



Citation: *TF v Minister of Employment and Social Development and DP*, 2020 SST 740

Tribunal File Number: GP-18-1368

BETWEEN:

T. F.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

and

D. P.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Income Security Section

Decision by: George Tsakalis

Claimant represented by Richard Pengelly

Added Party represented by: Tara Vasdani

Hearing Dates: September 5 and 20, November 8, 2019 and February 13,
2020

Decision Date: July 24, 2020

DECISION

[1] T. F. is the Claimant in this case. She married S. F. (the deceased) in 1993 and separated from him in 2006.¹ They never divorced. The deceased died in a motorcycle accident on May 16, 2017.

[2] D. P. is the Added Party. She claimed to be the deceased's common law spouse at the time of his death.

[3] The Claimant applied for a Canada Pension Plan (CPP) survivor's pension in September 2017. However, the Minister denied her application initially and on reconsideration. The Minister denied her application because it had already decided to award the survivor's pension to the Added Party.

[4] The Claimant appealed the Minister's decision to the Social Security Tribunal of Canada (the Tribunal).

[5] I am allowing the Claimant's appeal.

[6] These reasons explain why she is entitled to the survivor's pension.

PRELIMINARY MATTERS

I do not have the authority to deal with the Claimant's death benefit application.

[7] My jurisdiction is limited to the powers granted by the Tribunal's enabling legislation.²

[8] The Minister received the Claimant's death benefit application on September 21, 2017. The Minister denied the application because it had already paid the death benefit to the Added Party.

¹ See GD12-102

² See *R. v. Conway*, 2010 SCC 22, *Canada (Minister of Social Development) v. Kendall* (June 7, 2004), CP 21960 (PAB) and *S.S. v. Minister of Employment and Social Development*, 2018 SST 705

[9] My jurisdiction to consider an appeal comes from a reconsideration decision. In this case, the Claimant did not request reconsideration. So the Minister did not make a reconsideration decision. I therefore cannot deal with this issue.

OVERVIEW

[10] The Claimant argued that the Added Party was not the common law partner of the deceased at the time of his death because:

- The deceased kept his personal property at his mother's house.³
- The Claimant provided financial support to the deceased.⁴
- The Added Party did not provide financial support to the deceased.⁵
- The deceased had affairs during the course of his relationship with the Added Party, and was in a relationship with another woman at the time of his death.⁶

[11] The Added Party argued that she was entitled to the survivor's pension because she was the deceased's common law partner at the time of his death and had cohabited with him in a conjugal relationship for at least one year. The Added Party submitted that she met the legal criteria for a common law relationship under the CPP because:

- She lived with the deceased.⁷
- She had a sexual relationship with the deceased.⁸
- She and the deceased provided services to one another in terms of preparing meals, doing laundry, shopping, conducting household maintenance and other domestic services.⁹

³ See GD1-4

⁴ See GD1-4

⁵ See GD1-6

⁶ See GD12-3

⁷ See GD42-7

⁸ See GD42-7

⁹ See GD42-3 and 7

- She and the deceased had a social relationship. They participated in neighbourhood and community activities.¹⁰
- She and the deceased were treated as a couple in their community.¹¹
- She and the deceased financially supported each other.¹²

[12] The Minister was satisfied that the Added Party was the deceased's survivor under the CPP.¹³

ISSUE

[13] I must decide whether the Added Party and the deceased were common-law partners at the time of the deceased's death and, if so, whether they had so cohabited for a continuous period of at least one year.

ANALYSIS

The test for a survivor's pension

[14] The Added Party must establish that it is more likely than not that she was cohabiting with the deceased as his common-law partner at the time of his death, and they had so cohabited for a continuous period of at least one year. If she fails to establish this, the Claimant will be entitled to the survivor's pension because she is the legally married spouse of the deceased.¹⁴

[15] The generally accepted characteristics of a conjugal relationship include shared shelter, sexual and personal behavior, services, social activities, economic support and children, as well as the societal perception of the couple. These elements may be present in varying degrees and not all are necessary for the relationship to be conjugal.¹⁵

¹⁰ See GD42-7

¹¹ See GD42-4

¹² See GD42-8

¹³ See GD3, GD7, and GD15

¹⁴ See subsections 2(1), 42(1), and paragraph 44(1)(d) *Canada Pension Plan and Betts v. Shannon*, (September 17, 2001) CP 11654 (PAB)

¹⁵ See *M. v. H.*, 1999 CanLII 686 (SCC) and *McLaughlin v. Canada (Attorney General)*, 2012 FC 556

[16] Common-law relationships differ from legal marriages. There is often no specific evidence to show when common-law partners make a commitment to each other, such as a marriage certificate. Parties in a common-law relationship have to show, by their acts and conduct, a **mutual** intention to live together in a marriage-like relationship of some permanence.¹⁶

[17] For the reasons that follow, I find that the evidence did not establish that the deceased and Added Party lived in such a relationship continuously for at least one year.

Comments regarding evidentiary findings

[18] The law does not require me to refer to each submitted document. I am not required to refer to all the hearing evidence or answer every submission. The law requires me to identify the path that I made in reaching my decision.¹⁷

[19] Both parties called witnesses at the hearing. Some of these witnesses gave evidence that was not helpful in my decision. I will only refer to witness evidence that I feel was relevant to making my decision. The same goes for the documentary evidence.

The Added Party is not entitled to the survivor's pension

[20] I find that the deceased and the Added Party did not become common-law partners until October 2016, which was only about seven months before the deceased's death. The Added Party is not entitled to the survivor's pension because she failed to prove that she cohabited continuously with the deceased in a conjugal relationship for a continuous period of at least one year before his death in May 2017.

[21] I recognize that the Added Party may have had a sincere belief that she lived in a common-law relationship with the deceased since May 2014. But the evidence showed that the deceased did not view the relationship in the same way. Mutual intention to live together in a marriage-like relationship of some permanence is critical to a finding of a common-law

¹⁶ See *Hodge v. Canada (MHRD)*, 2004 SCC 65 and *MSD v. Pratt*, (January 31, 2006) CP 22323 (PAB)

¹⁷ See *Connolly v. Canada (Attorney General)*, 2014 FCA 294

relationship. A common-law relationship cannot exist without the mutual intention of both parties.¹⁸

[22] I will now turn my attention to the factors show a common relationship as discussed by the Federal Court in *McLaughlin*. For the purposes of clarity, I will subdivide my findings into three periods:

- a) May 2014 to February 2016. This period includes the time the Added Party alleges the common-law relationship began to the time they both moved to Florida.
- b) February 2016 to October 2016. This period includes the time the Added Party and deceased lived in Florida to the time of their engagement.
- c) October 2016 to May 2017. This period includes the time of the engagement to the time of the deceased's death.

MAY 2014 to FEBRUARY 2016

Shelter

[23] I find that the Added Party and deceased did not begin living together until they began leasing a home in Florida in February 2016.¹⁹

[24] The Added Party testified that she had lived with the deceased since May 1, 2014. She completed a statutory declaration to this effect.²⁰ She filed tax returns beginning in 2014 stating that she was in a common-law relationship.²¹ Her 2016 American tax return described her as married.²²

[25] The Added Party's brother gave evidence that the deceased lived with the Added Party in Ontario and his possessions were at the Added Party's house. The Added Party's sister provided a statement that the deceased and Added Party began living together in April 2014.²³ This

¹⁸ *MSD v. Pratt*, (January 31, 2006) CP 22323 (PAB)

¹⁹ See GD2-160

²⁰ See GD2-136

²¹ See GD2-139, 150

²² See GD6-160

²³ See GD25-155

evidence was not persuasive because her brother and sister did not specify the amount of time they spent with the Added Party and the deceased. V.M., a friend of the Added Party, testified that the deceased and Added Party had lived together since 2014. V.M. testified that she saw the Added Party and deceased once a week. However, the documentary evidence, including texts from the deceased, did not support a finding that the deceased and Added Party lived together during this time period.

[26] The Claimant testified that the deceased did not have a settled home for years prior to his death. The Claimant lived with a friend, C. S., until 2013. He then returned to live with the Claimant and their children. The deceased's stepfather passed away in 2014 and his mother did not want to live alone. The deceased completed renovations and moved in with his mother in the fall of 2014. The deceased stayed at different places, including living with friends and the Added Party. He did not have an established residence. The deceased's mother gave evidence that the deceased lived with her and kept his personal belongings at her residence during this period.

[27] The deceased spent time with the Added Party at her home in Canada before February 2016. But I do not accept that they began living together on May 1, 2014. In 2014 and 2015, the deceased sent several texts to the Claimant. He reported that he was sleeping in a truck or living with his mother.²⁴ The deceased's psychotherapist reported that the deceased lived part-time with his mother and the Claimant in September 2015.²⁵ In addition, his income tax returns for 2014-2016 record that he was divorced. The deceased provided the Claimant's address, and not the Added Party's address, as his mailing address on the tax returns.²⁶

Sexual and personal behaviour

[28] The deceased's comments to his psychotherapist do not suggest a sexual relationship before February 2016.

[29] In February 2016, the deceased told his psychotherapist that the Added Party had been offered a job in the United States. The Added Party wanted to take their friendship to an intimate

²⁴ See GD12-363, 372, 381, 435, 512, 819 and 856

²⁵ See GD1-228

²⁶ See GD1-40, 45, and 66

level. He, on the other hand, wanted the Added Party as a friend.²⁷ The Added Party testified that they had a sexual relationship. However, I find the psychotherapist's evidence more compelling. The psychotherapist is not a party to the action or a family member of the deceased. She was a health professional who the deceased confided in.

[30] Even if I were to accept the Added Party's evidence that they had a sexual relationship before February 2016, I do not see evidence that the deceased intended to live together with the Added Party in a marriage-like relationship of some permanence during this period.

[31] There is no evidence that the Added Party had any other sexual relationships during the time she allegedly cohabited with the deceased. The deceased, however, had relationships with other women from May 2014 to February 2016. There is a text message where the deceased mentioned relationships with two other women in June 2014.²⁸

[32] The evidence does not show that the deceased developed significant intimate and emotional ties with the Added Party during this time frame. On September 7, 2014, the deceased stated that the Added Party wanted a more intimate relationship with him. But he just liked the Added Party as a friend.²⁹

Services

[33] The Added Party testified that she and the deceased shared household responsibilities. The deceased liked to do the cooking. She did the cleaning. She did his laundry.

[34] V. M. gave evidence that the deceased and Added Party shared household responsibilities while they lived in Georgetown. I accept that the deceased met the Added Party in 2014, but the evidence does not support a finding that he began living with her in May 2014. It would make sense that the deceased would provide some household services for the Added Party when he stayed with her in Canada. The Added Party produced an e-mail that the deceased made her dinner in August 2014.³⁰ However, as I have indicated above, the evidence does not support a

²⁷ See GD1-229

²⁸ See GD12-415

²⁹ See GD12-519

³⁰ See GD36-28

finding that the deceased made a commitment to the Added Party to live in a marriage-like relationship during this period.

Social

[35] The Added Party testified that she and the deceased participated in neighbourhood and community activities. They attended block parties. Their friends and family visited them in Georgetown. The Added Party and her brother testified that the deceased had a close relationship with their family. V. M. testified that the deceased and the Added Party attended her 50th birthday celebration. The deceased assisted the Added Party's mother after she had a car accident.³¹

[36] The Added Party produced an e-mail showing that she met the deceased in February 2014.³² She went to Las Vegas with the deceased in January 2015.³³ They went on a boat excursion together in July 2015.³⁴

[37] I do not doubt that the deceased and Added Party had a relationship of some kind from 2014 to February 2016, when the Added Party lived in Georgetown. What I do not see is the deceased, by his actions or conduct, showing that he intended to live together in a marriage-like relationship of some permanence with the Added Party during this time period

Societal

[38] The Added Party testified that their friends in Canada saw her and the deceased as a common-law couple.

[39] The Added Party produced statements from family, friends, neighbours, professional acquaintances³⁵, and a Canadian physician³⁶ that she and the deceased were in a common-law relationship since 2014. The difficulty with these statements is that many of them are quite vague and just contain blanket assertions of a common-law relationship. I cannot just rely on the Added

³¹ See GD36-39

³² See GD36-16

³³ See GD36-33

³⁴ See GD36-38

³⁵ See GD6-147, 174, 178, GD25-153, 159 and 160

³⁶ See GD6-153

Party's view of the relationship or that of the Claimant's or that of witnesses and those who provided statements. I also have to review the evidence to see if the deceased showed an intention to live together in a marriage-like relationship of some permanence with the Added Party. After reviewing the evidence, the deceased by his actions and conduct did not display such an intention during this period.

Support

[40] The Added Party is a golf professional. The deceased had significant financial problems after retiring as a police officer in 2013.

[41] The Added Party testified that the deceased contributed to the household and paid for various home renovations. But the deceased also paid for renovations at his mother's home.³⁷ I did not see documentary evidence to support that the Added Party and deceased provided financial support to each other from May 2014 to February 2016.

[42] The Added Party was not a beneficiary under any of the deceased's insurance policies. After the deceased passed away, the Added Party found a separation agreement between the deceased and the Claimant.³⁸ It obliged the deceased to designate his children as beneficiaries under his insurance policy. The Added Party produced documentation that she designated the deceased as a beneficiary under a life insurance policy that she had with Great West Life.³⁹

[43] The Claimant and the deceased signed a separation agreement in July 2015.⁴⁰ The Claimant was supposed to assume responsibility for an existing mortgage. The deceased was supposed to be responsible for a credit card debt and car loan.⁴¹ The Claimant testified that she eventually assumed this debt as well. The deceased also had a life insurance policy with Trans American Life Canada. The deceased was to designate the Claimant as the beneficiary under this

³⁷ See GD12-372 and 381

³⁸ *The Added Party argued in her bias application that the Claimant was not entitled to the survivor's pension under the separation agreement. This argument is wrong in law. Under the CPP, the Claimant is entitled to the survivor's pension as the legally married spouse of the deceased if the Added Party fails to prove on a balance of probabilities that she was the deceased's common-law partner as defined in the CPP. The Added Party's legal representative acknowledged that the Claimant was the deceased's legally married spouse (Recording of Hearing Part I 6:55 to 7:02).*

³⁹ See GD6-75-76

⁴⁰ See GD12-125

⁴¹ See GD12-119

policy.⁴² However, the deceased did not maintain this policy and it was not in force at the time of his death. The deceased had another life insurance policy through a police association. The Claimant was the beneficiary under that policy.⁴³

[44] The Claimant testified that she and not the Added Party supported the deceased financially during this period. She provided evidence of this in the form of documents including:

- A copy of a June 19, 2015 cheque signed by the Claimant in relation to a payment on the deceased's truck.⁴⁴
- Cheques she wrote in 2015 and 2016 paying the Claimant's life insurance premiums.⁴⁵

[45] I do not see how the Added Party provided significant financial support to the deceased because there are numerous texts showing that he lived in a truck for periods of time in 2014 and 2015.

Attitude and conduct concerning children

[46] The deceased's children lived with the Claimant. The Added Party produced documents that showed that she knew the deceased's children and spent time with them.⁴⁶ But I do not believe that the Added Party and deceased shared much in terms of the deceased's children during this time period.

B. FEBRUARY 2016 to OCTOBER 2016

Shelter

[47] The Added Party and deceased signed a lease for a home in Florida in February 2016.⁴⁷ I accept that this is when the deceased began spending most of his time with the Added Party.

⁴² See GD12-116

⁴³ See GD1-29

⁴⁴ See GD1-129

⁴⁵ See GD1-134-135

⁴⁶ See GD36-27

⁴⁷ See GD2-160-166

[48] However, the evidence fails to show that the deceased intended to live together in a marriage-like relationship of some permanence with the Added Party from February 2016 to October 2016. He spent quite a bit of time in Canada during this period. He was at his mother's house in March 2016.⁴⁸ He was in Canada in April and May 2016.⁴⁹ His psychotherapist's notes showed that he had a relationship with another woman in Canada in June 2016.⁵⁰ The psychotherapist also noted that the deceased was staying with a friend in Florida in July 2016, who did not appear to be the Added Party.⁵¹ He also wanted to return to Canada in August 2016, but could not do so because he did not have enough money in his bank account.⁵²

[49] On March 3, 2016, the deceased thanked the Added Party for housing and feeding him for two years.⁵³ However, I do not take this to mean that the deceased had lived with the Added Party continuously for two years up to March 2016. Instead, I believe that the deceased lived with the Added Party during difficult periods in his life when he needed a place to stay. In October 2015, his psychotherapist mentioned the deceased taking leave at the Added Party's residence when he felt himself starting to crash.⁵⁴

Sexual and personal behaviour

[50] The Added Party produced texts that showed a sexual relationship during this time period.⁵⁵

[51] However, I did not see evidence that the deceased intended to live together in a marriage like relationship of some permanence during this period.

[52] The Added Party produced texts from the deceased where he stated that he loved the Added Party during this time period.⁵⁶ However, the deceased's psychotherapist records describe the Added Party as a friend in March 2016. The psychotherapist records also referred to the

⁴⁸ See GD1-229

⁴⁹ See GD1-247, 250, 251

⁵⁰ See GD1-229

⁵¹ See GD1-229

⁵² See GD1-253

⁵³ See GD36-216

⁵⁴ See GD1-170

⁵⁵ See for example GD27-22, GD36-61, 67, and 153

⁵⁶ See GD36-173 and 186

deceased having a relationship with another woman who was not the Added Party in June 2016.⁵⁷

Services

[53] The documentary evidence contains a text from the deceased in March 2016 where he performed yardwork at the Added Party's residence.⁵⁸

Social

[54] C. P., a friend of the deceased's in Florida, testified that the deceased and Added Party participated in a pool league and attended social events together.

[55] However, when I review the evidence for this time period, I do not see the deceased showing that he intended to live together in a marriage-like relationship of some permanence with the Added Party.

Societal

[56] The Added Party produced statements from friends and professional acquaintances in Florida that she and the deceased were a common-law couple.⁵⁹

[57] The Added Party's legal representative urged me to look at the evidence of C. P. The deceased met C. P. in Florida. They decided to open a business together. The Added Party's legal representative submitted that C. P.'s evidence supported a finding that the deceased and the Added Party were in a common-law relationship. I agree that C. P.'s evidence supported a finding that the Added Party and the deceased were in a common-law relationship at the time of his death.

[58] But C. P.'s evidence did not support a finding that the deceased and the Added Party had cohabited in a conjugal relationship similar to that of a married couple for a continuous period of at least one year. C. P. testified that he met the deceased in the spring of 2016. The deceased introduced the Added Party as his girlfriend at that time.

⁵⁷ See GD1-229

⁵⁸ See GD36-224

⁵⁹ See GD6-170, 172, 176, 180, 185; GD25-154, and 156

[59] In the fall of 2016, the deceased told C. P. that he planned to get engaged. This evidence supports a finding that a common-law relationship began in October 2016. C.P. testified that the Added Party and the deceased lived together as a boyfriend and girlfriend and then as an engaged couple. The Added Party and the deceased were always together at social events and had a loving relationship.

[60] C. P signed a statement that he was aware that the deceased and the Added Party had been in a common-law relationship since May 2014.⁶⁰ But he did not state how he was aware of this. I give C. P's statement that the deceased and Added Party started a common-law relationship in May 2014 little weight because he did not meet the deceased and Added Party until 2016.

[61] I found C. P's evidence to be similar to that of everybody who gave evidence at the hearing. It was not particularly helpful in sorting out the nature of the relationship between the deceased and the Added Party. You have one set of witnesses saying that they were common-law partners and another set of witnesses stating that they were not common-law. However, when I look at the documents and the deceased's e-mails and texts, I do not see a common-law relationship that had lasted continuously for at least 12 months at any time before the deceased's death. I placed significant weight on the documents filed in this case to help me resolve the conflicting statements and hearing evidence.

[62] There are many contradictions in the documents. A Florida landlord referred to the deceased as the Added Party's husband in March 2016.⁶¹ The Added Party referred to the deceased as her boyfriend in a March 2016 e-mail.⁶² How people describe themselves in their relationship is not binding upon me. Somebody can refer to a spouse as their boyfriend. But what makes this case difficult is that you have two sides that have a very different view of the nature of the relationship between the Added Party and the deceased. The Claimant and the deceased's family did not consider the Added Party and the deceased to be common-law partners. This fact is not binding upon me, but it is significant.

⁶⁰ See GD6-149

⁶¹ See GD36-216

⁶² See GD36-220

[63] Other people in the deceased's life also did not consider the Added Party and the deceased as a common-law couple. The deceased's family doctor provided a letter where he stated that he last saw the deceased on September 13, 2016. The deceased did not tell his family doctor anything about a long-standing or common-law relationship in that visit.⁶³ The deceased's bankruptcy trustee provided a statement that the deceased did not tell him about a relationship with the Added Party when he saw him in September 2016. The deceased told his bankruptcy trustee that he bought a home in Florida with a friend and planned to start a business. The bankruptcy trustee's records listed the deceased's marital status as separated.⁶⁴

[64] The conflicting evidence in this case does not support a finding that the deceased intended to live together in a marriage-like relationship of some permanence with the Added Party during this time period.

Support

[65] The Added Party submitted documents in support of her argument that she and the deceased mutually supported each other during this time period. These documents included a May 20, 2016 text from the deceased where he asked the Added Party to place money into his bank account.⁶⁵

[66] However, I found no real evidence of any mutual financial support between the Added Party and deceased during this period.

[67] The Claimant provided a report from a forensic handwriting expert that the Added Party forged the deceased's signature on two documents.⁶⁶ One of the allegedly forged documents was a letter written by the deceased where he referenced a \$50,000.00 loan from the Added Party. It is difficult for me to evaluate this expert's evidence. The expert was not produced as a witness. I will assume for the purposes of my analysis that these documents are true.

[68] The allegedly forged documents showed that the Added Party loaned the deceased \$50,000.00 in September 2015. The deceased had to pay back the Added Party by February

⁶³ See GD1-232

⁶⁴ See GD1-240

⁶⁵ See GD36-178

⁶⁶ See GD12-140-155

2017.⁶⁷ The letter that was allegedly forged was a “to whom it may concern” letter signed by the deceased. This letter says that on September 14, 2016, he transferred \$50,457.99 in US funds to the Added Party at a Florida bank. He said that he did this because the Added Party loaned him \$50,000. The Added Party was purchasing a home and she had asked the deceased to pay back \$25,000.00 of that loan. He had also purchased a new motorcycle in Florida and he needed a bank draft taken to the dealership. The deceased was out of town on business, so he transferred additional funds to the Added Party so that a bank draft could be issued and dropped off by her.⁶⁸

[69] A letter from one of the Added Party’s lawyers confirmed the Added Party’s \$50,000.00 loan to the deceased in September 2015. The deceased paid a portion of this loan, but the Added Party loaned the deceased another \$25,000.00 to fund the purchase of the motorcycle. As security for the loan, the deceased signed over a certificate of title for the motorcycle to the Added Party in the event of non-payment.⁶⁹ The certificate of title for the motorcycle had an October 13, 2016 issuance date.⁷⁰ This type of transaction involving the deceased posting security for a loan from the Added Party is more indicative of a debtor-creditor, as opposed to a common-law relationship as of October 13, 2016, just two weeks before the engagement.

[70] The Claimant also produced a text from August 2016 that showed the deceased wanting to travel from Florida to Canada, but he could not do so because he did not have enough money in his bank account.⁷¹ This document indicates that the Added Party did not financially support the Claimant at that time, despite his poor financial circumstances.

[71] The Claimant produced documents that showed she financially supported the deceased during this time period that included:

- A dental bill addressed to the Claimant for work done on the deceased in September 2016.⁷²

⁶⁷ See GD12-143

⁶⁸ See GD12-141

⁶⁹ See GD1-219

⁷⁰ See GD1-221

⁷¹ See GD1-253

⁷² See GD1-142

- Documentation from an automobile insurer for the period September 2016 to 2017. This documentation listed the Claimant as the named insured on two vehicles driven by the deceased.⁷³

Attitude and conduct concerning children

[72] The deceased's children resided with the Claimant during this time period. I do not see that the deceased and Added Party shared much in terms of his children.

C. OCTOBER 2016 to FEBRUARY 2017

Shelter

[73] I am satisfied that the deceased lived with the Added Party in a common-law relationship after the October 2016 engagement to the time of his death.

[74] The Added Party and the deceased purchased a Florida home in October 2016.⁷⁴

[75] The deceased subsequently developed serious reservations about his relationship with the Added Party. But I do not believe that he clearly terminated the relationship prior to his death.

[76] However, the fact that the deceased and the Added Party lived together at the time of death is not enough to establish that they had a common-law relationship under the CPP. This is because of a Supreme Court of Canada ruling that persons living together are not necessarily in a common-law relationship.⁷⁵

Sexual and personal behaviour

[77] The Added Party testified that the deceased proposed to her in late October 2016. I am satisfied that an engagement took place. Documentary evidence confirmed an engagement and

⁷³ See GD1-148-150

⁷⁴ See GD2-170 to 181

⁷⁵ See *Hodge v. Canada (MHRD)*, 2004 SCC 65

wedding planning.⁷⁶ The deceased also described the Added Party as his fiancée in a February 20, 2017 e-mail.⁷⁷

[78] The deceased had a relationship with another woman during the last two months of his life.⁷⁸ In addition, he stated that he was unhappy with life in the United States.⁷⁹ Just because somebody is unhappy in a common-law relationship does not mean that it is at an end. The deceased may have been on his way to ending his relationship with the Added Party, but I did not see a complete breaking of ties before his death.

Services

[79] There is an e-mail from the deceased dated October 24, 2016. The deceased inquired about access to the house in Florida so that he could perform various renovations.⁸⁰ There is another e-mail from October 28, 2016 that shows the deceased inquired about cleaning the swimming pool.⁸¹ Another e-mail dated December 1, 2016 shows the deceased e-mailing a pool company.⁸² Other e-mails in November 2016 show that the deceased was involved in home renovations in Florida.⁸³

[80] The Added Party's brother testified that he did not visit his sister and the deceased in Florida until after the deceased passed away. He noted that the deceased created a "man cave" at the house in Florida. The Added Party's documents show that the deceased was involved in renovating the garage in Florida.⁸⁴

[81] But I do not believe that the evidence related to domestic services showed that the deceased and Added Party lived together in conjugal relationship similar to a marriage before October 2016.

⁷⁶ See for example GD36-93, 120, 140

⁷⁷ See GD36-125

⁷⁸ See GD12-23-24

⁷⁹ See GD12-281 and 315-316

⁸⁰ See GD36-96

⁸¹ See GD36-98

⁸² See GD36-110

⁸³ See GD36-107

⁸⁴ See GD36-270

Social

[82] The Added Party and the Claimant did not have much of a relationship during the deceased's life. The Claimant testified that she was under the impression that the Added Party and deceased were just friends and that the Added Party was obsessed with the deceased. The Claimant testified that she did not know about the deceased's engagement to the Added Party in October 2016.

[83] The deceased's mother also testified that she did not know about his engagement to the Added Party. The deceased's brother provided a statement that he did not know about the deceased's engagement to the Added Party.⁸⁵

[84] But the Added Party produced a May 30, 2017 e-mail from the deceased's brother. The deceased's brother thanked the Added Party for allowing him to participate in the deceased's memorial service. The deceased's brother told the Added Party that the deceased was happy sharing his life with her.⁸⁶ However, the deceased's brother stated that he suspected that the Added Party had an interest in his brother's belongings.⁸⁷ He said that he sent her the e-mail thanking her for the memorial service because he felt that this would help alleviate a potential conflict with the Added Party. I also do not place much weight on the May 30, 2017 e-mail because the deceased's brother did not state how long the deceased shared his life with the Added Party.

[85] The fact that the deceased's family and the Claimant, who maintained a relationship with the deceased, did not know of the engagement does not assist the Added Party's case. However, I am satisfied that there was sufficient documentary evidence to establish that an engagement occurred in October 2016.

[86] I have accepted that the Added Party and deceased began living in a common-law relationship as of their engagement in October 2016, but this was only about 7 months before the deceased passed away, which is not a long enough period for the Added Party to be eligible for the survivor's pension.

⁸⁵ See GD1-263

⁸⁶ See GD6-145

⁸⁷ See GD21-6

Societal

[87] The deceased's funeral caused conflict. The Added Party testified that she organized and paid for a celebration of life in Ontario and Florida. She provided the Minister with an invoice for the Florida celebration of life.⁸⁸ She continues to organize an annual golf tournament in his memory in Florida.⁸⁹

[88] The Claimant testified that she paid for the deceased's cremation and a proper funeral. The Claimant also stated that the celebration of life services that the Added Party organized were for her friends and family only.

[89] The Claimant produced an invoice that showed that she paid for the deceased's cremation.⁹⁰ She also produced a statement from her bank account that showed she paid for the cremation.⁹¹ The Claimant's documentation contradicted the Added Party's documentation that she submitted to the Minister. The Added Party submitted an invoice to the Minister that she paid for the deceased's cremation.⁹² I believe that the Claimant paid for the cremation because the Claimant produced a copy of her bankbook statement confirming payment.

[90] I believe that what the deceased's funeral and celebration of life shows is that the deceased and Added Party had a relationship. But it does not confirm whether they had a common-law relationship for a continuous period of at least one year before the deceased's death.

[91] The Claimant and the Added Party also had a dispute over the deceased's obituary. The Added Party sent the Claimant a proposed obituary, which stated that she and the deceased were long-time partners. The Claimant sent a text to the Added Party asking her not to publish the proposed obituary in Canada because the Claimant never told her children that she and the deceased were apart. The Claimant said the children were under the impression that the deceased went to Florida to start a business and make money so that they could be looked after. She told the Added Party that the deceased had introduced his girlfriends as just friends. She told the

⁸⁸ See GD2-199

⁸⁹ See GD36-149

⁹⁰ See GD1-209-210

⁹¹ See GD2-211

⁹² See GD2-201

Added Party that she could tell her friends and family what she wanted about her relationship with the deceased. But she did not want the deceased's children to know about the relationship. She suggested that the Added Party refer to the deceased as a dear friend or companion as opposed to a partner.⁹³

[92] The difficulty with the Added Party's case is that the deceased lived a double life. The deceased can still lead a double life and be in a common-law relationship; so long as the evidence showed that he intended to live together in a marriage-like relationship of some permanence with the Added Party. However, I did not see evidence that he intended to have such a relationship before the October 2016 engagement.

Support

[93] The Added Party and the deceased purchased a home in Florida in October 2016.⁹⁴ She sought a life insurance quote for her and the deceased to ensure mortgage coverage in Florida.⁹⁵ She testified that she did not have a joint bank account with the deceased.⁹⁶

[94] The Claimant testified that when the deceased resigned from the police service, he listed the Claimant as a beneficiary under a Locked in Retirement Account (LIRA). The deceased removed half the money from his LIRA in the fall of 2016 under a hardship clause in order to start a business in Florida. The LIRA did not have a designated beneficiary at the time of his death. The Claimant testified that the deceased told her that the Added Party gave him an ultimatum when she found out about the funds from the LIRA in August 2016. According to the Claimant, the Added Party told the deceased that if he wanted to stay with her, he would have to purchase a home with her in Florida. The Claimant was adamant that the deceased did not purchase the home to start a life in Florida with the Added Party, but that he was forced to do so by the Added Party. A good friend of the deceased, C. S., testified that he believed that the deceased had been manipulated in Florida.

⁹³ See GD12-163-165

⁹⁴ See GD36-101

⁹⁵ See GD36-92

⁹⁶ See Recording of Hearing Part I 1:08:12-15

[95] The Claimant also referred to a text in March 2017 where she paid the deceased's telephone bill as evidence that she continued to provide financial support to the deceased during this period.

[96] It is difficult for me to evaluate some of the evidence provided by the Claimant and C.S. because it is speculative. But when I review the evidence as a whole, I find that the financial arrangements between the Added Party did not show significant interdependence in a committed relationship of some permanence, similar to that of a married couple for a continuous period of at least one year before the deceased's death. I find it particularly significant that as late as October 13, 2016, the deceased allegedly signed over a certificate of title for a motorcycle to the Added Party in the event of non-payment of a loan. Again, this is indicative of a debtor-creditor, as opposed to a spousal relationship.

Attitude and conduct concerning children

[97] The deceased's children lived with the Claimant. The Claimant produced a text between herself and the Added Party after the deceased passed away. The Claimant told the deceased that, as far as the children knew, the deceased went to Florida to start a business so that they could be looked after.⁹⁷ The Claimant also submitted that she opened a trust account for the children. The Added Party did not put anything into the trust account and eventually gained access to this account and took the money. This dispute is being litigated in Florida.⁹⁸ The Claimant also submitted that the Added Party refused to return any of the deceased's belongings for the children.⁹⁹

[98] The Added Party produced documents that showed that she knew the deceased's children and spent time with them.¹⁰⁰ The children visited the deceased in Florida in March 2017.¹⁰¹ But I do not believe that deceased and the Added Party shared much in terms of the deceased's children.

⁹⁷ See GD12-163

⁹⁸ See GD1-9

⁹⁹ See GD12-6

¹⁰⁰ See GD36-27

¹⁰¹ See GD12-295

Final Comments

[99] The parties to a common-law relationship have to show a mutual intention to live together in a marriage-like relationship of some permanence. A common-law relationship cannot exist without the mutual intention of both parties.¹⁰²

[100] The Added Party may have had a sincere belief that she lived in a common-law relationship with the deceased since May 2014. But the evidence showed that the deceased did not view the relationship in the same way.

[101] The Added Party and deceased did not being living together until February 2016. However, the evidence did not show that they began living in a common-law relationship as of February 2016. The deceased told his psychotherapist in February 2016 that he only viewed the Added Party as a friend.

[102] I find that the deceased and Added Party did not become common-law partners until late October 2016 when they became engaged. But this took place only seven months before the deceased's death. This means that the Added Party is not entitled to the survivor's pension because she failed to prove that she cohabited in a conjugal relationship with the deceased for a continuous period of at least one year before his death in May 2017.

[103] The Claimant is therefore entitled to the survivor's pension as the legally married spouse of the deceased.

CONCLUSION

[104] The appeal is allowed.

George Tsakalis
Member, General Division - Income Security

¹⁰² *MSD v. Pratt*, (January 31, 2006) CP 22323 (PAB)