

## Judge: LAPD Officer's Domestic Partner Can Collect Pension

BY SHERRI M. OKAMOTO  
*Staff Writer*

The longtime domestic partner of the Los Angeles Police Department officer killed last year in the Chatsworth Metrolink crash is entitled to survivorship pension benefits, Los Angeles Superior Court Judge Judith C. Chirlin has ruled.

Chirlin issued a statement of decision Wednesday finding that the city was equitably estopped from denying fellow officer Laura Gerritsen status as the domestic partner of Spree DeSha.

DeSha was among the 25 killed when Metrolink 111 collided head-on with a Union Pacific freight train on Sept. 12, 2008. She was 35.

The undisputed evidence presented at the two-day bench trial indicated that Gerritsen and DeSha had been involved in a mutually committed, intimate relationship for over 10 years, and the two had been cohabitating since 2003. They owned the Simi Valley home they shared together, which they had purchased in 2004.

In the months before DeSha's death, Gerritsen said the couple had discussed steps to protect each other in the event of the death or disability. They jointly retained an attorney who prepared a trust, will and other estate documents for them.

They also discussed publicly registering their partnership with the secretary of state, but ultimately declined to do so because DeSha was worried her sexual orientation could result in discrimination at work and impede her ability to advance within the department, Gerritsen claimed.

### Inquiries Made

Gerritsen testified that she also made two telephone inquiries to city agencies concerning how to obtain mutual benefits in the event of the death or disability to herself or her partner.

In response, she said she received a form entitled "Affidavit of Domestic Partnership," which she partially completed and gave to DeSha. The completed form, signed by DeSha, was found on DeSha's desk after her death.

At trial, the city introduced evidence that this form was used by the city personnel department for purposes of health, dental and bereavement benefits, not pension benefits. The city said a different form was required for sur-

vivorship pension benefits, and acknowledged that the use of two separate forms can, and does, cause confusion.

Although the city said it had sent the form for pension benefits to Gerritsen, the record indicated that it was sent to her former residence. Gerritsen denied ever receiving any materials allegedly sent regarding the pension benefits or being informed of the existence of the second form.

Chirlin also noted that nothing in the materials allegedly sent to Gerritsen indicated that they had to be filed during the lifetime of both partners, but the city denied Gerritsen's request for pension benefits on the ground that neither form was filed with the city before DeSha's death.

### Declaration Sought

Gerritsen filed suit last December seeking a declaration that she was DeSha's domestic partner at the time of DeSha's death and a declaration that the city's policies and procedures with respect to the registration of domestic partnerships are unconstitutional. DeSha's parents, Allan Moran and Sha Shopf-Moran, were later named defendants since they would be entitled to DeSha's pension benefits if Gerritsen were not.

Chirlin found that the city was aware of which form was required to be submitted and intended Gerritsen to rely on the incomplete and erroneous information she was provided. Based on this, she concluded that Gerritsen reasonably believed she had the right form.

As Gerritsen's reliance on the city's misrepresentations were to her detriment and DeSha could not submit the form, Chirlin reasoned that "justice and right" required application of equitable estoppel.

She rejected the city's argument based on Government Code Sec. 818.8—which provides that a public entity cannot be held liable for misrepresentations by a government employee—reasoning that the section was inapplicable, as it relates only to immunity from tort liability.

Since the city's position was that the timing of submission of the required forms was critical, Chirlin said, "full and complete information concerning what to submit and when" should have been provided by the city in response to Gerritsen's inquiries.

"[E]xercising this Court's discretion, and finding good cause therefore, the Court finds the City is equitably estopped from denying Ms. Gerritsen's status as Ms. DeSha's domestic partner for survivorship benefits under the Administrative Code," Chirlin said.

Chirlin declined to reach the issues of whether Gerritsen substantially complied with the requirements of the Administrative Code with respect to her assertion of domestic partner rights and whether the codified requirements were unconstitutional.

The city was represented by Deputy City Attorney Brian I. Cheng, who said that officials were "discussing" the ruling and "still weighing the ramifications" of it.

Gerritsen was represented by Lisa L. Maki and Christina M. Coleman of the Law Offices of Lisa Maki.

Maki said that her client was "incredibly grateful to the civil justice system and all the people who have stood by her through this entire process," and that Wednesday's ruling embodied DeSha's intent.

She said the hoped the ruling would motivate the city to "take a look at its policies so that they will be applied to all people" in the same manner, since at present, "anyone other than a domestic partner" can wait until the death of their loved one to establish their entitlement to benefits, and only domestic partners need to pre-register.

David R. Lira of Girardi & Keese represented DeSha's parents. He could not be reached for comment.

The case is *Gerritsen v. City of Los Angeles*, BC403760.

## Privilege Did Not Require Dismissal of Suit, C.A. Rules

BY KENNETH OFGANG  
*Staff Writer*

The Fourth District Court of Appeal yesterday upheld a judgment requiring a San Diego law firm to pay a 25 percent referral fee after winning a multimillion dollar settlement for insurance company bad faith.

In affirming a nearly \$400,000 judgment in favor of San Diego attorney William K. Dietz, the court rejected arguments by the now-defunct San Diego firm of Meisenheimer & Herron that its due process rights were violated

the attorney-client privilege. Among other things, it claimed that it needed discovery regarding Vital's tax-planning strategies in order to show that it did not pay the full contingency as originally agreed.

Dietz responded that Meisenheimer & Herron had not moved to compel any such discovery and that it "concocted a fee dispute" in an effort to avoid paying the referral fee.

Following an evidentiary hearing, San Diego Superior Court Judge Jeffrey B. Barton dismissed Dietz's fraud claim, but allowed the case to proceed to trial on other claims, including breach of contract and conversion. Barton noted that Vital had waived attorney-client privilege

## S.O.S. Preview

California Court of Appeal