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Property Division Issues in Non-Marital Relationships

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Courts have yet to uniformly address the dissolution rights of unmarried same-sex, cohabitating couples. At present, a well-marked schism exists between the legal rights of married and unmarried cohabitants. Unmarried same-sex couples are generally not entitled to an equitable distribution of property rights under state divorce statutes. Nonetheless, courts are struggling with ways to divide the couple's property to effectuate the parties' original intent or to protect the parties' equitable interests. One common approach is to enforce a written, and in some cases oral, agreement between the parties so long as the consideration for the agreement is for something other than sexual services. In the absence of an enforceable agreement, courts have applied alternative equitable principles, such as constructive trust, unjust enrichment or equitable liens, to avoid an inequitable resolution. Thus, courts have been willing to look behind the explicit title of the couple's individually and jointly held property to determine whether redistribution is necessary to effectuate the parties' intent or to prevent unfairness. This index surveys cases across the country that address these issues, in the context of both same-sex and different-sex couples.

PROPERTY DIVISION: SAME-SEX RELATIONSHIPS

Alaska

D.M. v. D.A., 885 P.2d 94 (Alaska 1994)

Lesbian couple involved in six-year personal and four-year business relationship initiated suit to resolve claims to personal and business property. After one year together, the couple moved into D.A.'s house. Though D.A. formerly owned the house outright, she later quitclaimed the deed to herself and D.M. "in consideration of love and affection." D.A. claimed that she had only transformed the deed in order for D.M. to realize legal tax deductions on the property. D.M. (the primary wage earner) made the larger of the two mortgage payments on the property and took a tax deduction for payments on the property. The trial court held, by a preponderance of the evidence, that the deed should be reformed to reflect the fact that D.M. had no interest in that property. The Alaska Supreme Court remanded finding that the trial court

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improperly based its decision to reform the deed upon a “preponderance of the evidence” standard rather than upon a “clear and convincing” evidentiary standard. The trial court’s finding that a written agreement between the parties dividing accumulated property was unenforceable because executed under duress (based on a history of domestic violence) was not addressed on appeal.

Arkansas

Bramlett v. Selman, 597 S.W.2d 80 (Ark. 1980)

Court held that property purchased for Selman by Bramlett with funds provided by Selman was held in constructive trust, rejecting Bramlett’s argument that the money was a gift. Although statute of frauds generally bars admission of parol evidence of an oral agreement concerning an interest in land, such evidence is admissible where the existence of an implied or constructive trust is alleged. Imposition of a constructive trust rests upon the existence of a confidential relationship; here, such a relationship was found to exist where the parties had been in the relationship for approximately a year and had lived together for most of that year. “A court of equity should not deny relief to a person merely because he is a homosexual.”

California

Robertson v. Reinhart, 2003 WL 122613, (Cal. Ct. App. 2003)

Plaintiff Lynn Robertson and defendant Leal Reinhart had a six-year relationship. During their relationship, they shared equally in the rent and expenses until Robertson went to college (due to Reinhart’s encouragement). During that time, Reinhart made two \$10,000 payments to Robertson and forgave her rent and most of her expenses while she was in school. On the other hand, Robertson contributed to the renovation of Reinhart’s vacation cabin and home. At various points during their relationship, Robertson and Reinhart discussed Reinhart’s eventual retirement, and the possibility that Robertson would support Reinhart after she graduated from college. That possibility never arrived because Reinhart ended the relationship in 1999. Robertson sued contending that she was entitled to a share of Reinhart’s assets under Marvin v. Marvin (infra) and quantum meruit. The trial court found that no Marvin agreement existed and entered judgment for Reinhart. The appellate court affirmed because (i) Robertson and Reinhart did not choose to enter into asset-sharing agreements (a requirement of a Marvin agreement) as evidenced by their separate handling of financial matters; and (ii) Robertson did not prove that she expected monetary compensation when she performed services for Reinhart (a pre-requisite for the quantum meruit claim).

Whorton v. Dillingham, 202 Cal.App.3d 447 (1988)

Parties entered into an oral agreement at the beginning of their seven-year period of cohabitation under which Whorton was to cease his education and work full time with Dillingham in both a business and personal capacity. The parties specifically agreed that any unenforceable portion of their oral agreement was severable. The appellate court reversed the trial court’s holding that the contract was unenforceable because consideration was based, in part, on sexual services. It found that adults who voluntarily live together and engage in sexual

relations are competent to contract respecting their earnings and property rights, and such contracts are enforceable unless expressly and inseparably based upon illicit consideration of sexual services. Additionally, even if sexual services are part of the consideration, any severable portion of the contract supported by independent consideration will still be enforced. As a result, the trier of fact did not err in his finding that Whorton made contributions (such as chauffeur, bodyguard, secretary, and business partner), apart from sexual services, which provided independent consideration for Dillingham's promises pertaining to financial support and property rights.

Connecticut

Rosengarten v. Downes, 802 A.2d 170 (Conn. App. Ct. 2002)

Appellate court affirmed the trial court's determination that it lacked subject matter jurisdiction to dissolve a civil union. The appellate court also concluded that the Superior Court had jurisdiction to grant relief, in law or equity, to a contract-based claim asserting that the parties to a same-sex, non-marital relationship had an implied or express contract to "share their earnings and the fruits of their joint labor," whether or not they engaged in sexual activity. As the complaint failed to contain the allegation that the parties had entered into such an express or implied agreement, jurisdiction could not be exercised on that ground.

Delaware

Boone v. Howard, 1989 WL 124898 (Del. Super. Ct. 1989)

The Court rejected a lesbian partner's claim that she and her partner had entered into an oral contract to live together. Boone claimed she entered into an oral contract with Howard in 1983 to live together for business, social, and personal purposes; to pool all of their assets and earnings together; and to enter into mutually beneficial business relationships. Howard disclaimed the contract and counterclaimed for a partnership debt arising out of a written partnership agreement. The Court held that Boone failed to show, by a preponderance of the evidence, that the parties necessarily intended to bind themselves contractually either from their overt acts or statements. The Court concluded that a written partnership agreement, which contained a partnership termination clause, was inconsistent with Boone's allegations concerning the oral contract.

Florida

Posik v. Layton, 695 So.2d 759 (Fla. Dist. Ct. App. 1997)

Parties entered into a written agreement whereby Posik agreed to give up her job to move with Layton to a new residence in exchange for Layton's agreement to reside with Posik, to provide for "essentially all of the support for the two," and to will all of Layton's estate to Posik. Posik and Layton entered into the agreement after being involved for an indeterminate number of years. Posik testified that she required the agreement before moving with Layton because she feared Layton "might become interested in a younger companion". The agreement contained a

liquidated damages provision whereby Layton agreed to pay \$2500/month to Posik for the remainder of her life should Layton fail to provide adequate support for Posik, bring a third person into the home, or otherwise breach the agreement. The lower court found the liquidated damages provision to be unenforceable because Posik's economic losses were reasonably ascertainable. The appellate court concluded that (i) a written agreement for support between unmarried adults is valid unless the agreement is inseparably based upon illicit consideration of sexual services (which it was not in this case); and (ii) the liquidated penalty provision contained therein was enforceable because lost wages and moving expenses were not readily ascertainable at the time the contract was created. The court, in dicta, intimated that an oral agreement of this type would not be enforceable.

Georgia

Van Dyck v. Van Dyck, 425 S.E.2d 853 (Ga. 1993)

Statute permitting modification of alimony payments when recipient is living in a "meretricious relationship" with a person of the opposite sex did not apply to similar relationships with persons of the same sex. The Supreme Court refused to expand the statute's reach to same-sex couples alleging that such an action should only be undertaken by the legislature. Because the alimony modification statute applied to both male and female recipients, the equal protection clause was not violated. The concurring opinion points out that same-gender couples do not have the ability to marry, and accordingly, it would be unfair to punish them for not doing so. (Note: the legislature subsequently amended the statute (Ga. Code Ann., §19-6-19(b)) so that alimony would terminate if the ex-spouse becomes involved in a meretricious relationship with another person "regardless of the sex of the other person.")

Crooke v. Gilden, 414 S.E.2d 645 (Ga. 1992)

Appellant Gilden brought action for specific performance of a written contract and an equitable partition of real estate. Gilden and her partner entered into a written contract for the joint ownership and division of certain real property, which contract was based upon each person's contribution toward real estate improvements and the sharing of assets and expenses. The contract recited that it was being entered into "in consideration of the mutual promises contained herein." The trial court held that the contract was void because the women's "illegal and immoral" sexual relationship constituted an implicit part of the consideration for the contract. The Supreme Court reversed, as nothing in the contract required either party to perform an illegal activity, and such activity was at most incidental to the contract.

Indiana

Anderson v. Anderson, No. 43CO1-9105-CP-269 (Kosciusko Cir. Cr., Indiana, 1992)

The applicable standard of law to apply to the allocation of property and indebtedness of two women after the dissolution of their relationship - - where there was "total commingling of property" - - is the same standard applied to a conventionally married heterosexual couple.

Willet v. Clark, 542 N.E.2d 1354 (Ind. Ct. App. 1989)

Lesbian couple separated after six years and sought a partition of their real and personal property. (The couple did not seek to have the case decided on the theory of any express or implied agreement.) The appellate court allowed the partition, but reversed and remanded on the respective shares due to each party. In a partition proceeding, the trial court can adjust the equities. When two or more people take title to property as tenants-in-common, there is a rebuttable presumption that their shares are equal. However, since partition is an equitable remedy, the court should have heard evidence rebutting that presumption and should have made findings on Clark's counterclaim that she conveyed an interest in one of her real properties to Willet under undue influence. (The Court of Appeals later affirmed the trial court's subsequent partition of the property without commenting upon the specifics of the ultimate partition.)

New York

Silver v. Starrett, 176 Misc.2d 511 (N.Y. Sup. Ct. 1998)

The Court upheld a non-marital, written separation agreement entered into by a lesbian couple who were separating after a fourteen-year relationship. Emotional pressures that caused Starrett to enter into the separation agreement did not justify setting aside the agreement for duress, particularly where Starrett had complied with the separation agreement for over three years before claiming a breach by Silver. The Court rejected Starrett's argument that her intense desire to get Silver out of her life and home after their break up constituted duress. The Court also rejected Starrett's argument that the agreement was void for lack of consideration because Starrett gave up everything and all Silver agreed to do was to move out of Starrett's house. Because Silver had an arguable claim to property or tenant rights to the house they shared, the property release secured by the separation agreement constituted sufficient consideration.

Hanselman v. Shepardson, 1996 WL 99377 (S.D.N.Y. 1996)

Upon the break-up of a fifteen-year relationship, Hanselman filed a complaint alleging that Shepardson breached an oral agreement to reconvey property purchased by Hanselman and placed in joint title. Hanselman claimed that he included Shepardson's name on the deed only to ensure Shepardson's financial security in the event of Hanselman's death and that Shepardson agreed to reconvey the property to Hanselman if the two no longer lived together. Although both applicable jurisdictions (Florida and New Jersey) have statutes of fraud requiring promises to convey property be in writing, the Court denied summary judgment finding potential disputed facts as to whether a constructive trust should be imposed. The Court found that "[t]hough not married, the parties were involved in an intimate relationship...A reasonable trier of fact could find this confidence was abused by defendant's failure to reconvey" the disputed properties when the relationship ended. The Court further noted that the defendant could be unjustly enriched if allowed to retain interest in the property.

Ohio

Seward v. Mentrup, 622 N.E.2d 756 (Ohio Ct. App. 1993)

Following the termination of their nine-year lesbian relationship, plaintiff brought suit against former partner alleging breach of contract, unjust enrichment, claim of partnership/joint venture, and wrongful conversion. The Court held that plaintiff was not entitled to a division of assets accumulated by parties' joint efforts during their cohabitation, absent a marriage or similar agreement. There was no evidence of any written contracts or agreements. Though the plaintiff viewed herself as a participant in a marriage-like relationship, the Court refused to establish a precedent for the division of assets based upon mere cohabitation without marriage. In addition, plaintiff did not state a claim for unjust enrichment where she lived in her partner's home for nine years, benefited from the improvements made to the home, and never received a promise or indication that her partner intended to reimburse her.

Gajovski v. Gajovski, 610 N.E.2d 431 (Ohio Ct. App. 1991)

Former husband sought to terminate his alimony payments which were made pursuant to a separation agreement because his wife began cohabitating with another woman, which he claimed ran afoul of the "concubinage" restriction in the agreement. The Court held that a same-gender relationship could not constitute "concubinage" for the purpose of terminating alimony. "Concubinage" is a relationship where a man and a woman, two people capable of contracting marriage, are involved in an open, illicit, sexual relationship approximating marriage. Because gay people in Ohio may not marry at present, they cannot be concubines to one another.

Oregon

Ireland v. Flanagan, 627 P.2d 496 (Or. Ct. App. 1981)

Plaintiff claimed that, pursuant to an express oral agreement whereby she and her partner committed to pool all of their assets for their joint benefit, she was entitled to a 50% interest in the house (held in her partner's name only) they purchased during their relationship. The appeals court overturned the lower court's finding that plaintiff's contributions to the down-payment and improvements were a gift, concluding that parties should be considered equal co-tenants because they intended joint ownership when they purchased the house. Such intent was demonstrated by jointly held checking and savings accounts, loans and credit cards. Whether the agreement is oral or written, courts must examine the facts to discern the actual intent of the parties.

Pennsylvania

Kripp v. Kripp, 784 A.2d 158 (Pa. Super. Ct. 2001)

Upon divorce, the parties entered into a property settlement agreement under which alimony payments would end should the wife "cohabit." When the former wife began living with another woman, her former husband terminated his alimony payments. In evaluating the wife's contempt petition, the trial court improperly admitted parol evidence as to the parties'

intent in using the term “cohabitation.” The appellate court held that the term “cohabitation” could not be expanded to include the wife’s same-sex roommate. “Cohabitation” has been defined in Pennsylvania statutes and case law to require members of the opposite sex to reside together “in the manner of husband and wife.” Courts must defer to the legislature for the task of determining whether to expand the definition of same-sex partners under the Divorce Code.

De Santo v. Barnsley, 476 A.2d 952 (Pa. Super. Ct. 1984)

De Santo filed a divorce complaint against Barnsley, alleging that they had entered into a common law marriage. Upholding a lower court’s dismissal of the actions, the Superior Court held that two persons of the same gender cannot contract a common law marriage. Because statutory marriage had been limited to heterosexuals, common law marriage should not be expanded to include same-sex couples who are presently precluded from statutory marriage.

Rhode Island

Doe v. Burkland, 808 A.2d 1090 (R.I. 2002)

Plaintiff Doe brought an action against his former domestic partner, Burkland, seeking injunctive relief to stop Burkland’s alleged harassment and threats. In response, Burkland filed counterclaims for breach of an oral agreement to share property, promissory estoppel, constructive trust, resulting trust, and unjust enrichment. The Superior Court determined that Burkland’s counterclaims were not viable because (i) Rhode Island law does not recognize marital dissolutions between unmarried couples, homosexual or heterosexual, and (ii) the alleged property-sharing agreement was impermissibly based upon a meretricious relationship. The Supreme Court reversed the lower court’s holding that Burkland could assert his contract claim because a sexual relationship does not preclude the parties from contracting based upon alternative, non-sexual consideration (e.g., agreeing to devote his skills, effort, labors and earnings to assist plaintiff in his career, and that he provided homemaking services, business consulting, and counseling to plaintiff in consideration for the alleged property-sharing agreement). In addition, the court found that even in the absence of an enforceable contract, the equitable doctrine of unjust enrichment or constructive trust may apply under certain circumstances to prevent a person from retaining a benefit received from another without appropriate payment. Consequently, the Supreme Court held that the facts, if proved true, could provide Burkland with legal or equitable relief.

South Carolina

Doe v. Roe, 475 S.E.2d 783 (S.C. App. 1996) reh. den. Sept. 24, 1996)

When her thirteen-year lesbian relationship ended, Plaintiff Doe sought the partition of the couple’s real and personal property. Her partner, Roe, asserted counterclaims for constructive trust, partnership, and equitable lien. The lower court imposed a constructive trust and equitable lien in favor of Roe, who had been the primary earner in the relationship, for property taken in joint title. The trial judge found that Doe coerced and manipulated Roe into titling the property in both names by threatening to end the relationship. The trial court seemed persuaded that because Doe misled and manipulated Roe by falsely professing her affection for

Roe, Doe could not obtain a judgment in equity. The appeals court reversed because there was insufficient evidence to establish fraud, abuse of confidence, or violation of fiduciary duty which would be necessary to justify the imposition of a constructive trust. Moreover, the appeals court concluded that the imposition of equitable liens were inappropriate in the absence of a debt owing to Roe. The court did not reach the issue of whether the relationship gave rise to a “confidential relationship” in light of its determination on the constructive trust.

Texas

Zaremba v. Cliburn, 949 S.W.2d 822 (Tex. App. 1997), reh. overruled Aug. 7, 1997

Plaintiff Zaremba sued his partner of seventeen years, Cliburn, for claims arising from the relationship. His claims included: an accounting of partnership assets, appointment of a constructive trust, breach of contract, breach of a fiduciary relationship, mismanagement of partnership property, appointment of a receiver, fraud, quantum meruit and unjust enrichment. The Court of Appeals applied the Texas Statute of Frauds to prohibit the suit which was effectively a palimony suit based upon an oral promise or implied partnership to provide domestic services in exchange for a share in the partner’s income. The Statute of Frauds provides that “agreement made on consideration of marriage or on consideration of non-marital conjugal cohabitation” must be in writing. Court found that the same-sex relationship fit within the Statute of Frauds, thus, requiring a written agreement. The Court of Appeals refused to consider ancillary items of consideration, claiming that the performance of household services were collateral to a non-marital, conjugal cohabitation agreement.

Small v. Harper, 638 S.W.2d 24 (Tex. App. 1982)

Plaintiff Small was permitted to sue her partner of 12 years for recovery of portions of lands and other property under theories of breach of an oral partnership, joint ventures, and resulting or constructive trust. The appellate court held that the lower court erred in granting summary judgment for Small’s former partner as there were disputed issues regarding parties’ acquisition of investments and property. Public policy was not controverted because previous cases held that where unmarried couples worked together towards a common purpose and the proceeds became their joint property, each would own the property in proportion to the value of her labor contributed to the acquisition of it. Thus, there were genuine issues of material fact requiring resolution upon a trial of the case. (Note: This case result was effectively reversed by the Texas Statute of Frauds’ requirement that such domestic partnership agreements be in writing).

Washington

Vasquez v. Hawthorne, 994 P.2d 240 (Wash. App. 2000), *rev’d and vacated* by 33 P.3d 735 (Wash. 2001).

Decedent’s same-sex partner of twenty-eight years filed a claim against decedent’s intestate estate asserting that he was entitled to a share of the community property. The Superior Court awarded nearly all the property to the partner. The Court of Appeals held that a

“meretricious relationship” is a quasi-marital relationship that cannot exist between members of the same sex. Accordingly, the Court of Appeals refused to extend the rights and protections of marriage to same-sex relationships. The Supreme Court overruled, holding that equitable claims based on a meretricious relationship do not depend upon the legality of the relationship between the parties. Thus, genuine issues of material fact existed as to the type of relationship existing between the partner and the decedent and what property was acquired during the course of their relationship that could be subject to equitable division. The case was remanded for trial.

PROPERTY DIVISION: DIFFERENT-SEX RELATIONSHIPS

Alabama

Jordan v. Mitchell, 705 So.2d 453 (Ala. Civ. App. 1997)

Ex-wife and ex-husband resumed cohabitation three months after their initial divorce. The divorce judgment required the ex-wife to convey her interest in the land on which they lived to ex-husband. After resuming cohabitation, they agreed to build a new house on the property. Ex-wife later sought to recover her alleged financial contributions to the construction of the house. The Court of Civil Appeals affirmed the trial court's refusal to allow recovery of ex-wife's improvements under equitable theories. The ex-wife failed to show mistake, reliance, or wrongdoing necessary to recover for her contribution to the property's improvements under theories of constructive trust, money had and received, or restitution in quasi-contract. The Court also stated that there is no presumption of a confidential relationship between unmarried cohabitants and noted that ex-wife held a superior position with respect to the handling of financial matters during their relationship.

Alaska

Bishop v. Clark, 54 P.3d 804 (Alaska 2002)

Couple cohabited for thirteen years and operated a joint business enterprise as a partnership for fourteen years. Upon their separation, the female cohabitant brought action for property division. The Superior Court found that the parties impliedly agreed to share in the fruits of their relationship as though they were married such that an award to the female cohabitant of half interest in the properties not otherwise allocated under the parties' own settlement agreements was proper. Though the male cohabitant claimed that he used his inheritance proceeds to independently purchase one of his properties, he failed to meet the burden of proof on the source of funds because they were commingled with the couple's business operations; consequently, the female cohabitant was also entitled to a half interest award in that property as well. The Supreme Court held that it was error to apply marital divorce laws when dividing the assets of non-marital parties, though the error was harmless here. The Supreme Court followed Wood v. Collins (*infra*) in holding that property accumulated during non-marital cohabitation should be divided by determining the express or implied intent of the parties.

Tolan v. Kimball, 33 P.3d 1152 (Alaska 2001)

Male partner brought action seeking division of property jointly acquired and improved during the existence of couple's domestic partnership. The Supreme Court held that the intent of unmarried couples, not possession of title, controls in a division of property. Here, the evidence indicated an informal oral agreement according to which each party was entitled to half the value of the house. The Court found that the female partner, who held title individually, considered her partner's contribution of cash and labor as payment toward the mortgage.

Voss v. Brooks, 907 P.2d 465 (Alaska 1995)

The Supreme Court held that property bought by Voss and transferred by quitclaim deed to himself and Brooks as “joint tenants” created a joint tenancy deed. A prior oral agreement to transfer the property to Brooks was discharged by acceptance of the joint tenancy deed, which became the new operative contract between the parties. The joint tenancy deed could not be reformed without clear and convincing proof that Brooks thought the deed conveyed the entire present possessory interest to her and that Voss shared her belief or knew of her mistake.

Wood v. Collins, 812 P.2d 951 (Alaska 1991)

Property accumulated by unmarried couples while they are cohabiting should be divided by determining the express or implied intent of parties. Here, there was no evidence showing an implied contract that man would provide for woman’s housing needs for the rest of her life after their separation. Because the female partner excluded the male partner from their jointly owned condominium after their separation, the male partner was awarded rental payments from the female partner.

Arizona

Knott v. Vachal, 752 P.2d 39 (Ariz. Ct. App. 1988)

Unmarried cohabitants can enter into agreements which will entitle them to the partition of jointly-owned assets. Without examining the validity of the subject agreement between the cohabitants, the Court of Appeals held that the survivor of the non-marital cohabitation relationship need not file a claim against the estate of the deceased member for the share of assets claimed pursuant to an agreement to hold their property as joint tenants. An agreement to hold property as joint tenants seeks equitable title to the property and, thus, is not a claim for property which is part of the deceased’s estate.

Carroll v. Lee, 712 P.2d 923 (Ariz. 1986)

The Supreme Court upheld an implied contract between unmarried cohabitants who separated after fourteen years. Consistent with the implied agreement, the court partitioned all property acquired through common effort and for a common purpose. The woman’s homemaking services were deemed adequate consideration for the implied contract and were severable from the sexual component of the relationship. (“Paul received the cooking, cleaning, and household chores he bargained for while Judy received monetary support.”)

Cook v. Cook, 691 P.2d 664 (Ariz. 1984)

After the dissolution of a twelve-year non-marital relationship, the female cohabitant brought action against her male partner seeking to enforce an agreement to pool earnings and share equally in certain assets. The Supreme Court found an “agreement for partnership” based on a course of conduct including financial interdependence (*i.e.*, joint checking and saving accounts, joint purchases). The fact of cohabitation did not render the agreement unenforceable;

rather, the agreement to contribute earnings to a common pool and to hold property as equal owners was adequate consideration to support an enforceable contract.

Arkansas

Rippee v. Walters, 40 S.W.3d 823 (Ark. 2001)

Male cohabitant brought claims to force the division of the couple's property in accordance with statutory and case law principles underlying the divorce laws, or alternatively, pursuant to a constructive trust and other equitable theories of recovery. The Court of Appeals ruled that reliance on the divorce laws was inapposite because the parties were not married. The Court also refused to impose constructive trust with respect to the land owned and titled in female cohabitant's name because male cohabitant made no allegation of fact that he had any interest in the realty: he denied having an ownership interest; she was the sole titled owner; and there was no allegation that he contributed any money toward the purchase of the property.

Hall v. Superior Federal Bank, 794 S.W.2d 611 (Ark. 1990)

An Arkansas statute that permits the opening of an account at banking institutions in the name of two persons designated as joint tenants with right of survivorship "shall be conclusive evidence...of the intention of the parties." Where a woman in a "confidential relationship" (there is no suggestion of an intimate relationship) with another woman opened a savings account and a brokerage account as joint tenants with right of survivorship, the Supreme Court respected survivor's right to funds in savings account but not in the brokerage account which does not fall within the protections of the banking statute. Consequently, the Court ignored extrinsic evidence as to the purpose of the savings account's joint tenancy but allowed such evidence as to the brokerage account.

California

Cochran v. Cochran, 106 Cal.Rptr.2d 899 (Cal. Ct. App. 2001)

A female cohabitant brought an action for breach of an alleged agreement for lifetime support. The unmarried couple only lived together 2-4 days a week. Nonetheless, the Court held that cohabitation sufficient to enforce a Marvin-type agreement for lifetime support may exist even if the cohabitants do not live together full time. More critical than full-time cohabitation is the fact that the couple enjoyed a long-term, significant and stable relationship. (The Court left aside the question of whether adults need to cohabit at all in order to enter into an enforceable agreement.) Thus, in light of the triable issues of material fact, the entry of summary judgment on behalf of the male cohabitant was error.

Della Zoppa v. Della Zoppa, 103 Cal. Rptr. 2d 901 (Cal. Ct. App. 2001)

The parties entered into an oral, non-marital cohabitation agreement to jointly divide their property. This agreement included the commitment to try "to have a family." The parties subsequently married, and later, the wife filed an action for the dissolution of the marriage which

included a claim for a constructive or resulting trust arising from the obligations set forth in the pre-cohabitation agreement. The Court held that the non-marital cohabitation agreement with respect to earnings and property rights was not rendered meretricious and invalid by inclusion therein of the provision that wife would attempt to bear husband's children.

Byrne v. Laura, 52 Cal. App. 4th 1054 (Cal. Ct. App. 1997)

Female cohabitant sought to enforce her oral joint tenancy agreement with her decedent partner's estate. The opinion provides a lengthy account of the couple's non-marital relationship over a five-year period, including testimony from friends and relatives regarding the couple's love and devotion for each other. The Court was persuaded by the couple's relationship of trust and confidence and the decedent partner's conformity with his alleged agreement to support his partner during his lifetime. Thus, it rejected arguments that decedent's promises to care for his female partner were either too uncertain to enforce or unenforceable because not reduced to a writing. The decedent partner's estate was worth over \$1.2 million. Despite the fact that the estate was left testate to individuals who predeceased the decedent, the Court rejected the estate's motion for summary disposition of the female partner's claims against the estate in quantum meruit; for damages for failure to pay a debt on a rejected claim (estate allegedly breached decedent's contract with female partner by rejecting her claim against the estate); for specific performance of express oral agreement; for imposition of constructive trust; and for breach of oral contract and declaratory relief. The Court found a triable issue of fact as to whether the estate could be equitably estopped from asserting the Statute of Frauds as a defense.

Bergen v. Wood, 18 Cal. Rptr. 2d 75 (Cal. Ct. App. 1993)

Cohabitation is necessary in a palimony action, not in and of itself, but because from cohabitation flows the rendition of domestic services which amount to lawful consideration between the parties. Here, an oral contract promising support in exchange for plaintiff's companionship and social hostess services was found invalid as the parties never cohabited, and therefore, there was no consideration severable from the sexual relationship.

Friedman v. Friedman, 20 Cal.Rptr.2d 892 (Cal. Ct. App. 1993)

Former non-marital female cohabitant brought action seeking damages and equitable relief from her male cohabitant following termination of their relationship. The female cohabitant relied upon Marvin to support her claim of an implied agreement for support. The lower court awarded temporary spousal support pending trial, and her partner appealed from that order. The Court of Appeal held that: (1) the trial court lacked power to issue "orders to pay money" as a provisional remedy or inherent equity power to award spousal support pending trial; (2) the evidence was insufficient to support the finding of an implied agreement to provide temporary spousal support; and (4) injunctive relief was improper due to cohabitant's inability to prove that monetary damages would not provide an adequate remedy and that the denial of injunctive relief would cause her irreparable harm.

Alderson v. Alderson, 225 Cal. Rptr. 610 (Cal. Ct. App.1986)

Female cohabitant sought the division of certain real property acquired during her twelve-year relationship with her male partner, and in a separate action, sought an order appointing receiver over his real property as result of his failure to pay child support as ordered in the custody determination. The Superior Court declared that the woman was entitled to one-half interest in the couple's property; set aside quitclaim deeds signed by the woman; and appointed a receiver. In turn, the appellate court held that substantial evidence supported finding that (1) the couple's conduct evidenced an implied contract to share equally any and all property acquired during the course of their relationship; (2) the implied contract was legal and enforceable under Marvin; and (3) the female cohabitant signed quitclaim deeds for all of their real properties under duress. The Court of Appeals also held that the appointment of receiver was not abuse of discretion.

Milian v. De Leon, 226 Cal. Rptr. 831 (Cal. Ct. App. 1986)

A non-marital, heterosexual couple who lived together only on weekends purchased a house together and commingled a portion of their finances. Upon the break-up of the relationship, the male partner filed an action for quiet title in the co-owned real estate. The female co-owner filed a cross complaint seeking a declaration that her partner owned an undivided one-half interest in the couple's property, and accordingly, was only entitled to half of the proceeds arising from the partition by sale and a fair division of their personal property. The Superior Court entered interlocutory judgment of partition after finding an implied contract between the couple for equal ownership of the real and personal property. In response to the male partner's appeal, the Court of Appeal held that: (1) the finding of an implied contract for equal division of property was supported by sufficient evidence; (2) the court was not required to order reimbursement of contribution after a partition action between joint tenants; and (3) evidence of the couple's earnings and separation was not relevant to the division of property except as to issue of ouster.

Marvin v. Marvin, 557 P.2d 106 (CA 1976)

Express and implied contracts of unmarried cohabitants are enforceable unless consideration for the contract rests wholly upon meretricious sexual services.

Colorado

Salzman v. Bachrach, 996 P.2d 1263 (Colo. 2000)

Unmarried cohabitants may contract with one another subject to general contract laws and equitable rules. Such contracts are enforceable so long as sexual relations are not the sole consideration. Mere cohabitation does not trigger marital rights.

Connecticut

Lovallo v. Guerrero, No. 093735, 1991 Conn. Super. LEXIS 798 (Conn. Super. Ct. 1991)

A non-marital heterosexual couple lived together for thirteen years. The female partner brought an action to collect room and board expenses from her partner on an implied contract theory. Her claim was not barred by the existence of a sexual relationship. Instead, the Court found that the parties' conduct demonstrated an understanding that household expenditures would be shared between them and that the male partner would reimburse the female partner for his share when he was able to do so. Her claim for quantum meruit for nursing services rendered during his illness was rejected, as she acted out of a sense of love and obligation.

Boland v. Catalano, 521 A.2d 142 (Conn. 1987)

After a nine-year relationship, the female cohabitant brought suit against her partner for the return of certain property and to recover an equal share of the money and property they accumulated during their relationship. The Supreme Court agreed with the view set forth in Marvin v. Marvin and held that it would enforce contracts between non-marital partners except to the extent the contract is explicitly founded on consideration of meretricious sexual services. The Court remanded the case with instructions that the trial court should, in the absence of express agreement, look to the conduct of the parties to determine whether an implied contract existed.

Florida

Dietrich v. Winters, 798 So.2d 864 (Fla. Dist. Ct. App. 2001)

The trial court ordered the partition of real property which the parties acquired during their five year relationship in order to facilitate the recovery of the female cohabitant's investment. The District Court of Appeal reversed the order for partition, stating that the female cohabitant had no right to partition where title was exclusively in the male cohabitant's name and where there had been no written agreement or documentary proof of the female cohabitant's contributions. However, because the evidence showed that she contributed substantially to the purchase of, and payments on, the property during their cohabitation, the Court remanded the case directing that the female cohabitant should be able to recover her investment in the property through some other means, such as a constructive trust or equitable lien.

McLane v. Musick, 792 So.2d 702 (Fla. Dist. Ct. App. 2001)

McLane and Monroe lived together for a number of years and both contributed funds to a joint account from which they paid expenses. McLane filed claims against Monroe's intestate estate seeking reimbursement for payment of taxes, insurance, and legal bills associated with property deeded Monroe by a third party because these expenses were paid from the joint account and were not used to improve the property at issue. The Court rejected McLane's request and remanded the case to determine whether the boyfriend contributed to the improvement of the property in which he and his girlfriend cohabited, which might support a

claim for restitution to prevent unjust enrichment, under a theory of equitable lien. The Court noted, “the parties had only a mutual understanding of their relationship, and agreement to dispose of their co-mingled assets and other properties, which effectively died with Monroe.” In the absence of written agreements, contracts, or wills, Florida courts have no power to remedy unfair and unjust situations this absence may create.

Stevens v. Muse, 562 So.2d 852 (Fla. Dist. Ct. App. 1990)

An unmarried female cohabitant brought an action against her former partner for the return of certain property, and in response, her partner counterclaimed for the proceeds of an insurance claim and the repayment of a loan. The Court held that a claim based upon an express contract is enforceable regardless of the fact that the parties may be cohabiting, as long as it is clear that valid, lawful consideration separate and apart from any express or implied agreement regarding sexual relations underlies the contract.

Evans v. Wall, 542 So.2d 1055 (Fla. Dist. Ct. App. 1989)

After female cohabitant was evicted from her former lover’s home, she sought reimbursement for the reasonable value of her contributions to home’s improvement over a five-year period. The Court held that a claim for constructive trust of residential and commercial property may be maintained between unmarried cohabiting persons as long as there is valid lawful consideration (such as money, labor, and materials), separate and apart from any express or implied agreement regarding sexual relations. The trial court’s judgment was also supported by an equitable lien theory. The Court stated that an equitable lien “may be declared out of general consideration of right and justice as applied to the relationship of the parties and the circumstances of their dealings in a particular case.”

Poe v. Levy, 411 So.2d 253 (Fla. Dist. Ct. App. 1982)

A male cohabitant appealed from a judgment of the lower court dismissing his complaint against the estate of the woman he had lived with and her heirs. The District Court of Appeal held that: (1) the counts of plaintiff’s complaint which sought (i) enforcement of an express support contract; (ii) declaratory relief for plaintiff’s rights and interests in various properties acquired during the couple’s relationship; and (iii) a constructive trust in certain property due to the confidential relationship between the plaintiff and decedent, stated causes of action which were not against public policy; (2) plaintiff’s allegation that he was entitled to one-half of the decedent’s property by virtue of his relationship with the decedent - - which he claimed had the same force and effect as a legally married couple’s relationship - - failed to state a cause of action for breach of an implied contract; and (3) plaintiff’s allegation that he sought to recover the reasonable value of services he rendered to the decedent pursuant to an express agreement failed to state a quantum meruit claim because an express agreement precludes quantum meruit recovery.

Georgia

Boot v. Beelen, 480 S.E.2d 267 (Ga. Ct. App. 1997)

Beelen brought a breach of contract action to recover money she loaned to Boot during the couple's two-year cohabitation. Boot had made verbal promises to repay the loans when they were made, and at the end of their relationship, the parties reduced these promises to writing in a settlement agreement. Boot moved to dismiss the action claiming that he was married to another woman at the time of his relationship with Beelen, and as a result, any agreement he had with Beelen was void as a contract to do an illegal thing. The Court dismissed Boot's motion holding that Boot's other relationship did not render his agreement with Beelen void as a contract to do an illegal thing, absent evidence that the contract obligated either party to perform any illegal activity, which was at most incidental to the contract.

Hawaii

Maria v. Freitas, 832 P.2d 259 (Haw. 1992)

The Supreme Court held that an unmarried female cohabitant could not claim any right to the quasi-marital property from her partnership of approximately twenty years, when the facts showed an on-going understanding between the parties of separate property rights and intentions. The Court also denied her claims of implied contract, estoppel, and constructive trust stating: "Marriage holds positive and negative legal consequences for each party. A person who is not legally married does not qualify for the positive legal consequences of marriage."

Illinois

Kaiser v. Fleming, 735 N.E.2d 144 (Ill. App. Ct. 2000)

Former girlfriend appealed from the dismissal of her complaint which sought a judgment for the money she loaned her former boyfriend to pay off his mortgage on his home, and which he had agreed to repay when he sold his property. The Court of Appeals held that the girlfriend's claim: (1) was sustainable as an action for money had and received, either under a theory of implied contract or of quasi-contract. Her complaint did not violate Illinois public policy against granting mutual property rights to unmarried cohabitants because plaintiff alleged rights substantially independent from her non-marital relationship with the defendant. She paid off the mortgage as an investment in expectation of gain, and made a lump-sum payment rather than making mortgage payments over the years the parties lived together; and (2) could not be sustained under a theory of constructive trust. The following factors must be taken into consideration to find a constructive trust based upon a fiduciary relationship: (i) the degree of kinship; (ii) the disparity in age, health, mental condition, education, and business experience between the parties; and (iii) the extent to which the allegedly servient party entrusted the handling of her business and financial affairs to the "dominant" party and placed trust and confidence in him. In this case, the disparity between the parties was not great in any regard.

Medley v. Strong, 558 N.E.2d 244 (Ill. App. Ct. 1990)

Woman sought damages for loss of consortium from doctors and hospitals for their alleged negligence in treating her cohabiting partner and companion of ten years. The alleged negligence resulted in the amputation of his penis. The Court held that unmarried cohabitants may not pursue loss of consortium claims because de facto marriages are not legally recognized. In so holding, the Court relied upon the Illinois Supreme Court's decision in Hewitt v. Hewitt which held that unmarried cohabitants are entitled to no legal protection for claims that depend upon the cohabitation itself. Thus, because the couple had not married, and thus were not within the protections of the State's marriage laws, the plaintiff could not claim any rights based on the cohabiting relationship itself.

Ayala v. Fox, 564 N.E.2d 920 (Ill. App. Ct. 1990)

Public policy precluded an award of equitable interest to an unmarried cohabitant in the residence she built and shared with male partner of ten years, despite her having taken out a \$48,000 mortgage in reliance on her partner's unfulfilled promise to convey title in joint tenancy. Such an award would grant unmarried cohabitants substantially the same rights as married couples (i.e., an equitable interest in a marital residence), thus effectively instituting a common-law marriage which is not cognizable in Illinois.

In re Marriage of Weisbruch, 710 N.E.2d 439 (Ill. App. Ct. 1999)

Ex-husband brought post-dissolution proceeding to terminate his maintenance payments to his ex-wife. In light of the gender-neutral Illinois statute regarding modification of alimony payments, the ex-wife's entitlement to maintenance may be terminated by a same-sex relationship.

Hewitt v. Hewitt, 394 N.E.2d 1204 (Ill. 1979)

The plaintiff had lived for fifteen years with her male partner in an unmarried, family-like relationship to which three children had been born. The plaintiff brought suit to recover an equal share of the profits and property accumulated by the parties during that period. The Circuit Court dismissed the complaint, and an appeal followed. When the Appellate Court reversed and remanded, her partner appealed. Ultimately, the Supreme Court held that the woman's claim was unenforceable because it contravened the public policy implicit in the statutory scheme of the Illinois Marriage and Dissolution of Marriage Act. This public policy disfavors the extension of mutually enforceable property rights to knowingly unmarried cohabitants.

Indiana

Bright v. Kuehl, 650 N.E.2d 311 (Ind. Ct. App. 1995)

A party who cohabits with another without subsequent marriage is entitled to relief upon a showing of express contract or a viable equitable theory such as an implied contract or unjust enrichment. Here, the plaintiff was unable to establish an implied contract to repay funds given

to his female partner, as he could not show that he provided the money with the expectation that she would repay him, or that she impliedly or expressly requested these benefits. Further, there was no showing that his partner had been unjustly enriched, although he made greater financial contributions to the relationship.

Iowa

Kerkove v. Thompson, 487 N.W.2d 693 (Iowa Ct. App. 1992)

Female cohabitant sued her partner for breach of a contract to build a new home and live in it. The Court held that such a contract existed between the parties, entitling the plaintiff to damages and to a lien on the property securing the award of damages. Her partner admitted that he told her they would build a new home in which they would live forever if she were to sell her mobile home. She accepted his offer and sold her mobile home. She participated in the construction of the home as well as spent some of her own money for associated expenditures. Their cohabitation was no defense to the contract because their dispute arose from his apparently false commitment to live together in a new home and not from their cohabitation.

Kansas

Matter of Marriage of Thomas, 825 P.2d 1163 (Kan. Ct. App. 1992)

Ex-wife (and later mere cohabitant) brought an action for divorce from her common-law marriage. Unbeknownst to the plaintiff, her ex-husband had married someone else between the time of their initial divorce in 1962 and their subsequent cohabitation in 1972. Despite the ex-husband's marriage to someone else, the Court ruled that it possessed equitable powers to make a division of the unmarried cohabitants' property which was jointly accumulated or acquired singly with the intent that each would have an interest. The Court held that it was not bound by the Uniform Partnership Act (or by partnership principles) in dividing the property.

Kentucky

Glidewill v. Glidewell, 790 S.W.2d 925 (Ky. Ct. App. 1990)

Based upon a partnership theory, the lower court equally divided the real and personal property of a couple in a fifteen year relationship who had held themselves out as married and filed joint tax returns. The appellate court reversed, explicitly ruling that the female cohabitant's contributions in maintaining the joint household were not to be considered in dividing the property accumulated during their cohabitation. As to property which they held in a joint venture or partnership, the parties were entitled to division of the equity in proportion to their contribution to the acquisition.

Murphy v. Bowen, 756 S.W.2d 149 (Ky. Ct. App. 1988)

The Court refused to allow division of all assets upon the termination of an eleven-year relationship based solely upon the fact of cohabitation. With respect to cattle raising and certain

personal property, however, the Court found evidence implying joint ownership such that the Court could determine the parties' respective ownership rights. The Court was careful to observe that there was no express agreement and little evidence of joint endeavors other than the mere fact of cohabitation.

Massachusetts

Wilcox v. Trautz, 693 N.E.2d 141 (Mass. 1998)

The Supreme Judicial Court held that unmarried cohabitants may lawfully contract concerning property, financial, and other matters relevant to their relationship. The Court held that it would enforce express agreements between unmarried cohabitants subject to the rules of contract law, even if expressly the agreement were made in contemplation of a common living arrangement. Here, the Court enforced an agreement entered into in the sixteenth year of the couple's twenty-five year cohabitation arrangement. The Court recognized that "[s]ocial mores regarding cohabitation . . . have changed dramatically in recent years and living arrangements that were once criticized are now relatively common and accepted." Accordingly, the courts would "do well to recognize the benefits to be gained by encouraging unmarried cohabitants to enter into a written agreement." The Court, while not expressly limiting the decision to written contracts, clearly stated a preference for them.

Sullivan v. McCann, Mass. Super. Ct. (Essex), Civil Action No. 92-682B (1995)

Unless faced with a compelling factual scenario, the courts will not recognize the claims of former romantic partners for compensation based upon the provision of services in the context of a relationship that was never subject to the formal solemnization of marriage. Plaintiff's claim against the corporation for which defendant worked and was a minority shareholder was untenable, as defendant did not have power to bind the corporation.

Collins v. Guggenheim, 631 N.E.2d 1016 (Mass. 1994)

Collins brought suit against Guggenheim seeking imposition of a constructive trust for the farm on which couple had lived and worked together for six years. Farm expenses were paid out of a joint account, but the parties otherwise maintained separate finances. By the time Collins filed suit, he had neither lived there nor made mortgage payments for nearly three years. The title to the farm was in Guggenheim's name, and it was her principal asset. When the couple was intact, they had jointly taken out \$72,000 in loans to renovate the property, and Collins contributed his own money for equipment and certain improvements. There were no facts showing "any agreement, promise or contract to transfer title to the property to their joint names." The Supreme Judicial Court held that no equitable claim existed based upon the parties' relationship, as the incidents of a marital relationship do not attach to an arrangement of cohabitation without marriage. The Court also refused to impose a constructive trust, as there was no showing of fraud, fiduciary duty or other misconduct.

Romano v. Bastian, 1 Mass. L. Rptr. 199 (Mass. Super. 1993)

The Superior Court awarded the plaintiff the value of the enhancements he made to the defendant's home as a result of his expenditures and labors during the parties' cohabitation. Although the Court found no evidence of fraud or deceit by the defendant, it imposed a constructive trust because the plaintiff relied on his partner in many respects, and it could be inferred that she understood his trust on and reliance in her. The Court also concluded that it could reach the same result under a quantum meruit claim based upon an implied contract because the plaintiff's expenditures, though provided during a relationship of mutual trust, confidence, and love, were not made with pure donative intent. Rather, he made his expenditures with the expectation that their relationship would be permanent and he would share in the enjoyment of the improvements.

Lewis v. Mills, 593 N.E.2d 1312 (Mass. App. Ct. 1992)

The decedent and Mills entered into a purchase and sale agreement on a single family residence, and obtained title as joint tenants with a right of survivorship. They were engaged and planned to sell their respective houses, funneling the proceeds equally into their new home. Yet, the couple apparently financed their new house from the sale of the decedent's house and a mortgage loan signed by both parties. They took title to the house as joint tenants. Decedent made all payments of principal and interest on the note and mortgage and paid most household expenses while Mills used the proceeds from the sale of her house for personal investments and purchases. Prior to decedent's death, the parties separated. After the decedent's death, Mills took possession of the house. The plaintiff, the administrator of decedent's estate, brought suit seeking a determination that Mills obtained title in fraud and that she held title in trust for the plaintiff. The trial court ruled that Mills held title to the house as "a mere convenience" and that both a constructive trust and a resulting trust had been created in favor of the decedent's estate. The Appeals Court reversed and remanded, explaining that the taking of title as joint tenants in anticipation of marriage, manifests an intent to create an undivided beneficial interests in the locus. On remand, the Court suggested that Mills could retain title as the survivor of the joint tenancy as long as Mills rectified the duty she owed to the decedent to equally fund the house. In this vein, the Court proposed that the one-sided payments by decedent could be deemed "loans" to Mills which would be payable by Mills to the decedent's estate.

Sullivan v. Rooney, 533 N.E.2d 1372 (Mass 1989)

A constructive trust on one-half interest in home plaintiff shared with army officer was properly imposed given the special confidence the plaintiff placed in her partner; her contributions to the home (money, expenses, housework, decorating, entertaining); and her partner's promises to eventually convey joint title to the property. The Court directed the partner to convey the premises to plaintiff and himself as tenants in common. The Court did not consider plaintiff's claim that her partial performance of the oral agreement between the parties to live together, including leaving her job as a flight attendant to her detriment, estopped her partner from relying on the Statute of Frauds and entitled her to specific performance.

Hatton v. Meade, 502 N.E.2d 552 (Mass App. Ct. 1987)

The Appeals Court reinstated a jury verdict allowing the plaintiff to enforce a constructive trust upon a house allegedly given to her by her decedent partner. The couple cohabited over a twenty-four year period. The plaintiff claimed the decedent gave the house to her as a Christmas gift. Decedent allegedly made repeated promises to transfer the title to the plaintiff's name, and the plaintiff spent money to improve the house. The jury could reasonably have viewed the decedent's conduct as "an unconscionable abuse of a quasi-fiduciary, confidential relationship by at least a grossly negligent failure to perfect the gift of the locus to the detriment of the plaintiff, who relied upon it by moving to the locus."

Michigan

Whitson v. Kaltz, 2002 WL 31104989 (Mich Ct. App. 2003)

Katz and Whitson were a non-marital cohabitating couple for approximately five years. They had an express agreement to accumulate the subject property and both provided consideration: Whitson contributed the down-payment and the other costs of construction, and Kaltz contributed the land. The trial court awarded plaintiff Whitson damages based on quantum meruit. Defendant Kaltz appealed from that ruling. The Court of Appeals affirmed the trial court's damage award under the quantum meruit theory reasoning that Kaltz would be unjustly enriched if she were allowed to keep the land with the home and improvements without compensating Whitson for his contributions. The Court of Appeals relied on precedent for the principle that those "engaged in meretricious relationships do not enjoy property rights afforded a legally married couple." Yet, the Court also held that it would "enforce an agreement made during the relationship upon proof of independent consideration."

Horak v. Goodwin, 2000 WL 33418413 (Mich. Ct. App. 2000)

Plaintiff Horak appealed from an order granting defendant's motion for summary disposition. Horak and Goodwin lived together in a non-marital relationship for about thirteen years and had two children. After their relationship ended, Horak brought this action seeking a one-half interest in the property where they had lived together, as well as exemplary damages. Horak's complaint contained counts of fraud, breach of contract, equitable mortgage, and assault and battery. The appellate court affirmed the summary disposition because Horak did not present any evidence of an express agreement to share ownership of their accumulated property, outside of Goodwin's promise to marry her in the future. Moreover, Horak did not cite any authority to support her other claims under these circumstances.

Ford v. Wagner, 395 N.W.2d 72 (Mich. Ct. App. 1986)

Plaintiff who lived with his female partner in a non-marital relationship brought an action for loss of consortium arising from a motor vehicle accident. The Court of Appeals held that a relationship which does not meet statutory requirements for legal marriage cannot give rise to property rights, personal rights or rights of support. The extension of such rights would be

tantamount to judicial recognition of common-law marriages in the face of express statutory provisions abolishing the legal recognition of such marriages.

Carnes v. Sheldon, 311 N.W.2d 747 (Mich. Ct. App. 1981)

A woman who had lived with her male partner for more than ten years appealed from the judgment of the trial court which denied her request for equitable division of property and for custody of her partner's minor child. The Court of Appeals held that: (1) the woman failed to prove an express agreement with respect to the division of property; (2) she was essentially asking for relief based upon a breach of her partner's promise to marry, which action had been previously abolished by the legislative fiat; and (3) judicial restraint requires the legislature, rather than judiciary, to be the appropriate forum for addressing the formulation of remedies for non-marital relationships.

Minnesota

In re Estate of Palmen, 574 N.W.2d 743 (Minn. Ct. App. 1998) rev. granted April 14, 1998; Obert v. Dahl, 574 N.W.2d 747 (Minn. Ct. App. 1998) rev. granted April 14, 1998.

Two cases decided on the same day by two separate panels of the Minnesota Court of Appeals split as to whether and when a Minnesota statute requires that agreements as to property and financial relationship between unmarried cohabitants be in writing. In In re Estate of Palmen, an unmarried couple together for eleven years purchased and developed property, the documentation of which all was in Palmen's name. The couple did not enter into a written contract nor did they contribute equally to the purchase and maintenance of the property. The Court of Appeal dismissed the claim of Palmen's former partner holding that no extenuating circumstances existed to render inapplicable the Minnesota statute requiring agreements between unmarried cohabitants to be in writing.

In Obert v. Dahl, unmarried cohabitants together for four years jointly purchased property (taking title in Dahl's name only) and made significant payment towards Dahl's debt (to improve his chances to qualify for credit). The couple agreed that although the property would be taken in Dahl's name, they would later amend the title to include Obert's name. After the couple terminated their relationship, Obert initiated suit to recover the funds she contributed towards the improvement of the property (the title of which remained in Dahl's name) and to Dahl's debt reduction, and she sought to impose a constructive trust which would enable her to obtain joint title. The Court of Appeal reversed the trial court's grant of summary judgment, holding that Obert presented material fact questions as to whether the relevant Minnesota statute (which requires agreements by non-marital cohabitants to be in writing) should even apply where the parties' sexual relations were not the sole consideration for any contract between them.

Carlson v. Olson, 256 N.W.2d 249 (Minn. 1977)

Woman brought action to partition real and person property accumulated during her twenty-one year non-marital cohabitation with her male partner. The couple held themselves out to the public as if they were in fact married. Her male partner counterclaimed for recovery of

rent and improvements to the property and a declaratory judgment that he was the owner of the real estate. He also sought to eject the plaintiff from the subject property. The male partner appealed the trial court's allowance of the partition and its allotment of a one-half interest in the property to each party. The Supreme Court held that (1) the trial court had authority to exercise equitable powers and equally divide the property, and (2) the evidence supported the finding that the parties intended their accumulations to be divided on an equal basis and that contributions of each partner constituted irrevocable gifts to each other.

Mississippi

Davis v. Davis, 643 So.2d 931 (Miss. 1994)

Plaintiff had a child by and lived with her male partner for thirteen years, during which time his net worth increased by over \$6 million. She claimed that the parties had orally agreed to live as husband and wife and sought an accounting and equitable distribution of property acquired during the alleged partnership, as well as the imposition of a lien or constructive trust against the assets of the partnership and her partner. The Supreme Court rejected her claims because she had voluntarily assumed the unsanctioned role of "mistress" and failed to seek the law's protection through a marriage ceremony, even though her partner had offered to marry her. Further, there was no showing that her partner's assets had been gained through a joint effort. The Court refused to allow recovery on a contractual basis, as it would resurrect the common-law marriage doctrine rejected by the legislature.

Missouri

Champion v. Frazier, 977 S.W.2d 61 (Mo. Ct. App. 1998)

Finding an implied-in-fact contract between the parties to share equally in the benefits flowing from the house they cohabited in for 5 years, the trial court awarded damages for breach of contract to the female plaintiff. The Court of Appeals reversed because, although plaintiff contributed to the household, she did not substantially contribute to the purchase of the property, nor was her name on the title or bank loan. There were no jointly held assets. Unlike the joint "business-type" relationship in Hudson v. DeLonjay (*infra*), the parties in this case had a family relationship. Rendition of services in a family relationship does not justify recovery unless there was an express contract or actual understanding that plaintiff would be paid.

Hudson v. DeLonjay, 732 S.W.2d 922 (Mo. Ct. App. 1987)

Public policy prohibiting recovery of damages from cohabitants based on meretricious relationship does not preclude recovery on implied-in-fact contract between cohabitants to share assets accumulated during their relationship.

Nevada

Langevin v. York, 907 P.2d 981 (Nev. 1995)

During their two-year cohabitation, the parties acquired four properties which they held as joint tenants. The properties were purchased by the male joint tenant, and there was no evidence of an agreement to pool assets. The Supreme Court held that unmarried joint tenants are entitled to recover an amount in proportion to their contribution to the acquisition of the property.

Sack v. Tomlin, 871 P.2d 298 (Nev. 1994)

Upon the dissolution of this non-marital couple's seven-year relationship, a dispute arose over the apportionment of the proceeds from the sale of their house, which dispute led to an action for partition of the real property held as tenants in common. In Hay v. Hay (*infra*), the Nevada Supreme Court stated that "[t]he courts should enforce express contracts between non-marital partners except to the extent that the contract is explicitly founded on the consideration of meretricious sexual services. [In addition,] in the absence of an express contract, the courts should inquire into the conduct of the parties to determine whether that conduct demonstrates an implied contract, agreement of partnership or joint venture, or some other tacit understanding between the parties. The courts may also employ the doctrine of quantum meruit, or equitable remedies such as constructive or resulting trusts when warranted by the facts of the case." Here, the Supreme Court held that the doctrine of quantum meruit did not apply because nothing in the record indicated that either party promised or expected compensation for his or her contribution of household services, nor was there any evidence to indicate that whatever services were provided by one party were not reduced by equivalent services rendered by the other.

Western States Construction, Inc. v. Michoff, 840 P.2d 1220 (Nev. 1992)

Lois Michoff ("Lois") and Max Michoff ("Max") were cohabitants for approximately nine years, but never married. When their relationship ended, Lois brought an action seeking one half of her and Max's assets, including Western States Construction, Inc., which they formed during their relationship. The trial court entered judgment in favor of Lois and against Max and the corporation. Both appealed. The Supreme Court held that: (1) Max was given sufficient notice that the complaint stated cause of action for breach of express and implied contract to acquire and hold property as though the couple were married; (2) unmarried cohabitating adults may agree to hold property as if they were married; (3) the evidence did not demonstrate an express agreement, but instead, supported a finding that the parties impliedly agreed to hold the property as if they were married; and (4) the corporation was not party to the contract and, therefore, could not be liable for defendant breach.

Hay v. Hay, 678 P.2d 672 (Nev. 1984)

Female cohabitant brought an action seeking a declaration of her interest in the property she acquired with her male partner during their cohabitation. The lower court entered summary judgment dismissing the complaint, and an appeal followed. The Supreme Court held that:

(1) the complaint stated a cause of action for breach of an implied-in-fact contract to acquire and hold property as if parties were married or were general partners, and (2) an issue of material fact concerning the ownership of various items of property precluded summary judgment.

New Jersey

Kozlowski v. Kozlowski, 403 A.2d 902 (N.J. 1979)

Woman brought an action against her male partner with whom she had cohabited for fifteen years. In her action, she sought to recover a share of the assets her partner accumulated during those years, the reasonable value of the services she rendered for his benefit, and future support. The lower court rendered judgment for the plaintiff, and an appeal followed. The Supreme Court held that: (1) the 1968 agreement - - whereby plaintiff agreed to live with her partner and run his household and, in turn, her partner agreed to provide for her for the rest of her life - - was enforceable because the agreement was not explicitly and inseparably founded on sexual service. Moreover, as the parties' subsequent cohabitation could not be termed "meretricious," and the relationship between the parties was not tainted by the fact that the male partner was married to someone else at that time; (2) an agreement between a cohabitating adult couple is enforceable to the extent it is not based upon a relationship proscribed by law, or upon a promise to marry.

New York

Donnell v. Stogel, 161 A.D.2d 93 (N.Y. App. Div. 1990)

An action was brought to enforce a written contract entered into by an unmarried couple upon the termination of their cohabitation. While cohabitation without marriage does not give rise to the property and financial rights which normally attend the marital relation, neither does cohabitation disable the parties from making an agreement within the normal rules of contract law. The appellate court disagreed with trial court's conclusion that the main objective of the agreement was to compensate the plaintiff for cohabiting with the defendant. The Court held that even if this were the main objective of the agreement, such an objective would not serve to render the agreement unenforceable, as New York does not have any statutory or common-law authority upon which to render cohabitation between unmarried parties illegal. The Court ultimately remanded the case because neither party had moved for summary judgment, and the defendant had not been given the opportunity to present evidence on his own behalf.

North Carolina

Thomas v. Thomas, 401 S.E.2d 396 (N.C. Ct. App. 1991)

An unmarried couple separated after fourteen years. Plaintiff sued for breach of implied contract and was awarded \$25,000 in quantum meruit damages. The appeals court overturned the award, finding insufficient evidence that the plaintiff's services were rendered for compensation. Even if the evidence were sufficient to make such a finding, however, the claim

would be limited to three years under the applicable statute of limitation. No contract would be necessary for the plaintiff to recover under a theory of unjust enrichment.

Suggs v. Norris, 364 S.E.2d 159 (N.C. Ct. App. 1988), *appeal den'd* 370 S.E.2d 236 (N.C. 1988)

Cohabiting but unmarried individuals are capable of entering into enforceable express or implied contracts for the purchase of, or improvements to, houses, or for the loan and repayment of money.

North Dakota

Kohler v. Flynn, 493 N.W. 2d 647 (N.D. 1992)

The Supreme Court held that the non-marital cohabitants were not entitled to a judicial division of their property where their relationship ended after only six months (not a “substantial period”), and neither cohabitant gave up personal or professional opportunities. Moreover, the couple did not hold any property as partners, joint tenants, or tenants in common and did not indicate any intent to own property together. If they had, the division of assets upon separation would have been controlled by the applicable statute governing the partition of property (NDCC 32-16-01). Mere cohabitation is insufficient to support a right to partition in the absence of actual joint ownership.

Ohio

Stone v. Stone, 2002 WL 1058373 Ohio App. 5 Dist. May 20, 2002 (slip copy)

Ex-husband brought claim of unjust enrichment against ex-wife. The parties dissolved their marriage in 1989, but they continued to cohabit “off and on” until 2000. After the dissolution of their marriage, the ex-husband provided almost all the labor for the construction of his ex-wife’s house, and he was jointly liable on the mortgage and the note for the residence. The Court of Appeals upheld the trial court’s judgment in favor of the ex-husband on an unjust enrichment theory.

Tarry v. Stewart, 649 N.E. 2d 1 (Ohio Ct. App. 1994)

The Court of Appeals held that the evidence did not support a finding that the defendant entered into a cohabitation agreement with the plaintiff. The evidence was also insufficient to establish that plaintiff’s work on the two residences resulted in the unjust enrichment of defendant. Moreover, the Court could identify no authority upon which to allow cohabitating individuals to recover under a constructive trust theory for contributions to the relationship.

Oregon

Wilbur v. DeLapp, 850 P.2d 1151 (Or. Ct. App. 1993)

Oregon does not recognize common-law marriage; however, the court may redistribute property owned by the parties to a non-marital domestic relationship. The primary consideration is the intent of the parties. Here, the couple lived together for eighteen years and accumulated joint property. The plaintiff's main contribution was as a homemaker. Although the house was in the defendant's name, the court concluded that the parties intended for the plaintiff to have an interest and, as a matter of equity, granted her a half interest. The court also granted her a half interest in the defendant's pension fund.

Beal v. Beal, 577 P.2d 507 (Or. 1978)

An appeal was taken from a decree of the trial court establishing the interests of plaintiff and defendant in a residence. The Supreme Court held that the evidence showed that the parties, who had lived together in a meretricious relationship, intended to pool their resources for their common benefit during their cohabitation, and that the residence therefore belonged to them both.

Pennsylvania

Roberson v. Davis, 580 A.2d 39 (Pa. Super. Ct. 1990)

Woman who had lived in meretricious relationship with a man who was married to another brought an action in equity to impose a constructive trust or otherwise to acquire a one-half interest in the real property and a vehicle. The Superior Court held that the lower court's rejection of the woman's claim to an interest in the man's real property was not abuse of discretion because cohabitation in a meretricious relationship did not provide the woman with a claim to the real estate. The Court did not find any agreement to support the woman's acquisition of an interest in her partner's real estate, nor a partnership or joint venture with respect thereto. The woman was granted relief with respect to vehicle, however, because, unlike the real estate, she had purchased the car.

South Carolina

Dye v. Gainey, 463 S.E.2d 97 (S.C. Ct. App. 1995)

The "mistress" received eviction papers from the married mobile home owner with whom she had been cohabitating, demanding that she vacate the mobile home he had allegedly purchased for her. In response, she sued the mobile home owner seeking to have a constructive trust imposed on the mobile home and a declaration that the owner was equitably estopped from refusing to fulfill his promise to transfer title to her. The lower court dismissed the suit for failure to state a claim. The appellate court reversed finding that she stated a cause action for constructive trust when she alleged that she had a confidential relationship with the owner and that he engaged in bad faith and wrongful inducement, thus causing her to change her position in

reliance on his conduct, promises, and representations. She claimed that she quit her employment and moved into his mobile home as a result of his promises of marriage; the mobile home was gift to her and he promised to transfer title to her; and she did not seek employment for the past four years in reliance on the owner's promises. The Court remanded the case for further determinations.

Tennessee

Rivkin v. Postal, not reported in S.W.3d, 2001 WL1077952 (Tenn. Ct. App. 2001)

Outside marriage, the right to insist upon a division of property depends upon common legal ownership, not simply cohabitation. Because the parties never held themselves out as married, none of the equitable principles generally used to divide the property of non-marital couples who do act as husbands and wives have any application.

Texas

In re Marriage of Sanger, 1999 WL 742607 (Tex. App. – Texarkana 1999)

Darley Sanger appealed from a judgment denying in part and granting in part the petition for divorce filed by Donna Sanger. The trial court denied Donna's request for a divorce, but granted her request for a just and right division of property. Specifically, the court found that: (1) Darley and Donna were never married, legally or by common law; (2) their relationship cannot be considered a putative marriage since there was no legal impediment to getting married and neither party ever in good faith believed that a marriage existed; (3) their relationship was purely meretricious; and (4) based on the parties' contributions to the relationship, financial and otherwise, there was "a community of effort and responsibility shared" which required a just and right division of the property acquired during the relationship. Thus, the trial court ordered that the property acquired during the course of their meretricious relationship be taken into receivership, sold, and the proceeds distributed equally between them. The appellate court later reversed the trial court decision and denied Donna Sanger's pleas for a division of the property because there was no express trust agreement, no resulting trust, nor any partnership between the two. The appellate court relied upon precedent holding that the division of property laws only apply to solemnized and putative marriages. Consequently, since the Sanger's relationship was merely meretricious and not putative, neither party received equitable protection under the law. As a result, the parties would only have an interest in the property they had separately purchased.

Utah

Layton v. Layton, 777 P2d 504 (Utah Ct. App. 1989)

A state statute, which recognizes as a marriage a non-marital, cohabitating relationship satisfying certain specified criteria, did not apply to a case filed four years prior to enactment of statute. Thus, the lower court should not have divided the couple's property pursuant to the statute. The Court of Appeals did recognize that "an equitable division of property accumulated

by unmarried cohabitants” was possible based upon “a partnership, contract for services, or trust.”

Vermont

Harman v. Rogers, 510 A.2d 161 (Vt. 1986)

Plaintiff and defendant lived together for seven years, during which time the plaintiff worked as a bookkeeper and manager in several business enterprises, either owned jointly or by the defendant alone. The parties agreed that her wages from bookkeeping were to go towards housekeeping expenses. While expressly disclaiming a “palimony” theory, the plaintiff sued to recover her interest in the defendant’s enterprises under theories of express and implied partnership and quasi-contract. The Court rejected her partnership claims to defendant’s solely owned enterprises as there was no showing of mutual intent to be so bound. The defendant had repeatedly refused to put the real estate in both names, and plaintiff’s actions showed her perception of defendant as her employer rather than her partner. Plaintiff’s restitution claim for her managerial services was upheld where it was shown that defendant’s business materially benefited from those services. Yet, her claim for restitution arising from her bookkeeping services was dismissed because there was no showing of unjust enrichment, and she was unable to demonstrate that she expected more than \$3/hour for her services.

Washington

In re the Marriage of Pennington, 14 P.3d 764 (Wash. 2000)

Female cohabitants, in separate cases, filed complaints against their male cohabitants, seeking an equitable division of property on the basis of meretricious relationships. (In Washington, property acquired during a meretricious relationship provides a rebuttable presumption that the property belongs to both parties.) The applicable superior courts, determined that the relationships were meretricious and divided their assets. Both male cohabitants appealed. The appellate court reversed and remanded one case, but affirmed the other. The Supreme Court held that the facts of each case did not establish that either relationship was a meretricious relationship. Specifically, neither relationship was a “stable relationship evidenced by factors such as: continuous cohabitation, duration of the relationship, purpose of the relationship, pooling of resources and services for mutual benefit, and the intent of parties.”

In re the Meretricious Relationship of Sutton and Widner, 933 P.2d 1069 (Wash. Ct. App. 1997)

Factors the courts should consider to determine whether a relationship is meretricious for purposes of determining an equitable distribution of property include: length of cohabitation, contribution to the house, and joint efforts on behalf of the relationship. Maintenance of separate identities and accounts alone is not sufficient to defeat the claim that a relationship was in fact meretricious.

Connell V. Francisco, 898 P.2d 831 (Wash. 1995)

The Court held that the characterization of property following a meretricious relationship (*i.e.*, “a stable, marital-like relationship where both parties cohabit with the knowledge that a lawful marriage between them does not exist”) should be the same as the property that would have been characterized as community property had the parties been married. Although the laws involving the distribution of marital property do not directly apply to the division of property following a meretricious relationship, the courts may look to those laws for guidance. There is a rebuttable presumption that all property acquired during a meretricious relationship is jointly owned by both parties; and the fact that title has been taken in only a single party’s name does not rebut this presumption. “Furthermore, when the funds or services owned by both parties are used to increase the equity or maintain or increase the value of property that would have been separate property had the parties been married, there may arise a right of reimbursement in the ‘community.’”

Peffley-Warner v. Bowen, 778 P.2d 1022 (Wash. 1989)

The surviving partner to an unmarried cohabiting relationship appealed the Social Security Administration’s decision to deny her widow’s benefits in United States District Court. Though the parties were not married, they maintained a meretricious relationship for twenty-two years prior to the male cohabitant’s death. On motion for summary judgment, the magistrate dismissed the case, and the claimant appealed. The United States Court of Appeals for the Ninth Circuit entered an order certifying the issue to the state Supreme Court. The Supreme Court of Washington held that state law did not afford a person in claimant’s situation the same status as that of a wife with respect to the intestate devolution of decedent’s personal property.

In re the Marriage of Lindsey, 678 P.2d 328 (Wash.1984)

In 1974, this heterosexual couple began a meretricious relationship but married two years later. Upon their ultimate break-up, the husband filed a petition for dissolution of marriage. The Superior Court granted the petition, and the wife appealed. The Supreme Court held that: (1) in dividing property during meretricious relationship, a trial court must examine the relationship and the property accumulations and make just and equitable disposition of the property; (2) real property owned by the husband before the marriage was properly characterized as “separate property;” (3) the trial court properly exercised its statutory discretion in distributing assets other than fire insurance proceeds; and (4) the trial court abused its discretion in failing to consider wife’s interest in fire insurance proceeds from barn which was constructed by couple during meretricious relationship prior to marriage. Affirmed in part, reversed and remanded part.

Warden v. Warden, 676 P.2d 1037(Wash. 1984)

Action was brought for the disposition of property acquired by a non-marital, cohabitating couple who had children. The Superior Court divided the property, ruling that the parties’ former home be held by them as tenants in common. The male partner appealed. The Court of Appeals held that: (1) the statute providing guidelines for the division of property upon dissolution, legal separation, or declaration of invalidity was also applicable to the disposition of

property acquired by a cohabitating heterosexual couple in an established relationship that was tantamount to a marital relationship except for legal marriage, and thus, (2) the trial court properly treated parties as a marital family and considered appropriate factors in ruling that the home be held by the parties as tenants-in-common.

Hinkle v. McColm, 575 P.2d 711 (Wash. 1978)

Female partner initiated a proceeding to partition the property acquired during her four-year meretricious relationship. The lower court entered judgment awarding certain items to the parties, and the male partner appealed. The Supreme Court held that the award of a boat, trailer and citizen band radio to the plaintiff as the person in whom title to items existed was in accordance with the sense of equity and justice of the trial court as well as the Creasman rule (i.e., property acquired by non-marital couple otherwise 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), given findings of the trial court that there was no love and affection between the parties and that their meretricious relationship was never intended to have any stability or permanency.

West Virginia

Goode v. Goode, 396 S.E.2d 430 (W. Va. 1990)

Court may order division of property acquired by a man and woman who are unmarried cohabitants, but hold themselves out as husband and wife. Such an order may be based upon principles of express or implied contract or constructive trust. Factors to be considered include the purpose, duration, and stability of the relationship, and the expectations of the parties. Here, if upheld, plaintiff's allegations would be sufficient to support her claims for equitable relief where she alleged that: for twenty-nine years she had provided a wide range of homemaker services that materially contributed to the economic well-being of the defendant and their children; she had forgone occupational opportunities; and, her services allowed the defendant to pursue full-time employment, rendering him better able to amass his own assets.

Thomas v. LaRosa, 400 S.E.2d 809 (W. Va. 1990)

Agreements, express or implied, between unmarried partners for future support are not enforceable, even when not explicitly and inseparably based upon sexual services. This was not a case of common-law marriage, as she knew he was married at the time she agreed to be his companion and business helper.

Wisconsin

Ulrich v. Zemke, 654 N.W.2d 458 (Wis. Ct. App. 2002)

Zemke was not entitled to sole ownership of a parcel of land acquired while the parties lived together, even though Ulrich did not participate in the acquisition or maintenance of the property. The couple shared a house for seven years, raised four children, shared living expenses and

continually acquired real and personal property. Ulrich's contribution to the relationship enabled Zemke to purchase the parcel. The trial court improperly analyzed the unjust enrichment claim asset by asset. The Court of Appeals stated that unjust enrichment applies to all assets if the parties act together in a joint enterprise to acquire them, absent proof that an asset was acquired independently.

Ward v. Jahnke, 583 N.W.2d. 656 (Wis. Ct. App. 1998)

Ward, the female cohabitant, asserted an unjust enrichment claim against Jahnke seeking a portion of the equity in their shared house of eight years. The lower court awarded Ward half of the equity in the house. The Court of Appeals reversed and remanded. A claim for restitution based upon a theory of unjust enrichment requires the plaintiff to present proof of specific contributions that led directly to an increase in assets or an accumulation of wealth, and of facts indicating that the assets were acquired through the efforts of both in a shared enterprise. Here, Ward presented the requisite proof of their mutual undertaking to accumulate assets during the three and a half years the parties lived together in her apartment prior to their purchase of the house. Specifically, Ward paid all living expenses during this time to accumulate a down payment for the house. However, Ward failed to show a mutual undertaking after the purchase of the house, as title was in Jahnke's name alone; he paid all expenses associated with the mortgage, taxes, and maintenance; and the parties never pooled their income nor handled money jointly.

Watts v. Watts, 405 N.W.2d 303 (Wis. 1987)

The cohabitants lived together for more than twelve years, holding joint bank accounts and filing joint income tax returns. The lower court dismissed female cohabitant's action for an accounting and share of accumulated property under family law statutes, theory of marriage by estoppel, express or implied-in-fact contract, constructive trust based on unjust enrichment, partition, and failure to state a claim. The Supreme Court agreed that the unmarried cohabitants were not "family" within the meaning of the statute authorizing a division of property in actions affecting family, but held that the female cohabitant stated claims for breach of express or implied contract, unjust enrichment, and partition, where she alleged that she and her partner were engaged in a joint venture or partnership; they purchased and intended to share real and personal property as husband and wife; and she contributed to the acquisition of the property.

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