



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *G. O. v. Minister of Employment and Social Development*, 2016 SSTGDIS 77

Tribunal File Number: GP-15-1902

BETWEEN:

G. O.

Appellant

and

Minister of Employment and Social Development

Respondent

and

V. P.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Valerie Hazlett Parker

HEARD ON: September 26, 2016

DATE OF DECISION: October 3, 2016

REASONS AND DECISION

PERSONS IN ATTENDANCE

The Appellant	G. O.
Appellant's Representative	Irina Ovis
Observer	C. I.
The Added Party	V. P.
Interpreter	Igor Trugknow

PRELIMINARY ISSUES

[1] The Appellant stated at the start of the hearing that she had planned to have a witness attend the hearing and testify, however, he was not well and unable to attend. She agreed to proceed with the hearing in his absence.

[2] After each of the parties present at the hearing had completed their testimony, had questioned the other party, and the Appellant had made her closing submissions, the Added Party wished to introduce two documents as evidence to support her claim. She described these documents as papers regarding her divorce from her Husband in Latvia. The Appellant objected to their admission. She argued that these documents should not be considered because the Added Party had plenty of opportunity to file these documents prior to the hearing, and should have done so then.

[3] I did not admit these documents. The Appellant was correct that each party had already had plenty of time to file all relevant documents with the Tribunal. In addition, each party was asked at the start of the hearing if there were any additional documents that they wished to file, and both indicated that there were none. It would be prejudicial to the Appellant to allow the Added Party to file these documents after all of the evidence at the hearing had been received. The documents related to the Added Party's divorce in Latvia, so had little probative value. This probative value would not outweigh the prejudice caused by admitting them.

INTRODUCTION

[4] The Appellant was married to Mr. P. O. in 2005. They separated, and during contested litigation a divorce order was granted, with the divorce effective January 17, 2014. Mr. P. O. married the Added Party on March 20, 2014. Mr. P. O. passed away on April 28, 2014. Both the Appellant and the Added Party applied for a Survivor Pension under the *Canada Pension Plan*. The Respondent decided that this pension should be paid to the Added Party. The Appellant appealed from this decision. The Respondent maintained its decision to pay the survivor pension to the Added Party upon reconsideration. The Appellant appealed that decision to the Social Security Tribunal.

[5] This appeal was heard by videoconference for the following reasons:

- a) The Appellant and the Added Party did not wish to be in the same room;
- b) The method of proceeding is most appropriate to allow for multiple participants;
- c) Videoconferencing is available within a reasonable distance of the area where the Appellant and the Added Party live;
- d) There are gaps in the information in the file and/or a need for clarification;
- e) The method of proceeding is the most appropriate to address inconsistencies in the evidence; and
- f) This method of proceeding respects the requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit.

ANALYSIS

The Appellant's Claim

[6] The Appellant must prove that she is entitled to a survivor pension under the *Canada Pension Plan* (CPP). Subsection 42 (1) of the CPP provides that a survivor, in relation to a deceased contributor, means

(a) if there is no person described in paragraph (b), a person who was married to the contributor at the time of the contributor's death, or

(b) a person who was the common-law partner of the contributor at the time of the contributor's death

[7] The Appellant testified that she did not agree to separate from the deceased. She did not agree to any divorce from him. She testified that in spite of the fact that she was working on a contract basis in the United States for a number of years prior to his death, their relationship continued. She claimed that the divorce proceedings were forced upon the deceased by his son.

[8] Numerous court documents from the matrimonial litigation between the Appellant and the deceased were filed with the Tribunal. These documents clearly demonstrated that the Appellant did not agree to separate from the deceased. Despite this, the Court concluded that the parties separated in October 2009. A divorce order was made, and became effective January 2014.

[9] The Appellant did not allege that she was a common-law partner of the deceased. She testified that she last saw him in the fall of 2013 and did not know that he had cancer before he died. She testified that he was secretive about his health.

[10] After considering the evidence, I am satisfied that the Appellant was not a spouse or a common-law partner of the deceased. A valid divorce order was made. There was no evidence that even suggested that this order was not valid, or that the Appellant and the deceased had reconciled their relationship after it had been granted. She is therefore not entitled to receive the survivor pension under the CPP.

The Added Party's Claim

[11] The Added Party must prove that she is entitled to a survivor pension under the CPP. She came to Canada from Latvia in 2012. She claims that she is entitled to receive the survivor's pension as the spouse of the deceased.

[12] The Added Party and the deceased were married on March 20, 2014. This was less than one year prior to when the deceased passed away on April 28, 2014. Subsection 63(7) of the CPP provides:

Where a contributor dies within one year after his marriage, no survivor's pension is payable to his survivor if the Minister is not satisfied that the contributor was at the time of his marriage in such a condition of health as to justify him in having an expectation of surviving for at least one year thereafter.

(7.1) Subsection (7) does not apply if the aggregate of the following periods is one year or more:

- (a) the period during which the contributor and the survivor had cohabited during the marriage; and

- (b) the period during which the contributor and the survivor had cohabited in a conjugal relationship immediately before the marriage.

[13] The Added Party testified that she and the deceased began to live together on April 17, 2013, when he proposed marriage to her. She did not provide any additional evidence about their residing together prior to May 1, 2013. On this basis she claimed that she was entitled to the survivor pension as his spouse and common-law partner for a period of more than one year before he passed away.

[14] The Added Party further confirmed that she had completed a Declaration of Common Law Union where she declared that she and the deceased began to live together on May 1, 2013 (GD6-5). She testified that May 1st was her "official move in date" when all of her things were moved to the deceased's home. She also testified that she and the deceased opened a joint bank account in May 2013. The Added Party was not working at the time, and did not contribute financially to this household. Similarly, prior to moving in with the deceased, the Added Party was staying with a friend and not contributing financially.

[15] The Added Party testified that she had provided Service Canada with copies of bank statements, driver's licence, marriage licence and certificate. She also testified that Service Canada interviewed her family members and those of the deceased. Based on this investigation, Service Canada awarded her the survivor pension. The Added Party did not file any of these documents with the Tribunal. The Respondent also did not file any evidence of this investigation. She did not present any witness to testify regarding when she began to reside with the deceased.

[16] The Added Party made a solemn declaration in writing that she and the deceased began to reside together in May 2013. This was her "official move in date". That is when they also

opened a joint bank account. I place more weight on this evidence than the Added Party's testimony that she began to cohabit with the deceased in April 2013. There was no evidence to support her testimony that she began to live in a common-law relationship with the deceased prior to May 1, 2013, which was self-serving. Therefore, I find that she and the deceased began to live together on May 1, 2013.

[17] As a result, the Added Party had not been married to the deceased for one year at the date of his death, had not been residing in a common-law relationship with him for one year, and the combined time of marriage and common-law cohabitation was also less than one year.

[18] Clearly he was ill at that time. Neither the Appellant nor the Added Party seemed to know how serious his illness was. There was no evidence regarding whether the deceased was expected to live for more than one year at the time of his marriage to the Added Party.

[19] The Appellant argued that the Added Party's marriage to the deceased was a "fraud" and done only so that she could obtain Canadian citizenship. I need not decide this. The CPP does not suggest that the Tribunal investigate the *bone fides* of a marriage certificate. If I am wrong on this, whether the marriage was a "fraud" or not would not change the decision made in this matter as I have concluded that the Added Party did not reside in a common-law relationship with the deceased for sufficient time to be entitled to the survivor pension.

[20] Finally, I note that the Respondent removed pages of its file before filing it with the Tribunal pursuant to section 26 of the *Social Security Tribunal Regulations*. Upon my request for the documents, it refused to provide these removed documents or even disclose what the documents were. The Appellant testified that these documents were related to the Added Party's immigration application and status. If the Respondent relied on any of these documents to make its decision in this matter, it has breached its obligation to disclose them to the Tribunal. Fortunately for the parties, however, I am able to make my decision without these documents.

CONCLUSION

[21] For the reasons set out above, the claims made by both the Appellant and the Added Party are dismissed.

[22] The appeal is dismissed.

Valerie Hazlett Parker
Acting Vice-chair, Member, General Division - Income Security