



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *SG v Minister of Employment and Social Development*, 2020 SST 984

Tribunal File Number: GP-20-403

BETWEEN:

S. G.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Kelly Temkin

Teleconference hearing on: October 3, 2020

Date of decision: October 20, 2020

DECISION

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

[2] Here are my reasons why.

OVERVIEW

[3] The Claimant says that she and the deceased contributor, CK, were common-law partners from September 24, 2009 until his death on July 29, 2016. The Minister received S. G.'s application for a CPP survivor's pension on February 27, 2019. The Minister denied the application initially and upon reconsideration because there was insufficient documentation to support an intact common law union at the time that CK died.¹ The Claimant appealed the reconsideration decision to the Social Security Tribunal.

ISSUE

[4] Were S. G. and CK living in a common law relationship at the time of his death in accordance with the CPP criteria?

ANALYSIS

[5] To qualify for a CPP survivor's pension, S. G. must meet the requirements that are set out in the CPP. S. G. must establish on the balance of probabilities, or that it is more likely than not, that she and CK were common law partners. She must establish that she was cohabiting with him in a conjugal relationship at the time of his death and that they had so cohabitated for a period of at least one year.²

[6] The Minister acknowledges that S. G. and CK cared deeply for each other.³ The Minister's position is that it is unclear if S. G. and CK, although living at separate addresses at the time that CK died, continued to be in a common law relationship after S. G. moved to a new

¹ GD4-3

² Sections 2, 42(1) and 44(1)(d) of the CPP

³ GD4-7

address. The Minister reviewed the documentation on file and asked the Tribunal to review the documentation and render a decision with respect to this appeal.⁴

[7] S. G. submits that she is entitled to a survivor's pension because their relationship falls within the definition of common law under the CPP. She submits that she was the common law partner of CK at the time of his death despite not living under the same roof. I spoke to S. G. at a teleconference. During the teleconference, she told me about her relationship with CK. Below I have included what she told me that was important for my decision.

[8] The Claimant told me that she was widowed and living in the Philippines when she met CK on the internet in 2006. He was a widow and living in Canada. They developed a romantic relationship and in 2009, he sponsored her to Canada.⁵ She worked and saved for several years and in 2012, she sponsored her children to come to Canada. When she first came to Canada, CK's son told her that his father's home belonged to his father and late mother. She has a so-so relationship with his two adult children.

[9] The address history on file shows that from 1993 until his death, CK lived at X X Avenue, X BC. S. G. and CK were resident at the Blair address from April 2011. S. G.'s address changed to X X Avenue X BC on July 24, 2013 and then in May 2015 to X X Street, X BC.⁶

[10] S. G. said she lived with CK at the X Street address from 2009 when she arrived in Canada. In July 2012, her children arrived in Canada and she rented a home with them at X Avenue. In 2015, she bought a condominium at X X Street.⁷ CK helped to fix up her new home. The children called CK "uncle". He spent Christmas and birthdays with them.

[11] She and CK bought each other gifts.⁸ They shared a bed. They ate meals together. Even when she lived in two homes, they had meals together at his home on her lunchbreak. They stayed home or visited neighbours occasionally. They did groceries together. Sometimes she paid for groceries. This continued throughout their relationship.

⁴ GD12

⁵ GD14-3

⁶ GD4-6

⁷ GD4-8

⁸ GD11-4/5

[12] They kept their finances separate. She wrote on her tax returns that she was widowed. She provided a bank statement in support of her application with the X Street address.⁹ She had her own income and savings.

[13] There is an incomplete Statutory Declaration in which S. G. states that she and CK lived together from September 24, 2009 to July 20, 2012. The Claimant swore a new Statutory Declaration in June 2020 stating the same.¹⁰ When she sponsored her children (then age 13, 19, 20 and 21) to come to Canada she was responsible for them. They could not stay in CK's house. She rented a home for herself and the children. She lived and slept at both homes. Her eldest child is a nurse so she could go and stay at CK's home. This is why she said the years they lived together were from 2009 to 2012. They are the years when they lived together continuously before the children came to Canada.

[14] On July 20, 2016, she flew to the Philippines to see her mom who was ill. CK's daughter came to stay with her father as he was just out of hospital. While S. G. was overseas, CK's daughter called her (on July 27th) to say that her father was ill. She tried to call CK in hospital. His son called S. G. to say CK was not conscious. CK passed away on July 29, 2016. S. G. bought a new plane ticket and flew back to Canada. CK's children waited until she returned to have him cremated. Although her name was not mentioned in the program, S. G. was invited to speak at the memorial service along with CK's son and a friend.

[15] CK had promised to leave her 20 thousand dollars in his will. The house would go to his children. Eventually she received a cheque from CK's son for ten thousand dollars.

My findings

[16] The Supreme Court of Canada has stated that cohabitation in the context of a common-law relationship is not synonymous with co-residence, and that two people can cohabit even though they do not live under the same roof. There may be periods of physical separation if there was a mutual intention to continue in a common law relationship.¹¹ While cohabitation under the same roof is not determinative of a common-law relationship in order to qualify for a survivor's

⁹ GD2-22

¹⁰ GD10-2

¹¹ *Hodge v. Canada (Minister of Human Resources Development)*, [2004] 3 SCR 357

pension, living under the same roof is still a significant factor to be taken into account in assessing the overall relationship.¹²

[17] The Federal Court has stated that the factors that are indicative of a common-law relationship include shelter, sexual and personal behaviour, services, social, societal, support, attitude and conduct concerning any children.¹³

The Claimant did not leave the common law relationship in July 2012. She and CK were common law partners at the time of his death, in July 2016.

[18] I found the testimony given by S. G. to be straightforward, detailed and sincere. I asked many questions about the period between July 18, 2012 (when her children arrived in Canada) and CK's death on July 29, 2016. Her testimony was consistent with the written statements on file. I acknowledge that not all couples blend their finances or acquire mutual property. The extent to which the different factors of a common-law relationship should be taken into account varies with the circumstances of each case.¹⁴ I must keep in mind the endlessly variable nature of marriage in our society and assess the specific circumstances, to determine if S. G. and CK had a marriage like relationship.¹⁵ It is not appropriate for me to evaluate the quality of their relationship.¹⁶ The sole question before me is whether S. G. and CK were in a common-law relationship at the time of his death and for at least a one year prior.

[19] The Minister asked me to review the evidence on file and decide if S. G. and CK were common law partners when he died.¹⁷ I recognize that in the absence of joint property, life insurance or wills it is very difficult for the Claimant to provide documentary evidence that the common law union between S. G. and CK was intact at the time of his death. In reaching my decision, I have had the benefit of hearing S. G.'s sworn testimony. S. G. sponsored her children to Canada. I accept her testimony that this is the reason she established a second residence. I

¹² *E.S. v. MHRSD* (July 24, 2012), CP 25586 (PAB). This decision is not binding but I find it persuasive.

¹³ *McLaughlin* 2012 FC 556

¹⁴ *Molodowich v Penttinen*, 1980 CanLII 1537 (Ontario District Court, paragraph 16)

¹⁵ *A.L v D.P and MHRSD* (November 16, 2011), CP 27238 (PAB). This decision is not binding but I find it persuasive.

¹⁶ *McLaughlin*, above

¹⁷ The Minister did not reply to GD14 despite being given an opportunity to do so

looked at the photos S. G. submitted taken of CK, S. G. and her children.¹⁸ I heard the challenges she faced when her children arrived in Canada, including providing a stable home for them while remaining in a committed relationship with CK. Once the children arrived, she divided her time between the two residences. She shared a bed with CK. They ate meals together each day. They spent important holidays and occasions together with her children. I have given significant weight to S. G.'s actions when she returned to Canada immediately once she learned of CK's passing. Despite flying half way around the world to visit her mother for a month, S. G.'s decision to leave when she learns of CK's passing, demonstrates she is fully committed to her marriage-like relationship with CK. In addition, the fact that his adult children waited for her return until they cremated their father is the attitude and conduct of the community and the parties' families towards the parties one would expect to see where there is a marriage like-relationship.

[20] I find that S. G. has established, that it is more likely than not, that she and CK were common-law partners at the time of his death despite not living under the same roof. They lived together for one year prior as required under the CPP definition of common law.

CONCLUSION

[21] S. G. is entitled to the survivor's pension.

[22] The appeal is allowed.

Kelly Temkin
Member, General Division - Income Security

¹⁸ GD11