

STATE OF IDAHO } ss  
COUNTY OF KOOTENAI  
FILED: 10-17-14  
AT 1:15 O'CLOCK P.M.  
CLERK, DISTRICT COURT  
*[Signature]*  
DEPUTY

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT  
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

TERILYN LEE GUNDERSON,  Petitioner,  vs.  CURTIS LYNN GOLDEN  Respondent.	CASE NO. CV-13-8637  MEMORANDUM DECISION AND ORDER
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**PROCEDURAL AND FACTUAL HISTORY**

This case arises out of a Petition for an Equitable Division and Distribution of Property filed by Petitioner, Terilyn Lee Golden. According to Ms. Golden, she and Respondent, Curtis Lynn Golden were involved in a committed intimate relationship from September 1987 until March 2012. The parties began cohabitating in 1994. During the tenure of their relationship, the parties acquired both real and personal property.

Petitioner argues that the Court should apply the principles of Idaho divorce law in this case to make an equitable division and distribution of the joint property at issue and to award Petitioner an allowance of \$1,000 per month for 24 months. Petitioner has

failed to assert any Idaho authority that would support the application of Idaho divorce law to the case at bar; additionally Petitioner has cited no authority which would support an award of a support allowance or attorney fees. Petitioner also makes reference to the laws governing partnerships, under I.C. § 53-3-101(8).

A trial before the Court was held in this matter on July 29, 2014. Following the trial, the Court requested supplemental briefing and requested that the parties return to mediation. On August 22, 2014, the Court filed an Order to Supplement the Record; following a stay of that Order the parties were to submit their supplemental briefing within thirty days of September 12, 2014.

## **DISCUSSION**

### **1. APPLICATION OF IDAHO DIVORCE LAW**

On September 22, 2014 the parties filed a Stipulation to Apply Idaho Divorce Law. That stipulation did not, however, detail which of the Idaho statutes the parties intend the Court to apply or at what date the parties allege the divorce principles became effective in the relationship.

In its Denial of Petition for Rehearing in *Clow v. Bd. of Cnty. Comm'rs of Payette Cnty.*, 105 Idaho 714, 717, 672 P.2d 1044, 1047 (1983) the Supreme Court of Idaho stated that:

The general rule is that parties may not, by agreement, “waive or abrogate the requirements of statutes or rules of trial or appellate courts adopted to promote the expeditious and orderly hearing of causes; nor can the parties by stipulation require the court to do something which is not within its power.” 83 C.J.S. *Stipulations* § 10 a. (1953). *See also Smithart v. Sportsman*, 614 S.W.2d 320 (Mo.Ct.App.1981) (court not bound by stipulation which provides issue be determined contrary to rules); *Stone v. Briggs*, 112 Vt. 410, 26 A.2d 828 (1942) (the parties can not by stipulation require the court to do something that is not within its power). Therefore, the Petition for Rehearing is denied.

105 Idaho at 717, 672 P.2d at 1047.

By way of House Bill 176 the Idaho legislature abrogated common law marriage in the State of Idaho as of January 1, 1996. The legislative policy behind the abolition of common law marriage was to “promote the stability and best interests of marriage and the family.” 1995 Idaho Laws Ch. 104 (H.B. 176). In essence the parties, by stipulating to apply the divorce laws of the State of Idaho, are asking this Court to grant them a de facto common law marriage, in contravention of the policy of the Idaho legislature.

Despite the fact that the parties in the case at bar started their committed intimate relationship in 1987 and began cohabitating in 1994, there is no evidence that the parties ever intended to form a marriage. There is no evidence that the parties ever held themselves out as a married couple. Additionally, neither party has asserted or argued in favor of the existence of a common law marriage. Therefore, the Court finds that the parties were not involved in a common law marriage prior to its abolition.

As noted above, the Court is not required to accept stipulations which are contrary to Idaho’s rules or statutes. “The wisdom, justice, policy, or expediency of a statute are questions for the legislature alone.” *Verska v. Saint Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889, 895, 265 P.3d 502, 508 (2011) (quoting *Berry v. Koehler*, 84 Idaho 170, 177, 369 P.2d 1010, 1013 (1962)). The public policy of legislative enactments cannot be questioned by the courts and avoided simply because the courts might not agree with the public policy so announced. *Verska*, 151 Idaho at 896, 265 P.3d at 509. The Court finds that to allow the application of Idaho divorce laws in the case at bar would be to question the public policy of I.C. § 32-201 and to proceed in a manner contrary to the laws of the State of Idaho. Therefore, the Court declines to accept the parties’ stipulation to apply

Idaho divorce laws.

In an August 22, 2014 Order to Supplement the Record the Court ordered Petitioner's counsel, Mr. Amendola, to submit detailed written legal points and authorities which support Petitioner's claim for an equitable division of the property of the parties. The Court finds that aside from asserting Idaho's divorces laws, Petitioner's counsel has failed to submit any other Idaho authority which supports a claim for equitable distribution of property. Pursuant to that August 22, 2014 Order, Petitioner's "failure ... to timely submit the supplemental materials required by [the] order may be treated by the court as a waiver of the right to submit supplemental evidence and legal authority or as a failure to meet his or her burden of proof." Because Mr. Amendola, did not submit detailed written legal points and authorities which support Petitioner's claim for an equitable division of the property, the Court finds that Petitioner failed to meet her burden of proof.

## **2. APPLICATION OF IDAHO PARTNERSHIP PRINCIPLES**

Under I.C. § 53-3-101(8) a "partnership" is defined as: "an association of two (2) or more persons to carry on as co-owners a business for profit formed under section 53-3-202, Idaho Code, predecessor law, or comparable law of another jurisdiction."

In determining whether a partnership is formed, the following rules apply:

- (1) Joint tenancy, tenancy in common, tenancy by the entireties, joint property, common property, or part ownership does not by itself establish a partnership, even if the co-owners share profits made by the use of the property.
- (2) The sharing of gross returns does not by itself establish a partnership, even if the persons sharing them have a joint or common right or interest in property from which the returns are derived.
- (3) A person who receives a share of the profits of a business is presumed

to be a partner in the business, unless the profits were received in payment:

- (i) Of a debt by installments or otherwise;
- (ii) For services as an independent contractor or of wages or other compensation to an employee;
- (iii) Of rent;
- (iv) Of an annuity or other retirement or health benefit to a beneficiary, representative, or designee of a deceased or retired partner;
- (v) Of interest or other charge on a loan, even if the amount of payment varies with the profits of the business, including a direct or indirect present or future ownership of the collateral, or rights to income, proceeds, or increase in value derived from the collateral; or
- (vi) For the sale of the goodwill of a business or other property by installments or otherwise.

I.C. § 53-3-202(b).

In the August 22, 2014 Order to Supplement the Record, the Court ordered that Respondent's counsel, Ms. Graham, "submit, within 30 days after entry of [the] order, detailed written legal points and authorities she claims support her claim the property of the parties is to be distributed according to Idaho partnership law." (Order to Supplement the Record, ¶ 8). The Court further ordered that Ms. Graham "set forth in writing all of the trial evidence she believes supports the formation of a partnership and all the terms of the partnership agreement." *Id.* Finally, the Court ordered that "[a]ny failure of either party to timely submit the supplemental materials required by [the] order may be treated by the court as a waiver of the right to submit supplemental evidence and legal authority or as a failure to meet his or her burden of proof." *Id.* ¶ 10 (emphasis added).

Subsequently, the August 22, 2014 order was stayed until September 12, 2014.

As of October 17, 2014, 35 days after the lifting of the stay of the August 22, 2014 order, Ms. Graham has failed to provide the court with either the detailed written

legal points and authorities she claims support her claim the property of the parties is to be distributed according to Idaho partnership law or the trial evidence she believes supports the formation of a partnership and all the terms of the partnership agreement. Consequently, the Court finds that Ms. Graham has failed to meet her burden of proof as to the existence of the partnership agreement, and the Court declines to find that any partnership existed between the parties.

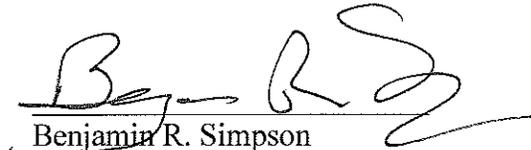
**ORDER:**

Based upon the foregoing, IT IS HERBY ORDERED, that:

1. The Court finds that it is not required to accept stipulations which are contrary to Idaho's rules or statutes. To allow the application of Idaho divorce laws in the case at bar would be contrary to the public policy of I.C. § 32-201 and in doing so the Court would be proceeding in a manner contrary to the laws of the State of Idaho. Therefore, the Court declines to accept the parties' stipulation to apply Idaho divorce laws.
2. Because Mr. Amendola, did not submit detailed written legal points and authorities which support Petitioner's claim for an equitable division of the property, aside from the inapplicable Idaho divorce law, the Court finds that Petitioner failed to meet her burden of proof. Accordingly, Petitioner's claim for equitable division is dismissed with prejudice.

3. Ms. Graham failed to provide the court with either the detailed written legal points and authorities she claims support a claim that the property of the parties is to be distributed according to Idaho partnership law or the trial evidence she believes supports the formation of a partnership and all the terms of the partnership agreement. Pursuant to the Court's August 22, 2014 Order, the Court finds that Ms. Graham has failed to meet her burden of proof as to the existence of the partnership agreement. Accordingly, the Court declines to find that any partnership existed between the parties and any claims related to the existence of a partnership between the parties are dismissed with prejudice.

DATED: This 17 day of October, 2014

  
Benjamin R. Simpson  
District Judge # 101

CERTIFICATE OF SERVICE

I hereby certify that on the 17 day of October, 2014, I caused, to be served, a true and correct copy of the foregoing document as addressed to:

Gary Amendola  
AMENDOLA, DOTY, & BRUMLEY, PLLC  
Fax: 208-765-1046

First Class Mail  
 Faxed

Suzanna L. Graham  
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Deputy Clerk