

**Castillo v. Castillo, No. 69691, ORDER AFFIRMING IN PART, REVERSING IN PART AND REMANDING (Unpublished Disposition, Sep. 6, 2016)  
COA Unpub**

This is a pension division and child custody case in the context of an annulment action.

The parties entered into a void ab initio marriage in 1998 as husband was already married to another at the time the parties married, and did not divorce that spouse until 2000. Both parties were aware of the impediment at the time of the marriage, and remained together until separating in 2013, and beginning litigation in 2015, in which wife filed for divorce and husband counter-claimed for annulment.

The main question concerned the division of husband's PERS Pension, which the trial court divided under the time rule as "quasi-community property." [ED. NOTE: this is a mis-use of the term, which actually means, in States using the doctrine, applying forum community property law to divide property acquired in non-community property States].

The COA relied on Western States in determining that the parties implicitly agreed to hold all property acquired during the void marriage as community property. Without citing to *Williams v. Williams*, 120 Nev. 559, 97 P.3d 1124 (2004), the COA ignored its holding terminating the accrual of community property by analogy upon discovery of the invalidity of the marriage, finding that since the parties continued holding out as married even after separation, the decree date marked the end of joint property accrual.

The COA found that the meretricious "wife" could be an Alternate Payee of part of the PERS pension benefits although that status is not in the statutory list of potential alternate payees. In doing so, the COA relied upon the holding in *Wolff v. Wolff*, 112 Nev. 1355, 929 P.2d 916 (1996), in which the Nevada Supreme Court held that the estate of an ex-wife could receive the PERS benefits as an alternate payee if she were to pre-decease her ex-husband. [ED. NOTE: However, the *Wolff* holding is erroneous in that PERS refuses to pay an estate as an alternate payee; the benefits awarded to a former spouse revert back to the participant if the former spouse pre-deceases the participant.]

The COA reversed and remanded the custody and child support orders because the district court failed to make specific findings related to the evidence supporting the child custody determination.