



Citation: *C. D. v Minister of Employment and Social Development and A. M.*, 2019 SST 1447

Tribunal File Number: GP-19-843

BETWEEN:

C. D.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

and

A. M.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Raymond Raphael

Videoconference hearing on: November 1, 2019

Date of decision: November 14, 2019

DECISION

[1] A. M. was the common-law spouse of K. L. at the time of his death. She is entitled to the survivor's benefit.

OVERVIEW

[2] C. D. and K. L. were married in August 1991, and separated in November 2011.¹ They did not divorce. K. L. died in March 2016.² A. M. claims that she and K. L. lived together as common-law partners from March 2013 until his death.³ C. D. does not dispute that C. D. and K. L. lived together commencing in January 2014. However, she takes the position that this does not mean they had a conjugal common-law relationship.

[3] Both C. D. and A. M. applied for the *Canada Pension Plan* (CPP) survivor's benefit. The Minister allowed A. M.'s application and denied C. D.'s. The Minister denied C. D.'s request for reconsideration, and C. D. appealed to the Social Security Tribunal.

[4] C. D.'s position is that sharing an address should not be sufficient to establish a common-law relationship. A. M. has not provided sufficient evidence to support her claim that she and K. L. were common-law partners.⁴

[5] A. M.'s position is that although C. D. may not agree with how they decided to live together, she and K. L. were in a committed, conjugal, common-law relationship.⁵

[6] In November 2018, the General Division dismissed C. D.'s appeal. C. D. appealed to the Appeal Division. In May 2019, the Appeal Division allowed the appeal and referred this matter back to the General Division for reconsideration.

¹ GD2-124

² GD2-145 to 146

³ IS4-3 to 4

⁴ IS5-2

⁵ IS7-3

ISSUE

[7] I must decide whether A. M. and K. L. were common-law partners at the time of his death.

Preliminary Matter

[8] In order to avoid unnecessary duplication, I used the recording of oral evidence from the initial General Division hearing as part of the evidence at this hearing. Both C. D. and A. M. provided additional oral evidence.

ANALYSIS

[9] A. M. must establish that it is more likely than not, that she was cohabiting with K. L. as his common-law partner at the time of his death, and that they had so cohabited for a period of at least one year. If she fails to establish this, C. D. will be entitled to the survivor's pension.

Legal Principles

[10] Although living under the same roof is not determinative of a common-law relationship, it is a significant factor to be taken into account in assessing the overall relationship.⁶

[11] The Federal Court has stated that the factors that are indicative of a common-law relationship include the following⁷:

- 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 had sexual relations, maintained an attitude of fidelity to each other, communicates on a personal level, ate together, assisted each other with problems or during illness, or bought each other gifts;
- 3) Services, including the roles they played in preparation of meals, doing laundry, shopping, conducting household maintenance and other domestic services;

⁶ *E.S. v. MHRSD* (July 24, 2012), CP 25586 (PAB). This decision is not binding but I find it persuasive.

⁷ *McLaughlin v. Canada (Attorney General)*, 2012 FC 556

- 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 them for provision of necessities and acquisition and ownership of property; and
- 7) Attitude and conduct concerning any children.

[12] I now turn to each of the factors set out above:

Shelter

[13] I am satisfied that K. L. and A. M. lived together at A. M.'s house from January 2014 until his death in March 2016. The only other occupant of the house was A. M.'s son.

Sexual and personal behaviour

[14] I accept A. M.'s evidence that she and K. L. were sexually intimate and shared the same bedroom. A. M. stated that they were in a committed monogamous relationship.⁸

[15] In her July 2017 statement, C. D. and K. L.'s daughter stated that her father had a separate room where his belongings were kept, but she did not know if he and A. M. shared the same room.⁹ A. M. clarified that K. L.'s regular clothing was kept in their shared bedroom. He stored rarely used items such as business suits in a spare bedroom.¹⁰

[16] Although C. D. participated in K. L.'s treatment, A. M. also participated. A. M. discussed his addiction issues with C. D. and K. L.'s best friend. She drove K. L. to medical and counseling appointments, and to AA meetings.¹¹ The fact that C. D. played a significant role in

⁸ IS7-5

⁹ GD1-92

¹⁰ IS7-6

¹¹ IS7-6

K. L.'s treatment and rehabilitation does not mean that A. M. did not also participate and support him.¹²

[17] A. M. stated that she and K. L. exchanged gifts, and celebrated holidays and special occasions together. He purchased a ring and gold necklace for her, and she purchased a gold chain and pendant for him. They also purchased other gifts for each other.¹³

Services

[18] A. M. stated that she and K. L. shared household tasks including housecleaning, grocery shopping, yard maintenance, cooking, and other day-to-day chores.¹⁴ They both contributed to the day-to-day household costs such as purchasing groceries. A. M. paid items such as the mortgage, property tax, and house insurance since the house was in her name. K. L. contributed by giving her cheques.¹⁵ C. D. produced cheques and suggested that K. L. was paying rent. Only one cheque (May 1, 2015) noted rent¹⁶, and the March 5, 2015 cheque noted "all my love."¹⁷

Social

[19] A. M. stated that they vacationed together at K. L.'s Florida property at least twice a year, and travelled together to visit her family in Nova Scotia on two occasions. They participated in family and community activities. They spent time with K. L.'s best friend and his family. They had dinner with his sister. They visited his mother and stepfather, who visited K. L.'s and A. M.'s home. C. D. referred to K. L. having gone alone to Florida in March 2015; however, A. M. stated that this was to help him recover after he had suffered a seizure. She was not able to go with him because of work commitments.

¹² In addition to addiction issues, K. L. had other health issues including a seizure disorder and musculoskeletal issues.

¹³ IS7-5

¹⁴ IS7-5

¹⁵ GD2-27 to 44

¹⁶ GD2-39

¹⁷ GD2-37

Societal

[20] A. M. stated that they did not refer to each other as “husband and wife” when they were with K. L.’s children or C. D. out of consideration for their feelings.¹⁸ At other times, they referred to each other as “husband and wife.”

[21] They did not file taxes as spouses. They decided that they would not do this until C. D.’s dependence on him ended, and the children were no longer living with her.¹⁹

Support and financial arrangements

[22] There was no joint property or lease. There were no joint credit cards. There were no joint bank accounts. They were not named on each other’s employment benefits. They were not named as beneficiaries under each other’s wills.

[23] In January 2016, K. L. recorded C. D. as his spouse on his employment forms. C. D. was the beneficiary of his life insurance, and their children were beneficiaries of his accidental death and dismemberment insurance. He designated A. M. and his mother as contacts in the case of an emergency.²⁰ C. D. continued to be the beneficiary and executor under his will.²¹ C. D. and K. L. drew \$10,000 on a joint line of credit to cover his living expenses and legal fees.²² C. D. made the funeral arrangements. She wrote his obituary and referred to A. M. as his partner.²³

Attitude and conduct concerning children

[24] Neither A. M. nor K. L. developed a strong relationship with each other’s children. My impression was that this was because the children were older, and were not accepting of the relationship. There was friction between K. L. and A. M.’s son, who lived with them.

[25] A. M. stated that she and K. L. discussed his financial arrangements. She was aware of, and accepted, that he continued to be financially linked with C. D.. She also knew that C. D. was

¹⁸ IS7-6

¹⁹ IS7-7

²⁰ GD2-62 to 65

²¹ GD2-67 to 72

²² GD2-57

²³ GD2-19

the beneficiary under his will. She had no problem with that at the time, because she felt that K. L. was obligated to support his children. He told her that C. D. was not happy about his changing his will, and A. M. did not feel that this was an “issue” at that time.

[26] A. M. was aware that he had not named her as common-law spouse on his employment forms, but how he named her on a form was not important to her. She had her own benefits, and she was not “offended” by what he called their relationship on his employment form.

My findings

[27] The extent to which the different factors of a common-law relationship should be taken into account varies with the circumstances of each case.²⁴ I must keep in mind the endlessly variable nature of marriage in our society and assess the specific circumstances, to determine if A. M. and K. L. had a marriage like relationship.²⁵ It is not appropriate for me to evaluate the quality of their relationship.²⁶

[28] C. D. relies on the closeness of her financial relationship to K. L.. She also stresses that she played a significant role in K. L.’s addiction treatment. These are important considerations; however, the continued attachment between C. D. and K. L. does not negate the common-law relationship between A. M. and K. L..

[29] K. L. and C. D. had been married for many years. They continued to own a house, and shared two lines of credit. K. L. continued to have financial obligations for their children. A. M. respected these obligations. C. D. continued to care about K. L., and played a significant role in assisting him deal with his addiction and other medical issues. A. M. also played a significant role. It is not appropriate for me to attempt to weigh the respective value of the roles played by each of them, or to judge the manner in which each of them dealt with K. L.’s issues.

[30] K. L. and A. M.’s common-law relationship began in January 2014, when he moved into her house. They shared a bedroom and intimacy. They shared expenses, vacationed together, and socialized as a couple. They were planning eventually to sell A. M.’s house and purchase a new

²⁴ *Molodowich v Penttinen*, 1980 CanLII 1537 (Ontario District Court, paragraph 16)

²⁵ *A.L v D.P and MHRSD* (November 16, 2011), CP 27238 (PAB).

²⁶ *McLaughlin*, above

home together. In January 2016, they obtained a comparative market analysis and marketing plan for the sale of A. M.'s house. This was addressed to K. L. and A. M..²⁷ Despite challenges due to K. L.'s addiction and health issues, they continued to cohabit and share a committed relationship for more than two years. A. M. dealt with these challenges "in her own way", stood by him, and participated in his care.

[31] I am satisfied that it is more likely than not that A. M. and K. L. started to cohabit in a common-law relationship by January 2014, and that they continued to do so until K. L. died in March 2016.

CONCLUSION

[32] A. M. is entitled to the survivor's benefits.

[33] The appeal is dismissed.

Raymond Raphael
Member, General Division - Income Security

²⁷ IS7-9 to 18