Vasquez v. Hawthorne, No. 69655-1, (Slip Op., November 1, 2001).

Cause No. 69655-1

[No. 69655-1. En Banc.]

Argued February 13, 2001. Decided November 1, 2001.

FRANK VASQUEZ,)
Petitioner,)
) No. 69655-1
v.)
) En Banc
JOSEPH HAWTHORNE, as)
personal representative of the Estate)
of Robert Awrey Schwerzler,)
Respondent.) Filed November 1, 2001

ALEXANDER, C.J., and SANDERS, J., concur by separate opinions.

Trial Court: Superior Court, Pierce County,
No. 96-2-07794-7, Vicki L. Hogan, J.

Rumbaugh Rideout Barnett, by Terry J. Barnett, for petitioner.

Ross E. Taylor, for respondent.

Suzanne J. Thomas; Jamie D. Pedersen, Lambda Legal Defense & Education Fund, by Jennifer C. Pizer and Doni Gewirtzman, amicus curiae on behalf of Lambda Legal Defense & Education Fund.

Patricia S. Novotny, amicus curiae on behalf of Northwest Womans Law Center.

Columbus School of Law the Catholic University of America, by Joshua K. Baker; Darren C. Walker, amicus curiae on behalf of Marriage Law Project.

Roger A. Leishman; Karen E. Boxx, amicus curiae on behalf of American Civil Liberties Union.

JOHNSON, J. - The issue in this case is whether the facts were sufficient to grant summary judgment based on the equitable doctrine of meretricious relationship. Granting summary judgment for the plaintiff, the trial court held Frank Vasquez (Vasquez) had proved he was involved in a long-term, stable, cohabiting relationship with the decedent, Robert Schwerzler (Schwerzler). The trial court further found the property acquired during the relationship was the joint property of Vasquez and Schwerzler, and that it passed to Vasquez upon Schwerzler's death and was not part of the estate. Since Schwerzler died without a will, the trial court drew an analogy to community property laws and the probate statute governing intestate distribution in awarding property. The Court of Appeals reversed, reasoning that because meretricious relationships are marital-like and persons of the same sex cannot be legally married, a meretricious relationship cannot exist between members of the same sex. *Vasquez v. Hawthorne,* 99 Wn. App. 363, 994 P.2d 240 (2000). The Court of Appeals, however, remanded for trial on other equitable theories.

We granted review. We hold the trial court erred in resolving this case on summary judgment. The record on summary judgment is inadequate to reach the legal issue presented. It was further error for the Court of Appeals to reach the merits of the case. We vacate the opinion of the Court of Appeals and remand this case to the superior court for trial.

FACTS

Upon Schwerzler's death, Vasquez filed a claim against the estate asserting he and Schwerzler had formed an economic community and he was entitled to an equitable share of the property. Joseph Hawthorne (Hawthorne), who was appointed personal representative of the estate, denied the claim. Vasquez filed suit in superior court, asserting his claim under several equitable theories. Vasquez made a motion for partial summary judgment requesting relief under the meretricious relationship doctrine. To decide the motion, the trial court considered several conflicting affidavits of the parties. The trial court made two rulings relevant to this case. First, the trial court determined Vasquez and Schwerzler had a meretricious relationship and the property acquired during the course of their relationship was presumed jointly owned.

Second, the trial court awarded some of the property to Vasquez by analogizing to our probate laws (i.e., community-like property goes to the survivor). Hawthorne appealed. The Court of Appeals reversed and remanded the case for trial on the theories of implied partnership and equitable trust, which had not been decided by the trial court. We granted Vasquez's petition for review.

ANALYSIS

A summary judgment motion under CR 56(c) can be granted only if the pleadings, affidavits, depositions, and admissions on file demonstrate no genuine issues of material fact, and that the moving party is entitled to judgment as a matter of law. The court must consider all facts submitted and all reasonable inferences from those facts in the

light most favorable to the nonmoving party. The motion should be granted only if, from all the evidence, reasonable persons could reach but one conclusion. *Ellis v. City of Seattle,* 142 Wn.2d 450, 458, 13 P.3d 1065 (2000).

The facts of this case are contested through the affidavits of the parties. First, the nature of the relationship between Vasquez and Schwerzler is disputed. Vasquez presents affidavits asserting he and Schwerzler were a same sex couple. The estate offers affidavits contending Vasquez and Schwerzler were not a same sex couple and did not hold themselves out as such. Vasquez offers as proof of their relationship that he and Schwerzler lived together from April 1967 until October 1995, with the exception of two years in the early 1970s during which they lived in different apartments in the same building. The estate counters that no such relationship existed. Although they lived together, Vasquez and Schwerzler did not travel together on vacation and each had his own bedroom.

Similarly, the nature of Vasquez's and Schwerzler's business relationship is disputed. On the one hand, Vasquez contends the couple made their living recycling boxes and bags. Schwerzler managed their financial affairs and any remuneration Vasquez earned was contributed to their economic community. On the other hand, the estate argues that Schwerzler inherited the bag business from his father and any property he owned was derived from either his inherited wealth or through his separate businesses. Schwerzler placed all property acquired during their 28 years together in his own name, including the house he and Vasquez shared, a life insurance policy, two automobiles, and a checking account. The estate argues Vasquez was merely a handyman and any property found in Schwerzler's home should be included in his estate and pass to his legal heirs.

On review, we conclude the trial court did not have sufficient undisputed factual information to resolve this case on its merits. From the affidavits, the trial court could not determine what type of relationship existed between Vasquez and Schwerzler. Nor could it conclude what property acquired during the course of their relationship could be subject to equitable division. Without proof of the facts asserted, it was not possible for the trial court to know the character of the relationship between Schwerzler and Vasquez, the nature and extent of contribution to any property acquired by the parties, and what equitable theories are most appropriate. Therefore, we must remand this case for the trial court to review under the various theories Vasquez asserts.

Vasquez presented claims for equitable relief under several theories, including meretricious relationship, implied partnership, and equitable trust. When equitable claims are brought, the focus remains on the equities involved between the parties. Equitable claims are not dependent on the "legality" of the relationship between the parties, nor are they limited by the gender or sexual orientation of the parties. For example, the use of the term "marital-like" in prior meretricious relationship cases is a mere analogy because defining these relationships as related to marriage would create a de facto common-law marriage, which this court has refused to do. *In re Marriage of Pennington,* 142 Wn.2d 592, 601, 14 P.3d 764 (2000). Rather than relying on analogy, equitable claims must be analyzed under the specific facts presented in each case. Even when we recognize "factors"

to guide the court's determination of the equitable issues presented, these considerations are not exclusive, but are intended to reach all relevant evidence. In a situation where the relationship between the parties is both complicated and contested, the determination of which equitable theories apply should seldom be decided by the court on summary judgment. In this case, the trial court must weigh the evidence to determine whether Vasquez has established his claim for equitable relief.

Because we remand this case for trial, we need not resolve the evidentiary issues raised by the estate concerning the deadman's statute. Any objection to specific testimony will be resolved at trial.

CONCLUSION

We vacate the decision of the Court of Appeals, reverse the trial court's granting of the motion for partial summary judgment, and remand this case for trial. Finally, an award of attorney fees, if any, should be determined at trial.

ALEXANDER, C.J., SMITH, SANDERS, MADSEN, IRELAND, BRIDGE, CHAMBERS and OWENS, JJ., concur.

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ALEXANDER, C.J. (concurring) - I agree with the majority that we should remand this case to the trial court so that it may consider whether Frank Vasquez can establish any of his claims for relief under the equitable doctrines of implied partnership and equitable trust. I write separately simply to indicate my agreement with Justice Sanders' view that the meretricious relationship doctrine is unavailable to a party who seeks relief when, as is the case here, one party to the alleged meretricious relationship is deceased. I reach that conclusion because the meretricious relationship doctrine is limited in that the trial court is to apply, by analogy, the provisions of RCW 26.09.080 /1 when it distributes the property of persons who have been living in a "marital-like relationship."
Connell v. Francisco, 127 Wn.2d 339, 346, 898 P.2d 831 (1995);

see also Gavin M. Parr, *What is a "Meretricious Relationship"?: An Analysis of Cohabitant Property Rights Under* Connell v. Francisco, 74 Wash. L. Rev. 1243 (1999). Indeed, we developed this equitable doctrine because the legislature has not provided a statutory means of resolving the property distribution issues that arise when unmarried persons, who have lived in a marital- like relationship and acquire what would have been community property had they been married, separate. *See In re Marriage of Lindsey*, 101 Wn.2d 299, 678 P.2d 328 (1984).

On the other hand, the laws of intestacy, RCW 11.04.015-.290, dictate how property is to be distributed when an individual dies without leaving a will. Accordingly, we have held that the meretricious relationship doctrine's analogy to RCW 26.09.080 does not apply when a

relationship between unmarried cohabitants is terminated by death of one cohabitant. *Peffley-Warner v. Bowen*, 113 Wn.2d 243, 253, 778 P.2d 1022 (1989). Thus, under the circumstances of this case, I would hold that the meretricious relationship doctrine is not an available form of equitable relief. The question of whether the doctrine has application when parties of the same sex separate after having lived together in a long-term stable relationship, we should leave to another day when that issue is properly before us.

For this reason I concur.

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1 This statute provides that "[i]n a *proceeding for dissolution* of the marriage, . . . the court shall . . . make such disposition of the property and the liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors." RCW 26.09.080 (emphasis added).