CAN A LONG-DISTANCE "COMMITTED INTIMATE RELATIONSHIP" EXIST IN WASHINGTON?

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I. INTRODUCTION

The "Committed Intimate Relationship" (CIR) is a sui generis doctrine that for decades has been a bedrock of family law in the state of Washington.[1] Succinctly, a CIR arises when two unmarried people, under certain circumstances, can have their community-like property[2] divided in a just and equitable manner as if they were married.[3] Courts define CIRs as "stable, marital-like relationship[s] where both parties cohabit with knowledge that a lawful marriage between them does not exist."[4] Property acquired during the CIR mirrors that of property acquired during a marriage in that it is presumed to be community-like.[5] Grounded in equity, the CIR prevents one party from unjust enrichment at the expense of the other after years of toiling together in a relationship akin to marriage.[6]

Employing a tripartite analysis, trial courts are not navigating unchartered waters with each CIR action that comes before them.[7] First, to determine whether a CIR exists at all, courts look to five nonexclusive factors: continuous cohabitation, duration of the relationship, purpose of the relationship, pooling of resources and services for joint projects, and

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1. Courts formerly referred to the doctrine as a "meretricious relationship," which has since been decried as antiquated and derogatory. *See* Olver v. Fowler, 168 P.3d 348, 350 n.1 (Wash. 2007) (en banc). Other judges will occasionally use the term "equity relationship." *Compare* Byerley v. Cail, 334 P.3d 108, 113 (Wash. Ct. App. 2014), *with* Walsh v. Reynolds, 335 P.3d 984, 993 n.21 (Wash. Ct. App. 2014), *and In re* Long, 244 P.3d 26, 29 (Wash. Ct. App. 2010). This article follows the modern trend by referring to it as a CIR.

2. *See* Soltero v. Wilmer, 150 P.3d 552, 553 n.1 (Wash. 2007) (en banc) (noting that this property is labeled "community-like" rather than "quasi-community property" because the latter denotes a different meaning in Washington).

3. *See In re* Marriage of Pennington, 14 P.3d 764, 769–70 (Wash. 2000) (en banc). Note that separate property is not subject to division in CIR actions. *See Long*, 244 P.3d at 31 ("Unlike a marriage, at the end of an equity relationship, solely what would be community property is before the court.").

4. Connell v. Francisco, 898 P.2d 831, 834 (Wash. 1995) (en banc); *see also* Vasquez v. Hawthorne, 33 P.3d 735, 738 (Wash. 2001) (en banc) (Alexander, C.J., concurring) ("[W]e developed this equitable doctrine because the legislature has not provided a statutory means of resolving the property distribution issues that arise when unmarried persons, who have lived in a marital-like relationship and acquire what would have been community property had they been married, separate.").

5. *In re* Committed Intimate Relationship of Amburgey, 440 P.3d 1069, 1073 (Wash. Ct. App. 2019) ("[A]pplication of marriage principles by analogy applies . . . once the existence of a CIR has been established.").

6. *Pennington*, 14 P.3d at 770; *Walsh*, 335 P.3d at 835 n.1. A basic example may be beneficial at this time. Consider a relationship in which two people lived in a home together for 10 years, and children were begotten, but they never married. Consider further that one party earned close to twice as much as the other. Absent a CIR action, the opportunity for the financially-disadvantaged party to receive community-like property accumulated during those 10 years would be foreclosed on the ground that they never contractually established a marital union in the eyes of the state.

7. *See generally Olver*, 168 P.3d at 353–55 (tracing the development and history of the CIR doctrine).

the intent of the parties.[8] These factors—eponymously referred to as the *Connell* factors after the touchstone case of *Connell v. Francisco*[9]—present a mixed question of fact and law.[10] If, after balancing the *Connell* factors, the court deems there to be a CIR, the analysis shifts to the second and third prongs: to determine the interest each party has in the community-like property acquired during the relationship and then to ascertain a just and equitable allocation of such property.[11] Under this framework, Washington "goes the farthest of any U.S. jurisdiction in treating cohabitating relationships similarly to marriages for purposes of distributing property acquired during the relationship."[12]

Yet there is no case law as to whether a CIR may exist in a long-distance relationship.[13] Such a notion presents a sensible antinomy: on the one hand, long-distance relationships are not uncommon in our day and age, but on the other, *cohabitation* is a conspicuous hallmark in the CIR

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8. *Connell*, 898 P.2d at 834; *In re* Marriage of Lindsey, 678 P.2d 328, 331 (Wash. 1984) (en banc). In that these enumerated factors are not exhaustive, courts have latched onto other attributes in making this decision. *See, e.g.*, *In re* Marriage of DeBoer, No. 38002-5-III, 2022 WL 1258326, at *2 (Wash. Ct. App. Apr. 28, 2022) ("Beyond the five *Connell* factors, the court found the infidelity of both parties indicated a lack of commitment."); *In re* Jorgensen, No. 82556-9-I, 2022 WL 766220, at *4 (Wash. Ct. App. Mar. 14, 2022) ("[T]hey made affirmative efforts to mend their relationship, indicating their commitment to one another.").

9. *Connell*, 898 P.2d at 834.

10. Muridan v. Redl, 413 P.3d 1072, 1077 (Wash. Ct. App. 2018). "These characteristic factors are neither exclusive nor hypertechnical. Rather, these factors are meant to reach all relevant evidence helpful in establishing whether a meretricious relationship exists." *Pennington*, 142 P.3d at 770. "Thus, whether relationships are properly characterized as meretricious depends upon the facts of each case." *Id.*

11. *Connell*, 898 P.2d at 835; *Olver*, 168 P.3d at 355 ("[W]hen dealing with property distribution between partners in a committed intimate relationship, Washington common law has evolved to look beyond how property is titled, requiring equitable distribution of property that would have been community property had the partners been married. But equity is limited; only jointly acquired property, but not separate property, can be equitably distributed."). Appellate review of a CIR falls outside the scope of this article, but many of the cases cited herein set forth the applicable standard of review. *See Muridan*, 413 P.3d at 1078 ("First, we review de novo the legal conclusion that a CIR existed. Second, if such a relationship did exist, we identify when it ended. This review is an issue of fact. Third, we review for abuse of discretion whether the trial court's distribution of property acquired during a CIR was just and equitable.") (internal citations omitted).

12. Steven K. Berenson, *Should Cohabitation Matter in Family Law?*, 13 J. L. & FAM. STUD. 289, 299 (2011).

13. The Court of Appeals nearly confronted the issue head on in *In re Marriage of McCarthy*, No. 30029-3-III, 2012 WL 3580059, at *1–2 (Wash. Ct. App. Aug. 21, 2012), where the husband argued "that they could not have lived together and continued a relationship while Ms. McCarthy was over 3,000 miles away." However, the Court was able to sidestep the issue because the husband failed to challenge the trial court's factual findings, rendering them verities on appeal. *Id.* at *2 ("Mr. McCarthy lists a variety of reasons for his contention that there was no committed intimate relationship. The majority of these center on the court's findings; findings to which Mr. McCarthy did not assign error."). The trial court's conclusion regarding the CIR flowed from its unchallenged findings and was therefore affirmed on appeal. *Id.*

analysis.[14] But, as a judicially-created doctrine, the courts may broaden the CIR's scope to potentially encompass long-distance relationships;[15] after all, the "flexibility and capacity for growth and adaptation is the peculiar boast and excellence of the common law."[16] As a family law attorney, it is my hope that this article will further the discourse on the topic and potentially assist future litigants and judges confronting a possible long-distance CIR.[17]

II. COHABITATION AND ITS LIMITS

Canvassing the boundaries of a long-distance CIR naturally centers upon the continuous cohabitation *Connell* factor. We shall see, however, that careful scrutiny of the case law offers little assistance with delineating cohabitation in this realm of the law. Thus, as a point of departure, let us begin by noting that the *Connell* factors aim to reach all relevant evidence in establishing whether a CIR exists.[18] Although they are "neither

14. *Connell*, 898 P.2d at 834.

15. It should be noted that CIRs are not common law marriages. *See In re* Marriage of Amburgey, 440 P.3d 1069, 1073 (Wash. Ct. App. 2019) ("Courts have declined to characterize a CIR as a de facto common law marriage."); *In re* Kelly, 287 P.3d 12, 19 (Wash. Ct. App. 2012) ("It is inappropriate to ascribe common law, marriage-related property rights to those who have not timely proved that there is a CIR in the first place."). For a thorough explanation as to why CIRs are separate and distinct from a common law marriage, see Tom Andrews, *Cohabitating with Property in Washington: Washington's Committed Intimate Relationship Doctrine*, 53 GONZ. L. REV. 293, 322–23 (2016); *see also* Tom Andrews, *Not So Common (Law) Marriage: Notes from a Blue State*, 6 EST. PLAN. & CMTY. PROP. L.J. 1, 29 (2013) ("It is also clear that the test for a CIR is quite different—less demanding and less formalistic—than the test for a common law marriage.").

16. Hurtado v. California, 110 U.S. 516, 530 (1884).

17. To be clear, there are many cases in which both parties accept that they lived in a CIR, thus obviating the need to examine the *Connell* factors. Arguments in those cases are anchored in ascertaining a just and equitable division of the community-like property, which may include inquiries into when the CIR began and ended, whether certain property is community-like or separate, and so forth. *See, e.g.*, Koher v. Morgan, 968 P.2d 920, 921 (Wash. Ct. App. 1998); Perry v. Phillipson, No. 77373, 2019 WL 1772445, at *2 (Wash. Ct. App. Apr. 22, 2019). This article does not focus on these cases in which the parties agree there was a CIR.

18. *Pennington*, 14 P.3d at 770. Prefatorily, we should discuss the other factors as a whole before honing our attention on the issue of cohabitation. The "duration of the relationship" factor is self-explanatory, inasmuch as the longer the relationship the more likely this factor weighs in favor of there being a CIR. *See In re* Sutton, 933 P.2d 1069, 1070–71 (Wash. Ct. App. 1997) (finding a CIR existed when the couple lived together and had a sexually intimate relationship for five years); Ketchum v. Miller, No. 30078-1-III, 2012 WL 6085294, at *1 (Wash. Ct. App. Dec. 6, 2012) (finding a three-year CIR). The "purpose of the relationship" factor asks courts to examine whether the parties were seeking companionship, support, love, sex, to create a family, or other traits that show this was not merely a transactional relationship. *See Muridan*, 413 P.3d at 1079–80 (Wash. Ct. App. 2018) ("They lived together and raised a young child. They gave birth to one child and twice attempted to have a second child."). As for the factor concerning the "pooling of resources," this broadly extends to whether the parties "jointly pooled their time, effort, or financial resources enough to require an equitable distribution of property." *Pennington*, 14 P.3d at 772; *see also Muridan*, 413 P.3d at 1080 (explaining that parties who divvy up payments could, in a way, be pooling resources to build a life together in accordance with the CIR doctrine); *In re* Dewitt, No. 53794-o-II, 2021 WL 982588, at *11

exclusive nor hypertechnical,"[19] an inquiry into continuous cohabitation appears particularly rigid.[20] Juxtapose the cohabitation factor with the duration factor. A relationship might not be continuous in the sense that people break up and reconcile, and a court can still find the duration of the relationship weighs in favor of a CIR even when the parties' romance adjourns.[21] By contrast, certain cases tend to suggest a higher threshold of continuity for cohabitation.[22] This impression dovetails with the seemingly inflexible definition found in Black's Law Dictionary, which defines "cohabitation" as "the fact, state, condition, or practice of living together, esp. as partners in life, usu. with the suggestion of sexual relations."[23] From these strands, it may appear as though we can pull together an open-and-shut analysis with regard to *Connell*'s cohabitation factor.

Not so—in *In re Marriage of Pennington*,[24] the Supreme Court of Washington concluded that the parties did not have a continuous cohabitation, reasoning that "their cohabitation was sporadic and not *continuous enough* to evidence a stable cohabiting relationship."[25] This language evinces an understanding that there is latitude with this factor,

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(Wash. Ct. App. Mar. 16, 2021) (discussing how the pooling or *resources*, in addition to accounts, is on the table for consideration). Finally, the "intent" factor is vague but roughly amounts to a summation of the previous four factors and might account for further inquiries such as how the parties worked through problems in their relationship when they arose, whether they wanted children together, and so on. *Cf. In re* Long, 244 P.3d 26, 30 (Wash. Ct. App. 2010) (noting that infidelity, standing alone, does not invalidate the intent factor).

19. Niemela v. Kalkwarf, No. 53484-o-I, 2005 WL 519061, at *2 (Wash. Ct. App. Mar. 7, 2005).

20. As a general matter, cohabitation in Washington has always been closely scrutinized despite the state lacking any form of common law marriage. In 1911, the Supreme Court held that while there is a presumption of marriage from cohabitation (stemming from a policy against licentiousness), this may be rebutted where "it is made to appear that the woman is lewd and free with her favors." Weatherall v. Weatherall, 115 P. 1078, 1079 (Wash. 1911); *see also In re* McLaughlin's Estate, 30 P. 651, 656 (Wash. 1892) ("'At common law, the fact of sexual intercourse after an agreement to marry at a future day does not constitute marriage. The copula must have been in fulfillment of the agreement to marry. Where the beginning of a cohabitation is illicit, there can be no presumption of marriage from the cohabitation and reputation,'—and that 'circumstances of cohabitation, acknowledgment, reputation, and recognition by the family form a presumption that a connection was matrimonial, and not meretricious.'").

21. *See, e.g.*, *Pennington*, 14 P.3d at 771 ("They began living together in August 1985. The trial court also found the parties separated for a short time in 1991, reconciled, separated again in 1993 through 1994, and reconciled again in October 1994. Thus, their relationship, while not continuous, spanned 12 years. While we agree with the trial court this factor was satisfied . . . .").

22. *See, e.g.*, *In re* Marriage of Briskey, No. 36035-7-II, 2008 WL 2503658, at *2 (Wash. Ct. App. June 24, 2008) ("It is undisputed that Mary Jo moved into William's home before their marriage. She later moved out for a period of several months, and she moved back in when they reconciled, less than a year before they married. Their cohabitation was clearly not continuous.").

23. *Cohabitation*, BLACK'S LAW DICTIONARY (11th ed. 2019); *see also infra* note 69 for case law from other jurisdictions addressing cohabitation.

24. *Pennington*, 14 P.3d at 769–70.

25. *Id.* at 771 (emphasis added).

something other courts have picked up on as well. For instance, in *Morgan v. Briney*,[26] the Court found that the parties cleared the continuous cohabitation hurdle notwithstanding an eight-month period during which they were not living together.[27] Viewing the relationship from an Archimedean standpoint, the Court of Appeals agreed that "[i]n the context of an almost 20-year relationship, an 8-month separation is not very significant."[28] Perhaps in dictum, the Court observed that the parties remained in contact during this separation period and refrained from dating other people.[29] Such facts were presumably mentioned to show that a lack of consistent cohabitation can be tempered by other acts showing you still intend to remain in a relationship.

Then there is the case of *Ross v. Hamilton*,[30] in which the cohabitation was found to be continuous even though the husband's job kept him away for weeks at a time, and he was "regularly absent when he went to Alaska for work."[31] Ross worked in the oil industry as a heavy equipment operator, and Hamilton was an exotic dancer who owned properties in Washington and Alaska.[32] They met in 1989 in Alaska, and the following year, Ross rented a studio apartment near Hamilton's workplace. She began living with him soon thereafter, and they subsequently moved to one of her properties in Anchorage.[33] Although their relationship spanned approximately fifteen years, Hamilton denied the existence of a CIR. She chalked Ross up to being a glorified tenant and not "marriage material."[34] The trial court disagreed, and the Court of Appeals affirmed. Notwithstanding Ross's job, which punctuated their cohabitation for weeks on end, his "irregular schedule was not abnormal when compared to some professions, such as commercial fishing, and thus, Hamilton and Ross continually lived together from 1990 to 2005."[35] In effect, the *Ross* Court's ruling opens the door to one party's justification for why cohabitation fluctuated. More specifically, it signifies that obligations concomitant with one's employment may be used as grounds for time away from a home shared with another in a disputed CIR.

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26. Morgan v. Briney, 403 P.3d 86 (Wash. Ct. App. 2017).
27. *Id.* at 91.
28. *Id.* at 92.
29. *Id.* Bear in mind that these people in a CIR were not married and were completely free to date other people should they have chosen to do so; that they didn't look for any other romantic relations apparently carried weight in the eyes of the Court.
30. Ross v. Hamilton, No. 39887-7-II, 2011 WL 1376767 (Wash. Ct. App. Apr. 12, 2011).
31. *Id.* at *1.
32. *Id.*
33. *Id.*
34. *Id.* at *3.
35. *Id.* at *6.

But compare *Morgan* and *Ross* with *In re Marriage of Briskey*,[36] in which the wife argued that the trial court erred by not concluding that she and her husband had a CIR for six years prior to their marriage.[37] Although it was undisputed that the wife moved into the husband's home in 1991, prior to marriage she moved out for a period of "two to three months" in 1995.[38] They reconciled, she returned to his home, and they lived together for about a year before marrying.[39] The evidence adduced at trial tended to show conflicting stances as to when they first began cohabitating. Unlike the wife, the husband asserted that they only began living together, at most, two years prior to marriage,[40] and the wife gave testimony at odds with her previous statements about when the cohabitation began.[41] From this, the Court of Appeals brusquely noted that "[t]heir cohabitation was clearly not continuous."[42] The Court identified that "the evidence here supports a conclusion that the parties' cohabiting relationship was not stable," and "the testimony provides substantial support for finding that the parties cohabited not for six years, but for a shorter time, disrupted by a separation of several months."[43] Evidently, the continuity was not long enough to account for—or gloss over—their separation of a few months.

It is interesting that the *Briskey* decision largely pretermits the discussion of the other *Connell* factors.[44] Even if we only scrutinize the cohabitation factor, the parties appeared to be in a two to six-year relationship, divided only by a short relational entr'acte, after which they reunited and married within a year. Upon reconciliation, though before marriage, the wife even went to work for the husband's veterinary practice.[45] Though not the case here, in ordinary parlance, such actions

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36. *In re* Marriage of Briskey, No. 36035-7-II, 2008 WL 2503658 (Wash. Ct. App. June 24, 2008).

37. *Id.* at *2.

38. *Id.*

39. *Id.*

40. *Id.* at *3.

41. *Id.* ("Mary Jo testified that she moved into William's home in the fall of 1991 or the beginning of 1992 and that they cohabited for three years before she was divorced from her previous husband. But she also testified that divorce proceedings in her previous marriage had begun but not concluded when she began cohabiting with William and that she lived with William while married to her previous husband for 'a very short period of time.'").

42. *Id.* at *2.

43. *Id.* at *3.

44. To highlight the laconic nature of the *Briskey* Court's analysis, compare that opinion with *In re Caldwell*, No. 67734-9-I, 2013 WL 3946224, at *2 (Wash. Ct. App. July 29, 2013), where the parties' sporadic cohabitation was supplemented by a "'lack of any pooling of resources and services for joint projects.'" (quoting trial court).

45. *Briskey*, 2008 WL 2503658, at *1.

might easily be viewed as a sincere commitment to the relationship.[46] There is no reference to the wife's employment prior to their 1995 breakup, nor is there a discussion regarding the three remaining *Connell* factors. Unlike *Morgan* and *Ross*, the notion of a sliding-scale approach to cohabitation was nowhere to be found. The *Briskey* Court instead focused on cohabitation as the cardinal factor in determining whether there was a CIR or not.

Briskey is not unique in elevating the cohabitation factor above others. In the recent case of *In re Dewitt*,[47] Division II of the Washington Court of Appeals espoused that "arguably" cohabitation, pooling of resources, and intent "are the three most important factors"[48] in determining a CIR's existence. However, the *Dewitt* Court neither elaborated on why these outvie the duration and purpose factors nor did it explain how this comports with the Supreme Court's avowal that "[o]ne *Connell* factor is not more important than another."[49] This is not meant to be censorious toward the *Dewitt* Court's observation (which can likely be regarded as earnest dicta), as cohabitation has always been considered a telltale sigil of common law marriages.[50] It is understandable, therefore, that a finder of fact (or reviewing court) may emphasize the status of their cohabitation when push comes to shove. Even still, some cases use language that creates a bright-line rule for this *Connell* factor,[51] which I would argue undermines the spirit of the CIR doctrine through either erroneous or careless application.

Another recent case, *In re Marriage of Maneau*,[52] recognized that "[c]ontinuous cohabitation does not mean uninterrupted," whilst advancing the notion that it "usually requires the parties consistently live with each other without other partners."[53] *Maneau*'s facts do not include either party living with anyone else, so there is no discussion as to what

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46. *See In re* Long & Fregeau, 244 P.3d 26, 27 (Wash. Ct. App. 2010) ("Intimacy and commitment are just two nonexclusive relevant factors a trial court can consider in deciding if equity applies to support an equitable property division.").

47. *In re* Dewitt, No. 53794-0-II, 2021 WL 982588, at *11 (Wash. Ct. App. Mar. 16, 2021).

48. *Id.* at *12.

49. *In re* Marriage of Pennington, 14 P.3d 764, 772 (Wash. 2000) (en banc).

50. *Compare* Travers v. Reinhardt, 205 U.S. 423, 437 (1907) ("Indeed, the most usual way of proving marriage, except in actions for criminal conversation and in prosecutions for bigamy, is by general reputation, cohabitation, and acknowledgment."), *with* Murphy v. Ramsey, 114 U.S. 15, 42 (1885) ("Cohabitation is but one of many incidents to the marriage relation. It is not essential to it. One man, where such a system has been tolerated and practiced, may have several establishments, each of which may be the home of a separate family, none of which he himself may dwell in or even visit.").

51. *See, e.g.*, *In re* Marriage of McBeth, No. 51076-6-II, 2019 WL 4447560, at *2 (Wash. Ct. App. Sept. 17, 2019) ("Parties who do not continuously cohabitate prior to marriage, for example, do not form a committed intimate relationship.").

52. *In re* Marriage of Maneau, No. 36577-8-III, 2020 WL 3533391, at *2 (Wash. Ct. App. June 30, 2020).

53. *Id.* at *2.

this assertion means in practice. However, in *Pennington*, which *Maneau* cites as authority to bolster its observation, the parties ceased living with one another, and during that time, one of them began cohabitating with another person unrelated to the CIR action.[54] The *Pennington* situation would clearly fall outside the ambit of the continuous cohabitation factor's purview. Moreover, in a vacuum, *Maneau*'s general sentiment could potentially curtail couples who simply share an apartment or residence with a roommate—something "more common the more expensive the rents are in your city, but it's going on more or less everywhere"[55]—to the extent that intimacy is not a prerequisite for establishing a CIR.[56]

So, what can we discern from all of this? It should come as little surprise that a remedy grounded in equity, let alone one nested within family law,[57] yields a spectrum of outcomes.[58] None of this will come as a surprise to family law attorneys. For those litigators regularly mired in

54. *Pennington*, 14 P.3d at 771 ("The uncontested evidence also establishes Van Pevenage lived with another man during her separation from Pennington. Van Pevenage then moved back in with Pennington for a period of one year. We conclude the continuous cohabitation factor as contemplated by *Connell* has not been established.").

55. Marianne Hayes, *What Married Life Looks Like When You Live with Roommates*, FORBES (Mar.18, 2016, 6:00 a.m.), https://www.forbes.com/sites/learnvest/2016/03/18/10800/?sh=bc9a53c37; *see also* Francesca Di Meglio, *Why Married Couples Should Not Live with Roommates*, LIVEABOUT (Sept. 28, 2017), https://www.liveabout.com/why-married-couples-should-not-live-with-roommates-2492350, ("After reading numerous forums on various sites, you will learn that lots of married couples do this, especially as newlyweds, to save money. Obviously, having a roommate can help offset costs of housing or even groceries, depending on how much you share with each other. Some married couples have a single roomie, while others live with other couples.").

56. *See In re* Long, 244 P.3d 26, 27 (Wash. Ct. App. 2010). At least in this situation the roommate could testify as to whether or not the parties appeared to hold themselves out as a couple. With that being said, determining when a party unequivocally ended the relationship can be troublesome. *See, e.g.*, *In re* Committed Intimate Relationship of Campos, No. 79509-1-I, 2020 WL 3047526, at *4 (Wash. Ct. App. June 8, 2020) ("[I]n support of her contention that 'the parties ended the relationship . . . in 2012, and moved into separate rooms on separate floors,' Pena, who bears the burden of proof on this issue, relies solely on her testimony that she 'broke up with' Quin in July 2012. She points to no evidence that Quin understood Pena's intent to end the relationship in 2012 and cites to no authority for the proposition that a CIR ends merely because the parties move into separate bedrooms."); *cf.* Hanson v. Harjo, No. 66749-1-I 2012 WL 4335455, at *1 (Wash. Ct. App. Sept. 24, 2012) ("Hanson and Harjo ended their relationship in January 2009, but continued to live in the same house and share responsibility for managing the restaurant.").

57. *See* Clare Huntington, *Repairing Family Law*, 57 DUKE L.J. 1245, 1279 n.146 (2008) ("The larger legal system, of course, has long grappled with the familiar tension between uniformity and flexibility—rules and standards—and the family law system has some aspects that tend toward open-ended resolution."); Craig W. Dallon, *The Likely Impact of the ALI Principles of the Law of Family Dissolution on Property Division*, 2001 BYU L. REV. 891, 895 (2001) ("Scholars and judges have bemoaned the inconsistent and unpredictable results in divorce property division cases, noting that judges are given little guidance, comparatively few cases are reversed on appeal, and nearly any conceivable division of property is possible.").

58. *See* DAN B. DOBBS, LAW OF REMEDIES § 2.4(1), at 67 (2d ed. 1993) ("Discretion of equity courts is long established. It makes possible decisions that are flexible, intuitive, and tailored to the particular case. It also makes possible decisions that are unanalyzed, unexplained, and unthoughtful.").

divorce actions, statutes and case law can often feel like a starting pistol at a track and field event—necessary to commence the litigation, but largely an afterthought as compared to the facts being argued over.[59] CIR actions are particularly detailed in that they are similar to ordinary, fact-specific divorces[60] but with the additional step of convincing a court that there was, in fact, a CIR to begin with.[61] The question to be answered, then, is whether such facts can demonstrate the existence of a long-distance CIR.

III. CONSIDERATIONS IN ADVOCATING FOR A LONG-DISTANCE CIR

A. Incorporating Therapeutic Jurisprudence into the Conversation

The foregoing discussion indirectly underscores questions of public policy and how Washington courts determine equitable outcomes for unmarried individuals. It is easy to simply analyze these relationships in terms of black-and-white questions. Were they living together? Did they have children together? Is there evidence that they shared expenses? These straightforward queries are fine for certain cases, but they may not tell the full story. Considering the ease with which two people can marry one another in our day and age, litigants should not brush aside the social (and potentially psychological) aspects of unmarried cohabitants that may bear upon a CIR adjudication. This is particularly material to unmarried persons in a long-distance relationship, who may harbor attributes distinguishable from those living under one roof.

To the extent that outside social forces play a role in long-distance relationships,[62] a natural question is whether trial courts are capable of gleaning information as to how such forces impact the parties. The answer has to be yes. By and large, trial courts are well-versed in examining the actions of two people in a relationship.[63] Judges must discern the party's

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59. Huntington, *supra* note 57, at 1278 ("Although a court will hear evidence on contested facts representing multiple perspectives, the court will ultimately choose one set of facts to the exclusion of others.").

60. *See, e.g.*, Self v. Dittmer, 619 S.W.3d 43, 48 (Ark. Ct. App. 2021) ("[T]he crux of these cases is that a child-custody determination is fact specific, and each case ultimately must rest on its own facts."); Karmand v. Karmand, 802 A.2d 1106, 1118 (Md. Ct. App. 2002) ("Whether the post-divorce standards of living of former spouses are unconscionably disparate only can be determined by a fact-intensive case-by-case analysis."); Cyn Haueter, *"I Can't Afford to Leave Him": Divorcing a Spouse with Superior Financial Resources*, 31 HASTINGS WOMEN'S L.J. 237, 252 (2020) ("The nebulous statutory language and dearth of objective criteria in determining whether to award temporary attorney's fees was likely intended to afford the courts flexibility and discretion in delicate and fact-intensive family law matters.").

61. *See In re* Sutton, 933 P.2d 1069, 1071 (Wash. Ct. App. 1997).

62. Such as, for example, familial or work-related obligations that prevent the two partners from living with one another. *See infra* Section III(b).

63. *See* Natalie Anne Knowlton, *The Modern Family Court Judge: Knowledge, Qualities &*

intentions based on their behaviors, notwithstanding whatever they may purport to the contrary.[64] Indeed, as the eighteenth-century philosopher David Hume observed, "we may imagine we feel a liberty within ourselves; but a spectator can commonly infer our actions from our motives and character."[65] But regardless of the trial judge's ability to discern the veridicality of these relationships, it could be that therapeutic jurisprudence is an auspicious lens through which to view long-distance CIRs.[66]

Therapeutic jurisprudence is the study of the law as a therapeutic agent. A perspective centered around therapeutic jurisprudence considers how the law might be used to achieve therapeutic objectives. Acknowledging that the law inevitably functions as a therapeutic agent, impacting on the psychological and physical health and well-being of those with whom it comes into contact, therapeutic jurisprudence seeks to engage in systematic study of these effects. To do so, therapeutic jurisprudence seeks to utilize the interdisciplinary perspectives and techniques of legal and policy studies, psychiatry, philosophy, and the behavioral sciences, particularly clinical, social, and experimental psychology, to evaluate the therapeutic and the anti-therapeutic effects of substantive laws, legal procedures, and legal roles.[67]

Skills for Success, IAALS (Oct. 21, 2014), https://iaals.du.edu/publications/modern-family-court-judge-knowledge-qualities-skills-success ("Divorce, separation, and parental responsibility cases often . . . requir[e] a family court judge to have familiarity with theories and research in disciplines such as social work, psychology, and dispute resolution.").

64. Again, where one party is disputing the existence of the CIR to avoid having the community-like property divided, that party may simply deny aspects of their relationship. It is easy to imagine a person asserting: "Yes, we did have a child together, but we never once held ourselves out as husband and wife, nor did we attend family functions or take vacations together." One response to such a claim would be to show (through affidavits or documentation) that the parties did take trips and did publicly come across as a married couple. A factfinder will naturally have to wrestle with these competing accounts of the relationship.

65. DAVID HUME, A TREATISE OF HUMAN NATURE bk. II, pt.3, at 408 (2d ed. 1978); *cf.* Shirley S. Abrahamson, *Judging in the Quiet of the Storm*, 24 ST. MARY'S L.J. 965, 978 (1993) (discussing various perspectives a judge may entertain in ruling on a case, specifically noting that the judge may assess custom and "social values to be served by either outcome").

66. *See* Jennifer K. Robbennolt & Monica Kirkpatrick Johnson, *Legal Planning for Unmarried Committed Partners: Empirical Lessons for a Preventive and Therapeutic Approach*, 41 ARIZ. L. REV. 417, 434 (1999) ("Many of the challenges that nonmarital couples will face both during and after their committed relationships are of both legal and psychological importance. During the relationship, the ways in which couples structure their finances, handle joint participation in the rearing of children, and approach possible estrangement from their families can have both legal and psychological repercussions.").

67. *Id.* at 431; *see also* Bruce J. Winick, *The Jurisprudence of Therapeutic Jurisprudence*, 3 PSYCH. PUB. POL'Y & L. 184, 185 (1997) ("Legal rules, legal procedures, and the roles of legal actors (such as lawyers and judges) constitute social forces that, whether intended or not, often produce therapeutic or antitherapeutic consequences. Therapeutic jurisprudence calls for the study of these consequences with the tools of the social sciences to identify them and to ascertain whether the law's

By the same token, therapeutic jurisprudence aligns with *preventive* law. Preventive law is roughly defined as legal counseling designed to minimize the risk of litigation through proactively ensuring one's affairs—whatever they may be as it relates to the salient legal landscape—are fully in order.[68] The legal and psychological ramifications of cohabitating "can be addressed in a therapeutic manner as an attorney engaged in the practice of preventive law helps the partners to recognize and plan for those issues that are relevant to their circumstances."[69] The emphasis here—that "positive therapeutic effects are desirable and should generally be a proper aim of the law"[70]—is congruent with the common law's premise that decisions are, to an extent, made in response to social needs and in the light of the need to reconcile conflicting social values.[71]

Applying therapeutic jurisprudence and preventive law for the purposes of this article may appear odd at first glance.[72] Nonetheless, a well-planned relationship between unmarried couples in Washington will greatly heighten one partner's ability to demonstrate that their case falls squarely

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antitherapeutic effects can be reduced, and its therapeutic effects enhanced, without subordinating due process and other justice values."); Dennis P. Stoll & David B. Wexler, *Therapeutic Jurisprudence and Preventive Law: A Combined Concentration to Invigorate the Everyday Practice of Law*, 39 ARIZ. L. REV. 25, 25 (1997) ("Therapeutic jurisprudence is sensitive to the therapeutic and anti-therapeutic consequences that sometimes flow from legal rules, legal procedures, and the roles of legal actors.").

68. Robbennolt & Johnson, *supra* note 66, at 432; Stolle & Wexler, *supra* note 67, at 28 ("Preventive law, therefore, can provide a framework for the practice of therapeutic jurisprudence. And therapeutic jurisprudence, in turn, can provide a rich and rewarding "human aspect" and interdisciplinary orientation for a preventive lawyer to use in everyday law practice.").

69. Robbennolt & Johnson, *supra* note 66, at 450.

70. *Id.* (quoting Winick, *supra* note 67, at 187).

71. Charles D. Breitel, *The Common Law Tradition—Deciding Appeals*, 61 COLUM. L. REV. 931, 936 (1961).

72. Case law from other jurisdictions leaves a distinct impression that the law surrounding cohabitation offers little room for lenifying its strictures. *See, e.g.*, Scott v. Scott, 2020 UT 54, ¶ 62, 472 P.3d 897 (quoting Myers v. Myers, 2011 UT 65, ¶ 22, 266 P.3d 806) (examination of an alleged cohabitation entails "a fact-intensive inquiry into the nature and extent of a couple's 'common residence, relationship, and interactions'"); Crayne v. Marchese, FM-0702346-05, 2007 WL 655446, at *5 (Sup. Ct. N.J. Mar. 6, 2007) (cohabitation is partly predicated on "living together under the same roof on a regular basis"); Sindel v. Sindel, Nos. 75AP-299 and 75AP-301, 1975 WL 181946, at *3 (Ohio Ct. App. Nov. 25, 1975) (positing that "[t]he ordinary meaning of cohabitation is, of course, the act of living together," observing that "cohabitation can be based entirely on acts of living together without sexual relations"); *accord* State v. Hadinger, 73 N.E.2d 1191, 1192 (Ohio Ct. App. 1991); Richardson v. Hunte, 435 So. 2d 1315, 1316 (Ala. Civ. App. 1983) ("Cohabitation requires more than occasional sexual activity; there must be a more permanent relationship manifested by such things as the sharing of a dwelling, ceasing to date other members of the opposite sex, and the sharing of expenses."); McVicker v. McVicker, 40 Pa. D. & C.4th 47, 48 (Pa. Com. Pl. Nov. 9, 1998) ("Hence, cohabitation requires two persons of the opposite sex to reside together in the manner of husband and wife, mutually assuming those rights and duties usually attendant upon the marriage relationship. Cohabitation may be shown by evidence of financial, social and sexual interdependence, by a sharing of the same residence, and by other means."); *see also* Berenson, *supra* note 12, at 290 ("[F]or married couples, many jurisdictions seem to treat cohabitation as the 'essence' of a true marriage, and strip some of the perquisites of a valid marriage from couples who are not residing together, even though their marriages have not legally been terminated.").

within the purview of a CIR.[73] Establishing the expectations and parameters of these relationships lends credence to the idea that these unmarried persons have been committed to one another.[74] More than one scholarly article has posited that family actions can benefit from the integration of therapeutic jurisprudence and preventive law,[75] and another illustrates how such a practice can benefit unmarried committed partners cohabitating with one another.[76] The question is whether such planning can assist unmarried persons in long-distance relationships for purposes of a CIR. I contend that it can—not just prior to the demise of the relationship but also for the trial court endeavoring to reach an equitable decision on the matter.[77]

Like most unsuccessful marriages, the unsuccessful romance between two unmarried people will eventually fade and give way to either apathy or antipathy. By that point, there is a higher chance that both parties disagree as to whether there was a CIR between them.[78] It makes sense to take prophylactic measures that help establish aspects of a CIR. Thus, against this backdrop, the following section of this article will cogitate on various other considerations litigants may heed in confronting the cohabitation factor where the parties lived apart.

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73. *Cf.* Robbennolt & Johnson, *supra* note 66, at 450 ("[A] well-planned nonmarital relationship ought to include plans for how to handle the cohabitation, the couple's finances and property ownership (including insurance and pensions), the parties' parenting roles, medical emergencies and periods of incapacity, and the eventual termination of the relationship either through dissolution or death.").

74. *Id.*

75. *See, e.g.*, Dennis P. Stolle et al., *Integrating Preventive Law and Therapeutic Jurisprudence: A Law and Psychology Based Approach to Lawyering*, 34 CAL. W .L. REV. 15, 29–30 (1997) ("Maxwell further suggests that once the lawyer has agreed to represent the client, the lawyer should educate the client regarding the potential detrimental effects of divorce on children, and plan a specific preventive/therapeutic strategy to mitigate any such negative effects in this client's case."); Barbara A. Babb, *An Interdisciplinary Approach to Family Law Jurisprudence: Application of an Ecological and Therapeutic Perspective*, 72 IND. L.J. 775, 802 (1997) ("An approach to family law jurisprudence that structures decision making by applying the ecology of human development paradigm, buttressed by notions of therapeutic jurisprudence, provides a functional family law jurisprudential model. This type of decision making has the potential to facilitate problem-solving and to positively enhance the quality of parties' daily lives, thereby rendering a more effective outcome for individuals and families.").

76. Robbennolt & Johnson, *supra* note 66, at 450.

77. *Cf.* Benjamin N. Cardozo, *Our Lady of the Common Law*, 13 ST. JOHN'S L. REV. 231, 233 (1939) ("The point is, however, that without a full and rich background of knowledge and culture in fields foreign to the law itself, we shall never reach the perception of the problems to be solved. We shall never see it in its true relation to the lives of those about us, and missing its relation to life, we shall miss its relation to the law, which is to give the rule of life.").

78. As is the nature of these cases—one party wants to prevent unjust enrichment through an equitable remedy, and the other party naturally wants to defend against such action. *See supra* note 6.

B. Scrutinizing "Commitment" in Long-Distance Relationships

Where the parties were not living together, the party advocating for a CIR should start by assessing the other *Connell* factors for support.[79] Imagine a situation in which the parties pooled resources through joint accounts, raised children together, held themselves out as husband and wife, attended family functions together, and exclusively dated one another. Now, further, imagine that this went on for twelve years. It would appear that you have to be a strong case for a CIR where four of the five *Connell* factors weigh in favor of such a relationship, even if the parties did not own a home together. However, given that the Supreme Court of Washington's touchstone denotation of a CIR uses the word "cohabit" (i.e., a "stable, marital-like relationship where both parties *cohabit* with knowledge that a lawful marriage between them does not exist"),[80] this might seem odd based on how the legal definition is presented. Then again, courts have stressed that cohabitation is not assigned more weight than the other *Connell* factors.[81]

Moving away from this rudimentary situation, murkier circumstances will require a more thorough analysis of the long-distance nature of the relationship. It seems evident that the spatial proximity between the two parties requires scrutiny if they are living apart. The closer two parties live to one another, the less likely it is to make a successful argument for cohabitation. Suppose two parties live just ten minutes apart. There would be little need to discuss cohabitation because they could simply live under one roof, but instead, they are choosing to remain in separate homes a stone's throw away. No one denies that moving can be a stressful experience—one most of us likely try to avoid. However, moving into your partner's home or acquiring one together evinces a strong commitment to the relationship. By contrast, people living close to one another who elect not to live together are sending an equally strong message.

Thus, there is a certain threshold distance between the parties to show that living together was simply not feasible under the circumstances. This does not necessarily mean that the parties have to live on opposite coasts

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79. This is a verity regardless of which factor is lacking. In Jones v. Danforth, No. 48547-4-I, 2002 WL 80695 (Wash. Ct. App. Jan. 22, 2002) (per curiam), the Court of Appeals reversed summary judgment in favor of a CIR because only three of the factors were clearly satisfied. *Id.* at *2. The Court determined that the pooling of resources factor was not satisfied, so "reasonable persons could find four of the five factors satisfied in this case." *Id.* at *3. And "[b]ecause the factors are merely guidelines and not to be rigidly applied . . . reasonable minds could reach different conclusions as to whether the factors demonstrate a meretricious relationship in this case." *Id.*

80. Connell v. Francisco, 898 P.2d 831, 834 (Wash. 1995) (en banc).

81. *In re* Marriage of Pennington, 14 P.3d 764, 772 (Wash. 2000) (en banc).

or in different countries. Analogize a work commute with traveling for a relationship. Most people are willing to drive or commute a certain distance for a job deemed valuable and fulfilling, whereas longer commutes pose dilemmas many people prefer to avoid.[82] Economists—and by extension employers—broadly surmise that "[y]ou agree to a long commute, which you hate, in order to do a job that you love, or that pays well, or both."[83] To that end, individuals either consciously or unconsciously confront a trade-off, identified in one study as a Travel Time Ratio, in which one justifies the length of the commute with the potential benefits stemming therefrom.[84] In other words, the individual must want the job enough to justify the commute. So it is with CIRs. If the parties live ninety minutes apart and have jobs for which they have to drive twenty minutes in the opposite direction from one another, living together is neither practicable nor sustainable. Arguments could arise when the parties live, say, forty-five minutes apart, in which case there is room for debate as to whether they were actually in a long-distance relationship or merely a workable (albeit uncomfortable) distance. And if the Court agrees that the latter is the accurate description, then

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82. *See* Jaana I. Halonen et al., *Commuting Time to Work and Behavior-Related Health: A Fixed-Effect Analysis*, 77 OCCUP. ENV'T. MED. 77 (2020) ("[A]ssociations have been reported between long commuting times and health-related factors including lower physical activity levels, shorter sleep duration, poorer perceived sleep quality, poorer mental health, lower psychological well-being (if commuting mode was other than walking) and health satisfaction as well as higher level of health complaints."); *see also* Lane Lambert, *Commuting Hurts Productivity and Your Best Talent Suffers Most*, HARV. BUS. SCH. (Mar. 30, 2021), https://hbswk.hbs.edu/item/commuting-kills-productivity-and-your-best-talent-suffers-most#:~:text=The%20most%20talented%20inventors%20suffered,can%20gain%20in%20innovative%20productivity.%22 ("[F]or every 10 kilometers (6.2 miles) of added travel distance, the firm employing those inventors registered 5 percent fewer patents. The quality of the patents took an even bigger dive, dropping 7 percent with every 6.2 miles added to the inventors' commute."); Emma Allison, *Commuting to Work: How Far Is Too Far?* FORWARD ROLE, https://www.forwardrole.com/blog/2014/01/commuting-to-work-how-far-is-too-far?source=google.com (last visited August 27, 2022) (indicating that roughly one in ten people are willing to commute over fifty miles for a perfect job, but most people will drive up to thirty miles for the same position); Annette Schaefer, *Commuting Takes Its Toll*, SCI. AM. (Oct. 1, 2005), https://www.scientificamerican.com/article/commuting-takes-its-toll/ ("Research from around the world is leading psychologists to conclude that the heightened stress that commuting puts on individuals and their families can easily overshadow the work and home gains they might realize.").

83. Minda Zetlin, *Long Commutes Destroy Happiness, Research Shows. Here's What to do About Them*, INC.COM (Feb. 29, 2020), https://www.inc.com/hr-outsourcing/best-hr-services-outsourcing-for-small-business-in-2017.html.

84. Yusak O. Susilo & Martin Dijst, *How Far Is Too Far?*, 2134 TRANSP. RSCH. REC. 89 (2009) (explaining that activities you commute to have different turn-over points—i.e., a point where increased activity duration will lead to less instead of more travel time, adding as an example that the turn over point for a shopping activity is 20 minutes travel and 3.5 hours of shopping, whereas the turn over point for sport/recreation trip is 28 minutes travel and 7.25 hours of activity). Commuting longer distances also eats into resources such as money for gas, upkeep of the car based on more driving, and various other expenses (such as tolls) that weigh on this travel time ratio.

argumentation over cohabitation likely flatlines.

The establishment of a threshold distance is just one spoke on this wheel. Lacking a realistic ability to live with one another because of circumstances at least partially out of their control, there would need to be a showing of steps taken to make the most of the situation. One potential preliminary observation might be whether there was evidence that the parties were faithful to one another, notwithstanding physical distance.[85] History and common sense show that carrying on an affair is easier when one partner is not around. Family law is sadly riddled with charges of infidelity irrespective of the relationship's nature,[86] yet long-distance relationships add an "out of sight, out of mind" element.[87] Although one recent study found the rate of infidelity in long-distance relationships is similar to other relationships,[88] the distinction matters where the party refuting the existence of a CIR is shown to have been in an exclusive relationship from afar—by dint of one's fidelity in a long-distance relationship, there is an evocation of commitment in step with a CIR.[89]

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85. Though, to be clear, *commitment* is not necessarily a predicate to a CIR, which is why infidelity is but one of the many unenumerated *Connell* factors, rather than an element. *See* Muridan v. Redl, 413 P.3d 1072, 1081 (Wash. Ct. App. 2018) ("[T]he word 'committed' does not mean that infidelity triggers the end of a CIR."); *In re* Marriage of Long, 244 P.3d 26, 27 (Wash. Ct. App. 2010) ("Intimacy and commitment are just two nonexclusive relevant factors a trial court can consider in deciding if equity applies to support an equitable property division."); *cf. In re* Jorgensen, No. 82556-9-I, 2022 WL 766220, at *4 (Wash. Ct. App. Mar. 14, 2022) ("Jorgensen declared that on the two occasions when he and Sears lived apart due to Jorgensen's suspected infidelity, they made affirmative efforts to mend their relationship, indicating their commitment to one another.").

86. *See* Brenda Cossman, *The New Politics of Adultery*, 15 COLUM. J. GENDER & L. 274 (2006) ("As the definition of infidelity expands, so do its practitioners. In several recent exposés of 'the new infidelity,' women have increasingly been shown to be equal opportunity cheaters. This expansion of infidelity and infidels has produced a new crisis of adultery . . . ."); Sandi S. Varnado, *Avatars, Scarlet "A"s, and Adultery in the Technological Age*, 55 ARIZ. L. REV. 371, 374 (2013) ("[D]ue to the internet's popularity as a technological advancement, many greatly underestimated online infidelity as a cause of marital dissolution."); Marsha Garrison, *Law Making for Baby Making: An Interpretive Approach to the Determination of Legal Parentage*, 113 HARV. L. REV. 835, 881 (2000) ("[F]amily law regularly contends with marital infidelity. . . .").

87. Yearnings for an in-person connection can drive one's decision-making on faithfulness. *See Cheating in a Long-Distance Relationship*, COUPLES COACHING ONLINE, https://couplescoachingonline.com/cheating-in-a-long-distance-relationship/ (last visited Sept. 20, 2022) (explaining that unfulfillment is a key reason why people cheat on their partner).

88. Dainis Graveris, *Only 31% of Relationships Survive Long-Distance, New Study by SexualAlpha Finds*, YAHOO! (Jan. 13, 2022), https://www.yahoo.com/now/only-31-relationships-survivelong135800939.html?guccounter=1&guce_referrer=aHR0cHM6Ly93d3cuZ29vZ2xlLmNvbS8&guce_referrer_sig=AQAAAAWWT2ojqU9w0cNyZh5W1Z34lf6_EX2SBhqvBChEDQX5cnrIOlOR5hgSBmey3oBOPKmeS5YcS74gKG5ac_E_M9UybZj7Hz6z7mfCGw_u7KEEmFj74pTuUBgQ4bInm0Me5YIdLiwSg7aMR3WyxgDaX.

89. Under the right circumstances, infidelity can help *prove* that the parties maintained a CIR. This might seem counter-intuitive. However, where one party carried on an affair but lied about not seeing anyone else to the person positing the existence of a CIR, this perversely demonstrates that the adulterous party understood that he or she was breaching basic boundaries established by the parties; namely, that they were to be exclusive with one another. Were they not in a committed, exclusive relationship, there would be no need for the cheating party to conceal the third-party's identity or what

Support for this notion can be found in *Morgan v. Briney*, which advances the notion that fidelity to the relationship can make up for punctuations in the continuity of cohabitation.[90]

Traveling to see one another is an additional factor that could exemplify the efforts to make the most of their long-distance situation. The court could inquire if there was a regular schedule to which the parties consistently adhered. Consider the following hypothetical. Partners A and B lived two hours away from one another, and both worked regular nine-to-five jobs. They set up a monthly schedule whereby, on the first and third weekends, Partner A drove to visit Partner B, and Partner B drove to visit Partner A on the other two weekends. This example might not be continuous cohabitation in the strictest sense, but it evidences a commitment to cohabitate to the extent possible. Of course, this also presumes that Partners A and B are staying with one another when they drive to visit for the weekend. Those with sincere religious inclinations or other reservations about premarital transgressions might stay at a hotel or somewhere nearby, in which case this focus is largely moot. While intimacy is not a sine qua non for establishing a CIR, traveling with the purpose of staying in one bed and engaging in sexual activity seems like a necessary component—one that bears on the trial court's judgment—to a long-distance relationship.

Returning to the previous hypothetical, suppose Partners A and B are inconsistent about the times when they drive to see one another. They see each other all four weekends of one month, then just once over the course of the next month. This would require the party advocating for the CIR's existence to fossick through the totality of the circumstances underpinning their reasons for not seeing each other more consistently.[91] Were they unable to see each other due to work responsibilities they could not avoid, or was one person simply too busy or too tired that weekend? Did one person have familial obligations they could not avoid, such as an annual family gathering? If so, why was the other person unable to attend?[92] The

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they were doing together.

90. 403 P.3d 86 (Wash. Ct. App. 2017).

91. *See supra* notes 30–35 and accompanying text, discussing how the "irregular" work schedule of a party withstood scrutiny under this *Connell* factor.

92. This question speaks to the *Connell* factor inquiring into the purpose of the relationship and whether you held yourself out to your family and the community as a couple. *See* Muridan v. Redl, 413 P.3d 1072, 1079 (Wash. Ct. App. 2018) ("Muridan also concedes that he and Redl appeared in public as a couple on other occasions, including attending regular barbeques and cookouts together."); Walsh v. Reynolds, 335 P.3d 984, 993 n.21 (Wash. Ct. App. 2014) ("Walsh's 'co-parent' assertion supports the trial court's finding that the parties held themselves out as one family, which weighs in favor of its finding an 'equity relationship.'"); *In re* Long, 244 P.3d 26, 30 (Wash. Ct. App. 2010) ("Given all in this record showing permanency planning, shared love and intimacy, extended family

justification for the missing time would need to include an excusable absence. Perhaps a factfinder will not fault anyone for missing one weekend every few months where they spent the entire time working on a project for their employer, as this shows a good faith effort to see one another unless and until something in life comes up that they cannot get around. In the end, it seems apparent that advocating for a long-distance CIR requires a showing that a sizeable amount, if not all, of one's available free time was dedicated toward residing with the other person.

So, traveling to see one another is manifestly important. However, this does not dovetail with traveling for vacations with one's partner. The problem here is that regular rendezvous at locations away from home dilutes intimations that the parties meant to live with one another. While spending time traveling or on vacation with one's partner evinces a clear desire to be together, especially if it is just the two partners by themselves, this means that they are not spending time cohabitating in a *home*. It is possible that the nature of the relationship naturally gravitates toward meeting at other locations. One can imagine partners who serendipitously met while both were traveling, and they enjoy meeting "in the middle" or at other neutral locations to spend time with one another. Regardless, a relationship bereft of dwelling together in a residence makes the argument for a CIR troublesome.

But not all is lost in such situations. To tie everything together, many of these additional considerations can accentuate other *Connell* factors. For example, too much vacationing and not enough time simply seeing one another at a residence still speaks to the purpose and intent of the relationship. It, likewise, touches upon whether the parties pooled resources insofar as certain vacation expenses were shared. Even if these considerations do not persuade a court that the cohabitation factor is met, there is merit in mentioning them insofar as the *Connell* factors are nonexclusive and meant to discern whether a CIR exists in the first place. While a long-distance CIR may raise other questions—e.g., determining when the CIR ended for purposes of the statute of limitations[93]—the objective of equitably ensuring one party is not unjustly enriched at the termination of the relationship makes such an analysis worthwhile.

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relationships, caring for one another when sick, and holding themselves out as a couple, the court did not err in determining the parties held a shared purpose in their relationship."); Rinaldi v. Bailey, No.66029-2-I, 2012 WL 5292816, at *7 (Wash. Ct. App. Oct. 29, 2012) ("Ms. Bailey and Ms. Rinaldi held themselves out as a couple, sharing a bedroom, caring for one another's family, traveling together, and for all purposes living as life partners.").

93. *In re* Matter of Kelly and Moesslang, 287 P.3d 12, 19 (Wash. Ct. App. 2012) ("We conclude that the equitable doctrine of CIR is subject to a three-year statute of limitations. A party must sue to establish that the relationship existed within three years of the end of the relationship.").

IV. CONCLUSION

The purpose of this article is to show that, even without consistent cohabitation, long-distance relationships can evince acts and behaviors consistent with the factors Washington courts employ in ascertaining whether two people lived in a CIR. These relationships will almost always present physical, financial, and emotional sacrifices. Indeed, "distance is not for the fearful, it's for the bold. It's for those who are willing to spend a lot of time alone in exchange for a little time with the one they love."[94] Two romantic partners who dedicate time, effort, and resources to one another in spite of their geographic separation can, in certain cases, embody a commitment that should be recognized under Washington common law.

Although it is hard to fathom that Washington would categorically disallow non-cohabiting parties from reaping the benefits of an equitable doctrine, the Court of Appeals could eventually foreclose the possibility of a long-distance CIR. For now, there is room for argumentation one way or another. Acute consideration of the myriad facts in the relationship—be they social and psychological or financial and emotional—are key to resolving these issues. Given the case law on CIRs to date, advocating for a long-distance CIR could be a fruitful undertaking for litigants who find themselves in this unique set of circumstances.

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94. JYOTI PATEL, THE AWAKENING – UNHEARD. UNDISCOVERED. UNTOLD 40 (2021).