Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *G. S. v. Minister of Employment and Social Development*, 2017 SSTADIS 770

Tribunal File Number: AD-17-760

BETWEEN:

G. S.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: December 28, 2017

DECISION AND REASONS

DECISION

[1] The application requesting leave to appeal is refused.

OVERVIEW

[2] The Applicant, G. S., purports that she was involved in a common-law relationship with the deceased contributor D. W. between July 2007 and June 3, 2014, when he passed away. She applied for a Canada Pension Plan survivor's pension but the Respondent, the Minister of Employment and Social Development, denied her application. She appealed the Respondent's decision to the General Division.

[3] The General Division in turn concluded that the Applicant was ineligible for a survivor's pension, having determined that she had not been the common-law partner of the deceased contributor, as defined by subsection 2(1) of the *Canada Pension Plan*. The Applicant seeks leave to appeal the General Division's decision, on several grounds. I must decide whether the appeal has a reasonable chance of success on any of these grounds.

ISSUE

[4] Does the appeal have a reasonable chance of success on any of the grounds that the Applicant has raised?

GROUNDS OF APPEAL

[5] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) sets out the grounds of appeal as being limited to the following:

> (a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
>
> (b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or

(c) the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[6] Before granting leave to appeal, I need to be satisfied that the reasons for appeal fall within the enumerated grounds of appeal under subsection 58(1) of the DESDA and that the appeal has a reasonable chance of success. The Federal Court endorsed this approach in *Tracey.*[1]

ANALYSIS

Did the General Division fail to observe a principle of natural justice?

[7] Natural justice is concerned with ensuring that an applicant has a fair opportunity to present his or her case, and that the proceedings are fair and free of any bias.

[8] The Applicant argues that the General Division failed to observe a principle of natural justice because only one member was present to hear the appeal, despite describing itself as an "administrative tribunal." The Applicant argues that the root "tri" in the word "tribunal" suggests that she could have expected a three-member panel. Despite the Applicant's expectation, section 61 of the DESDA stipulates that every application to the Social Security Tribunal is to be heard before a single member. There are no provisions under the DESDA that permit a matter to be heard before a three- member panel. Even so, the fact that there was just a one-member panel does not result in a breach of the principles of natural justice, if the Applicant was afforded an opportunity to fairly and fully present her case and was not subjected to any bias.

[9] There is no indication that the General Division deprived the Applicant of any opportunity to fully present her case, but the Applicant alleges that the General Division was biased against her, because it assumed that she could not have been in a common-law relationship with Mr. D. W. given that she had not yet sought a divorce from her ex-spouse.

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[1] *Tracey v. Canada (Attorney General)*, 2015 FC 1300.

She claims that, consequently, the General Division had already predetermined the outcome of the appeal and thereby ignored her file, including the contents of a CD- ROM.

[10] In my review of this matter, I see that on January 29, 2016, the Social Security Tribunal returned a CD-ROM to the Applicant, “as they [were] not part of the contents required for an appeal.” There was no accompanying description of the content matter of the CD-ROM, but the Tribunal wrote that if the Applicant wished to rely on the CD- ROM for her appeal, it was “[her] responsibility to clearly explain their relevance.”

[11] The Applicant responded to this letter in January 2017, when she filed a hearing information form and notice of readiness (GD4-NOR-HIF). She explained that the CD-ROM contained a message that Mr. D. W. had left for the Applicant in which he expressed his profound feelings for her and indicated they could build “[their] world together.” He had a ring to give to her to “signify [their] friendship” and he expressed that he was looking for a special friend and hoped that she would be his lifelong partner.

[12] The Applicant provided several handwritten letters to the Tribunal in which she described the nature of her relationship with Mr. D. W. and what their future intentions were. She also explained that she had not included Mr. D. W. in her medical and drug plan because she did not intend on remaining with her employer much longer.

[13] She also provided supporting letters from friends and family, documentation relating to a business they operated together at X Arena Booth, correspondence from legal counsel that described the Applicant having been involved in a common-law relationship with Mr. D. W., and telephone bills that showed she and Mr. D. W. spoke with each other every day when they were apart.

[14] The Applicant explained in her correspondence that she was forced to remain in X, Ontario until she could sell her home there. For insurance reasons and because a mortgage remained outstanding on her X home, she had to continue working in nearby X X, Ontario. She planned on retiring in November 2014, after which she would sell the home, pursue a

divorce from her ex-spouse and move any remaining belongings to the X home she shared with Mr. D. W.

[15] Based on the Applicant's summary, there was nothing materially different on the CD-ROM from what was already before the General Division. It already had evidence of the gist of the content matter on the CD-ROM. The General Division considered many of these points, so obviously was aware of them.

[16] The Applicant argues that the General Division was biased because it based its decision solely on the fact that she remained married to her ex-spouse. This fact was relevant. However, the General Division considered several other factors in assessing whether the Applicant was eligible for a survivor's pension. Accordingly, there is no merit to the claim that the General Division based its decision solely on the fact that she remained married to her ex-spouse and hence, this undercuts her claim that the General Division was biased against her.

[17] I am not satisfied that the appeal has a reasonable chance of success on this ground**.**

Did the General Division err in law?

[18] The Applicant submits that the General Division erred in law, although she did not readily identify any such errors. Instead, she provided responses to the General Division's decision to explain why, for instance, she and Mr. D. W. did not jointly hold property,[2] why neither was named as a beneficiary in the other's will, and why she was described as a "long time special friend," rather than as a spouse or partner, in the obituary and memoriam notice.

[19] The Applicant also explained why she had provided conflicting dates in separate statutory declarations as to when she allegedly commenced a common-law relationship with Mr. D. W. She explained that, in the initial statutory declaration, she named July 1993 as

[2] The Applicant explains that she and Mr. D. W. held a joint chequing account for three or four years and also had access to a gas credit card, but both were closed when they were no longer required. She also added that Mr. D. W. held power of attorney of her account at a credit union in X, Ontario

the commencement date of their common-law relationship, because that is when her friendship with Mr. D. W. began.

[20] In another statutory declaration, she named July 1, 2007, as the date when she and Mr. D. W. began a common-law relationship. She began moving some of her possessions into the X, Ontario residence on this date. She states that she and Mr. D. W. envisioned this residence would become their future home and that they would maintain a home and operate a business together. She states that by the time Mr. D. W. passed away in June 2014, she had moved approximately 90 to 95% of her possessions from X to her X home.

[21] The Applicant explained that financial considerations forced her to work and remain in X X during the week, but that on weekends she would return to the home she shared with Mr. D. W. She expended her energy looking after their home and helping with the café business they had started in X. They shared the workload and made joint business decisions. Before Mr. D. W. passed away, she had already decided to retire in November 2014 from her X X job and to work at their business together. She indicates that she had been unable to leave X X/X before then because she had to ready her home in order to sell it and had to occupy the home to qualify for home insurance. And, in the meantime, she had to continue working in X X so that she could meet the mortgage payments on the X home.

[22] The Applicant explained that she never obtained a divorce from her ex-spouse because it was too expensive, but she had otherwise severed any ties with him since their separation in 1993. Otherwise, she and Mr. D. W. were committed to each other and their future relationship, and their families spent considerable time together and operated as a family unit. She had planned on pursuing a divorce from her ex-spouse after she sold her house in X, Ontario, which was relatively close to her work in X X.

[23] The Applicant argues that if she did not have to work in X X or if Mr. D. W. did not have to operate the café in X, they would have been able to reside together. Nevertheless, she considered X, Ontario their “main home and residence.” Indeed, she notes that she was on short-term disability for three or so months in 2014 and was able to spend

most of her time at the X home with Mr. D. W., other than when she had to leave for medical appointments.

[24] The Applicant submits that the General Division failed to appropriately consider all of the evidence before it. In particular, she claims that the General Division ignored why she was forced to remain in X X and why she had been unable to obtain a divorce from her ex-spouse. She explains that she was forced to live and work in X/X X until she was able to sell her house.

[25] All of this evidence was before the General Division. The General Division referred to most of it and accepted the fact that the Applicant and Mr. D. W. deeply loved and cared for each other, spent considerable time together and intended to live together after she retired.

[26] The General Division may not have set out all the details of the relationship between the Applicant and Mr. D. W., but as the Federal Court of Appeal stated in *Canada v. South Yukon Forest Corporation*,[3] it is unnecessary for a decision-maker to write exhaustive reasons addressing all the evidence and the facts before it. As Stratas J.A. remarked:

> […] trial judges are not trying to draft an encyclopedia memorializing every last morsel of factual minutiae, nor can they. They distill and synthesize masses of information, separating the wheat from the chaff and, in the end, expressing only the most important factual findings and justifications for them.

[27] It is clear that the General Division determined that while the relationship between the Applicant and Mr. D. W. had evolved and become closer over time, it had yet to coalesce into a common-law relationship. There was evidence to support the General Division's inferences and conclusion.

[3] *Canada v. South Yukon Forest Corporation*, 2012 FCA 165 at para. 50.

[28] Essentially, the Applicant disagrees with the General Division's assessment and interpretation of the evidence and is urging me to conduct my own assessment of her claim. Some measure of deference is owed to the General Division. As the primary trier of fact, it is best-positioned to assess and make findings on the evidence, as well as to determine whether, after considering the evidence on a cumulative basis, it could lead to a finding that the Applicant was in a common-law relationship with Mr. D. W. Furthermore, subsection 58(1) of the DESDA provides for only limited grounds of appeal. It does not allow for a reassessment or rehearing of the evidence: *Tracey*, *supra*.

Did the General Division base its decision on an erroneous finding of fact?

[29] The Applicant argues that the General Division erred when it wrote in its overview at paragraph 4 that she was ineligible for a "disability pension." I agree that the General Division erred in suggesting that it had assessed whether the Applicant was eligible for a disability pension, when she had not applied for one. However, this reference to a disability pension represents a typographical error and it is clear that the General Division had turned its mind to determining whether the Applicant was eligible for a survivor's pension.

[30] The General Division noted, for instance, that the Applicant had applied for a survivor's pension. It also referred to the provisions of the *Canada Pension Plan* that relate to eligibility for a survivor's pension. The General Division reviewed the nature of the relationship between the Applicant and Mr. D. W., as well as the evidence and submissions from each of the parties. The General Division also reviewed the relevant jurisprudence on the issue of a common-law relationship.

[31] There is no indication that the General Division reviewed or considered whether the Applicant could be considered disabled for the purposes of the *Canada Pension Plan*, or that it even based its decision on whether she was disabled. Hence, I am not satisfied that the appeal has a reasonable chance of success on this particular issue.

[32] The Applicant argues that the General Division erred when it wrote that she married in 1970, rather than in 1971. As nothing turns on this, for the purposes of

determining eligibility to a survivor's pension, I am not satisfied that the appeal has a reasonable chance of success on this issue.

CONCLUSION

[33] I am not satisfied that the appeal has a reasonable chance of success. The application requesting leave to appeal is therefore refused.

Janet Lew
Member, Appeal Division