

**Citation: *J. G. v. Minister of Employment and Social Development*, 2015 SSTGDIS 31**

**Date: April 16, 2015**

**File number: GT-122909**

**GENERAL DIVISION- Income Security Section**

**Between:**

**J. G.**

**Appellant**

**and**

**Minister of Employment and Social Development  
(formerly Minister of Human Resources and Skills Development)**

**Respondent**

**and**

**M. S.**

**Added Party**

**Decision by: Raymond Raphael, Member, General Division - Income Security Section**

**Heard In person on April 14, 2015, Toronto, Ontario**

## **REASONS AND DECISION**

### **PERSONS IN ATTENDANCE**

M. S.: Added Party

R. V.: Witness (D. V.'s brother)

B. V.: Witness (D.'s V.'s sister-in-law)

D. E. V.: Witness (D. V.'s son)

D. W.: (D. V.'s daughter)

D. B. V.: (D. V.'s daughter-in-law)

Jeffrey Steinberg: Observer, Member of the Social Security Tribunal

### **DECISION**

[1] The Tribunal finds that the Appellant is not entitled to receive the survivor's pension.

### **INTRODUCTION**

[2] D. V. (the deceased contributor) died on January 31, 2012. M. S.'s application for a survivor's pension was date stamped by the Respondent on February 10, 2012. Her application was approved by the Respondent on the ground that she was the common-law partner of the deceased contributor at the time of his death. M. S. has been receiving the survivor's pension with respect to the deceased contributor and has been added as a party to this proceeding.

[3] The Appellant J. G.'s application for a survivor's pension was date stamped by the Respondent on May 24, 2012. The application indicates that she and the deceased contributor were married on March 23, 1978, that they were still married at the time of his death, and that they were not living together at the time his of death. On July 11, 2012 the Respondent denied the Appellant's application because the deceased contributor was living in a common-law relationship with someone else when he died. The Appellant requested reconsideration on August 10, 2012 taking the position that M. S. was the deceased contributor's landlady and

that she was never “in any shape or form” his spouse. The Respondent denied the Appellant’s request for reconsideration and on October 15, 2012 the Appellant appealed to the Office of the Commissioner of Review Tribunals (OCRT).

[4] The hearing of this appeal was in person for the following reasons:

- The form of hearing is most appropriate to allow for multiple participants;
- The form of hearing is the most appropriate to address inconsistencies in the evidence; and
- The form of hearing respects the requirement under the Social Security Tribunal Regulations to proceed as informally and quickly as circumstances, fairness and natural justice permit.

## **THE LAW**

[5] 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.

### ***Applicable CPP provisions***

[6] Section 44(1)(d) of the CPP provides that a survivor’s pension shall be payable to the survivor of a deceased contributor who has made contributions for not less than the minimum qualifying period provided the survivor meet certain conditions.

[7] Subsection 42(1) of the CPP defines a survivor in relation to a deceased contributor as either a person who was the common-law partner at the time of the contributor’s death, or, if there was no such common-law partner, a person who was married to the contributor at the time of death.

[8] Subsection 2(1) of the CPP defines a common-law partner in relation to a contributor as a person who is cohabiting with the contributor in a conjugal relationship at the relevant time, having so cohabited for a continuous period of at least one year. In the case of a contributor's death the "relevant time" means the time of the contributor's death.

## **ISSUE**

[9] The Tribunal must determine whether the Appellant is a survivor in accordance with the CPP criteria.

[10] Since there are two alleged survivors the Tribunal must determine whether the Appellant who was married to the deceased contributor at the relevant time or the Added Party who claims to have been the common-law spouse of the deceased contributor at the relevant time is entitled to the survivor's pension.

### ***Preliminary Matter***

[11] The hearing was scheduled to begin at 11 am, and although the Tribunal waited until 11:30 am before commencing the hearing the Appellant did not appear. The Added Party and her five witnesses were all present at the scheduled starting time. The SST records confirm that the Notice of Hearing was received by the Appellant on December 29, 2014. In addition, the SST records note a telephone call from the Appellant on that day indicating that she agrees with the scheduled hearing date of April 14, 2015.

[12] S. 12 (1) of the Social Security Tribunal Regulations provides that if a party fails to appear at a hearing, the Tribunal may proceed in the party's absence if the Tribunal is satisfied that the party received the Notice of Hearing. In this case, the Tribunal was satisfied that the Appellant received the Notice of Hearing. Accordingly, the Tribunal decided to proceed in her absence.

### ***Post-hearing communication from the Appellant***

[13] At approximately 11:45 am on the date of hearing, the Appellant called the SST indicating that she had sent a letter to the SST on April 9<sup>th</sup> indicating that she would not be able to attend the hearing due to impossibility of travel. A letter from the Appellant dated April 7, 2015 and date stamped by the SST on April 14, 2015, informed the Tribunal that she would not be appearing in person at the hearing which she apparently mistakenly believed to be scheduled for April 15<sup>th</sup>. In that letter the Appellant also indicated she will abide by the decision reached and that she was reserving her rights of appeal to a higher court, if she is unsatisfied with the decision.

[14] Although the Appellant may have mistakenly believed that the hearing would be on April 15<sup>th</sup>, her telephone conversation and letter make it clear that she had decided not to attend the hearing.

### **Oral Evidence**

#### ***M. S.'s evidence***

[15] Ms. M. S. testified that she and D. V. (D. V.) met in 1991, and that he moved into her home in 1992. She stated that from that point onward they shared the same bedroom and lived together in a common-law relationship. At times he referred to her as his fiancé, and later referred to her as his wife.

[16] Ms. M. S. was referred by the Tribunal to the October 6, 2005 letter (GT11-15) signed by the D. V. which states:

This is my consent to give M. S., my common law wife, the authority to make any necessary decisions and arrangements around my health care and personal affairs in the event I am unable to do so.

[17] She stated that the Appellant prepared this letter after he fell 15 feet and was taken to the hospital emergency department. The hospital was looking to her for answers, and when he returned home he wanted her to have this letter so that she would be able to give information if he was seriously injured. D. V. was seriously injured in that accident and from that point

onwards she took over responsibility for his personal affairs and for making sure all of his bills were paid.

[18] Ms. M. S. reviewed seven factors which evidence that she and D. V. were common-law spouses in all respects as follows:

- Shelter: they lived together and shared the same bedroom from 1992 up until his death in January 2012.
- Sexual and personal conduct: D. V. was a very loving man, and they ate together, and assisted each other during illnesses. She supported the Appellant in “all aspects” of their life; he was going through a difficult divorce and at times had no job, and she provided funds for his legal fees and living expenses.
- Services: they shared household duties with her doing items such as laundry, cooking and cleaning and D. V. taking care of outdoor work and repairs.
- Social: they had a network of friends from bowling, in their neighbourhood, and work related. They spent most birthdays together with another couple, and she arranged a large party for him for his 70<sup>th</sup> birthday in 2007. They went together to numerous family functions including weddings, reunions, and christenings. Every boxing day they had a party at their home for D. V.’s family (her family lives out west). In 2008 they went together to her family reunion in X.
- Attitude of community: She referred to the many letters of support in the hearing file as well as the evidence from the five witnesses who attended to give evidence on her behalf.
- Financial arrangements: they shared expenses and had a common credit card. She had access to his bank accounts and paid his bills online. She went to the bank to get cheques certified for support

payments to the Appellant and dropped them off at the Family Responsibility Office. He was the beneficiary of her will and of her bank employee life insurance policy. He didn't have a will because he didn't have any assets. In 1998 she completed the required form with her employer so that D. V. could get benefits under her medical plan.

- Children: She had a good relationship with all of his children and referred to the evidence from his children who were testifying at the hearing on her behalf. They were involved together in the annual memorial golf tournament for D. V.'s eldest son.

[19] The Appellant testified about the numerous vacations that she and D. V. went on together including: a cruise in 1992; X in 1993; driving to X in 1995; numerous bowling trips to X; X in 1996; a boat cruise in 1997; the X in 1998 when he gave her a promise ring; and X in 2001. She stated that after this they couldn't go on more vacations because their money was limited due to her losing her job, his company failing, and his having to make payments to the Appellant until 2006. She stated that he paid a total of \$122,000 to the Appellant.

[20] After D. V.'s fall in 2005 he was in a lot of pain. She was involved with his medical care, booked and took him to medical appointments, sat in on his appointments with surgeons, and picked up his medications at the drug store. He was on her medical plan which paid for his medications. She made the funeral arrangements and paid for the funeral.

[21] In response to the Appellant's allegation that their relationship was landlord-tenant as opposed to a common-law relationship she stated that D. V. didn't pay rent. They needed a figure for his court case with the Appellant for his expenses, so they put in that he was paying \$200 a week, which was the amount that he was supposed to contribute towards their common expenses. Because of D. V.'s financial difficulties, this amount wasn't paid and D. V. contributed what he could. As time went on he had less and less money and he would contribute less.

### ***D. E. V.'s evidence***

[22] He referred to and confirmed the accuracy of his email dated September 2, 2015 (GT11-17). He is D. V.'s son and he met M. S. in 1991. He stated that he never saw his father so happy. He stated that he (D. E. V.) had a great relationship with M. S., that he went to Boxing Day parties at their house, and that he considers M. S. to be his step mother. D. V. and M. S. shared the same bedroom and he saw their clothes in the same bedroom. He still keeps in touch with M. S., visits, and helps out at her house. His nine year old son looks on M. S. like a grand-mother.

### ***D. B. V.'s evidence***

[23] She referred to and confirmed the accuracy of her letters dated March 8, 2013 (GT11-18) and March 18, 2013 (GT1-215). She is D. V.'s daughter-in-law and the widow of D. V.'s son who was killed in an accident in 2007. She first met M. S. in 1992, and her father was always very happy with and proud of M. S. She stated that M. S. has been part of their family since 1992, and that they spent many holidays and attended many family occasions together. She considers M. S. to be her mother-in-law and one of her best friends. Her children and grandchildren know her as Grandma M. S.

### ***D. W.'s evidence***

[24] She referred to and confirmed the accuracy of her letter dated March 3, 2013 (GT1-213). She is D. V.'s daughter. She indicated that M. S. was a devoted spouse/companion to her father, and that their relationship included living together, enjoying family and social gathering together, and sharing the ups and downs of any relationship. She considers M. S. to be her step-mother, and they still keep in touch and do things together. Her children look on M. S. as a grandmother. She showed the Tribunal a picture of M. S. attending her son's christening.



### ***R. V.'s evidence***

[25] He referred to and confirmed the accuracy of his letter dated March 7, 2013 (GT1-217). He is D. V.'s brother. He indicated that D. V. and M. S. were in a very loving relationship, and he and his wife socialized with them on numerous musical outings and concerts as well as family functions such as birthdays, holidays, and family reunions. D. V. and M. S. hosted a large family get together at their home every Boxing Day; they lived together and were known by all as a couple. D. V. was in love with M. S. and he was very happy.

### ***B. V.'s evidence***

[26] She is D. V.'s sister and he introduced M. S. as his wife. They socialized together and she always considered M. S. to be her sister-in-law. They often went together to Casino R. as two couples. She stated that it is unbelievable for the Appellant to suggest that M. S. was D. V.'s landlady, and stated that a person doesn't bring his family to his landlord's house for Christmas dinners, barbecues etc.

### ***Additional Witness Statements***

[27] There are additional letters in the hearing file supporting the position that D. V. and M. S. lived together in a common-law relationship including: a letter dated February 23, 2013 from M. S.'s sister P. B. (GT1-219); a letter dated March 7, 2013 from M. S.'s brother T. W. (GT1-212); a letter date stamped on March 22, 2013 from D. V.'s first wife G. V. (GT1-218); and a letter dated March 18, 2013 from I. O. a long-standing friend of D. V. and M. S. (GT1-221).

### **SUBMISSIONS**

[28] The Appellant submitted that she is entitled to the survivor's pension because:

- a) Although the Appellant did not attend the hearing, the Tribunal carefully reviewed her written submissions including her letter dated June 27, 2012 (GT1-122), her

letter dated August 1, 2012 (GT1-129), and her letter dated October 12, 2012 (GT1-108);

- b) In her June 27, 2012 letter the Appellant indicated that D. V. always indicated that he was living as a boarder at M. S.'s house and that he was sleeping in his own room paying \$200 a week for room and board, and that there was no physical relationship involved. She also indicated that they did not wish to divorce and that they remained in a close physical relationship all 34 years of their marriage, that they were last physically together on her birthday on October 19, 2007, and they kept in touch by other means;
- c) In her letter dated August 1, 2012 the Appellant stated that M. S. was never D. V.'s spouse in any shape or form and that M. S. was his landlady.
- d) In her letter dated October 12, 2012 the Appellant stated that her appeal is based on a number of facts:
  - her status of living compared to M. S.
  - that although she and D. V. lived separate and apart in residence, they continued a relationship throughout the years and only discontinued it due to serious health issues affecting both of them.
  - that D. V. never referred to M. S. as his spouse, common law or otherwise.
  - that M. S. has a vindictive personality and is applying for the survivor's pension to spite her (the Appellant), and that M. S. is not without substantial means.

[29] The Added Party submitted that e she was the common-law spouse of deceased contributor at the time of death and that accordingly she and not the Appellant is entitled to the survivor's pension because:

- a) She and D. V. lived together as common-law spouses from 1992 up until his death in January 2012;
- b) They were spouses in all respects as confirmed by the oral evidence from herself and five supporting witnesses, as well as the other witness statements and documents in the hearing file;
- c) She referred to the letter signed by D. V. on October 6, 2005 in which he referred to her as his common law wife and gave her with decision making authority(see paragraph 16, supra); to the claim in a notice of motion on behalf of the Appellant in which the Appellant sought an order for production of financial documents from D. V.'s "common law partner, M. S."; to documentation confirming that she made arrangements for and paid for D. V.'s funeral expenses; and to a document marked Exhibit 4 which was submitted by D. V. in the court proceedings with the Appellant in which he indicates that he lived off the generosity of his son D. E. V. and his "common-law partner M. S." (GT11-13);

[30] The Respondent supported the Added Party's position and submitted that the Appellant is not entitled to the survivor's pension because:

- a) The evidence establishes that M. S. was D. V. 's common-law partner at the time of his death;
- b) Accordingly, the Appellant cannot be considered D. V.'s survivor for the purposes of the CPP and she not eligible to receive the survivor's pension.

## ANALYSIS

[31] Where there are competing interests between the legal widow of a deceased contributor and a person claiming to be common-law spouse, there exists a prima facie presumption that, absent satisfactory proof to the contrary, the benefit will pass to the legal widow. The person legally married to the deceased contributor at the time of death is the preferred beneficiary unless she is displaced by a common-law spouse.

[32] In this case, the Tribunal was satisfied by the preponderance of evidence that the Added Party was the deceased contributor's common-law spouse at the time of his death and that, according, the Added Party and not the Appellant is entitled to the survivor's pension.

[33] In determining whether persons 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* (September 27, 2001), CP 11654 (PAB).

[34] The Added Party as well as the five supporting witnesses gave compelling and consistent evidence to confirm the longstanding common-law relationship between D. V. and M. S.. The evidence canvassed all of the elements of such a relationship as set out in the *Betts v Shannon* decision, supra. The evidence is also consistent with and supported by witness statements from other persons (see paragraph 27, supra) as well as the written documentation (see paragraph 29 (c), supra).

[35] There is no evidence to support the allegations made by the Appellant. Although she has made numerous written allegations, she chose to not to attend the hearing and provide

sworn evidence to support them. There are no witness statements and no documentation supporting the Appellant's allegations.

[36] Further, her allegations lack an air of reality. It is difficult to accept that she continued to have a good relationship with D. V. in the light of the lengthy legal proceedings brought by her which resulted in his being incarcerated for 30 days, and his being forced to sell off the equipment from his business to pay support arrears. In the legal proceedings brought on her behalf to collect arrears payments she referred to M. S. as D. V.'s common-law partner and sought financial disclosure from her. This flies in the face of the position taken by her in this proceeding.

[37] Having regard to the totality of the evidence, the Tribunal is satisfied, on the balance or probabilities, that the Added Party and the deceased contributor continuously cohabitated in a common-law relationship from 1992 up until the deceased contributor's death in January 2012.

## **CONCLUSION**

[38] The Appellant is not a survivor in accordance with the CPP criteria in relation to the deceased contributor D. V. Accordingly, she is not entitled to receive the CPP survivor's pension.

[39] The appeal is dismissed.

Raymond Raphael  
Member, General Division