

Blumenthal v Brewer Illinois Supreme Court, August 2016
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To understand Illinois's public policy concerning the common-law rights of unmarried, cohabiting couples, we must begin with a review of the history in Illinois concerning the matter—a history the parties and amici have extensively outlined in their briefs.... Common-law marriages are invalid in Illinois and have been since the early part of the last century. The prohibition is statutory and unequivocal. Section 214 of the Marriage and Dissolution Act ... expressly provides that “[c]ommon law marriages contracted in this State after June 30, 1905 are invalid.”.. Prior to this legislative enactment, the doctrine of common-law marriage was a judicially sanctioned alternative to formal marriage... In *Hewitt*, decided in 1979, this court undertook an extensive and in-depth public policy analysis with respect to the statutory change by which common-law marriages were abolished....The facts of the present case are almost indistinguishable from *Hewitt*, except, in this case, the parties were in a same-sex relationship. During the course of their long-term, domestic relationship, Brewer alleges that she and Blumenthal had a relationship that was "identical in every essential way to that of a married couple." Although the parties were not legally married, they acted like a married couple and held themselves out as such. For example, the former domestic partners exchanged rings as a symbol of their commitment to each other, executed wills and trusts, each naming the other as the sole beneficiary of her assets, and appointed each other as fiduciary for financial and medical decision making. Blumenthal and Brewer also began to commingle their personal and financial assets, which allowed them to purchase investment property as well as the Chicago home where they raised their three children. Much like in *Hewitt*, Brewer alleges that she contributed to Blumenthal's purchase of an ownership interest in the medical group GSN, helping Blumenthal earn the majority of income for the parties and "thereby guaranteeing the family's financial security." Because Blumenthal was able to earn a high income, Brewer was able to devote more time to raising the couple's children and to attend to other domestic duties. Once Blumenthal's and Brewer's relationship ended, Brewer, like Victoria Hewitt, brought suit seeking various common-law remedies to equalize their assets and receive an interest in Blumenthal's business.... our decision in *Hewitt* did no more than follow the statutory provision abolishing common-law marriage, which embodied the public policy of Illinois that individuals acting privately by themselves, without the involvement of the State, cannot create marriage-like benefits....When considering the property rights of unmarried cohabitants, our view of *Hewitt*'s holding has not changed. As in *Hewitt*, the issue before this court cannot appropriately be characterized solely in terms of contract law, nor is it limited to considerations of equity or fairness as between the parties in such marriage-like relationships. .. These questions undoubtedly involve some of the most fundamental policy concerns in our society. Permitting such claims, as sought by Brewer, would not only impact the institution of marriage but also raise questions pertaining to other family-related issues... Moreover, Brewer's argument that her relationship with Blumenthal should not be viewed differently from others who cohabit, like roommates or siblings living together, ignores the fact that their relationship - which lasted almost three decades and involved raising three children - was different from other forms of cohabitation. Brewer herself identified in her counterclaim that her relationship with Blumenthal was not that of roommates or siblings living together but was "identical in every essential way to that of a married couple." ...Since this

court's decision in Hewitt, the General Assembly has enacted, repealed, and amended numerous family-related statutes. ...These post-Hewitt amendments demonstrate that the legislature knows how to alter family-related statutes and does not hesitate to do so when and if it believes public policy so requires. Nothing in these post-Hewitt changes, however, can be interpreted as evincing an intention by the legislature to change the public policy concerning the situation presently before this court. To the contrary, the claim that our legislature is moving toward granting additional property rights to unmarried cohabitants in derogation of the prohibition against common-law marriage is flatly contradicted by the undeniable fact that for almost four decades since Hewitt, and despite all of these numerous changes to other family-related statutes, the statutory prohibition against common-law marriage set forth in section 214 of the Marriage and Dissolution Act ... has remained completely untouched and unqualified. That is so even though this court in Hewitt explicitly deferred any policy change to the legislature. ..It is well-understood that when the legislature chooses not to amend a statute to reverse a judicial construction, it is presumed that the legislature has acquiesced in the court's statement of the legislative intent...Based on this principle, we can presume that the legislature has acquiesced in Hewitt's judicial interpretation of the statute prohibiting marriage-like rights to those outside of marriage. If this court were to recognize the legal status desired by Brewer, we would infringe on the duty of the legislature to set policy in the area of domestic relations. As mentioned in Hewitt, the legislative branch is far better suited to declare public policy in the domestic relations field due to its superior investigative and fact-finding facilities, as declaring public policy requires evaluation of sociological data and alternatives. Therefore, we do not find a compelling reason to reverse course now and depart from our earlier legislative interpretation, especially in light of almost two score years of legislative inaction on the matter....

We also reject Brewer's argument that changes in law since Hewitt demonstrate that the "legislature no longer considers withholding protection from nonmarital families to be a legitimate means of advancing the state's interest in marriage." To the contrary, this court finds that the current legislative and judicial trend is to uphold the institution of marriage. Most notably, within the past year, the United States Supreme Court in *Obergefell v. Hodges*... held that same-sex couples cannot be denied the right to marry. In doing so, the Court found that "new insights [from the developments in the institution of marriage over the past centuries] have strengthened, not weakened, the institution of marriage... For the institution of marriage has been a keystone of our social order and "remains a building block of our national community." ... Accordingly, the Court invalidated any state legislation prohibiting same-sex marriage because excluding same-sex couples from marriage would be excluding them "from one of civilization's oldest institutions." ..While the United States Supreme Court has made clear that "[t]he Constitution does not permit the State to bar same-sex couples from marriage on the same terms as accorded to couples of the opposite sex"... nothing in that holding can fairly be construed as requiring states to confer on non-married, same-sex couples common-law rights or remedies not shared by similarly situated non-married couples of the opposite sex. Legislatures may, of course, decide that matters of public policy do warrant special consideration for non-married, same-sex couples under certain circumstances, notwithstanding the fact that the institution of marriage is available to all couples equally. What is important for the purposes of this discussion is that the balancing of the relevant public policy considerations is for the legislature, not the courts. Indeed, now that

the centrality of the marriage has been recognized as a fundamental right for all, it is perhaps more imperative than before that we leave it to the legislative branch to determine whether and under what circumstances a change in the public policy governing the rights of parties in nonmarital relationships is necessary.