

Chapter 3

DOMESTIC PARTNERSHIPS 30 YEARS AFTER *BEAL*

Part A Mark Johnson

I. DISSOLVING THE DOMESTIC PARTNERSHIP

A. Proof of Intent

The seminal appellate case on domestic partnership dissolution in Oregon is the Supreme Court's decision in *Beal v. Beal*, 282 Or 115, 577 P2d 507 (1978). In *Beal*, the court abandoned its previous "meretricious relationship" doctrine, which held that unmarried cohabitants had entered into a relationship outside the bounds of the law and could not receive the attention of equity. See *Traver v. Naylor*, 126 Or 193, 207, 268 P 75 (1928); *Merit v. Losey*, 194 Or 89, 102-03, 240 P2d 933 (1952). Under *Beal*, by contrast, the court may undertake an equitable distribution of the property of unmarried cohabitants based upon the express or implied intent of the parties:

We believe a division of property accumulated during a period of cohabitation must be begun by inquiring into the intent of the parties, and if an intent can be found, it should control that property distribution. While this is obviously true when the parties have executed a written agreement, it is just as true if there is no written agreement. *** Thus, absent an express agreement, courts should closely examine the facts in evidence to determine what the parties implicitly agreed upon. ***

More often than not, such an inquiry will produce convincing evidence of an intended division of property, but we recognize that occasionally the record will leave doubt as to the intent of the parties. In such cases, inferences can be drawn from factual settings in which the parties lived.

Beal, 282 Or at 122.

Virtually no dissolutions present the convenience of a written agreement, or even an oral agreement that the separating partners each view in the same way. As a result, the practitioner is almost always faced with the prospect of proving the nature and extent of the parties' intent to share property. Complicating the analysis is the fact that the parties may have agreed to share some property and not to share other property. See *Wallender v. Wallender*, 126 Or App 614, 870 P2d 232, rev den 319 Or 150 (1994); *Brazell v. Meyer*, 42 Or App 179, 600 P2d 460 (1979). Factors the courts have found persuasive in proving intent in the absence of an express intention include the following:

- Assistance with career objectives (*Wilbur*)
- Beneficiary designations (*Wilbur*)
- Cohabitation (*Beal*; *Pinto*; *Raimer*; *Rogelis*; *Brazell*; *Rissberger*)
- Conception and birth of child (*Rissberger*)
- Contribution of income or resources to household (*Beal*; *Wilbur*; *Holloway*;

McWhirter; Rissberger)

- Contributions to real property (*Pinto; Wallender; Wilbur; Raimer*)
- Efforts at accounting or reimbursement (*Beal; McWhirter*)
- Form of title on legal documents (*Beal, Linde, J., concurring and dissenting; Holloway; McWhirter; Ireland; Rogelis; Brazell*)
- Holding out as husband and wife (*Beal, Linde, J., concurring and dissenting; Holloway; Rogelis; Brazell*)
- Homemaker services (*Wilbur; Rogelis*)
- Joint vs. separate bank and credit card accounts (*Beal; Pinto; Raimer; Holloway; Rissberger*)
- Operation of business (*Raimer; McWhirter*)
- Plans for retirement (*Wilbur*)
- Purchase of insurance (*Raimer*)
- Use of surname (*Holloway; Rogelis; Brazell*)
- Wearing of ring (*Holloway*)

Beal; Pinto and Smalz, 153 Or App 1, 955 P2d 770 (1998); *Wallender; Wilbur v. DeLapp*, 119 Or App 348, 850 P2d 1151 (1993); *Raimer and Wheeler*, 119 Or App 118, 849 P2d 1122 (1993); *Wilkinson v. Higgins*, 117 Or App 436, 844 P2d 266 (1992); *Shuraleff v. Donnelly*, 108 Or App 707, 817 P2d 764 (1991); *Holloway v. Holloway*, 63 Or App 343, 663 P2d 798 (1983); *McWhirter v. McWhirter*, 54 Or App 409, 635 P2d 12, *rev den* 292 Or 334 (1981); *Ireland v. Flanagan*, 51 Or App 837, 627 P2d 496 (1981); *Rogelis v. Pettis*, 49 Or App 537, 619 P2d 1339 (1980), *rev den*, 290 Or 449 (1981); *Brazell; Rissberger v. Gorton*, 41 Or App 65, 597 P2d 366, *rev den* (1979).

B. Equitable Distribution

The second major case on distribution of property in a domestic partnership is *Shuraleff*. In that case, the Court of Appeals observed that exclusive focus on the parties' intent as suggested by *Beal* would frustrate the "equitable principles" underlying the *Beal* holding. Although the statutory presumption of equal contribution, ORS 107.105(1)(f), does not apply in a non-marital relationship, the court recognizes that the property division "should recognize the parties' efforts over 15 years of cohabitation to build a future based on the contributions of both." *Shuraleff*, 108 Or App at 714. Accordingly, the court may distribute property retained by one party alone in order to accomplish an equitable result. *See also Raimer*. Subsequent cases have held that, once the parties' intent to share property is established, the court, much like in a marriage, may exercise plenary authority over all of the parties' property "to reach a fair result based on the circumstances of each case." *Wilbur*, 119 Or App at 352; *Pinto*. Nevertheless, the court has cautioned, the parties' intent remains the controlling factor in the distribution of partnership property; "equity will not compel what is contrary to their contemplation." *Wallender*, 126 Or App at 619 (distinguishing *Wilbur* and *Shuraleff*).

C. Domestic Partnership Registration Ordinances

Several Oregon communities, including at this writing Multnomah County and the Cities of Ashland and Eugene, have adopted domestic partnership registration ordinances. Those ordinances generally follow the model of other ordinances adopted by numerous communities across the United States. The Multnomah County ordinance is typical in requiring the parties to sign a certificate stating that they are residing together and sharing the common necessities of life, are not married or registered as domestic partners in any other jurisdiction, are at least 18 years of age, are not related by blood kinship closer than would bar marriage in the state of Oregon, are mentally competent to consent to the contract, are each other's sole domestic partner with the intent to remain so indefinitely, and are responsible for each other's common welfare.

As a general rule, registration of a domestic partnership with a local government agency has no direct legal effect. The ordinances are conceived as a way for unmarried couples to demonstrate the existence of their relationship to government entities and to employers for the purpose of receiving benefits that may be made available to domestic partners. Depending on the exact language of the affidavit executed by the parties to obtain the registration, however, registration itself may be a powerful indicator of intent to share property in a domestic relationship. In Multnomah County, registering couples are being provided with a packet of information regarding legal issues to consider in formalizing the relationship. Certainly no one should enter into a domestic partnership registration without considering and planning for the potential legal consequences.

D. Resources

American Law Institute, *Principles of the Law of Family Dissolution: Analysis and Recommendations*, ch 6 (2000).

Jennifer K. Robbennolt and Monica Kirkpatrick Johnson, *Legal Planning for Unmarried Committed Partners: Empirical Lessons for a Preventive And Therapeutic Approach*, 41 ARIZ L REV 417 (1999).