In Re: The Estate of Jack L. Franks – "Community-Like Property" and Estate Taxes

The Court of Appeals in Division II affirmed the trial court's determination that a committed intimate partner's one-half community property interest was properly deducted from deceased partner's taxable estate, either on the basis of the correct application of the committed intimate relationship doctrine or by reason of a valid TEDRA.

Jack Franks and Anneliese Roldan were in a committed intimate relationship for 40 years. Ten years prior to his death, Franks executed a will leaving three parcels of property, an investment account, and multiple cars to Roldan. Due to a falling out, Frank's son was only left $1. The remainder of the estate was left to two grandsons.

Frank's son contested the will and Roldan responded by filing a TEDRA petition. The parties ultimately reached an agreement that concluded that Franks and Roldan were in a committed intimate relationship and that all of the assets were acquired during the relationship and classified as community property of Franks and Roldan. The total value of the assets was $8.3 million and that Franks and Roldan each had a one-half interest in the assets ($4.15 million).

When the estate filed its tax return, each schedule attachment that described property, the estate deducted half the value for each piece of property and listed "Less 50% Community Property: Interest of surviving spouse." The Department of Revenue disagreed with this calculation and responded that it would honor the TEDRA agreement for purposes of finding that Franks and Roldan were in a committed intimate relationship, but they would not honor the agreement that property was community property. Instead, the DOR stated that property acquired during a committed intimate relationship was "community-property-like," and because they were not married, all assets should have been classified as sole property of Franks at the time of his death for purposes of calculating the gross estate. DOR determined that the Estate owed $824,920 in additional tax and filed its findings in superior court.

The Estate responded and pointed to precedent with respect to community-like property ("In a marriage, each spouse has a present, undivided interest in the couple's community property…The death of one of both partners does not extinguish that right") and reasoned that only one-half interest in the couple's property was subject to estate tax. Or in the alternative, the Estate argued that Roldan's TEDRA petition was a valid claim that had to be excluded from the taxable estate.

The DOR responded that the committed intimate relationship doctrine was intended to equitably distribute property among parties to that relationship and not to "permit a tax windfall not authorized by law" and that the Court should not apply it in this instance. Further, DOR rejected the argument that the TEDRA petition was a claim and that further, the Estate did not claim the deduction.

The trial court agreed with the Estate that each party in the committed intimate relationship had a one-half interest in the property obtained during the relationship at the time of Franks' death. As a result, the Estate never contained Roldan's one-half interest in the property and it had paid all estate taxes due.

In its appeal, the DOR argued that the trial court erred by applying the committed intimate relationship doctrine so that Roldan's interest reduced Franks' gross estate. DOR pointed that it may be the intent of the partners themselves to remain unmarried, possibly for tax reasons. DOR also raised concerns about undue burden on the Department should it have to determine whether committed intimate relationships

existed. Finally, DOR argues that applying the Estate's logic runs the risk of creating a new or quasi-property interest.

Ultimately, the Court recognized that Roldan's entitlement to her interest in the property was not a claim to a portion of the estate but rather a "property interest that existed during the relationship, prior to, and upon Franks' death." Estate tax is based on the value of the estate at the moment of death, and at the moment of Franks' death, the estate did not contain Roldan's one-half interest in the property acquired during their relationship. While the Court further recognized that the TEDRA was valid, the petition did not need to meet additional procedural hurdles as her claim was rotted in the committed intimate relationship doctrine and not agreement supported by consideration.

Granite Capital Group, Inc. and Kilu Peak Partners v. Getty and Ojiru – Judgments and Marital Community Assets

The Division I Court of Appeals affirmed a trial court's grant of summary judgment to creditors seeking to collect upon a criminal restitution judgment from tortfeasor's one-half interest in her marital community personal property.

Karen Getty and Movotosa Ojiru were married in 2014. In 2015, Getty entered a plea of guilty in California court for embezzling funds from Granite Peak, and the court entered a judgment against Getty. Granite Peak filed the $650,000 judgment in King County Superior Court. Getty indicated to Granite Peak's counsel that she did not have sufficient assets to pay the foreign judgment. During the proceedings, Getty produced a 2019 "Premarital Agreement" that was purportedly witnessed by Getty's mother who had died in 2016. In 2022, Granite Peak filed an action against Getty and Ojiru to recover from Getty's interest in the marital community property assets to satisfy the judgment. Another Premarital Agreement dated in 2014, also purportedly witnessed by Getty's mother, was produced. In 2024, Granite moved for summary judgment arguing that there is no question of fact that it should be able to pursue Getty's one-half interest in the Getty-Ojiru community property to satisfy the judgment and that Getty and Ojiru cannot meet their burden to prove the validity of the Agreements. The trial court granted Granite's motion and the order specified that Granite is entitled to recover from Getty's one-half interest in the marital community and that the Agreements are void and unenforceable as to this matter. Getty and Ojiru appealed.

Getty and Ojiru argued that summary judgment must be vacated because the judgment against Getty was not a community debt for the benefit of the community, that they were not married at the time of the conduct giving rise to the judgment, and that the judgment does not name the community estate. The Court disagreed.

RCW 26.16.200 generally protects spouses and the marital community from liability for separate, premarital debts and community property isn't generally available to satisfy separate debts. But precedent dictates that a tort victim may use the tortfeasor spouse's half interest in community property to satisfy a judgment where tortfeasor's separate property is insufficient to satisfy the judgment. Where a tort occurs during marriage, the WA Supreme Court has previously held that a tortfeasor's one-half interest in community property, both personal and real, may be reached to satisfy a judgment (deElche v. Jacobsen, 95 Wash.2d 237, 622 P.2d 835 (1980), and Keene v. Edie, 131 Wash.2d 822, 935 P.2d 588 (1997). Where

a tort occurs prior to marriage, tortfeasor's one half interest in community person property may be used (HALEY v. HIGHLAND (2000).

Craig R. Jolley, DMD v. Washington OIC – What constitutes insurance?

In an unpublished opinion, the Court of Appeals affirmed, in part, an OIC decision that a membership program offered by a dental office constituted insurance.

Jolley operates a dental office that offered a membership contract. Under the contract, Jolley provided up to two dental exams and cleanings per year, plus one emergency exam per year if needed in exchange for an initial fee and monthly dues. The OIC determined that the membership program caused him to be acting as an unauthorized insurer and imposed a $20,000 fine, back taxes, and fees. Jolley filed a petition for review with the Office of Administrative Hearings which affirmed OIC's fine. Jolley subsequently appealed to King County Superior Court which transferred the appeal to the Appellate Court.

RCW 48.01.040 defines insurance as "a contract whereby one undertakes to indemnify another or pay a specified amount upon determinable contingencies." Courts have also determined that an insurance contract must also be both a "risk-shifting and risk-distributing device." "[To] constitute "insurance" for purposes of RCW 48.01.040, an agreement must (1) be a contract, (2) that undertakes to indemnify another or pay a specified amount, (3) on determinable contingencies, and (4) is both a risk shifting and risk distributing device."

The Court acknowledges that there is no dispute that the membership contract is a contract.

In determining whether the membership provided indemnity for members, it identifies that "indemnity involves protecting a person against loss, providing compensation to reimburse a person's loss, and providing a benefit to a person to offset their loss." With respect to the membership, the member's loss was the cost of dental services. Because of the membership, Jolley did not charge the members which the Court viewed as paying for the services by absorbing the cost. The Court was not moved by the argument that providing services does not constitute an indemnity. "..Indemnification does not need to take the form of a cash payment and can be made by providing valuable services."

The Court determined that portions of the membership contract – providing one emergency exam per year, if needed, and any needed x-rays - involved contingencies. A loss is contingent if it occurs by chance and without intent, and a loss is not contingency if a party knows or expects the loss. When a person paid the initiation fee, their expectation was that they would at least receive the first exam and cleaning. If someone paid the initiation fee and did not schedule an appointment within 30 days, it was refunded. After the first exam, some members canceled, but the Court found that it was reasonable to conclude that those who did not cancel had the expectation of getting a second exam and cleaning. Members could not know or expect a dental emergency in any given year, however, so providing for an emergency exam involved a contingency.

Finally, the Court addressed whether the contract was both a risk-shifting and risk-distribution device. "Risk-shifting means that one party shifts the risk of loss to another; risk-distributing means that the party assuming the risk distributes the potential liability to others." The Court concluded that the first and second exams did not constitute a risk-shifting or risk-distribution device as there was no "risk" as regular

exams are a normal part of dental health and members simply prepaid for inevitable exams. The emergency exams, however, constituted both risk-shifting and risk-distributing. Jolley assumed the risk that a member would need additional services, and the dues were available to distribute the ordinary costs of those services for an individual member.

Easterling v. Clark (Idaho) – Statutes of limitation in easement by necessity claims

After reviewing the second appeal concerning Edward and Janice Easterling's efforts to secure an easement by necessity to their landlocked parcel, The Supreme Court of Idaho held that the district court did not err in granting the easement by necessity.

HAL Pacific Properties owned three parcels, one of which is landlocked but for access over the other two parcels. HAL sold the landlocked parcel to the Easterlings and subsequently sold the two other parcels to the Clarks.

In the first appeal, the Supreme Court ruled that easements by necessity are subject to the statutory "catch all" four year statute of limitations. The Court then remanded the case to determine when the accrual date for the statute of limitations began. The district court found that the statute of limitations had expired and granted summary judgment to the Clarks. The Easterlings appealed, in part asking the Court to re-consider its decision in *Easterling I* regarding the applicability of the statute of limitations to an easement by necessity claim "to clear up the confusing and inconsistent positions taken by the majority."

The Court addressed its authority to reconsider *Easterling I* and determined that neither res judicata nor law of the case doctrine precluded Court's authority to correct a mistake of law.

The Court ultimately held "No statutes of limitations are meant to apply to easements by necessity because an easement by necessity cannot be extinguished as long as the necessity exists." The Court notes that it is Idaho's public policy to preserve the full use of lands. "to bar the Easterlings' claims would render their lands useless and thereby violate Idaho's public policy to allow the full use of lands. Thus, this case has resulted in the apparent collision of two competing public policy considerations: (1) the statute of limitations, which bars stale claims, and (2) the easement by necessity doctrine, which promotes the full use of lands. The weight of legal authority suggests that the former must bend to the latter."

Pung v. Isabella County, Michigan – Constitutional issues and foreclosure

Isabella County incorrectly took the Pung's home for $2,200 in taxes and fees that were not actually owed. The lower courts calculated damages due to the Pungs using the auction sales price rather than fair market value.

The questions presented are:

1. Whether taking and selling a home to satisfy a debt to the government, and keeping the surplus value as a windfall, violates the Takings Clause of the Fifth Amendment when the compensation is based on the artificially depressed auction sale price rather than the property's fair market value?

2. Whether the forfeiture of real property worth far more than needed to satisfy a tax debt but sold for fraction of its real value constitutes an excessive fine under the Eighth Amendment, particularly when the debt was never actually owed?

Arguments are to be heard February 25, 2026.

Fidelity National Title Company of Washington v. State of Washington

Fidelity has filed its appeal and complaint for a refund of Business & Occupation (B&O) tax it believes was improperly assessed by the Department of Revenue. The parties are currently in disclosure with motions to be heard no later than August 2026.

In the complaint, Fidelity identifies that sales of "abstract, title insurance, and escrow services" is specifically subject to sales tax and retailing at B&O tax and that Fidelity paid tax of sales of title insurance and escrow services. Fidelity then alleges that DOR erroneously assessed tax on non-title and non-escrow services like notary services, inspection services, cancellation services, and recording fees.

With respect to recording fees, Fidelity argues that they are incurred during the performance of escrow services and are neither sales proceeds nor part of Fidelity's income. "…Recording fees constitute some of the 'money' received, held, and delivered by an escrow agent in the same manner as any property taxes, loan payoffs, lender fees, or sales proceeds that the escrow agent handles as part of the closing of a real property transaction."