



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *K. N. v Minister of Employment and Social Development*, 2018 SST 1247

Tribunal File Number: GP-18-1213

BETWEEN:

K. N.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: David Somer

Claimant represented by: John Kranjc

Date of decision: November 28, 2018

DECISION

[1] The Claimant is entitled to a Canada Pension Plan (CPP) survivor's pension.

OVERVIEW

[2] The Claimant is appealing the Minister's decision to deny her a CPP survivor's pension. The Minister received the Claimant's application for a survivor's pension on July 25, 2016. The Minister denied the application determining that she was separated from the deceased contributor at the time of his death. The Claimant appealed the reconsideration decision to the Social Security Tribunal.

ISSUE

[3] Is the Claimant is entitled to the survivor's pension following the death of G. F.?

EVIDENCE

[4] The deceased contributor, G. F. passed away on March 11, 2016.

[5] The Claimant submitted an application for a CPP Survivor's Pension on July 29, 2016.

[6] The Claimant submitted a Statuary Declaration of Common-law Union¹ dated July 25, 2016 that indicated that she lived together continuously with the deceased contributor from July 3, 2009 to the present. In her application, the Claimant stated that she and the deceased contributor were still living together at the time of her common-law partner's death Other evidence submitted include a copy of an Ontario driver's license for the claimant at the address of X issued July 6, 2016; a copy of an Ontario Health card for the claimant; a copy of a T1 General 2015² for the deceased with the same address that indicated that his marital status on December 31, 2015 as living common-law; a copy of a T1 General for the Claimant with the same address that indicated that her marital status on December 31, 2015 as living common-law.

¹ GD-2-12

² GD-2-15-16

The deceased is indicated as the Claimant's spouse or common-law partner. A Social Insurance Number and a certified true copy of a jointly addressed electricity bill prepared on July 19, 2016 to G. F. and the Claimant was submitted. [7] The Claimant's legal representative, John V. Kranjc, provided a copy of a Form 1 of the Mental Health Act dated December 16, 2015 and signed by Dr. W Hancock, that states that G. F. has shown or is showing a lack of confidence to care for himself. His sister stated that the patient was running around inside and winter with no shoes and in his underwear. Dr. Hancock was of the opinion that G. F. is apparently suffering from a mental disorder of the nature or quality that will likely result in serious bodily harm to himself. Mr. Kranjc also provided a Form 3 dated December 24, 2015 and signed by Dr. M. Shatzag. The form stated that the patient is suffering from a mental disorder of a nature or quality that will likely result in serious bodily harm to another person and/or serious physical impairment to the patient unless he remains in the custody of a psychiatric facility. A Form 4 dated January 5, 2016 signed by Dr. A. Levinson stated that G. F. is an involuntary patient subject to a Certificate of Involuntary Admission.

[8] In the questionnaire dated January 10, 2018, the Claimant stated that she was living in the same residence with the deceased contributor, G. F. at the time of his death. The Claimant further stated that the deceased contributor's sister, M. S. took advantage of his mental state to have herself appointed executive for the estate.

[9] The executrix of the deceased contributor's estate, his sister, M. S. submitted evidence to prove that the common-law relationship between her brother and the Claimant had ended. In a certified true copy of the power of attorney document dated December 21, 2015, it is indicated that the deceased contributor appointed his sister, M. S. as his attorney. The power of attorney document revokes any prior power of attorney for property. A Continuing Power of Attorney for Property document dated March 9, 2016 was submitted by M. S.. A Statutory Declaration-Separation of Legal Spouses or Common law Partners³ dated March 9, 2016 stated that the claimant and her common-law husband were living separate and apart from December 10, 2015 to the present. This document was signed by the sister of the deceased contributor as having power of attorney. A certified true copy of a power of attorney document dated October 14, 2015

³ GD-2-17

was submitted which indicated that the deceased contributor had previously appointed his common-law spouse as his attorney. A copy of a property transfer document dated December 18, 2015 indicated that the deceased contributor transfer the property at address X to himself as a transferee in order to sever a joint tenancy. In addition, a copy of a letter from Hamilton Health Sciences dated March 7, 2016⁴ that show that the deceased contributor had presented at the ER at Juravinsky Hospital with injuries claimed to have been caused by his common-law partner. The letter also indicated that the deceased contributor had discussed his intent to change the power of attorney to his sister, M. S.. A certified true copy of a will⁵ dated December 21, 2015 for G. F. appointed M. S. as the executrix. The Claimant, K. N. was not referenced in the will. The executrix indicated that the address for G. F. was X and his marital status as separated.

SUBMISSIONS OF THE CLAIMANT

[10] The following submissions were submitted by the legal representative of the Claimant, John Kranjc:

- As of December 16,, 2015, the deceased was involuntary patient in the hospital and did not have the capacity to sever his joint tenancy with the Claimant, execute the new December 2015 Power of Attorney. or execute the new December 2015 will. The deceased was dying of stage IV colon cancer and had recently stopped chemotherapy.
- The deceased was taken by police and paramedics to hospital on December 10, 2015 and again on December 11, 2015 acting confused and aggressive and making statements that did not make sense.
- On December 16, 2015, Dr. Wendy Hancock examined the deceased and subsequently completed a Form 1 wherein she indicated that the deceased was showing a lack of confidence to care for himself. Dr. Hancock also stated that the deceased was suffering from mental disorder of a nature or quality that would likely result in serious bodily harm to himself.

⁴ GD-2-18-19

⁵ GD-2-123-127

- The deceased was suffering from mental illness when he severed his joint tenancy with the claimant, executed the December 2015 Power of Attorney and executed the December 2015 will all within five days of Dr. Hancock completing the form 1. At this time, the deceased was not competent to care for himself and did not have the capacity to make these decisions.
- The deceased instructor's solicitor, Norman Watson, to sever his joint tenancy with the Claimant, to draft the December 2015 Power of Attorney and to draft the December 2015 will by telephone from his hospital bed. According to the transcript of M. S. dated January 23, 2017, the deceased also communicated with Mr. Watson through handwritten, scribbled notes which were delivered to him by M. S.. In fact, Mr. Watson did not attend the hospital to witness the deceased execute the December 2015 power of attorney or the December 2015 will and never assess the deceased capacity in person. Therefore he was unaware of the deceased's mental state, including the fact that the Form 1 had been completed.
- The December 2015 Power of Attorney and the December 2015 will witnessed, not by lawyers, but by two of the deceased friends, M. M. and M. D. who as alleged by the claimant, were the deceased's drinking buddies and were not qualified to assess the deceased's capacity at the time of signing.
- M. S., and her capacity as the deceased's power of attorney, completed a statutory declaration. Given that the deceased did not have capacity to execute the December 2015 power of attorney, the statutory declaration is known void. M. S. is also in a clear conflict of interest, and she and her family are now primary beneficiaries of the deceased estate.
- The claimant and the deceased lived together for roughly 7 years and remained common-law partners until the deceased's death.
- After the second incident, the deceased remained hospitalized until his death. The sole reason that the deceased and the Claimant were not physically living together the time of his death was because he was required to remain in the hospital due to his mental and physical state. The deceased never moved out of the property prior to his death in

particular, there is no evidence to suggest that he ever resided at X as submitted by the Minister.

- The deceased's claim that he was assaulted by the Claimant is false, he made this claim in the same day that Dr. Hancock completed the Form 1. He was suffering from paranoid delusions at the time the statements were made. This was a medical finding of the psychiatrists.
- The Claimant vigorously challenges the validity of the December 2015 will and the December 2015 Power of Attorney. It is her position, and it is always been her position, that the deceased did not have the capacity to execute these documents in December 2015.

SUBMISSIONS OF THE MINISTER

[11] The following submissions were submitted by the Minister:

- G. F. submitted a CPP disability application form on December 2, 2014 which indicated that he lives common-law with K. N..
- The deceased contributor passed away on March 11, 2016.
- The Claimant's application for a CPP survivor's pension was received by the Minister on July 25, 2016. Her application indicated that her marital status at the time of death was common-law and that they had the same mailing address.
- The Minister also received information from the executrix of the late G. F. s estate. A statutory declaration was submitted that was completed by the deceased's power of attorney, M. S., which indicated that the deceased and his common-law partner began living separately as of December 10, 2015 to the current date in 2016.
- The claimant alleges in the survivor's pension application, in statutory declarations in the questionnaire dated January 10, 2018 that she and G. F. resided together in the same residence at the time of his death; however, these assertions are not supported as

the evidence on file indicated that G. F. was removed from the residence in X on December 10, 2015 and again on December 11, 2015.

- The Minister submits that G. F. had cleared it is all of a common-law relationship with K. N. prior to his death by transferring the common residence in X into his name alone. On December 21, 2015, and G. F. signed a duly witness power of attorney document that appointed his sister, M. S. as his new attorney which revoked the power of attorney document that had appointed the Claimant on October 14, 2015.
- The Minister acknowledges that her previous common-law relationship existed between K. N. and G. F., but that the deceased voluntarily ended the common-law relationship prior to his death. Consequently, K. N. is not eligible for the survivor's pension.

ANALYSIS

[12] The Claimant's representative has proven, on a balance of probabilities that the Claimant and G. F. remained in a common-law relationship until his death. I am of the view that the Minister failed to properly acknowledge whether or not the deceased contributor had the capacity to make decisions on his own behalf. There is sufficient evidence to doubt G. F.'s capacity to transfer the common residence into his name alone and to execute legal documents. I make this analysis based on records from the hospital which indicate that the deceased contributor was involuntarily admitted to the hospital on a Form 1 and remained in hospital until the day he died. This demonstrates to me that G. F. did not have the capacity to make decisions on behalf of himself and his common-law wife, K. N. prior to his death. I therefore place no weight on M. S.'s statutory declaration and accept the Claimant's evidence. This leads me to find that that deceased did not voluntarily end the common-law relationship. I acknowledge that they were not living under the same roof just before his death but they did not have to be living under the same roof to meet the definition as they both had the intention of continuing their common-law relationship.

[13] Therefore, I find that the Claimant, K. N., was in fact the common-law wife of the late G. F. at the time just before his death and at least the last seven years and is therefore entitled to

the survivor's benefit under the CPP.

CONCLUSION

[14] The appeal is allowed.

David Somer
Member, General Division - Income Security