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Meretricious Relationships—Property Rights: A Meretricious Relationship May Create an Implied Partnership—In re Estate of Thornton, 81 Wn. 2d 72, 499 P.2d 864 (1972)

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RECENT DEVELOPMENTS

MERETRICIOUS RELATIONSHIPS—PROPERTY RIGHTS: A MERETRICIOUS RELATIONSHIP MAY CREATE AN IMPLIED PARTNERSHIP—*In re Estate of Thornton*, 81 Wn. 2d 72, 499 P.2d 864 (1972).

In the early 1950's, decedent separated from his wife and began living with appellant. During the subsequent seventeen years decedent, appellant and their four children operated a cattle ranch in Washington. In 1961 profits from that business were used to purchase property known as the Malo farm in the name of decedent. During the following years, appellant participated both in the decisions concerning the farm's management and in its day-to-day operations. Upon the death of the decedent in 1969, his surviving spouse filed a petition for probate of his will. Thereafter appellant filed a petition alleging a partnership interest in the Malo farm. The trial court dismissed appellant's claim for failure to state a cause of action, and the dismissal was affirmed by the court of appeals. The Washington Supreme Court reversed. *Held:* The survivor of a couple living in a meretricious relationship may establish an implied partnership interest in property by showing the surrounding acts and circumstances of the relationship. *In re Estate of Thornton*, 81 Wn. 2d 72, 499 P.2d 864 (1972).

I. BACKGROUND

One who cohabits[1] with another knowing that the relationship does not constitute a valid marriage is a meretricious "spouse."[2] Either or both of the parties to the relationship may be meretricious. Thus, if a prior marriage of either is still valid and both know this, then both parties are meretricious.[3] Alternatively, if a relationship exists in

1. Cohabitation seems to contemplate more than a single night of intimacy. Although no necessary minimum period of time is evident from any of the cases reviewed, the term "cohabitation" generally denotes a situation in which the parties have "set up housekeeping." *See, e.g.*, Humphries v. Riveland, 67 Wn. 2d 376, 407 P.2d 967 (1965) (thirteen years); Creasman v. Boyle, 31 Wn. 2d 345, 196 P.2d 835 (1948) (seven years). *See also* Coolidge, *Rights of the Putative and Meretricious Spouse in California*, 50 CALIF. L. REV. 866, 873 (1962) [hereinafter cited as Coolidge].

2. *See* Coolidge at 873.

3. *See In re* Sloan's Estate, 50 Wash. 86, 96 P. 684 (1908). It is not significant that one or even both of the parties is capable of contracting a valid marriage. It is the

which at least one of the parties has a "good faith belief" that a valid marriage exists, then the relationship is referred to as a putative marriage.[4] In the latter class of cases, Washington courts will exercise an equity power to protect the innocent party or parties.[5]

Prior to *Thornton* the leading Washington case involving a meretricious relationship[6] was *Creasman v. Boyle,*[7] which established that in the absence of some trust relationship,[8] property acquired by a couple living in a meretricious relationship is presumed to belong to the party

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knowledge of the invalidity, not the capability of the parties to contract a valid marriage, that makes a relationship meretricious. Thus in Humphries v. Riveland, 67 Wn. 2d 376, 407 P.2d 967 (1965), both parties were capable of contracting a valid marriage, but relief was denied because under the circumstances the woman lacked a good faith belief that a valid marriage existed. Her belief rather than her legal ability to contract a valid marriage was determinative of her status.

4. Lazzarevich v. Lazzarevich, 88 Cal. App. 2d 708, 200 P.2d 49 (1948); Powers v. Powers, 117 Wash. 248, 200 P. 1080 (1921); Buckley v. Buckley, 50 Wash. 213, 96 P. 1079 (1908); *See* Coolidge at 866. Hence, if a couple has undergone a marriage ceremony and only one is aware of a legal impediment to the validity of the marriage, then only that party is meretricious and the "innocent" or putative party is not tainted by his partner's knowledge. *See* Buckley v. Buckley, *supra.* Even a good faith belief that a common law marriage is valid is sufficient to make the believer a putative spouse. *See* Powers v. Powers, *supra.*

5. *See* Buckley v. Buckley, 50 Wash. 213, 96 P. 1079 (1908). In *Buckley* the court held that where a woman in good faith enters a marriage contract with a man:

> a status is created which will justify a court rendering a decree of annulment . . . upon complaint of the innocent party; and where in such a case the facts are [that] . . . the woman helped to acquire and very materially save the property, the court has jurisdiction . . . [to award] to the innocent, injured woman such proportion of the property as, under all the circumstances, would be just and equitable.

This approach is in contrast to that of other jurisdictions which have adopted the "putative wife doctrine" wherein the putative wife is automatically entitled to one-half of the relationship's joint accumulations. Through this doctrine civil effects of a valid marriage are conferred on a putative spouse who acts in good faith. Succession of Pigg, 228 La. 779, 802, 84 So. 2d 196, 198 (1955); Lee v. Lee, 112 Tex. 392, 398-99, 247 S.W. 828, 830 (1923). The doctrine has, for many years been applied in Texas (Lee v. Smith, 18 Tex. 141, 145 (1856)) and Louisiana (Patton v. Philadelphia and New Orleans, 1 La. Ann. 98 (1846)). Where it is applied, property acquired during the putative relationship is quasi-community property, and the putative spouse is entitled to a one-half interest. Funderburk v. Funderburk, 214 La. 717, 726, 38 So. 2d 502, 505 (1949).

6. A "meretricious relationship," as used in this note, connotes a relationship in which both parties cohabit, knowing that a valid marriage does not exist.

7. 31 Wn. 2d 345, 196 P.2d 835 (1948).

8. If realty or personalty is taken in the name of a grantee other than the person who advanced the consideration to a third party for the purchase, and the grantor and grantee are strangers to each other in the sense that there is no marital relationship between them, a resulting trust will arise and the person in whose name the property is taken will be presumed to hold the legal title subject to the equitable ownership of the party furnishing the consideration. *See* RESTATEMENT OF TRUSTS (SECOND) §§ 440, 441, 442 and 444 (1968). For application to Washington law, *see* Creasman v. Boyle, 31 Wn. 2d 345, 196 P.2d 835 (1948).

in whose name legal title rests.[9] This presumption is harsh on its face, and later cases have lessened but not eliminated its impact.[10]

There are at least three instances in which the *Creasman* presumption either is overcome or does not arise. First, the presumption is not conclusive and can be rebutted by "evidence to the contrary."[11] Second, no presumption arises as to property which can be clearly traced by the court and identified as belonging to one of the parties.[12] Finally, Washington courts will not ignore the effect of a conveyance or contractual agreement through imposition of the presumption.[13] However, the above exceptions to the application of the *Creasman* presumption do not cover all situations in which it may work a substantial injustice. For example, under the *Creasman* presumption the survivor of a meretricious relationship who is unfortunate enough to have had his or her partner die without an agreement regarding disposition of their joint assets will probably receive nothing, assuming the other party took title in his or her own name.[14] Furthermore, even if both parties are still living at the time of their separation there will be

9. As stated by the court in *Creasman,* the presumption is that, "property acquired by a man and a woman not married to each other, but living together as husband and wife, is not community property, and, in the absence of some trust relation, belongs to the one in whose name the legal title to the property stands." 31 Wn. 2d 345, 351, 196 P.2d 835, 841 (1948).

10. *See* notes 11-13 and accompanying text *infra.*

11. As enunciated in *Creasman,* the presumption appeared to be conclusive. *See* Walberg v. Mattson, 38 Wn. 2d 808, 232 P.2d 827 (1951). However in Dahlgren v. Blomeen, 49 Wn. 2d 47, 53, 298 P.2d 479, 485 (1956), the court stated that the presumption is rebuttable. Later in Iredell v. Iredell, 49 Wn. 2d 627, 630, 305 P.2d 805, 808 (1957), the court stated that presentation of "evidence to the contrary" prevents the presumption from arising. The *Iredell* view was followed in West v. Knowles, 50 Wn. 2d 311, 313, 311 P.2d 689, 691 (1957).

12. West v. Knowles, 50 Wn. 2d 311, 311 P.2d 689 (1957).

13. The parties to a meretricious relationship have the same right to contract with each other as do other persons. Humphries v. Riveland, 67 Wn. 2d 376, 386, 407 P.2d 967, 976 (1965). However, in the absence of any proof of a conveyance or contractual relationship (such as a deed of conveyance, partnership, joint venture or a resulting trust), the court will not assume that the parties had any agreement that property acquired by one of them was to be shared equally with the other. Therefore, the mere fact of such cohabitation alone does not vest any rights on the part of one person in the accumulations of the other during the period of cohabitation. *Id.*

14. Kenneth W. Weber, *Summary of the Current Status of the Law of the State of Washington Concerning the Rights of Partners to a Meretricious Relationship and the Rights and Obligations Concerning Children Born Outside of Lawful Wedlock,* prepared as a report to the Family Law Commitee of the Washington State Bar Association, December 1971.

the same deleterious result for the meretricious party who fails to make a partial contribution of capital.[15]

Thornton's holding and dicta offer two solutions to these inequities: first, the court's implied partnership rationale created a fourth exception to the *Creasman* presumption; and second, the court in dicta noted that *Creasman* arguably should be overruled and its archaic presumption invalidated.[16]

II. IMPLIED PARTNERSHIP

In *Thornton* appellant argued the existence of an implied partnership based on the facts and circumstances surrounding her operation with decedent of a business for a profit. Although the court discussed two other legal theories upon which recovery could be granted,[17] it ultimately held that the appellant had made out a sufficient prima facie case for the existence of an implied partnership to avoid a motion for nonsuit. In so holding the court relied on *Nicholson v. Kilbury*,[18] which has long provided the basis for the law of implied partnership in Washington.[19] However, this was the first time that

15. Like Washington, other community property jurisdictions hold that in the absence of an agreement to pool earnings, a partnership, a joint venture or circumstances sufficient to establish a resulting or constructive trust, mere cohabitation by a man and a woman with knowledge that a valid marriage is not in existence does not vest any rights in one person in the accumulations of the other during the period of such relationship. *See, e.g.*, Stevens v. Anderson, 75 Ariz. 331, 256 P.2d 712 (1953), Keene v. Keene, 57 Cal. 2d 657, 371 P.2d 329 (1962).

16. 81 Wn. 2d at 79, 499 P.2d at 870.

17. The additional theories were "(1) the existence of a contract or agreement to make a will . . . and (2) the existence of a relatively long-term, stable meretricious relationship during which the parties appeared to hold themselves out as husband and wife." 81 Wn. 2d at 75, 499 P.2d at 866. To establish the existence of a contract to make a will in Washington it is necessary to demonstrate: (1) that the contract as alleged was entered into between the deceased and the person asserting the contract; (2) that the services contemplated as consideration for such agreement have actually been performed; and (3) that the services were actually performed in reliance upon the agreement. Humphries v. Riveland, 67 Wn. 2d 376, 407 P.2d 967 (1965). The trier of fact must be convinced of the high probability that the required elements of a contract are present. Cook v. Cook, 80 Wn. 2d 642, 497 P.2d 584 (1972).

18. 83 Wash. 196, 145 P. 189 (1915).

19. The court in *Nicholson* stated:

> 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 evid-

Nicholson had been expressly applied to a case involving a meretricious relationship to protect the nontitled party.[20] Since, as the court in *Thornton* noted, the *Creasman* presumption does not apply to implied partnership cases, the result is a fourth instance in which the *Creasman* presumption will not arise with respect to a meretricious relationship.

Prior to *Thornton* the court applied what amounted to a double standard by frequently utilizing an implied partnership theory of recovery with respect to non-meretricious cases,[21] yet denying it when the parties cohabited in a meretricious relationship. The result was that an equitable distribution of the property was often precluded by application of the *Creasman* presumption, in spite of the fact that the court disclaimed "any opinion or intended reflection on the moral status of a couple living in a meretricious relationship."[22]

The *Thornton* decision abandoned this double standard with regard to the doctrine of implied partnership by finding a prima facie case was made out, irrespective of whether or not decedent's and appel-

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ence 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 Pac. 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.

83 Wash. 196, 202, 145 P. 189, 195 (1915) (emphasis added).

20. In Poole v. Schrichte, 39 Wn. 2d 558, 263 P.2d 1044 (1951), a case in which the *Creasman* presumption was rebutted by "evidence to the contrary," the court could have applied implied partnership reasoning. In *Poole* the man contributed labor in running a tavern while the woman supplied most of the cash from the profits of a beauty salon. Nevertheless the court's only reference to a partnership theory is in passing when it stated "the evidence establishes a joint venture if not a partnership between the parties . . . ." In addition, Humphries v. Riveland, *supra* note 13, could have provided the basis for a partnership theory of recovery if it is assumed that services performed by the party staying at home were not a gratuity. Justice Finley urged just such a result in his dissent.

21. *See, e.g.*, Eder v. Reddick, 46 Wn. 2d 41, 278 P.2d 361 (1955), Purdy & Whitfield v. Dept. L. & I., 12 Wn. 2d 131, 120 P.2d 858 (1942), Barovic v. Constaniti, 183 Wash. 60, 48 P.2d 257 (1935).

22. Humphries v. Riveland, 67 Wn. 2d 376, 386, 407 P.2d 967, 977 (1965). The disclaimer was reiterated in *Thornton*, 81 Wn. 2d at 77, 489 P.2d at 867. In contrast to the avowed approach of Washington, Louisiana has made a different determination with regard to a couple that cohabits without the formality of marriage. There, persons who live together in such relationships are placed "in the interest of good morals, public order and the best interests of society" under certain disabilities as regards one another in three general areas: contracts, partnerships and donations. *See, e.g.*, Cole v. Lucas, 2 La. Ann. 946, 952 (1847). *See generally* Note, *Community Property—Open Concubinage—Louisiana Civil Code Article 1481*, 44 TULANE L. REV. 562, 564 (1970).

lant's relationship was meretricious in nature. Unfortunately, the liberalization of the law of implied partnership may not benefit parties to a meretricious relationship who lack a "partnership to operate a business for profit." Hence, in a relationship in which one party works, taking title in his or her name, and the other stays at home performing household duties, the latter still might be denied a share of the property accumulated during their relationship by the presumption enunciated in *Creasman*.[23]

III. INVALIDATION OF THE *CREASMAN* PRESUMPTION

Although the *Thornton* court relied on the theory of implied partnership, it went on to state that it was "dubious about the continuing validity of the legal presumption or fiction accepted and applied by the court in *Creasman*."[24] Indeed the presumption should be invalidated for several reasons: (1) the application of the presumption coupled with the dead man's statute[25] often results in an outcome that is unfair and contrary to the probable intent of the parties; (2) the presumption makes an illogical distinction between labor and monetary contributions; and (3) the presumption may be unconstitutional.

Any distribution ordered by a court should be designed to give effect to the intention of the parties. Even the *Creasman* case alludes to that goal.[26] Thus, since parties who have lived harmoniously in a *long* and *stable* meretricious relationship terminated only by death presumably would desire that the survivor be adequately provided for, the court should implement that intent. However, the *Creasman* presumption often frustrates such a result. If title is in the deceased's name, the *Creasman* presumption coupled with the dead man's statute[27] probably will block the survivor from establishing an interest in their joint accumulations. However if the couple separates while both parties are living, the "dead man's" statute will not bar testimony by the nontitled party, and the presumption will not preclude an equitable

23. *See* note 9 *supra*.
24. 81 Wn. 2d at 77, 499 P.2d at 867 (1972).
25. WASH. REV. CODE § 5.60.030 (1959). For a discussion of the Dead Man's Statute, *see generally* Ray, *Dead Man's Statutes*, 24 OHIO L. J. 89 (1963).
26. 31 Wn. 2d 345, 351, 196 P.2d 835, 841 (1948).
27. *See* note 25 *supra*.

share for the nontitled party.[28] The effect of the former outcome is emphasized when children are born of the relationship and the nontitled survivor suddenly finds himself without property or an adequate means of support. Hence the consequence of the *Creasman* presumption is not to aid the court in deciding hard cases, but to deny justice when the plaintiff's partner has died without a written agreement regarding disposition of their property.[29]

The *Creasman* presumption also makes an invalid distinction between labor and monetary contributions. If a party can trace a monetary contribution or prove that he actually advanced funds to promote the couple's joint well-being, the court will award that party a pro rata share. On the other hand, the party bringing an action to establish a part interest in property because of services rendered in the form of household duties or the like, may find those services viewed as a gift.[30] The contention that a party's services as cook, housekeeper and homemaker are a gift seems illogical and invalid. A party contributing services in the home should receive as much protection as one contributing money or property. Indeed, if household services are deemed to be a gift, the logic underlying the concept of community property is open to question.[31]

Finally, as Justice Finley noted in *Thornton,* the *Creasman* presumption may very well be unconstitutional. There exists a long line of

28. *Thornton,* 81 Wn. 2d at 78, 499 P.2d at 868.

29. *See* Note, *Establishment of Interest in Intestate Decedents' Estate,* 41 WASH. L. REV. 578, 581 (1966).

30. The court in Humphries v. Riveland, 67 Wn. 2d 376, 407 P.2d 967 (1965), found that services such as housework and yardwork rendered by a meretricious spouse were a gratuity and in the absence of proof of a contractual agreement did not afford a legal basis for appellant's claim to one-half of decedent's estate. The five to four decision was accompanied by Justice Finley's vigorous dissent in which he urged that the case be remanded for further proceedings with respect to the appellant's right to share in the estate commensurate with the intent of the parties and their contributions to the partnership, inferred or implied, over the thirteen year period of the relationship. *Id.* at 400, 407 P.2d at 980. Note that had that person hired a housekeeper and worked, thereby contributing dollars to the relationship, the presumption probably would have been rebutted by "evidence to the contrary."

31. *See* W. DEFUNIAK & M. VAUGHN, PRINCIPLES OF COMMUNITY PROPERTY § 1 (2d ed. 1971), stating:

> Equality is the cardinal precept of the community property system. At the foundation of the concept is the principle that all wealth acquired by the joint efforts of the husband and wife shall be common property; the theory of the law being that, with respect to marital property acquisitions, the marriage is a community of which each spouse is a member, equally contributing by his or her industry to its prosperity, and possessing an equal right to succeed to the property after its dissolution.

criminal cases in which statutory presumptions have been held unconstitutional. In *Tot v. United States,*[32] the Court held such a presumption to be unconstitutional, adopting the test that there must be some rational connection between the fact proved and the ultimate fact presumed. More recently, in *Leary v. United States,*[33] the Court modified the test to require "substantial assurance that the presumed fact is more likely than not to flow from the proved fact upon which it is made to depend."[34] Further, other cases indicate that presumptions may be held unconstitutional in *civil* as well as *criminal* cases and that the same test may be applied to both.[35] If statutory and judicial presumptions may be equated, the fact that Washington courts have left the parties "as they placed themselves" in meretricious cases despite evidence of household services or a long term and stable relationship suggests that the *Creasman* presumption lacks a basis in fact and therefore may be unconstitutional.[36]

Coupled with the suggestion that the *Creasman* presumption should be invalidated was the court's hint of a new presumption that a party to a *long term* and *stable* meretricious relationship may have a claim to assets on that basis alone.[37] Apparently under the "long term and stable test" if a couple has lived together for an extended period of

32. 319 U.S. 463 (1943). This case involved a statute which made it a crime for a person previously convicted of a crime of violence to receive any firearm in an interstate transaction. The statute, 15 U.S.C. § 902(f) (1942), specifically provided that "the possession of a firearm or ammunition by any such person shall be presumptive evidence that such firearm or ammunition was shipped, transported or received, as the case may be, by such person in violation of this act."

33. 395 U.S. 6 (1969). *Leary* involved a presumption that a possessor of marijuana is deemed to know of its unlawful importation.

34. *Id.* at 36.

35. In Mobil J.K.R.R. v. Turnipseed, 219 U.S. 35 (1910), a civil case, the Supreme Court stated that "if a legislative provision not unreasonable in itself in prescribing a rule of evidence, in either *civil* or *criminal* cases, does not shut out from a party affected a reasonable opportunity to submit to the jury in his defense all the facts bearing on the issue, there is no ground for holding that due process of law has been denied him." Hence, while it appears the "rational connection" necessary to uphold the presumption was found in *Turnipseed,* the Court by implication held that presumptions may be illegal in both *civil* and *criminal* cases and that the same test will be applied to both. Later in Western & Atl. R.R. v. Henderson, 270 U.S. 639 (1929), another civil case, the Court did invalidate such a presumption. The rationale behind that invalidation was that the presumption therein, unlike that in *Turnipseed,* did not vanish upon the introduction of opposing evidence but rather "created an inference that is given the effect of evidence to be weighed against opposing testimony and is to prevail unless such testimony is found by the jury to predominate." *Id.* at 644.

36. *See, e.g.,* Humphries v. Riveland, 67 Wn. 2d 376, 407 P.2d 967 (1965); Creasman v. Boyle, 31 Wn. 2d 345, 196 P.2d 835 (1948).

37. 81 Wn. 2d at 76, 499 P.2d at 867.

time, the relationship is "stable" by definition and the nontitled survivor will be granted a share of their joint accumulations. However, a problem arises with regard to a stable meretricious relationship which both parties intend to be long term but in which one of the parties dies prematurely. Presumably in such an instance the court will deal with each case on its facts, perhaps finding the requirement of "long term and stable" to be met where such is consonant with the intent of the parties.[38] Thus, although the long term and stable qualification is ambiguous, it seemingly would give the court the flexibility to deal with the parties in a just and equitable fashion.

IV. JUST AND EQUITABLE DIVISION OF PROPERTY

The *Thornton* court's suggestion that the *Creasman* presumption should be invalidated is meritorious. However, the court further intimated that if it should again be presented with a case involving a meretricious relationship, it would view the joint accumulations of the couple as "community property."[39] If the court actually meant that it would treat such property as community property in the statutory sense, then it must face several related problems. Such an approach would be in direct conflict with long standing case law[40] based upon a number of current statutes. For example, the Washington community property statute specifically states, "Property . . . acquired after *mar-*

38. In the many meretricious relationships which are comparatively temporary, it is logical to assume that the parties had no intention to share the accumulations made during the course of their cohabitation. On the other hand, where a meretricious relationship has existed for a relatively short period of time, during which the couple has made several significant purchases (such as a house and furniture), one might find an intent on the part of the parties to share in such accumulations.

39. 81 Wn. 2d at 77, 499 P.2d at 868. So viewing the joint accumulations of a couple living in a meretricious relationship represents a definite change for Justice Finley, author of the majority opinion in *Thornton*. In his dissents in both West v. Knowles, *supra* note 12, and Humphries v. Riveland, *supra* note 13, the Justice had urged the court to divide the property in a "just and equitable fashion." For further elaboration, *see* text accompanying note 44 *infra*.

40. The proposition that only property acquired during marriage can give rise to community property appears to have its roots in Spanish law. Thus for "community of property between husband and wife there must be a marriage which could only result from the parties undergoing the ceremony of marriage and the wife going to live with the husband." W. DEFUNIAK & M. VAUGHN, PRINCIPLES OF COMMUNITY PROPERTY § 55 (2d ed. 1971). In Washington this thesis was enunciated in *In re* Sloan's Estate, 50 Wash. 86, 96 P. 684 (1908). Further, the subsequent marriage of the parties does not alter the status of previously acquired property. Iredell v. Iredell, 49 Wn. 2d 627, 305 P.2d 805 (1957).

riage by either husband or wife or both, is community property."[41] Furthermore, the necessity of marriage as a prerequisite of finding a "community interest" is an inherent part of numerous other statutes.[42]

Moreover, the court's suggestion that invalidation of the *Creasman* presumption would give rise to "community property" is inconsistent with its treatment of property accumulated by a couple that holds an erroneous but "good faith belief" that they are married. In such a case the property is not treated as community in character, but is subject to division on the basis of what, under all the circumstances, would be "just and equitable" to the innocent party.[43] Arguably, if property held by a couple living in a meretricious relationship is to be treated as community property, then property held by a couple with an erroneous "good faith belief" in the validity of their marriage should be treated in the same manner. However, this would be a needless modification of Washington law with regard to the latter class of individuals.

A desirable alternative to the approach suggested by the court in *Thornton* would be to treat the parties to a meretricious relationship in a just and equitable fashion[44] as if they had a "good faith belief" in the "validity" of their relationship. This approach not only would

41. WASH. REV. CODE § 26.16.030 (Supp. 1972) (emphasis added).

42. If the court does extend the community property concept to include parties to a meretricious relationship, then by parallel reasoning each party should also have other miscellaneous rights such as the right to maintain a wrongful death action [WASH. REV. CODE ch. 4.20 (1959)] and the right to receive workmen's compensation [WASH. REV. CODE tit. 51 (Supp. 1972)]. However, beneficiaries of both of these rights are limited to the wife or husband and immediate family [Wrongful Death, WASH. REV. CODE § 4.20.020 (1959); Workmen's Compensation, WASH. REV. CODE § 51.08.020 (Supp. 1972)], thus excluding parties to a meretricious relationship. Similarly, Social Security benefits require the claimant to have gone through a marriage ceremony, 42 U.S.C. § 416(h)(1)(A) (1970). Parties to a meretricious relationship also would be denied recovery in cases where other federal compensatory statutes lack language specifically including them. *See, e.g.,* Lawson v. United States, 192 F.2d 479 (2d Cir. 1951), *cert. denied,* 343 U.S. 904 (1952) (Death on the High Seas Act); Beebe v. Moormack Gulf Lines, Inc., 59 F.2d 319 (5th Cir. 1932) (Federal Employer's Liability Act); United States v. Robinson, 40 F.2d 14 (5th Cir. 1930) (War Risk Insurance Act); Keyway Stevedoring Co. v. Clark, 43 F.2d 923 (2nd Cir. 1930) (Longshoremen's and Harbor Workers' Compensation Act).

43. *See* note 5 *supra*. The success of the "just and equitable" approach has been demonstrated through its application to property dispositions in cases in which a valid marriage was contracted and divorce ensued. *See* WASH. REV. CODE § 26.08.110 (1959).

44. In determining that a party is entitled to "just and equitable" treatment the court should consider such things as the respective merits of the parties, through whom the property was acquired, monetary and labor contributions, whether or not children were born of the relationship and who is to care for them, and the general condition in which the termination of the relationship will leave each of the parties.

avoid the case and statutory conflicts associated with treating the property as community property, but also would remove the artificial distinction that has long been in existence in Washington between "innocent" and "meretricious" relationships. Further, this is consistent with the view that all parties should be treated fairly, without regard to the moral character of their relationship. Thus, in both "innocent" and "meretricious" cases the parties would be treated in conformity with their probable intent and in congruity with current mores.

CONCLUSION

Although it is salutary that the supreme court utilized implied partnership reasoning in a meretricious relationship setting, it is unfortunate that its application may be limited to those instances in which the parties engaged in a partnership to operate a business for profit. As a result certain classes of people remain unprotected, primarily due to the archaic *Creasman* presumption that property accumulated by a meretricious couple belongs to the one in whose name legal title rests. As it intimates it will, the court should invalidate the presumption. It should be noted, however, that invalidation does not necessarily mean equating the joint accumulations of a meretricious couple with community property. Indeed, not only would that approach have profound effects on the law in Washington, but it is an unnecessary adjunct to the invalidation of the *Creasman* presumption. Rather, the assets of the couple should be divided in a just and equitable fashion, an approach which would give the court sufficient flexibility to handle individual cases in the manner it deems fair. In this way the distinction between meretricious and "good faith" relationships would be eliminated, allowing all parties to be treated fairly without regard to the moral character of their relationship.

W.P.F.