



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *Z. H. v Minister of Employment and Social Development and R. F.*,  
2017 SSTGDIS 215

Tribunal File Number: GP-15-3989

BETWEEN:

**Z. H.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

and

**R. F.**

Added Party

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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DECISION BY: Antoinette Cardillo

DATE OF DECISION: June 22, 2017

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## REASONS AND DECISION

### INTRODUCTION

[1] The Appellant's application for a *Canada Pension Plan* (CPP) survivor's pension (SVR) was date stamped by the Respondent on February 7, 2013. The Added Party's SVR application was date stamped on January 22, 2013. The Appellant's application was denied given that the Respondent had also received an application from the Added Party, who claimed to be the common-law partner of the contributor. The Appellant requested a reconsideration of the Respondent's decision. The Respondent maintained its original position and the Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal).

[2] This appeal was decided on the basis of the documents and submissions filed for the following reasons:

- a) There were no gaps in the information in the file or need for clarification; and
- b) This method of proceeding respected the requirement under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit.

### THE LAW

[3] Paragraph 44(1)(d) of the CPP states that:

*" ... a survivor's pension shall be paid to the survivor of a deceased contributor who has made contributions for not less than the minimum qualifying period, if the survivor*

*(i) has reached sixty-five years of age, or*

*(ii) in the case of a survivor who has not reached sixty-five years of age,*

*a) had at the time of the death of the contributor reached thirty-five years of age,*

*b) was at the time of the death of the contributor a survivor with dependent children, or*

*c) is disabled.*

[4] A "survivor" is defined in subsection 42(1) of the CPP as:

*"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.*

[5] The CPP defines a common-law partner in section 2:

*"common-law partner": in relation to a contributor, means a person who is cohabiting with the contributor in a conjugal relationship at the relevant time, having so cohabited with the contributor for a continuous period of at least one year. For greater certainty, in the case of a contributor's death, the "relevant time" means the time of the contributor's death.*

## **ISSUE**

[6] The issue before the Tribunal in this appeal is whether the Appellant is entitled to a SVR pension.

[7] In this case, the burden of proof falls upon the common-law partner, therefore the Added Party. As provided in *Betts v. Shannon* (October 22, 2001), CP 11654 (PAB), where there are competing interests between the legally married widow of a deceased contributor and an alleged common-law partner, there is a *prima facie* presumption that the benefit goes to the legal widow. As a result, the burden will be on the alleged common-law partner to prove that she was living with the deceased contributor in a conjugal relationship at the time of the contributor's death and had lived with the deceased contributor in a conjugal relationship for a continuous period of at least one year.

## **EVIDENCE**

### **Evidence from the Appellant**

[8] In her SVR Application date stamped on February 7, 2013, the Appellant indicated that she was the legal spouse of the contributor and she was with him for 12 days when he passed away.

[9] Based on the evidence, the contributor passed away on December 9, 2012.

[10] The Appellant was married to the contributor on December 16, 1978. They had three children.

[11] A separation agreement indicates that the Appellant and the contributor separated on August 15, 1992.

[12] On July 18, 2013, a letter from the Appellant states that she and the contributor went through difficult times, she looked after him for 10 days at a clinic when he was sick, then he passed away six (6) days later.

[13] An affidavit dated February 18, 2014 from the Appellant states that in November 2012, the contributor went to Peru to start a new life, he got sick and was hospitalized. She and her daughter went to Peru and looked after the contributor for 10 days, then he died on December 9, 2012. The Appellant adds that the contributor died before the divorce process was complete. On January 8, 2013, she obtained a copy of her marriage certificate from the Registry and it indicated that she was still the legal wife of the contributor.

[14] The marriage certificate was submitted as evidence and is dated January 8, 2013.

[15] Based on the evidence on file, there was a divorce decree on January 12, 2012. The evidence however seems to also suggest that the divorce was nullified at a later date.

[16] Further, the contributor sold his share of the family home to the Added Party on or about September 6, 2012; on November 23, 2012, the named beneficiary under a Canada Life insurance policy held by the contributor was changed from the Added Party to his daughter. There is also evidence that the daughter made the deposit for the burial of the contributor (receipt of deposit from Cemetery in Peru dated December 20, 2012) and the ashes of the contributor were delivered to his daughter.

[17] There are several letters on file stating what the contributor said regarding the end of his relationship with the Added Party. The statements in the letters suggest that the relationship between the contributor and the Added Party ended some years earlier and that in the years before his passing, they were simply roommates:

- a letter dated April 26, 2013 from a co-worker of the Added Party stated that the Added Party told her that she and the contributor had separated a few years prior, that they were still living together for financial reasons, that he was more of a father figure to her, that they had been separated for many years, that he had moved out and decided to move to Peru;
- another letter from a co-worker of the contributor dated April 27, 2013 stated that he knew the Added Party for over 12 years. The contributor told him that when he died he would like to leave everything to his children. He also stated that the Added Party and the contributor were separated for at least two (2) years;
- a letter from the brother of contributor sent via facsimile on November 20, 2013 stated that the contributor and the Added Party were living at the contributor's mother's home, which he inherited. They were separated for many years, living in the same house, but in separate rooms. The last few years of his life, the contributor was very sad. The Added Party considered him a "father" and this upset him. After he got sick in 2005, she no longer considered him her partner. Instead he was just a "roommate". She made it clear to many people in the community, including her colleagues at work. At one point, upon returning from his vacation from Peru, the Added Party had her boyfriend living with her while the contributor was gone. Later the contributor and the Added Party decided to make their split official. She bought his portion of the house from him and he transferred the house to her name. In September (3 months before his passing), he received his share of the home;
- a letter from a friend dated May 12, 2016 stated that he met the contributor in October or November 2005, he was depressed and he told him that the Added Party did not want to stay with him and had moved in with another man and that she had obtained what she wanted regarding his inheritance and house;
- an undated letter from a business partner of the contributor stated that the Added Party did a lot of travelling and that in 2008, she told him that she and the contributor were separated and she was living with him for convenience purposes only; and
- another undated letter from a member of the community stated that she ran into the contributor at the end of November 2012, he told her he was doing some last minute shopping to take to his trip to Peru. He mentioned that he was moving to Peru indefinitely, to retire and he planned to open a business. She asked him if the Added Party was going with him, and he responded that she was not, that even though she was Peruvian and he had met her over there, she never traveled with him to Peru, but instead she preferred to travel by herself to places like Europe and visit male friends she had met through the Internet. He told her that although they lived in the same house, they were separated for many years; he had moved out and had decided to move to Peru by himself; that he hoped that in the near future his older son would go to Peru to help him with his business.

**Evidence from the Added Party**

[18] The Added Party's SVR application was date stamped on January 22, 2013. She indicated that she was the common law spouse of the contributor living together from July 5, 2002 until his death. She indicated the same information on the Statutory declaration of common law union date stamped on February 13, 2013.

[19] Based on the evidence, on June 27, 2002, the contributor and the Added Party participated in a wedding ceremony.

[20] On the Added Party's income tax return for 2012, her marital status is indicated as common law.

[21] A letter dated November 5, 2012 from the province of British Columbia regarding the contributor's GST credit indicates that he was married or living common law and that his address seemed to be the same address as the Added Party.

[22] The Added Party also provided copies of bank account statements indicating that she and the contributor had a joint bank account in October, November and December 2012.

[23] The evidence indicates that the contributor traveled to Peru on November 20, 2012. The Added Party did not accompany him. In an affidavit dated February 7, 2014, the Added Party provided that she lived in a marriage-like relationship with the contributor, that they had decided to open a business in Peru and that she was planning to join the contributor in Peru later in 2013.

[24] The Added Party submitted evidence from third parties, to support her position that prior to the contributor's death, she was living in a marriage-like relationship with him:

- a letter from a co-worker dated April 30, 2013 stated that she met the Added Party four (4) years earlier and saw the contributor drop her off work and pick her up, grocery shopping, and that they had plans to move to Peru, buy a home to spend the winters there and open a small business. He had an accident in December 2012 and passed away shortly thereafter. The Added Party's Blue Cross insurance was supposed to pay for the hospitalization and surgery costs of the contributor; and
- a letter from a friend dated January 1, 2016 stating that the Added Party and the contributor were in a husband and wife relationship. He met the contributor in late 1990 in his satellite business, he took him to Peru and he met his girlfriend (the Added Party). He had a previous wife, also from Peru, but they were separate since 1992, they had a separation agreement since that date, later they got divorced. His former wife and his

children lived in Edmonton and the contributor lived in X with his mother. In July 2002, she moved to X to start a common-law relationship with the contributor until the day he passed away on December 09, 2012.

[25] The Added Party also submitted an invoice for the contributor's funeral expenses.

## **SUBMISSIONS**

[26] The Appellant submitted that she qualifies for the SVR pension because she was the legal wife of the contributor at the time of his death on December 9, 2012. She was with the contributor at the time of his death and prior to that while he was sick. The Added Party was not the common-law spouse nor in a conjugal relationship with the contributor at the time of his death as she did not live with him for a continuous period of at least one (1) year nor was she in a conjugal relationship two (2) to three (3) years, or more, before his death.

[27] The Respondent submitted that the Appellant does not qualify for the SVR pension because:

- a) the Appellant is the separated spouse of the contributor, and was still married to him at the time of his death. The definition of survivor excludes the married separated spouse if someone else is found to be the common-law partner as described in subsection 42(1) of the CPP;
- b) on her SVP application, the Appellant states that she and the contributor decided to move to Peru to live together. The Appellant states that she was with the contributor in Peru when he was sick and that she looked after him and they made plans together for the future. The Appellant states that after the contributor passed away she returned to Edmonton;
- c) the Added Party applied for the SVR claiming to be the common-law partner of the deceased at the time of his death. The definition of common-law partner in the CPP requires that the cohabitation existed for at least one year immediately prior to the contributor's death; and
- d) the Appellant claimed that the contributor and the Added Party had not been living together continuously for at least one year immediately prior to the death of the contributor. However, when the SVR was awarded to the Added Party, sufficient evidence in support of the common-law period was provided.

## ANALYSIS

[28] In accordance with paragraph 44(1)(d) of the CPP, a survivor's pension shall be paid to the survivor of a deceased contributor. A "survivor" is defined in subsection 42(1) of the CPP as a person who was married to the contributor at the time of the contributor's death, if there is no common law partner, or a person who was the common-law partner of the contributor at the time of the contributor's death. The CPP defines a common-law partner in section 2 as a person, in relation to a contributor, who is cohabiting with the contributor in a conjugal relationship at the relevant time, having so cohabited with the contributor for a continuous period of at least one year.

[29] The relevant question in this case is whether the contributor and the person living with him at the time of death were in a common law relationship for at least one year prior to his death. If, at the time of the contributor's death, he did not have a common-law partner, then the person who was married to the contributor at the time of his death would qualify as his survivor.

[30] In *McLaughlin v. Canada (Attorney General)*, 2012 FC 556, the Federal Court stated that the factors that are indicative of a common-law relationship include the following:

- 1) shelter, including considerations of whether the parties lived under the same roof, slept together, and whether anyone else occupied or shared the available accommodation;
- 2) sexual and personal behaviour, including whether the parties have sexual relations, maintain an attitude of fidelity to each other, communicate on a personal level, eat together, assist each other with problems or during illness or buy each other gifts;
- 3) services, including the roles they played in preparation of meals, doing laundry, shopping, conducting household maintenance and other domestic services;
- 4) social, including whether they participated together or separately in neighbourhood and community activities and their relationship with respect to each other's family members;
- 5) societal, including the attitude and conduct of the community towards each of them as a couple;
- 6) support, including the financial arrangements between the parties for provision of necessities and acquisition and ownership of property; and



7) attitude and conduct concerning any children.

[31] The contributor passed away on December 9, 2012.

[32] Based on the evidence, although the Appellant and the contributor separated on August 15, 1992 as provided by the separation agreement dated August 15, 1992, they never divorced. There was a divorce decree on January 12, 2012, however, the evidence indicates that the divorce was nullified at a later date. On January 8, 2013, the Appellant obtained a copy of her marriage certificate from the Registry and it indicated that she was still the legal wife of the contributor. The marriage certificate was submitted as evidence and is dated January 8, 2013.

[33] Regarding the Added Party's relationship with the Appellant, the Tribunal finds that she was not in a common law relationship with the contributor for at least one year prior to his death. The Tribunal considered the fact that the contributor sold his share of the family home to the Added Party on or about September 6, 2012; on November 23, 2012, the named beneficiary under a Canada Life insurance policy held by the contributor was changed from the Added Party to his daughter. There is also evidence that the daughter made the deposit for the burial of the contributor (receipt of deposit from Cemetery in Peru dated December 20, 2012) and the ashes of the contributor were delivered to his daughter. This evidence does not demonstrate the contributor was in a common law relationship with the Added Party at the time of his death and for at least one year prior.

[34] The evidence further indicates that the contributor traveled to Peru on November 20, 2012 and that the Added Party did not accompany him.

[35] Although the Added Party submitted evidence that the income tax return for 2012 indicated her marital status as common law, that a letter dated November 5, 2012 from the province of British Columbia regarding the contributor's GST credit indicated that he was married or living common law and that his address seemed to be the same address as the Added Party, that copies of bank account statements indicated that she and the contributor had a joint bank account in October, November and December 2012, this evidence only confirms the statements made by several individuals that she was living with the contributor, however, this evidence does not demonstrate that she was living in a common-law relationship with the contributor for at least one year prior to his death.

[36] The Added Party did not submit evidence that she and the contributor had sexual relations, maintained an attitude of fidelity to each other, assisted each other with problems or during illness, conducted household maintenance and other domestic services, provided support, including the financial arrangements between them for provision of necessities and acquisition and ownership of property.

[37] On the contrary, there are several letters from individuals stating that the contributor told them he had ended his relationship with the Added Party some years earlier and that in the latest years, they were only roommates for convenience purposes. These letters support the evidence on file that the Added Party and the contributor were living under the same roof but not in a common law relationship. More precisely, the letter dated April 26, 2013 from a co-worker of the Added Party stating that the Added Party told her that she and the contributor had separated a few years prior, that they were still living together for financial reasons, that he was more of a father figure to her, that they had been separated for many years, that he had moved out and decided to move to Peru; the letter from a co-worker of the contributor dated April 27, 2013 stating that he knew the Added Party for over 12 years, the contributor told him that when he died he would like to leave everything to his children and he also stated that the Added Party and the contributor were separated for at least two (2) years; the letter from the brother of contributor on November 20, 2013 stating that the contributor and the Added Party were separated for many years, living in the same house, but in separate rooms. The Added Party considered him a "father". After he got sick in in 2005, she no longer considered him her partner. Instead he was now just a "roommate". She made it clear to many people in the community, including her colleagues at work. Later the contributor and the Added Party decided to make their split official. She bought his portion of the house from him and he transferred the house to her name, in September (3 months before his passing), he received his share of the home; a letter from a friend dated May 12, 2016 stating that he had met the contributor in October or November 2005, he was depressed and he told him that the Added Party did not want to stay with him and had moved with another man and that she had obtained what she wanted regarding his inheritance and house; and an undated letter from a business partner of the contributor stating that Added Party did a lot of travelling and that in 2008, she told him that she was with the contributor were separated and she was living with him for convenience purposes only; and another undated letter from a member of the community stating that she ran into the contributor

at the end of November 2012, he told her he was doing some last minute shopping to take to his trip to Peru. He mentioned that he was moving to Peru indefinitely, to retire and he planned to open up a business for himself. She asked him if the Added Party was going with him, and he responded that she was not, that even though she was Peruvian and he had meet her over there, she never traveled with him to Peru, but instead she preferred to travel by herself to places like Europe and visit male friends she had meet through the Internet, he had moved out and had decided to move to Peru by himself.

[38] Based on these letters and on the actions of the contributor from September to November 2012, namely where he sold his share of the family home to the Added Party on or about September 6, 2012, on November 23, 2012, the named beneficiary under a Canada Life insurance policy held by the contributor was changed from the Added Party to his daughter, in addition, he travelled to Peru alone and it was the Appellant who went to Peru to help the contributor when he was sick before his death, the Tribunal finds that the Added Party was not the common-law spouse of the contributor as provided by section 2 of the CPP.

[39] The Respondent submitted that when the SVR was awarded to the Added Party, sufficient evidence in support of the common-law period was provided. Further, the Respondent submitted that the Added Party submitted additional documents. The documentation included her personal statements as well as records from the Canada Revenue Agency for the contributor and for herself, records from the Royal Bank of Canada for the contributor and for herself, the separation agreement between the Appellant and the contributor, a translation of the divorce decree between the contributor and the Appellant, additional court documentation, two letters of support for the Added Party, copies of Blue Cross health care cards, a copy of the admission form for the contributor from the X Hospital. However, the Tribunal finds that this evidence only confirms the statements made by several individuals that the Added Party was living with the contributor, it does not demonstrate that she was living in a common-law relationship with the contributor for at least one year prior to his death. Regarding the divorce decree submitted by the Added Party, based on the evidence on file, the divorce appears to have been nullified at a later date.

[40] The Appellant claims that she was entitled to the survivor's pension under the CPP as she remained legally married to the contributor at the time of his death. There is no dispute that the Appellant was legally married to the contributor at the time of his death. Given that the CPP specifically provides that a person who was married to the contributor at the time of the contributor's death, if there is no common law partner, is the survivor of a contributor, and that a common-law partner is a person who was cohabiting with the contributor in a conjugal relationship at the relevant time for a continuous period of at least one year, the Tribunal finds that the Added Party was no longer in a common-law relationship with the contributor at the time of his death and that their relationship ended more than one year before the contributor past away.

[41] Therefore, pursuant to section 2, subsection 42(1) and paragraph 44(1)(d) of the CPP, the Tribunal determines that at the time of death of the contributor on December 9, 2012, the Appellant was the legal spouse of the contributor and is entitled to the SVR pension as the survivor of the contributor.

## **CONCLUSION**

[42] The appeal is allowed.

Antoinette Cardillo  
Member, General Division - Income Security