STATE OF VERMONT
ORANGE COUNTY, SS.

Tracy Dexter	)	**Orange Superior Court**
	)	**Docket No. 245-12-03 Oecv**
v.	)	
	)	
Donna Corliss	)	

DECISION
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, filed December 13, 2005

Tracy Dexter and Donna Corliss lived together for 20 years before separating. Mr. Dexter seeks return of certain items of property he claims are his, and Ms. Corliss counterclaims for a share of property they accumulated during their relationship. Mr. Dexter has filed a motion for summary judgment, seeking dismissal of Ms. Corliss's counterclaim. Attorney Stephen J. Craddock represents Mr. Dexter. Attorney Gary D. McQuesten represents Ms. Corliss.

Summary Judgment

Summary judgment is appropriate if the documents in the record, "referred to in the statements required by Rule 56(c)(2), show that there is no genuine issue as to any material fact and that any party is entitled to judgment as a matter of law." V.R.C.P. 56(c)(3).

Undisputed Facts

Since 1957, Donna Corliss has lived with her parents at the family homestead located at 20 Baton Road in West Topsham, Vermont. Donna got married when she was 17. Her husband moved in with her at the family residence, and lived with her there for about ten years, from about 1965 to 1975. When Donna and her husband lived with her parents at the family residence, there was no agreement or understanding regarding this living arrangement.

Tracy Dexter and Donna Corliss, the parties in this case, met each other in 1969 or 1970, when they both worked part-time at Hight's Store. They started dating a few years later, when Donna was still married. Her divorce did not become final until 1980 or 1981.

In 1983, Tracy moved in with Donna and her parents to live at the family residence. Tracy and Donna lived together for about 20 years, and they had a daughter together. During their relationship, they discussed marriage, and on one occasion they obtained a marriage license, but they never married one another.

Donna has always had a general understanding with her parents that, if she stayed with them and took care of them as long as possible, so that they would not have to go into a nursing

home, the house would be hers. Donna and Tracy never had any agreement or understanding regarding their living arrangement at Donna's parents' residence. Donna's position was that, as long as Tracy was with her, he would also enjoy the benefit of living in the house, but that his name would never be on the deed as long as they were not married.

During the parties' relationship, Tracy worked outside the home, often working overtime and buying and selling used cars to supplement his income. Tracy gave Donna cash on a regular basis to pay for their living expenses, including paying for her food, clothes, and medical bills. He also provided her with a car.

Donna had very little work experience prior to the start of the parties' relationship, and she worked very little during the relationship. Contributions from her parents, and financial support from Tracy, generally allowed Donna to forego working outside the home. Donna took care of her parents, and she also provided substantial care to Tracy's parents. She also kept and maintained the household for herself, Tracy, and their daughter.

During that time, Donna filed income tax returns only twice. She worked part-time for the cemetery from 1982 to 2002, except for 1989 and 1990, when she worked for L.D. Hutchins.

During the parties' relationship, Tracy made various repairs to the residence they lived in, which was owned by Donna's parents. He also helped with projects around the house, and he helped to pay for utility bills.

Donna has never held herself out as being married to Tracy, and Tracy has never held himself out as being married to Donna. Donna has never referred to Tracy has her husband, and Tracy has never referred to Donna as his wife.

The parties never engaged in any business ventures together. Tracy has never held himself out to others as being Donna's business partner. Tracy and Donna have never had any written contract or agreement regarding any kind of partnership between them.

Tracy and Donna broke up in 2002. Since May 2004, Donna has been working full-time at a retirement home. She earns a salary of about $22,000 per year. Tracy currently has an income earning capability of about $58,405 per year.

According to Tracy, there is a fund of $130,000 that was accumulated during the parties' relationship. Donna says that she does not have this $130,000.

During the parties' relationship, Tracy accumulated an IRA account that had a value of $103,413.78 as of June 2003. He also owns real estate in West Topsham, Vermont, with a value of at least $28,000. He also owns life insurance with a cash value of $23,000. He also owns four vehicles that were purchased during the relationship. Donna has one vehicle.

During the parties' relationship, Tracy always said that his retirement account, and any savings, would be used by both Tracy and Donna together, to travel in retirement.

Analysis

Donna Corliss, in her counterclaim, sets forth a variety of theories, essentially claiming that, after the long relationship, equity requires an award of assets. The counterclaim petition suggests, among other things, (1) that the relationship constituted a partnership, (2) that Donna provided various services to Tracy on a daily basis, (3) that she assisted him with his family obligations, (4) that at the end of their relationship, Tracy walked away with vast assets and personal property which were accumulated through the joint efforts of both parties, (5) that Tracy also has far greater earning capability, (6) that the circumstances constitute unjust enrichment, (7) that she is entitled to a portion of the assets based on principles of quantum meruit, and (8) that Tracy is guilty of negligent or fraudulent misrepresentation. In her prayer for relief, Donna requests a full accounting of all assets accumulated during the relationship, and an award of a suitable portion of those assets.

Tracy Dexter, in his memorandum for summary judgment, argues that Donna has not set forth any legal basis for the relief she seeks. Donna has the burden of proving a right to relief on her counterclaim, and the burden of showing that there is a triable issue of fact. *Boulton v. CLD Consulting Engineers, Inc.*, 2003 VT 72, ¶ 5, 175 Vt. 413, 417.

Donna's theory of the case is that her relationship with Tracy was similar to a marriage or to some other form of partnership, that they both contributed to the joint venture, and that therefore she is now entitled to share in a division of all the assets. However, the parties were never married, and therefore Donna is not entitled to the equitable division of property that would be available to her in a divorce under 15 V.S.A. § 751. Also, there is virtually no evidence of any partnership. They never engaged in any business ventures together, and they never had any written contract or agreement regarding any kind of partnership between them. A partnership is not created merely because the parties live together as an unmarried couple and share some of the living expenses. *Harman v. Rogers*, 147 Vt. 11 (1986). In this case, the undisputed facts do not show any general pooling of assets. Furthermore, Donna's position was that, even if she were to acquire full possession and ownership of her parents' residence, Tracy's name would not be on the deed as long as they were not married.

Donna argues that, under similar circumstances, other states have developed case law supporting equitable division of property following separation of cohabiting couples based on principles of equity. She cites to *Gormley v. Robertson*, 83 P.3d 1042 (Wash. App. 2004), where the court applied a "meretricious relationship doctrine" and awarded the plaintiff an equitable share of the property that would have been community property if the couple had been married. A meretricious relationship is "a stable, marital-like relationship where both parties cohabit with knowledge that a lawful marriage between them does not exist." Non-exclusive factors that tend

to establish such a relationship include "continuous cohabitation, duration of the relationship, purpose of the relationship, pooling of resources and services for joint projects, and the intent of the parties." *Id.* at 1045 (quoting from *Connell v. Francisco*, 898 P.2d 831 (Wash. 1995)). If the claimant can show such a relationship, income and property acquired during the relationship will be subject to distribution. "The critical focus is on property that would have been characterized as community property had the parties been married." *Connell* at 836.

Both the law and the facts of this case differ from those in the cases from Washington. Vermont, unlike Washington, is not a community property state, and therefore does not have a developed definition or doctrine of "community property." Even if Vermont were to adopt a similar legal doctrine, which it has not, the undisputed facts do not support any claim that the parties pooled their resources and services for joint projects. The fact that Tracy made household repairs and contributed to utility costs is not sufficient to show pooling, but simply contributions to housing expenses. A plan to travel in the future on Tracy's retirement funds is a hope or dream or plan and even demonstrates an intent to travel, but does not amount to a concrete act showing pooling of resources or an intent to "share and share alike." On the contrary, Donna's intent is reflected in her position on her interest in her family home, which she protected as a personal asset. For most of the assets at issue, Donna has not shown any right to an equitable distribution under any cognizable legal theory.

However, there is one exception to the general conclusions stated above. There is at least an allegation that the parties accumulated joint funds of about $130,000, and both parties have mentioned this fund as part of their claims. The facts are not clear about the history of the fund, the purpose for which it was established, who made contributions and/or had access to it, or whether any portion of the funds still exist in any form. The court concludes that there are facts in dispute with regard to whether this fund exists, and whether it represents a partnership of some kind. Thus, summary judgment as to the remainder of the counterclaim should not apply to this asset.

ORDER

1. Plaintiff's Motion for Summary Judgment is *granted* with respect to the counterclaim, except to the extent Defendant claims any right or benefit arising from a $130,000 fund.

2. Pursuant to the Orders of January 12, 2004 and November 14, 2005, mediation shall be complete by May 30, 2006. By April 21, 2006, Plaintiff shall file with the court the name of the mediator and the date for which mediation is scheduled.

Dated at Chelsea, Vermont, this 31st day of March, 2006.

Mary Miles Teachout

Hon. Mary Miles Teachout
Presiding Judge