

Citation: *I. M. v. Minister of Human Resources and Skills Development*, 2014 SSTGDIS 34

Appeal No: GT-118227

BETWEEN:

I. M.

Appellant

and

Minister of Human Resources and Skills Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security

SOCIAL SECURITY TRIBUNAL MEMBER: Raymond Raphael

HEARING DATE: November 24, 2014

TYPE OF HEARING: Videoconference

DATE OF DECISION: November 25, 2014

PERSONS IN ATTENDANCE

I. M.: Appellant

F. P.: Witness

DECISION

[1] The Tribunal finds that the Appellant is entitled to CPP survivor's benefits.

INTRODUCTION

[2] The Appellant's application for CPP survivor's benefits was date stamped by the Respondent on August 4, 2010. The Respondent denied the application at the initial and reconsideration levels and the Appellant appealed to the Office of the Commissioner of Review Tribunals (OCRT).

[3] The hearing of this appeal was by videoconference for the reasons given in the Notice of Hearing dated August 15, 2014.

THE LAW

[4] Section 257 of the *Jobs, Growth and Long-term Prosperity Act* of 2012 states that appeals filed with the OCRT before April 1, 2013 and not heard by the OCRT are deemed to have been filed with the General Division of the Social Security Tribunal.

[5] Paragraph 44 (1) (d) of the CPP provides that a survivor's pension is payable to the survivor of a deceased contributor. Subsection 42 (1) defines the survivor in relation to a deceased contributor to be the common-law partner of the deceased contributor at the time of the contributor's death, and if there is no eligible common-law partner, the person who is married to the contributor at the time of death.

[6] Subsection 2 (1) defines the common-law partner in relation to a contributor to be the person who was cohabitating with the contributor in a conjugal relationship at the time of the contributor's death, having so cohabited with the contributor for a continuous period

of at least one year. Case law has determined that the common-law partner is not eligible if he or she is separated from the deceased contributor at the time of the contributor's death.

ISSUE

[7] The Tribunal must decide whether the Appellant lived in a common-law relationship with M. F. for a continuous period of at least one year, and was so living with him at the time of M. F.'s death. The burden of proof lies upon the Appellant to establish the common-law relationship on the balance of probabilities.

Application Materials

[8] In his CPP survivor's benefits application, date stamped by the Respondent on August 4, 2010, the Appellant indicated that M. F. died on July 3, 2010; that they had started living together on September 1, 1990; and that they were no longer living together at the time of death. In his application for the CPP death benefit, date stamped on the same date, the Appellant described his relationship to M. F. as "separated common-law partner." In a statutory declaration sworn on July 28, 2010, which was accompanied the applications, the Appellant declared that he and M. F. had lived together for 16 years from September 1, 1990 to June 28, 2006.

[9] In his letter requesting reconsideration, date stamped by the Respondent on February 25, 2011, the Appellant indicated that he and M. F. has been in a continuous common-law relationship for over 20 years until M. F.'s death on July 3, 2010. He further stated that they had different addresses as part of their investment plan, and that although they had different addresses, he never moved out of the house.

Oral Evidence

Appellant's Evidence

[10] In his oral evidence at the hearing, the Appellant confirmed that he and M. F. continued to live in a common-law relationship up until M. F.'s death. In 1997 they jointly purchased a house on X Avenue. The house was in joint ownership until June 2006, when

M. F. decided to purchase a condominium on X Street as an investment. The house was transferred to M. F.'s name alone, and the condominium was put in the Appellant's name alone. M. F. arranged a mortgage on the X property to pay for the condominium. M. F. suggested that they proceed in this fashion because he was an art dealer, and he wanted to deduct 100% of the X expenses for income tax. They were also other considerations including wanting to avoid capital gains tax if the condominium was sold for a profit, and ODSP requirements (he was receiving ODSP payments) that limited the Appellant to having only one home in his name.

[11] Nothing changed after June 2006; he continued to live at the X property and share the same bedroom with M. F. They continued to live in a common-law relationship right up until M. F.'s death. He never moved any of his clothes or other personal items to the condominium. They moved some furniture to the condominium, and it was used at a place for artists, friends, and family to stay, when they came to Toronto.

[12] He went with F. P. to Service Canada to complete the forms. F. P. completed all of the forms because he was too emotional to do this. M. F. had died suddenly at a party, and there was a police investigation because of a concern that he had been given drugs. The Appellant wasn't at the party, and couldn't find out what was happening because the police were investigating. He called the police and hospitals and couldn't find out anything, and for two days he didn't even know that M. F. had died.

[13] The Appellant advised the Service Canada representative that the house where they lived was not in his name, and after speaking to her, he understood that in order to be considered common-law they would have to have either joint ownership of, or a joint rental agreement for, their home. She told him to indicate on the forms that they were "separated common-law" and that this would cover his situation as long as he indicated that neither of them had a relationship with anyone else. She gave them the statutory declaration form to complete and this was filled in by F. P. based on their discussions with the Service Canada representative. He swore the statutory declaration before a person at the Service Canada office.

[14] The Appellant reviewed with the Tribunal the documentation included at pages 53 to 82 of the Hearing File. The certificate of appointment of estate trustee dated November 29, 2010, and the last will and testament of M. F. executed on November 29, 2006, confirm that the Appellant was the executor and sole beneficiary of M. F.'s estate. M. F.'s death certificate dated July 6, 2010 indicates that arrangements for M. F.'s cremation/internment were made by the Appellant, and he is described as M. F.'s partner and executor. The Appellant testified that he made the funeral arrangements. The lawyer's letter dated April 28, 2011 confirms that the X property was transferred to the Appellant's name. The statement of account from Ing Insurance dated April 13, 2006, with a policy term from June 6, 2006 to June 6, 2007, confirms that the house insurance continued in both names after June 2006. The agreement of purchase and sale for X confirms that they both signed to purchase that property in 1997. The City of Toronto tax bill dated May 2008 confirms that the tax records for X continued in both names after June 2006. The Royal Bank credit line statement dated May 6, 2010 confirms that the credit line that they use to purchase X in 1997 was still open, and had never been closed. The TD Mutual Funds statement dated April 2010 confirms that the Appellant was designated the beneficiary of M. F.'s RRSP. The July 12, 2010 letter from Manulife confirms that he was the beneficiary of M. F.'s life insurance policy.

F. P.'s evidence

[15] F. P. testified that he met the Appellant and M. F. in 2007. He stated that he visited X on many occasions and that they were "definitely living together" at X. He was given a tour of the house when he first visited them, and he observed their living arrangements; he saw all of their belongings in the same place, including the bedroom. This situation never changed up until M. F.'s death, and it was always obvious that they were living together.

[16] He recalls having been told that the condominium was purchased for investment purposes. He visited the condominium, and no one was living there. It was very sparse, with minimal furniture, and was like a hotel room. Various artists, as well as friends and family, would stay there when they visited. It was used as an extra place for visitors to Toronto.

[17] He went to Service Canada with the Appellant because the Appellant was so emotionally distraught that he couldn't go by himself. He had to fill out the forms because the Appellant couldn't do so without breaking down. The Appellant was concerned that his name was not on the house mortgage, and he raised this as an issue with the Service Canada representative. She told him that if his name was not on the house, he wouldn't qualify, and that in order to qualify he should fill out that they were separated. She gave him the statutory declaration and told him to indicate that they were separated common-law partners. The Appellant wasn't comfortable with this, but she told him that this was okay, and that he would qualify if he completed the forms in this manner.

SUBMISSIONS

[18] The Appellant submitted that he is entitled to survivor's benefits because:

- a) He and M. F. lived continuously in a common-law relationship from September 1990 up until M. F.'s death on July 3, 2010;
- b) Nothing in their relationship changed after June 2006, and he continued to live with M. F. at X right up until M. F.'s death;
- c) The documentary evidence confirms their continued common-law relationship after June 2006.

[19] The Respondent submitted that the Appellant is not entitled to survivor's benefits because:

- a) The Applicants statements in the CPP applications, and the accompanying statutory declaration, indicate the Appellant and M. F. separated in June 2006;
- b) If those statements are accurate, they were not living together at the time of death, and the Appellant is not eligible for survivor's benefits.

ANALYSIS

[20] The Appellant must prove on a balance of probabilities that, at the time of M. F.'s death, he was cohabitating with him as his common-law partner in accordance with the CPP definition.

[21] In determining whether the partners are cohabitating, the Tribunal should consider elements such as continued financial interdependence, a sexual relationship, a common residence, expenses for each other on special occasions, a sharing of responsibilities in running the household, a shared use of assets, shared vacations, continued mutual dependency, the naming of each other as beneficiaries in the will of the other and as a beneficiary under insurance policies, where each kept their clothing, who cared for each person when ill, communication between the parties, public recognition of the relationship, what status was declared by the parties on various applications and other forms, and who took care of the deceased's funeral arrangements: *Betts v Shannon* (2001), CCH, CE B & PGR No. 8661, pp. 6775-6782).

[22] In view of the statements made by the Appellant in his CPP applications, and the accompanying statutory declaration, it is understandable that the Respondent initially denied the Appellant's application for survivor's benefits. These statements indicate that the Appellant and M. F. separated in June 2006, and that they were no longer cohabitating in a common-law relationship at the time of death. These statements, especially the statutory declaration under oath, are troubling. However, based on the oral and documentary evidence, the Tribunal is satisfied, on the balance of probabilities, that the Appellant and M. F. continued to cohabit in a common-law relationship at the X property up until the date of death.

[23] The Appellant's evidence was given in a straightforward and consistent manner. He readily accepted responsibility for the misstatements in his CPP applications; but was clear in his evidence that nothing changed after June 2006, and that he and M. F. continued to live in a common-law relationship. He was understandably emotionally distraught when he signed the applications and statutory declaration, and was unable to fill out the forms because this was so emotionally upsetting. The Appellant's oral evidence was confirmed by

F. P.'s evidence. F. P. had been excluded from the hearing room during the Appellant's evidence, and in his oral evidence he confirmed the continued common-law relationship, that that the Appellant continued to live at X and share the same bedroom with M. F., and that the condominium was used like a hotel room as an extra place for visitors.

[24] Significantly, the written documentation supports a continued common-law relationship after June 2006. M. F. made a new will in November 2006, and named the Appellant as his sole executor and beneficiary. The Appellant was the beneficiary of his life insurance policy and RRSP. The house insurance, utility, and tax bills are indicative of a continued joint occupancy of the X property. The Appellant made the funeral arrangements for M. F., and was described as his partner and executor on the death certificate.

[25] Having regard to the totality of the evidence, the Tribunal is satisfied, on the balance or probabilities, that the Appellant and M. F. continuously cohabitated in a common-law relationship from September 1990 up until M. F.'s death in July 2010.

CONCLUSION

[26] The Appellant is a survivor in accordance with the CPP criteria in relation to the deceased contributor M. F. Accordingly, he is entitled to CPP survivor's benefits.

[27] The appeal is allowed.

Raymond Raphael
Member, General Division