. 779, 786, 727 P.2d 687 (1986) (noting the "prejudicial impact" of a continuance on a party who is prepared and ready for trial and benefit of avoiding delay in litigation). Sears pointed out that she had already expended substantial funds on attorney fees and would be prejudiced by further delay in finality, both "financially and emotionally." *See Martonik v. Durkan*, 23 Wn. App. 47, 51, 596 P.2d 1054 (1979) (no abuse of discretion to deny pro se litigant's motion to continue where "interests of the defendant" weighed against continuance).

Nothing in the record supports an inference that the court failed to review the history of the case or failed to appreciate the nature and complexity. And

Jorgensen's claim that the ruling deprived him of the opportunity to be represented by adequately prepared counsel fails to recognize that Jorgensen was aware, as of March 2022, that the matter would proceed to trial. Although Jorgensen now appears to suggest that he was forced to try the case himself without the necessary expertise, he concedes that he only began to take steps to identify and retain counsel as the trial date "approached." Jorgensen had ample time to find an attorney and simply failed to act in a reasonably prompt manner. Although counsel's declaration was clear that he would have to withdraw from the case if the court declined to continue it, withdrawal of a civil litigant's attorney, on its own, is not a compelling reason to continue trial. *See Jankelson v. Cisel*, 3 Wn. App. 139, 141, 473 P.2d 202 (1970) ("if a contrary rule should prevail, all a party desiring a continuance . . . would have to do would be to discharge [their] counsel or induce [them] to file a notice of withdrawal").

In view of all the circumstances, the trial court's decision to deny Jorgensen's motion to continue was not manifestly unreasonable or based on untenable grounds.

Enforcement of Time Limits

While the trial court initially allocated seven hours of trial time to each side, Jorgensen asked, mid-trial, for a minimum of four additional hours to present testimony. At that point, Jorgensen had used approximately five hours of his allotted time. Jorgensen explained that he needed more time, in part, because opposing counsel had used a significant amount of his time cross-examining his witnesses. He also claimed that Sears's examination was taking more time than

expected because she "conveniently" failed to remember many details he sought to elicit.

The trial court granted the motion, in part, and allocated an additional three hours of trial time, to be shared equally. In so ruling, the trial court explained that opposing counsel's cross-examination was deducted from Sears's allotted time, not his. The court further explained that the initial amount of time set for trial was not "arbitrary," but was based on its review of the file and the discussion at pretrial conference.

As this court recently confirmed, where time limits for the examination of witnesses are used "to ensure that trials are conducted fairly and expeditiously," we review the enforcement of those limits for abuse of discretion. *Stocker v. Univ. of Wash.*, 33 Wn. App. 2d 352, 359, 561 P.3d 751 (2024). When reviewing a court decision enforcing time limits at trial, courts may consider, among other factors, whether time was allocated equitably; whether the parties had notice of the limits; whether additional time is allowed based on a suitable offer of proof; and whether there is a reasonable inference from the record that a party's "improvident use of time caused the purported need for additional time." *Stocker*, 33 Wn. App. 2d at 361.

Jorgensen argues that the court's ruling unfairly limited the presentation of his case. But the parties had notice of the time limits and the allocation of time was both equitable and in line with the parties' pretrial estimates. And the court granted additional time here, even though Jorgensen made no specific offer of proof and in spite of the fact that the record reflects Jorgensen's inefficient use of

his trial time contributed to his perceived need for more time. Jorgensen's appellate briefing does not address any of these considerations. More importantly, he fails to identify the evidence he would have been able to present if the court had granted additional time. On this record, Jorgensen fails to establish an abuse of discretion.

Pro Se Litigant and Bias

Jorgensen contends the trial court unfairly held him to the same standard as a licensed attorney. And he suggests that the record reveals the court's preferential treatment of opposing counsel and bias against him.

But the trial court was required to hold Jorgensen, a pro se litigant, to the same standards as an attorney. *See In re Marriage of Wherley*, 34 Wn. App. 344, 349, 661 P.2d 155 (1983) ("[T]he law does not distinguish between one who elects to conduct his or her own legal affairs and one who seeks assistance of counsel—both are subject to the same procedural and substantive laws"). This is an important aspect of judicial impartiality. *Edwards v. Le Duc*, 157 Wn. App. 455, 460-64, 238 P.3d 1187 (2010). At the same time, while under no affirmative obligation to do so, the trial court in this case made reasonable accommodations to facilitate Jorgensen's right to a full and fair hearing, by providing guidance, reminding of him of the legal issues he needed to prove, allowing leeway in his questioning, and allowing him to testify narratively. *See* Code of Judicial Conduct (CJC) 2.2, comment 4 (judges may "mak[e] reasonable accommodations to ensure an unrepresented litigant's right to be heard" without violating the rule of partiality and fairness).

To support his allegation of favoritism and bias, Jorgensen asserts that the trial court overruled the majority of his objections to irrelevant and inflammatory questions posed by Sears's counsel, whereas the court "proactively" foreclosed some lines of his questioning and sustained objections to his "valid questions" that would have elicited relevant evidence. Trial judges are presumed to perform their functions regularly and properly without bias or prejudice, and a party claiming otherwise must support the claim with evidence of the judge's actual or potential bias. *In re Estate of Hayes*, 185 Wn. App. 567, 607, 342 P.3d 1161 (2015); *Rich v. Starczewski*, 29 Wn. App. 244, 246, 628 P.2d 831 (1981).

The specific examples in the record Jorgensen cites do not support his claim of bias. For instance, Jorgensen claims the trial court sanctioned opposing counsel's improper and unnecessary questioning about the death of his pets and a homophobic comment about a witness. But the court had no opportunity to address the relevancy or propriety of these questions, since Jorgensen did not object.

Jorgensen identifies no affirmative evidence of actual or potential bias. And our careful review of the record reveals no evidence that the trial judge was biased against Jorgensen. In light of the established rule that pro se litigants must be held to the same standards as attorneys, Jorgensen fails to demonstrate that he was deprived of a fair hearing.

Attorney Fees on Appeal

Finally, Sears requests attorney fees on appeal under RAP 18.9, which provides the court with discretion to order a party to pay fees for filing a frivolous

appeal. RAP 18.9(a). "An appeal is frivolous if, considering the entire record, the court is convinced that the appeal presents no debatable issues upon which reasonable minds might differ, and that the appeal is so devoid of merit that there is no possibility of reversal." *Advocs. for Responsible Dev. v. W. Wash. Growth Mgmt. Hr'gs Bd.*, 170 Wn.2d 577, 580, 245 P.3d 764 (2010). "[A]ll doubts as to whether the appeal is frivolous should be resolved in favor of the appellant." *Streater v. White*, 26 Wn. App. 430, 435, 613 P.2d 187 (1980). Applying this high standard, considering the record as a whole, and construing all doubts about frivolousness in favor of Jorgensen, we decline to exercise our discretion to award fees as a sanction.

We affirm.

WE CONCUR:

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

In the Matter of Committed Intimate Relationship of	)	No. 82556-9-I
LEE JORGENSEN,	)	MANDATE
Appellant,	)	King County
and	)	Superior Court No. 20-3-02050-1 SEA
NATALIE SEARS,	)	
Respondent.	)	

THE STATE OF WASHINGTON TO: The Superior Court of the State of Washington in and for King County.

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division I, filed on March 14, 2022, became the decision terminating review of this court in the above entitled case on July 21, 2022. This case is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the decision.

Pursuant to a Commissioner's ruling entered on June 16, 2022, costs in the amount of $869.50 are to be awarded against judgment debtor NATALIE SEARS in favor of judgment creditor LEE JORGENSEN.

c: Lee Jorgensen
Veronica A. Freitas
Valerie A Villacin
Catherine Wright Smith
Hon. Catherine D. Shaffer

SEAL OF THE COURT OF APPEALS • STATE OF WASHINGTON •

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Seattle, this 21st day of July, 2022.

LEA ENNIS
Court Administrator/Clerk of the Court of Appeals,
State of Washington, Division I.

FILED
3/14/2022
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

In the Matter of Committed Intimate Relationship of LEE JORGENSEN, Appellant, and NATALIE SEARS, Respondent.	No. 82556-9-I DIVISION ONE UNPUBLISHED OPINION

APPELWICK, J. — Jorgensen appeals the trial court's summary dismissal of his petition for an equitable property distribution following the end of a committed intimate relationship with Sears. He argues that the trial court erred by concluding as a matter of law that the parties' relationship was not a committed intimate relationship. Because reasonable persons could reach different conclusions as to this threshold issue, we reverse and remand for further proceedings.

FACTS[1]

Lee Jorgensen and Natalie Sears met in March 2005, when Jorgensen was a deckhand aboard a yacht moored on a dock where Sears often worked as a boat detailer. It is undisputed that Sears started her boat detailing business, Deckhand

[1] Because this is an appeal from a summary judgment order, we present these facts in the light most favorable to Jorgensen, the nonmoving party. See Right-Price Recreation, LLC. v. Connells Prairie Cmty. Council, 146 Wn.2d 370, 381, 46 P.3d 789 (2002) ("When reviewing an order of summary judgment . . . , [t]he reviewing court considers the facts and all reasonable inferences from those facts in the light most favorable to the nonmoving party.").

Detailing LLC, well before she met Jorgensen. Jorgensen, who had owned a detailing company before, began washing and waxing boats for Sears sometime after he met her.

According to Jorgensen, by winter 2005 he had worked with Sears "for months," their relationship had become romantic, and they were "very much in love." At the time, Sears was still married, and she asked Jorgensen to keep their relationship "quiet." However, Jorgensen and Sears "didn't really act like" Sears was still married. Indeed, at some point early in their relationship, Jorgensen proposed marriage to Sears. Sears initially said yes but later retracted, indicating "it felt odd to her that she had a fiancée while she was still legally married."

Jorgensen later declared that by May 2006, he and Sears were planning their lives together. They also discussed Jorgensen taking on a larger role in the boat detailing business. In e-mails from summer 2006, Sears wrote to Jorgensen, "Just think how much more I (uh, I mean, we) could gross if I had someone to help me manage everything and do some of the work." In another e-mail, Sears proposed that Jorgensen "take over part of [her] business while [she] take[s] care of the 'wizard of Oz' work (bookkeeping, marketing, etc) and plan[s] other ventures." And, in another, Sears stated she wanted the business to ultimately gross "a lot of money so we can qualify for a nice property to buy in the future," but in the meantime, it "still has to [net] enough that we have a comfortable paycheck to live off of." In response, Jorgensen indicated it would be a "good thing" for him to start out as Sears's "arms and legs," letting Sears do "mostly just the heady

business side of things" while Jorgensen "took on most of the . . . cleaning the boats side of things." Jorgensen indicated that he hoped the two would ultimately divide the work, with Sears handling "50% washes and all books, schedule and supplies" and Jorgensen handling "50% washes {working towards all washes and crew details so your share takes up about two hours of your day} and all waxing plus new account acquisition." Jorgensen also wrote, "[A]s long as I can pay my rent, cell, gas, insurance and car bills and buy a few meals then the rest of the income is wasted on me and I'm willing to freely let it go into a cookie jar for later use by the two of us." E-mails from that period reflect that the parties not only discussed their plans for the boat detailing business, but also shared emotional and physical intimacy.

At the time, Jorgensen lived between a boat in Seattle and a home in Chelan, an arrangement he later described as a "logistics nightmare." Jorgensen and Sears began looking at properties in Cle Elum and "discussed living there together." Meanwhile, Sears had started talking to her husband about her relationship with Jorgensen.

In November 2006, Sears and her husband purchased a cabin in Cle Elum.

In March 2007, Sears and her husband separated. According to Jorgensen, Sears moved into the Cle Elum cabin around that time, and Jorgensen began to stay there nightly as well. Jorgensen declared that for a time, he would return to Chelan when weather permitted to do laundry and visit his animals, but by June 2007, he and Sears were living together full time at the cabin. Jorgensen and

Sears would commute to Seattle in two vehicles, with Jorgensen stopping in Kirkland to pick up an employee and then driving to Seattle to work. Jorgensen would then drop the employee off at the end of the day before driving home to Cle Elum.

In February 2008 a court dissolved Sears's marriage and awarded Sears the Cle Elum cabin and the business, Deckhand Detailing. Meanwhile, according to Jorgensen,

> [L]iving together in Cle Elum and driving into Seattle daily . . . was becoming expensive and we believed we should buy a small condo or tiny home outside the city. We were looking since 2005 but there were some things that needed to happen first. My credit was horrible, and [Sears] was paying me cash under the table. She was almost finished with her divorce and asked [her husband] to help her one last time as a condition of their divorce agreement. He agreed to cosign on [a] condo on Queen Anne.

Sears purchased the Queen Anne condo in January 2008, and Sears's former husband later quitclaimed any interest in the condo to Sears.

Jorgensen and Sears moved into the Queen Anne condo in June 2008. They continued to live together until at least 2019, with two exceptions. In 2009, Jorgensen "met a girl . . . at a boat show" and texted with her for a time. When Sears saw the texts, she was "not happy with" Jorgensen, and the two "were in a bad spot for a few months." During this time, Jorgensen "would live at the cabin while [Sears] stayed at the condo or the opposite if plans changed." But, the two "sought help in dealing with [their] relationship and a short time afterward had recovered and resumed . . . as if nothing ever happened." Later, in 2014, Jorgensen began flirting with a woman over text. Jorgensen ended the text

communications after he learned that the woman "was [a] professional working girl." When Sears discovered the texts, she was "understandably upset" and "initially wanted to break up." But, instead, Sears and Jorgensen "lived apart for a while," taking turns between the cabin and the condo. The two "lived like this for two to three months," sought counseling, and, by the end of the year, "were affectionate again and saying I love you to each other."

Meanwhile, Jorgensen and Sears continued working together in the boat detailing business. According to Jorgensen, Sears referred to the business as "'our business,'" and the two operated it as a joint effort. In e-mails from 2010, 2012, and 2017, Sears introduced Jorgensen to third parties as her "business partner," her "business partner who does all the waxing," and her "business partner and lead wax detailer." A company employee later declared that Jorgensen "took care of most of the hands-on operations of the business while [Sears] worked behind the curtains."

Jorgensen attested that he engaged in active efforts to grow the business. He trained employees, handed out "almost 1,500 business cards in a season," "[t]alked to everyone," doing "test spots for people just to earn business," and "work[ed] for free to establish [their] reputation." He declared that by 2007, his "wax sales were equal to what the company's gross sales brought in for the year 2004." By 2011, his crew "made more in sales than all of the company's sales in 2004 and 2005, and more than Deckhand Detailing . . . made in 2006 and 2007." Jorgensen attested that he helped Sears write a book about boat detailing that was

later used to market the business, secured new clients, and worked with a manufacturer to develop a new polisher. In exchange, the business received free polishers whenever it needed them and was able to "brag about [their] involvement in [the polisher's] development." Sears involved Jorgensen in discussions about potential product distributorships, and when the business sold a franchise in California in 2017, Jorgensen flew down and spent two weeks with the franchisee. Jorgensen declared, "I stayed late and worked hard knowing we were benefiting from my efforts to improve our business," and he and Sears "talked about building the business and either retiring if it ran itself or selling it and using the proceeds to retire." He declared that he received "more an allowance than a paycheck," but he "was happy" and "let the benefit to [him and Sears] outweigh [his] personal need to make or spend much money at all."

By 2017, Jorgensen was "over-stretched and stressed out from work." Sears "noticed [Jorgensen] was at [his] limits" and indicated, "[i]n her words, 'I know that on a regular basis, you're not grumpy at me but you're grumpy and angry at everything around you. The bikes, annoying neighbors, people not parking right, living in the city in general.'" The two "talked about many ways of making more time for us," including "build[ing] a new and easier life out in Eastern Washington," and "starting an RV [recreational vehicle] custom shop to run, where we could build custom trailers." In August 2019, Jorgensen and Sears explored purchasing a commercial property in Cle Elum. This purchase never materialized, and it is undisputed that, in January 2020, Sears ended her relationship with Jorgensen.

In April 2020, Jorgensen filed a petition alleging that his relationship with Sears constituted a committed intimate relationship (CIR). Jorgensen requested an equitable distribution of property, specifically, the Queen Anne condo, the Cle Elum cabin, and Deckhand Detailing.

Sears moved for summary judgment, arguing that as a matter of law, Jorgensen could not establish that his relationship with Sears was a CIR. The trial court agreed with Sears, concluding, "This relationship does not meet the definition of a Committed, Intimate Relationship within the meaning of the law." So, the court summarily dismissed Jorgensen's petition. Jorgensen appeals.

DISCUSSION

Jorgensen contends the trial court erred by concluding as a matter of law that his relationship with Sears was not a CIR and, thus, by summarily dismissing his petition. We agree.[2]

"Whether the court properly granted summary judgment is a question of law that we will review de novo." In re Kelly, 170 Wn. App. 722, 731, 287 P.3d 12 (2012). "A summary judgment motion . . . can be granted only if the pleadings, affidavits, depositions, and admissions on file demonstrate no genuine issues of

[2] Sears points out that Jorgensen's opening brief contains almost no citations to the record. This is true. However, the scope of our review in this case is limited to a single issue that was decided on summary judgment, and the record is not voluminous. So, we are unpersuaded by Sears's assertion that Jorgensen's failure "wholly undermin[es] the purpose of the rules of appellate procedure." Consequently, we decline Sears's invitation to resolve this appeal based on Jorgensen's noncompliance with the rules. See RAP 1.2(a) ("Cases and issues will not be determined on the basis of compliance or noncompliance with these rules except in compelling circumstances where justice demands.").

material fact, and that the moving party is entitled to judgment as a matter of law." Vasquez v. Hawthorne, 145 Wn.2d 103, 106, 33 P.3d 735 (2001). "The court must consider all facts submitted and all reasonable inferences from those facts in the light most favorable to the nonmoving party." Id. "The motion should be granted only if, from all the evidence, reasonable persons could reach but one conclusion." Id.

Here, reasonable persons could reach more than one conclusion about whether the parties' relationship was a CIR. Accordingly, the trial court erred by deciding that issue as a matter of law.

"The CIR doctrine is a judicially created doctrine used to resolve the property distribution issues that arise when unmarried people separate after living in a marital-like relationship and acquiring what would have been community property had they been married." Kelly, 170 Wn. App. at 731. Under the doctrine, a trial court decides property distribution issues in three steps: First, the court determines whether a CIR existed. Connell v. Francisco, 127 Wn.2d 339, 349, 898 P.2d 831 (1995). If so, "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." Id.

The first step—determining if a CIR exists—is a mixed question of law and fact. See In re Marriage of Pennington, 142 Wn.2d 592, 602-03, 14 P.3d 764 (2000) (determination of whether facts give rise to a "meretricious relationship" is "a mixed question of law and fact"). "A CIR is a 'stable, marital-like relationship

where both parties cohabit with knowledge that a lawful marriage between them does not exist.'" Kelly, 170 Wn. App. at 731 (quoting Connell, 127 Wn.2d at 346). "Five factors are relevant to the existence of a CIR: 'continuous cohabitation, duration of the relationship, purpose of the relationship, pooling of resources and services for joint projects, and the intent of the parties.'" Morgan v. Briney, 200 Wn. App. 380, 388, 403 P.3d 86 (2017) (quoting Connell, 127 Wn.2d at 346). These so-called "Connell factors" are "not exclusive, and no one factor is more important than the others." Id. The Connell factors also are not "hypertechnical." Pennington, 142 Wn.2d at 602. Rather, they are "meant to reach all relevant evidence helpful in establishing whether a [CIR] exists." Id. Accordingly, whether a particular relationship is a CIR "depends upon the facts of each case." Id.

Here, reasonable persons could determine that the first two Connell factors, continuous cohabitation and duration of the relationship, support a CIR. Jorgensen declared that he and Sears were living together in Cle Elum by April 2007, and he had moved into the cabin full time by June 2007. And, with the exception of two periods of a few months each, he and Sears continued to live together for at least 12 years. Furthermore, Jorgensen declared that during the two breaks in cohabitation, he and Sears attempted to reconcile and, during the 2014 break, sought counseling. While the trial court determined that the two breaks were "significant," that determination fails to view the evidence in the light most favorable to Jorgensen. Cf. Morgan, 200 Wn. App. at 388 (observing that, "[i]n the context of an almost 20-year relationship, an 8-month separation is not very significant"

where the parties remained in contact even while not living together, thus suggesting they "still intended to be in a romantic relationship").

Reasonable persons could further determine that the third and fifth factors, the relationship's purpose and the parties' intent, also support a CIR. Although Jorgensen and Sears never married, Jorgensen attested that the two acted like a married couple. He declared that the two "expressed to one another [their] love for each other" throughout their relationship, were "there for each other in good times and bad," and "made financial decisions together about money, paying bills, buying property, vehicles." Jorgensen declared that he and Sears "spoke often of [their] long-term plans for life," and "discussed dividing revenue from the business or that we would have a nice retirement someday." They traveled together to Europe on multiple occasions, including one trip with Jorgensen's parents during which his parents met Sears's parents, who were living in Switzerland. They shared pets during their relationship and grieved their losses together, and, in 2019, discussed buying a commercial property in Cle Elum where they could start an RV custom shop. Additionally, and as discussed, Jorgensen declared that on the two occasions when he and Sears lived apart due to Jorgensen's suspected infidelity, they made affirmative efforts to mend their relationship, indicating their commitment to one another. Cf. In re Muridan, 3 Wn. App. 2d 44, 60-61, 413 P.3d 1072 (2018) (observing that "[i]nfidelity alone does not preclude a CIR," and with regard to the intent factor, evidence of infidelity is partially counterbalanced where the parties choose to remain together even after the infidelity is revealed).

Also, the record contains numerous e-mails and text communications from Sears to Jorgensen in which she refers to Jorgensen using terms of endearment. These include an e-mail from as recently as March 2018 in which Sears addresses Jorgensen as "sweetie" and signs off, "LY," presumably shorthand for "love you." In another e-mail, from March 2019, Sears introduces herself to the seller of a Cle Elum property as Jorgensen's "other half" and asks if the seller would be interested in offering "us" seller financing.

Jorgensen also submitted multiple declarations from friends and family stating that Jorgensen and Sears held themselves out as a couple and behaved outwardly as a married couple would. Jorgensen's mother declared that Jorgensen and Sears "spoke of their immediate and long-term future plans for their lives as any other committed or married couple would." She also declared that she considered Sears her "next daughter-in-law," and that "[w]e all fit together as a family and got along like one." Another witness declared that on one occasion in mid 2018, Sears represented Jorgensen as being her "'husband.'" Yet another recalled that Jorgensen "would often refer to [Sears] as his wife" and that Sears "didn't seem to mind and never corrected [Jorgensen]."

Viewed in the light most favorable to Jorgensen, the evidence in the record supports a determination that the parties' intent and purpose was a marital-like relationship. Cf. Pennington, 142 Wn.2d at 605-06 (purpose factor satisfied upon finding that relationship "included companionship, friendship, love, sex, and mutual support and caring," and finding that parties "functioned as one would expect a

married couple to function" tended to support intent factor). Sears points to her attestations below that the parties' relationship never recovered after their 2014 break, and that the two no longer shared physical intimacy after that time. But, "[t]he word 'intimate' in the term 'committed intimate relationship' was not intended to make *sexual* intimacy the litmus test for whether courts should equitably divide property at the end of the relationship." Muridan, 3 Wn. App. 2d at 61. So, "[w]hile courts may consider physical intimacy . . . , it is not required." Id.

Sears also points out that the trial court observed, in granting summary judgment, that "marriage . . . d[id] not appear [to be] a consistent purpose of the relationship." She notes, too, that even after she was free to marry, Jorgensen did not propose again to her, nor did she propose to Jorgensen. Relying on Pennington, Sears argues that these facts support the trial court's summary judgment ruling. But, in Pennington, the court considered one party's refusal to marry in light of the other party's "insistence on marrying." 142 Wn.2d at 604. Here, Sears points to no evidence that either she or Jorgensen refused to marry in the face of the other party's insistence. Furthermore, the Pennington court also observed, with regard to the intent factor, that the party asserting a CIR was repeatedly absent from the other party's home and had a months-long sexual relationship with another person, with whom she resided at one point. Id. at 597, 604. Sears's reliance on Pennington is misplaced.

Turning to the remaining CIR factor—pooling of resources and services for joint projects—reasonable minds could also conclude that this factor supports a CIR. Sears asserts that she paid for the parties' shared living expenses. But, as Jorgensen points out, the record contains evidence that Jorgensen contributed to "the mortgages, utilities, Internet, [television] and [home owners' association] dues" by forgoing income from the detailing business. Jorgensen also declared that at the Cle Elum cabin, he refinished the bathroom, ran power to a shed that the parties purchased and painted, installed outlets and lights on the shed, added a wood stove and installed a chimney, insulated and finished the walls with plywood, and built a lean-to for the parties' snowmobiles. Jorgensen declared further that he redesigned and rebuilt the cabin's deck after a tree fell on the existing deck, purchasing some of the lumber himself. And, even Sears concedes that Jorgensen contributed to cabin's maintenance and general upkeep. She points out that Jorgensen did not contribute any funds toward the cabin, but time and labor, like money, are resources that the court may consider under the resource pooling factor. Cf. Pennington, 142 Wn.2d at 605 (no CIR existed where, among other things, there was an "absence of constant or continuous copayments *or* investment of time and effort in any significant asset" (emphasis added)).

Also, the record supports a determination that Sears and Jorgensen treated the boat detailing business as a joint project toward which they both devoted significant time and resources for their mutual benefit. There is evidence that Sears considered Jorgensen her business partner, that the two discussed using

proceeds from the business to retire or purchase a property together, and that Jorgensen contributed substantial time and labor to the business's "hands-on" aspects. Sears contends that Jorgensen was merely an employee who was paid for his labor. But, even assuming that one cannot both pool resources for the benefit of a quasi-community and be a paid employee, the record, as discussed, contains evidence that Jorgensen agreed to forgo income from the business to contribute to the parties' shared expenses.[3]

Sears also argues that the resource pooling factor does not support the existence of a CIR because Jorgensen provided no evidence that his efforts increased the value of any asset. But, Sears cites no authority holding that, for a CIR to exist, the parties' pooling of resources must actually result in pecuniary gain. We are not persuaded that a quasi-community's failure to prosper from its efforts makes it any less a quasi-community.

In sum, construing the evidence and all reasonable inferences therefrom in the light most favorable to Jorgensen, reasonable persons could conclude, under the Connell factors, that Jorgensen and Sears's relationship was a CIR. Consequently, the trial court erred by concluding otherwise as a matter of law and dismissing Jorgensen's petition.

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[3] Jorgensen has filed a motion to supplement the record with evidence that he was not paid for at least some of his labor. Because that evidence is not needed to fairly resolve the issues on review, we deny the motion. See RAP 9.11(a) (appellate court may direct the taking of additional evidence on review if, among other factors, "additional proof of acts is needed to fairly resolve the issues on review").

Sears asserts that we should nonetheless affirm because, "regardless [of] whether the parties were in a [CIR], [Jorgensen] failed to meet his burden of showing the existence of community-like property acquired during the relationship." Specifically, Sears asserts that the property at issue here—the Cle Elum cabin, the Queen Anne condo, and Deckhand Detailing—all constitute her separate property because she acquired them before the alleged CIR began. So, she says, even if there was a CIR, Jorgensen would be entitled, at most, to an equitable lien against Sears's separate property based on the increase in value attributable to Jorgensen's efforts. Therefore, Sears contends, to defeat summary judgment, Jorgensen had to present evidence that his efforts actually increased the value of that property. And, because Jorgensen failed to do so, the trial court did not err by summarily dismissing Jorgensen's petition.

Sears's contentions fail for two reasons.

First, Sears's claim that the cabin, condo, and her interest in Deckhand Detailing each constitute her separate property rests on her claim that that she acquired those assets before the parties began cohabitating. But, although the trial court concluded that "the parties did not begin to cohabitate until 2008," there is conflicting evidence in that regard. As discussed, Jorgensen declared that by June 2007, he and Sears were living together full time in the Cle Elum cabin. So, at least with regard to the condo, which Sears undisputedly did not buy until January 2008, the acquisition date alone may not be determinative of the property's character as separate or community-like. See Muridan, 3 Wn. App. 2d

at 56 ("Property acquired during a CIR is presumed to be community-like," but "[t]his presumption may be rebutted.").

Second, and more importantly, the sole issue on which Sears moved for summary judgment below was the existence of a CIR. The "Statement of Issues" in Sears's motion plainly stated that the issue presented was "[w]hether [Sears] is entitled to summary judgment dismissal of Mr. Jorgensen's Petition where he cannot establish that a [CIR] existed between the parties as a matter of law?" (Italics omitted.) Consistent with this statement of the issue, Sears's motion analyzed only the Connell factors and concluded, "Mr. Jorgensen cannot establish that a [CIR] existed as a matter of law when analyzing the Connell factors." To be sure, the trial court apparently believed that to satisfy the resource pooling factor, the party asserting a CIR must establish that the quasi-community's pooled resources created value. The trial court also stated in its order that the pooling factor "is the central factor." But, "[o]ne Connell factor is not more important than another." Pennington, 142 Wn.2d at 605; see also Morgan, 200 Wn. App. at 388 ("[N]o one factor is more important than the others."). And, whether there is pooling so as to support the existence of a CIR is different than the issue Sears now raises, i.e., whether, assuming a CIR exists, there is any community-like property subject to equitable distribution. We therefore decline to affirm on this basis. See RAP 9.12 ("On review of an order granting . . . a motion for summary judgment the

appellate court will consider only evidence and issues called to the attention of the trial court." (emphasis added)).[4]

We reverse and remand for further proceedings.[5]

Appelwick, J.

WE CONCUR:

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[4] Put another way, while we may affirm on any basis supported by the record, we are not persuaded that this record is the record that would have been presented had Sears sought summary judgment based on Jorgensen's inability to establish a genuine issue of material fact as to property characterization and distribution. Indeed, at oral argument below, Jorgensen argued as follows through counsel: "What the actual determination of what's fair and equitable in terms of a distribution of the accumulations during the relationship, that is an issue for another day. But for summary judgment, it's clear that they were in a committed intimate relationship, and so now we need to get on to the next step with this process." This argument reflects that Jorgensen understood Sears's motion as challenging solely the existence of a CIR.

[5] Because we reverse and remand, we need not address Jorgensen's argument that reversal is required because the trial judge was prejudiced against him. But, to the extent Jorgensen suggests that a different judge is required on remand, he fails to point to any evidence of the trial judge's actual or potential bias. Accordingly, we do not remand to a different judge. See In re Marriage of Meredith, 148 Wn. App. 887, 903, 201 P.3d 1056 (2009) ("A trial court is presumed to perform its functions regularly and properly without bias or prejudice," and to overcome the presumption, "[e]vidence of a judge's actual or potential bias is required."); In re Pers. Restraint of Davis, 152 Wn.2d 647, 692, 101 P.3d 1 (2004) ("Judicial rulings alone almost never constitute a valid showing of bias.").

STEVEN VELOZO - FILING PRO SE

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