



Citation: *WV v Minister of Employment and Social Development*, 2023 SST 567

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: W. V.

Respondent: Minister of Employment and Social Development

Added Party: P. G.

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated October 13, 2021 (issued
by Service Canada)

Tribunal member: Jackie Laidlaw

Type of hearing: Teleconference

Hearing date: March 21, 2023

Hearing participants: Appellant
Added Party
Witness #1 Appellant
Witness #2 Appellant
Witness#1 Added Party
Witness #2 Added Party
Witness #3 Added Party
Witness #4 Added Party
Witness #5 Added Party
Witness #6 Added Party

Decision date: May 19, 2023

File number: GP-22-43

Decision

[1] The appeal is allowed.

[2] The Appellant, W. V., is eligible for a CPP Survivor's pension. This decision explains why I am allowing the appeal.

Overview

[3] At the outset, once again, I would like to express my sympathy to all the parties, and the witnesses, for the loss of C. C.

[4] I would also like to clarify, that rather than refer to the people involved as "the Appellant", or "the Added Party", or "the Deceased", I will be using first names, W. V., P. G., and C. C. respectively. This is a very personal and complicated case, and I find it could be viewed as biased to use titles. Only initials will be used once the decision is published.

[5] This is not a decision about who was a better partner to C. C., or who cared more for his well-being. There are two families involved in this case. Both families have shown themselves to be a family unit, and both women have shown they have been involved with C. C. for many years. My decision is not a judgement on either W. V. or P. G.'s personal role as a partner.

[6] C. C. lived two separate lives. No one, including his brother, W. V., P. G., his children or his friends knew about his two lives.

[7] C. C. lived in Calgary with P. G., their daughter, and her children since 2007. They met through online dating the first time C. C. went out to Calgary for work. P. G. was aware he had a family in Ontario but was told he was separated, and a divorce was pending. C. C. and W. V. were not separated, and a divorce has never been pending.

[8] C. C. was married to W. V. in 1995 and they had two children. For years they lived in Ontario with their two daughters, and his daughter from a previous

relationship. In 2005 C. C. moved out to Calgary to find work. He returned for a year to Ontario then moved to Calgary again in 2007 with the understanding he would make money, send it home, and visit at Christmas and Caribana¹, and any other time he could. The arrangement was temporary and financially dependent. The couple remained married, and considered themselves still a couple, and a family unit. The arrangement was unconventional, but not unique in a world where many individuals leave home during their working years to support their families. When C. C. and P. G.'s child was born, W. V. found out and confronted C. C. He acknowledged he had fathered another daughter. W. V. forgave him and the marriage continued. Over the years, he would tell W. V. that his daughter and P. G. lived in Montreal with P. G.'s husband, and he sent child support. P. G. did not live in Montreal with her husband but lived in Calgary with her daughter and C. C.

[9] Both women knew of the other, but they did not know the real status of C. C.'s relationships. Both women thought of themselves as C. C.'s spouse. Their individual group of friends were also unaware of the other family. In Calgary, friends believed C. C., P. G. and the children were a family. In Ontario, friends and family believed C. C., W. V. and the girls were a family as they always had been despite him living in another province.

[10] C. C. became ill in Calgary around August 2020 and was in and out of hospital. He moved to hospice care in early 2021 and died on April 21, 2021, in Calgary.

[11] My decision is strictly a legal determination.

Matters I have to consider first

[12] On March 3, 2023, I requested the Minister provide the documents relied upon in it's decision. The hearing was scheduled for March 21, 2023. The Minister

¹ Caribana is now known as the Toronto Caribbean Carnival. It is a festival of Caribbean culture and traditions held each summer in the city of Toronto. It is considered North America's largest Caribbean Carnival.

provided the documents on March 20, 2023, but they were not redacted so I could not share them with the parties.

[13] The Minister submitted the redacted documents on April 27, 2023. I shared them with the parties with an opportunity to respond by May 12, 2023. Neither of the parties responded.

[14] I had to wait to write the decision until the parties received a copy of the documents and had time to respond. My decision was delayed until that time.

What the Appellant must prove

[15] For the Appellant to succeed, it must be proved that:

- P. G. was not the common-law spouse of C. C. at the time of his death; and,
- W. V. and C. C. were still legally married at the time of his death.

The Law

[16] A Survivor's Pension is paid to a survivor of a deceased contributor.² A survivor is defined in the CPP as:

(a) A person who was married to the contributor at the time of death **if there is no common-law partner**, or

(b) A common-law partner at the time of the contributor's death.³

[17] A common-law partner, in relation to a contributor means a person who is cohabitating with the contributor in a conjugal relationship at the relevant time, having so cohabitated with the contributor for a continuous period of at least one year. For greater certainty, in the case of a contributor's death, the "relevant time" means the time of the contributor's death.⁴

² See Paragraph 44(1)(d) of the *CPP*.

³ See subsection 42(1) of the *CPP*.

⁴ See the definition of a common-law partner in Section 2 of the *CPP*.

Reasons for my decision

[18] I have determined that P. G. and C. C. were not common-law partners from 2007 until November 2020 but were in a very long and involved affair. C. C. continued to maintain a marriage to W. V. without a separation⁵ until that period. From November 2020, P. G. and C. C. cannot be considered common-law partners according to the CPP because it was less than a year before he died.

– The issues to determine

[19] Whether P. G. was a common-law spouse of C. C., living in a conjugal relationship continuously for 12 months prior to his death.

[20] Whether W. V. was married to C. C. at the time of his death.

– P. G. cannot be considered a common-law spouse according to the CPP

[21] P. G. and C. C. were a couple, who lived as a family, in the same home with their child, along with her other children. They had lived together since 2007 in this relationship. As C. C. was still married to W. V. and presenting as married to W. V. in all parts of his life other than with P. G., he and P. G. were having an affair and not living common-law.

– Determining Common-law status from 2007

[22] There is case law of what is meant to cohabit in a common-law conjugal relationship.⁶ There is a non-exhaustive list of elements:

- Financial interdependence, i.e., Shared bank accounts, credit cards, ownership of property.
- A sexual relationship.

⁵ By separation I am referring to a legal or mutually accepted separation of the marriage, and not a geographical separation.

⁶ See *Betts v. Shannon*, 2001 CarswellNat 4429

- A common residence.
- A sharing of responsibility of household and raising children.
- Shared assets such as cars.
- Named beneficiary in will, insurance policy of other.
- Knowledge of medical needs.
- Public recognition of the parties; and,
- What marital status was declared by the parties on various applications, or forms, completed by them.

[23] Federal Court case law considered further:

- Sexual and personal behaviour maintaining an attitude of fidelity to each other⁷; and,
- Representing themselves to tax and social welfare authorities as common-law.⁸

Financial Interdependence/Shared assets

[24] P. G. and C. C. had no financial obligations together other than he was put on the car insurance with her, apparently in 2018. This is a very narrow and insignificant financial interdependence.

[25] They did not own any property together. They did not share a bank account. They did not have insurance on either person.

Sexual Relations and an attitude of fidelity

[26] P. G. indicated the last time they had sexual relations was August 2020, just before C. C. became very ill. I accept that because C. C. became ill very quickly, it

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

⁸ See *Dilka v. Canada (Attorney General)* 2009 FCA 90

prevented a continuation of the sexual relationship. They did not stop having sex because the relationship ended. However, the relationship was not monogamous.

[27] C. C. continued to have sexual relations with W. V. There is a reference to phone-sex in their texts as late as April 9, 2020, and he continues to claim his love to her in these texts throughout 2020.⁹ As previously noted, case law looks at an attitude of fidelity when determining a common-law relationship.¹⁰ C. C. did not present an attitude of fidelity in his relationship with P. G.

Common Residence

[28] C. C. and P. G. did live at the same address in Calgary. However, C. C. used a few different addresses in Calgary as his residence.

[29] C. C. continued to have a separate address which he gave to W. V., and his brother. On two separate occasions, he brought both W. V. and his brother to a studio apartment and stated that was where he lived. The most recent time he did that was in August 2020 the first time his brother came to visit. In which case, he was not openly acknowledging his relationship to everyone in his life.

[30] On his two applications for a CPP disability benefit dated March 1, 2021, and March 8, 2021, and on the Consent to Deduction and Payment of CPP dated March 2, 2021, C. C. listed a separate address than the house with P. G..¹¹

Shared Household and Child responsibilities

[31] No household bills with P. G. were provided which indicated C. C. held any household financial responsibility in Calgary. P. G. testified he gave money when he could towards food and the home. He also took responsibility for raising their daughter.

⁹ See GD 1 34-68.

¹⁰ See *McLaughlin v. Canada (Attorney General)*, 2012 FC 556

¹¹ See GD 16-7; GD 16-29; and GD 16-64 respectively.

[32] C. C. was responsible for the household bills in Ontario until his death.¹² He had bought the house with W. V. in 2003. W. V. still lives there, and C. C. would live there when he came to Ontario. He was still listed on some bills. He sent money to W. V.¹³ He also took responsibility for raising their two daughters. While this has no relevance to whether he and P. G. shared household responsibilities, it illustrates he had greater financial household obligations and responsibilities in Ontario than Calgary.

The Will

[33] P. G. relies heavily on C. C.'s will, which was written November 2020 listing her as his "spouse".¹⁴ He did not mention W. V. at all. The will was written six months before he died. While he does list P. G. as his spouse, the timeframe of the will does not show she was his common-law spouse for 12 months prior to his death.

Medical Needs

[34] P. G. has shown that C. C. was listed as her spouse on her medical benefits.¹⁵ While she testified that she added him in 2018, the two-year history of claims indicates this only happened in December 2020. I do not find C. C. listed on P. G.'s medical benefits as "spouse" from December 2020 until his death in April 2021 as persuasive to determine her a "common-law spouse" as it is less than 12 months. Until his death he was always listed on W. V.'s medical benefits as her spouse.

[35] I accept that all of the hospital records have P. G. as his common-law spouse. The hospital doctors, nurses and attendants would have had no knowledge of his married status to W. V. and would assume this to be correct as P. G. was there constantly and listed as his contact person.

[36] P. G. testified that when C. C. became ill, they both found a new physician who became their family doctor around February 2020.

¹² See GD 1-12 to 21.

¹³ See GD 1-13 to 33.

¹⁴ See GD 7 the Will and Power of Attorney documents.

¹⁵ See GD 9-47 a two-year history of claims until March 2021.

[37] P. G. also acknowledged that C. C. went to Toronto for his doctor and dentist until 2020. W. V. and C. C. shared a family doctor, Dr. Chadrakumar, for years and continued to do so. W. V. and Dr. Chadrakumar made arrangements to bring C. C. to Ontario for cancer treatments in November 2020.¹⁶

[38] In this case, both women were equally as involved with C. C.' medical needs. This does not persuade me that P. G. is a common-law spouse.

Public Acknowledgement of relationship

[39] C. C. publicly acknowledged P. G. and his relationship, but only in Calgary and not to all people, including to his own children, wife, family and friends in Ontario. His brother testified that it was not until his second visit to C. C., in November 2020, that he realized he and P. G. were acting as "a married couple". Previously his brother knew of P. G. but did not know of their living situation. C. C. never acknowledged P. G. to W. V. C. C.'s brother told W. V. in November 2020.

[40] P. G. and C. C.'s relationship was not publicly acknowledged in all aspects of C. C.'s life. This indicates an affair rather than a common-law relationship.

Filing of Taxes and other forms

[41] P. G. stated that C. C. told her he filed his taxes as "single" once they began living together.¹⁷ This is not the case. The taxes available up to 2014 show C. C.'s status as married to W. V. W. V.'s taxes up until 2020 show she is married to C. C.¹⁸ His taxes from 2014 are not in evidence because he had not done them by October 2020. C. C.'s uncle did the joint taxes for W. V. and C. C. The uncle did W. V.'s taxes in 2020 and listed her as married to C. C. It is reasonable the uncle would continue to list C. C. as married as well.

¹⁶ See the texts GD 1 34-68 specifically on November 10, 2020.

¹⁷ See GD 16-92, P. G.'s request for reconsideration.

¹⁸ See GD 4.

[42] On C. C.'s first application for a CPP disability benefit dated March 1, 2021, he lists himself as Single, and Separated, with the date of separation being January 2007. On C. C.'s second application for a CPP disability benefit two days later on March 3, 2021, he checked "common law" then scratched it out to put "single".¹⁹ On the AISH application for End-of-Life Palliative Care, signed February 11, 2021, he lists himself as single, but living with his family at the home address he shared with P. G.. **In that application, under spouse/partner information, he lists "no", but "yes" to a dependant child.**²⁰

[43] C. C. does not consider himself common-law with P. G. on any forms or his taxes. I find this quite persuasive in my determination they were not common-law partners.

[44] C. C. and P. G. were not interdependent financially or with any assets. Their relationship was not publicly acknowledged in the whole of C. C.'s life. While they did live at the same address, C. C. continued to use two other addresses in Calgary as his residence. Most importantly, C. C. did not represent himself on any government forms or his taxes as common-law. All of these factors outweigh that they shared responsibility for a child, and that P. G. cared for his medical needs. These findings show they were in an affair and not living together as a common-law couple.

– **W. V. was legally married to C. C.**

[45] There is no dispute that W. V. and C. C. were still married at the time of his death. They married in 1995. C. C.'s death certificate indicates he was married.²¹

[46] Unlike the test for common-law, it is irrelevant that they lived in separate cities, or were separated at the time of his death. A married spouse does not need to be living continuously with the deceased for a year up to the time of the contributor's death.

¹⁹ See GD 16-29.

²⁰ See GD 16-49.

²¹ See GD 1-9.

[47] C. C. and W. V. remained married while he lived with P. G. W. V. had no knowledge of his arrangement with P. G. and believed she and C. C. were still married. C. C. and W. V. had never discussed separation or an end to the marriage.

[48] Both parties in a marriage should be aware when the marriage has separated. This allows the parties to move on into a common-law relationship if they wish. Prior to any acknowledgement of a separation, any married person living with another cannot be considered legally common-law.

[49] C. C. never expressed an interest to separate. Their children believed they were still a married couple, and that C. C. would be returning to Ontario in a few years. C. C. and W. V.'s three or four daily texts and calls²² show they continued to be a married couple, discussing mundane daily things, the children, friends, and financial obligations.

[50] When he became sick W. V. was involved, albeit from afar, but to the best of her abilities. She sent him food, to the only address she had, which was not the home he shared with P. G. She made arrangements to have his personal items returned to Toronto and for him to return to Toronto, with his consent. She continued to try and reach out to his doctors, though he lied about which hospital he was in so she would not find out P. G. was his contact. She arranged to have their doctor set up cancer treatments in Ontario.

[51] The text/phone log W. V. provided in evidence clearly shows that she and C. C. were still an active, married couple until November 2020.

[52] In November, W. V. contacted the correct hospital and found P. G. listed as his wife. It was then that C. C.'s brother, who had recently become aware that P. G. and C. C. were a committed couple, told W. V. of the situation. The text/phone log shows at that point the marriage had changed as a direct consequence of the revelation of the affair. The people in C. C.'s Ontario life, his wife, children, and family were now

²² See GD 1 34-68.

aware he was living with P. G. W. V.'s text/phone log shows she realized C. C. was involved with P. G.

[53] With this situation in the open, I accept that there was now public recognition of P. G. and C. C.'s relationship and that the marriage to W. V. was in a state of separation, though not a formal, legal separation.

[54] At this point, P. G. could have become a common-law spouse. However, she could not be considered common-law according to the CPP as it was six months prior to his death. As well, C. C. did not acknowledge the status of common-law.

[55] I have determined C. C. and P. G. were not common-law spouses from 2007 until the time of his death.

[56] In the absence of a common-law spouse, the benefit is granted to the legally married spouse.

Conclusion

[57] I find that the Appellant is eligible for a CPP Survivor's Benefit.

[58] This means the appeal is allowed.

Jackie Laidlaw
Member, General Division – Income Security Section