



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Z. N. v. Minister of Employment and Social Development*, 2018 SST 914

Tribunal File Number: GP-17-1736

BETWEEN:

Z. N.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Pierre Vanderhout

Date of decision: August 31, 2018

DECISION

[1] The Claimant is not entitled to a Canada Pension Plan (“CPP”) survivor’s pension.

OVERVIEW

[2] The Minister received the Claimant’s application for a CPP survivor’s pension on November 17, 2015. The Minister denied the application initially and on reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

[3] The Claimant married G. C. (the “Contributor”) on X.¹ However, on January 20, 2015, Justice Trimble ordered that the Claimant and the Contributor be divorced, with the divorce taking effect 31 days after the date of the order (the “Divorce Order”).² February 20, 2015 appears to have been the 31st day after the Divorce Order. The Contributor died on February 20, 2015, thus creating a potential entitlement to a CPP survivor’s pension.³ Although he initially claimed to be divorced from the Contributor at the time of her death, the Claimant now argues that he is entitled to her CPP survivor’s pension because they were still married at the time of her death.

PRELIMINARY MATTER

[4] This matter proceeded by way of written questions and answers. Both the Claimant and the Minister were asked the same two questions with respect to the time of the Contributor’s death and the possibility of a common-law relationship at the time of her death. Answers were to have been received by Friday, August 24, 2018: the parties were advised that the Tribunal Member could potentially make a decision on the file without considering any answers received after this date. Late answers would only be considered at the Tribunal Member’s discretion.

[5] The Claimant’s answers (indexed as “GD6”) were received on August 9, 2018, prior to the response deadline. The Minister’s answers (indexed as “GD7”) were dated August 23, 2018, but were not received by the Tribunal until 8:54 a.m. on Monday, August 27, 2018. As such, the GD7 answers can only be considered at my discretion.

¹ GD6-7 to GD6-8

² GD1-7

³ GD6-5

[6] It is unclear why the Minister's response was dated Thursday, August 23, 2018, but not received by the Tribunal until early in the morning on the following Monday. However, in terms of business hours, the GD7 document was received only a few minutes late. I had not started preparing the decision in this matter before the GD7 document was received. The only new evidence in GD7 affirmed the Claimant's previous answers that the time of the Contributor's death was not known and that there was no evidence of a common-law relationship involving the Contributor at the time of her death. I also note that this appeal is largely one of "interpretation" and the key events took place more than three years ago. Finally, I am also mindful of my obligation to conduct proceedings as informally and quickly as the circumstances and the considerations of fairness and natural justice permit.⁴

[7] After considering these factors, I have elected to receive the GD7 document. I find the GD7 evidence to be highly relevant, as the answers were in response to the same two questions that were posed to the Claimant. I do not see any prejudice resulting from the extremely minor delay. Indeed, it was only the date-stamp on the documents that alerted me to their lateness. I also do not see any prejudice resulting from receiving the answers themselves, as the Claimant also had the opportunity to answer those questions. In fact, the answers in GD7 essentially mirrored the responses already received from the Claimant.

[8] I have also determined that it is not necessary to grant either party a further opportunity to reply to the GD6 and GD7 documents, as each party had already responded to the same questions and there was no significant difference in the substantive answers received.

ISSUES

[9] Did the Contributor have a common-law partner when she died?

[10] On what date, and at what time, did the Divorce Order take effect?

[11] At what time did the Contributor die on February 20, 2015?

[12] Based on the answers to these questions, is the Claimant entitled to a CPP Survivor's Pension in respect of the Contributor?

⁴ Paragraph 3(1)(a) of the *Social Security Tribunal Regulations*

ANALYSIS

[13] A CPP survivor's pension is payable to the survivor of a deceased contributor who had made base contributions to the CPP for not less than the minimum qualifying period.⁵ A "survivor" is a person who was the common-law partner of the contributor at the time of the contributor's death. The common-law partnership must have existed for a continuous period of at least one year at the time of the contributor's death. However, if there is no such common-law partner, a "survivor" is the person who was married to the contributor at the time of the contributor's death.⁶

[14] It is not disputed that the Contributor made the required contributions for not less than the minimum qualifying period. I must now determine whether the Contributor had a common-law partner when she died.

Did the Contributor have a common-law partner when she died?

[15] Neither the Claimant nor the Minister suggested that the Contributor was in a common-law relationship when she died.⁷ When the Claimant initially applied for the survivor's pension, he indicated that the Contributor's marital status was "divorced", as opposed to "married" or "surviving spouse or common-law partner". He further indicated that he was no longer married at the time of the Contributor's death. Also at that time, the witness to the Claimant's declaration indicated that she was in a common-law relationship with the Claimant.⁸

[16] Finally, both the Death Certificate and the Statement of Death indicate that the Contributor was "divorced" when she died.⁹ For the purposes of this appeal, these documents are not determinative of whether the Contributor was "divorced" when she died, as this is a complex issue that I must resolve myself based on all of the facts and law of this particular case. However, it is fair to say these documents support a finding that the Contributor was not in a common-law relationship when she died.

⁵ Paragraph 44(1)(d) of the *Canada Pension Plan*

⁶ Subsections 2(1) and 42(1) of the *Canada Pension Plan*.

⁷ GD6-2 and GD7-2

⁸ GD2-13, GD2-14, and GD2-17

⁹ GD6-6 and GD6-7

[17] Based on all of the above evidence, I find that the Claimant was not in a common-law relationship with the Contributor when she died. I also am not persuaded that the Contributor was in a common-law relationship with anybody else when she died. Accordingly, the Claimant would only be eligible for a CPP survivor's pension if he can establish that he was still married to the Contributor at the time of her death. The Claimant has given contradictory evidence on this issue, as he initially claimed to be divorced from the Contributor at the time of her death, only to later claim that he was still married to her at that time. To definitively answer this question, I must first determine at what exact date and time the Divorce Order took effect.

When did the Divorce Order take effect?

[18] The Divorce Order is of vital importance. It was clearly signed on January 20, 2015. It also clearly states that the Claimant and the Contributor are to be divorced, and that their divorce will "take effect 31 days after the date of this order". The Divorce Order does not explicitly mention at what time of day the divorce will take effect.¹⁰

[19] The first step is determining the 31st day after January 20, 2015. I have no difficulty finding that the first day after January 20, 2015 is January 21, 2015. As January has 31 days, a simple count of the days on the calendar reveals that February 20, 2015 is the 31st day after January 20, 2015. Although the Claimant asserted at one point that February 21, 2015 was the 31st day after January 20, 2015, I do not accept this interpretation.¹¹ In any case, the Claimant modified his position in later submissions, admitting that February 20, 2015 was the 31st day after January 20, 2015.¹² I find that February 20, 2015 is in fact the 31st day after January 20, 2015. As a result, I also find that the Divorce Order takes effect on February 20, 2015. This is consistent with the most recent submissions of the parties.

[20] However, the parties differ as to the time of day on February 20, 2015 that the Divorce Order took effect. The order did not specify a particular time of day at which it would take effect. The Claimant submits that it would take effect at 11:59 p.m.¹³ The Minister submits that it would

¹⁰ GD1-7

¹¹ GD2-22

¹² GD4-1 and GD6-2

¹³ GD4-1

take effect at 12:01 a.m.¹⁴ These times are actually approximations for the sake of clarity, as the intention is simply to identify the earliest and latest possible times of that day.

[21] If the Divorce Order is to “take effect” on a particular date, I do not see why it would take effect at the last possible moment on that date. Instead, if something takes effect on a date, it must take effect at the earliest possible moment on that date. This should not be any different, for example, from when a new month or year “takes effect”. One would not say that a new year takes effect at 11:59 p.m. on January 1, or that a new month takes effect at 11:59 p.m. on the first date of that month. Instead, a new year takes effect at the earliest possible moment on January 1. This would be even earlier than 12:01 a.m.: at the latest, it would be an infinitesimal and immeasurable fraction of a second after the exact stroke of midnight.

[22] My interpretation is wholly consistent with a 2006 decision of the Pension Appeals Board (the “*Riddell*” decision).¹⁵ Although Pension Appeals Board decisions are merely persuasive and are not binding on me, I find *Riddell* to be logically sound and based on similar considerations.

[23] In *Riddell*, the spouses obtained a divorce judgment that became effective on December 15, 2001. December 15, 2001 was the thirty-first day after the rendering of the divorce judgment. The husband died at 5:00 a.m. on December 15, 2001. The Pension Appeals Board noted that the *Divorce Act* has a 30-day appeal period built into it: when that period expires, the divorce is final.¹⁶ This would be after the end of the thirtieth day, which would coincide with the very beginning of the thirty-first day. The Board concluded that the *Riddell* divorce became final at the stroke of midnight marking the transition between December 14 and December 15, 2001, and the wife was a divorced person instantly thereafter. Even though her husband in *Riddell* died on December 15, 2001 (the thirty-first day after the divorce judgment), the wife was no longer married to him when he died at 5:00 a.m. that day.

[24] I also note that the Divorce Order in the present case contains many “preprinted” sections. One of these sections clearly sets out that 31 days is the default period for divorces to

¹⁴ GD5-2

¹⁵ *Minister of Social Development v. Riddell*, (2006) CP 22465

¹⁶ R.S.C., 1985, c. 3 (2nd Supp.)

take effect.¹⁷ This is again consistent with the 30-day appeal period under the *Divorce Act*, and suggests that the key moment is the expiry of the 30th day (rather than the expiry of the 31st day).

[25] I am not persuaded that the Divorce Order should take effect just before midnight (that is, just before the start of February 21, 2015) on February 20, 2015. I find instead that the Divorce Order in this case took effect at the earliest possible moment at the beginning of February 20, 2015. I must now determine, if possible, at what exact time the Contributor died.

At what time did the Contributor die on February 20, 2015?

[26] There is no evidence that pinpoints the exact time of the Contributor's death. Neither the Minister nor the Claimant could provide a specific time of death.¹⁸ In addition, neither the Statement of Death nor the Death Certificate provided the time of death.¹⁹ In the circumstances, I must find that the Contributor's time of death on February 20, 2015 is unknown.

[27] Based on my findings regarding the time of death and the effective time and date of the Divorce Order, I must now determine whether those findings create an entitlement for the Claimant to receive a CPP survivor's pension in respect of the Contributor.

Is the Claimant entitled to a CPP Survivor's Pension in respect of the Contributor?

[28] In order for the Claimant to be entitled to a survivor's pension, he would have to prove that the Contributor died before the Divorce Order took effect. However, I have found that the Divorce Order took effect at the earliest possible moment at the beginning of February 20, 2015. I also found that the Contributor's time of death on that date is unknown.

[29] The burden of proof in this matter is on the Claimant. He must prove his case on a balance of probabilities. In other words, it must be more likely than not that the Contributor died before the Divorce Order took effect. Given my findings, however, this would require the Contributor to have died on February 20, 2015 but before the earliest possible moment on February 20, 2015. This is logically impossible. Even if it could be established that the Contributor died one millionth of a second after the beginning of February 20, 2015, it could

¹⁷ GD1-7

¹⁸ GD6-1 and GD7-1

¹⁹ GD6-5 and GD6-6

then be argued that the Divorce Order took effect one billionth of a second after the beginning of February 20, 2015.

[30] The best the Claimant could do, theoretically, would be to prove that the Contributor died at the precise moment that the date changed from February 19, 2015 to February 20, 2015. This would require a degree of timing precision that simply does not exist in this case. In any case, there is no evidence to support this theoretical proposition. On balance of probabilities, I must conclude that the Contributor died on February 20, 2015, but after the precise moment that the date changed from February 19, 2015 to February 20, 2015.

[31] It follows that the Contributor's divorce from the Claimant took effect prior to the Contributor's death on February 20, 2015. When the Contributor died, she was already divorced from the Claimant. This means that the Claimant cannot establish an entitlement to a CPP survivor's pension in respect of the Contributor: he was not married to her, nor was he her common-law partner, at the time of her death.

CONCLUSION

[32] The appeal is dismissed.

Pierre Vanderhout
Member, General Division - Income Security