

DON'T POOH-POOH THE PAPERWORK

Washington court case involving gay partners' estate highlights the importance of writing a will by Inga Sorensen

It didn't matter that Frank Vasquez and Robert Schwerzler had been together for nearly three decades. It didn't matter that they created a home, or that they shared a business. It didn't matter that they, like other longtime couples, intertwined their financial assets. When one of the men died, the other grieved like a lover should.

None of this seemed to matter, though, to a Washington state appellate court. What was significant, it seems, was that this couple comprised two partners of the same sex—and for that, they would pay.

Last month, the Washington Court of Appeals Division II reversed a judge's decision and ruled that the gay widower could not inherit

his partner's estate.

Under Washington state law, the spouse—or the common-law spouse in cases where there is no marriage—would be first in line to inherit the property of someone who dies without a will, followed by the children, parents and siblings.

In its unanimous decision, the appellate panel ruled that the state's community property law applies only to heterosexual couples—be they married or common-law—but not same-sex couples.

The fact that Vasquez and Schwerzler had been together in a committed 30-year relationship didn't cut it with the court.

"We find no precedent for applying the marital concepts, either rights or protections, to same-sex relationships.... Community property law clearly applies only to opposite-sex relationships. Such an extension of the law is for the Legislature to decide, not the courts," Judge C.J. Bridgewater wrote in the decision.

Vasquez was denied Schwerzler's \$230,000 estate, including the home they shared.

Schwerzler passed away five years ago at the age of 78. He did not leave a will.

After Schwerzler's death, Vasquez's attorney, Terry Barnett, went to court to argue that his client should be able to inherit as would a common-law spouse. Pierce County Superior Court Judge Vicki Hogan agreed, but Schwerzler's siblings appealed—and won.

"The court here has drawn a bright line saying that the well-established community property rules that apply to heterosexual couples don't apply to same-sex relationships," Jennifer Pizer, managing attorney for Lambda Legal Defense

and Education Fund, told the Tacoma News Tribune. "This court is clearly misguided. Instead of trying to solve the problems that arise in a same-sex relationship in a logical, fair and legal way, the court has decided to pass the problem on to the Legislature."

She added: "The court's decision is one more argument for the proposition that same-sex couples should be allowed to marry."

A Feb. 18 Tribune editorial noted: "If Frank Vasquez was Francine Vasquez, he

would have been treated much better. A recent state appeals court decision denied Vasquez, who is gay, the right to his longtime partner's estate. The ruling was probably right on the law, but it was also unfair. The decision points to the need for the Legislature to expand the protection for couples—gay, straight or platonic—who cohabit and maintain long-term, stable relations, but won't or can't marry."

Barnett says his client will appeal the appellate court's decision to the state Supreme Court.

Though the case occurred in Washington, Portland attorney Mark Johnson says the basic concept of doing the paperwork applies to gay men and lesbians everywhere.

"This particular case is just one example of why it's so important to make a will," he tells *Just Out*.

But many people simply don't do it. They're busy with meetings and kids and groceries and films to view before the Oscars. There's also the fact, says Johnson, that "nobody wants to think about dying."

But die we do, and unless you cover your bases, you could wind up in a legal imbroglio.

"It can cost thousands of dollars to wage a legal battle, and still there's no certain outcome," he says. "In most cases people don't have the resources to keep fighting, and they eventually give up."

According to Johnson, if the deceased has a will, well,

it's virtually a slam dunk.

"Basically, yes," he says. "If the will is properly done, then it should be OK."

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