

Citation: 2008TCC314
Date: 20080523
Docket: 2006-303(IT)G

BETWEEN:

BRENT HARRISON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

(Delivered orally from the Bench on May 6, 2008,
in Vancouver, British Columbia.)

Boyle, J.

[1] These are my reasons for judgment in this morning's case involving Mr. Brent Harrison of Sussex, British Columbia. The issue to be determined is whether Mr. Harrison was a cohabiting common-law partner of the woman with whom he has shared a number of homes over a 20-year period and to this day, Ms. McIntyre, in the years 1995 to 1999 during which she received refundable Canada Child Tax Benefits in excess of what she was entitled to.

[2] Stripped to its barest terms, the question is simply whether Mr. Harrison and Ms. McIntyre lived together in a conjugal relationship.

[3] Mr. Harrison has been assessed by Canada Revenue Agency pursuant to subsection 160.1(2.1) of the *Income Tax Act* for approximately \$7,200 of CCTB overpayments paid to Ms. McIntyre. This provision provides that the spouse or common-law partner who was cohabiting with a person is jointly responsible for any CCTB benefits received by that person in excess of the amount that person was actually entitled to. The apparent purpose of this joint liability to repay the overpayments appears to reflect a presumption that the spouse or common-law partner who did not receive the payments nonetheless enjoyed the benefit of those monies being received by his or her household, hence the need for cohabiting in the years received whether they are spouses or common-law partners.

[4] There is no doubt in my mind on these facts or under the law that Mr. Harrison lived together with Ms. McIntyre in a conjugal relationship since she first moved into his home with three of her children almost 20 years ago. This is exactly the type of case this provision is aimed at. While the reason for the overpayments of CTBs being made to Ms. McIntyre was not in evidence, Mr. Harrison did testify he reported himself as single on his tax returns. Since Child Tax Benefits are calculated in part by reference to household income, I can surmise Mr. Harrison's own actions may have contributed, at least in part, to the overpayments for which he is now being assessed.

[5] The term "cohabiting in a conjugal relationship" is not defined in the *Act* for these purposes. Its meaning is well developed, nonetheless, in the law. An extensive listing of considerations is set out in the *Molodowich v. Penttinen* decision, which both counsel referred to. Mr. Harrison's counsel based the evidence he introduced and his written outline of argument he submitted along the lines of the *Molodowich* criteria.

[6] The role of the *Molodowich* characteristics in determining whether or not a conjugal relationship exists was addressed by the Supreme Court of Canada in *M. v. H.* The Supreme Court said that the characteristics of shared shelter, sexual and personal behaviour, services, social activities, economic support, children and societal perception may be present in varying degrees and are not all necessary. Common-law couples cannot escape because they do not fit precisely the "traditional marital model". Even sexual relationships are not a requirement, according to the Supreme Court. The weight to be given the *Molodowich* factors will vary widely and almost infinitely. The approaches of the courts must be flexible and reflect the reality that the relationships of all couples, whether married or common-law, will vary widely.

[7] Mr. Harrison met Ms. McIntyre almost 20 years ago. Their relationship began as a romantic one and quickly developed into a sexual one as well. Ms. McIntyre and three of her young children moved into Mr. Harrison's house and the couple shared a bedroom. Since then, they have continuously lived together in the same house, although they are now on their fourth house. Their first three homes were rented. In none of these homes did Mr. Harrison have a separate bedroom. While he often slept in the basement rec room in the years in question, he did not have a bed there, much less a bedroom. Their current and fourth house was bought after the years in question. It is owned jointly by Mr. Harrison with one of Ms. McIntyre's adult daughters who also resides in the home. Mr. Harrison has a separate room in this home.

[8] Mr. Harrison has remained sexually faithful to Ms. McIntyre throughout. While their incidence of sexual relations declined over time, especially in their late 40s and 50s, they had a sexual relationship throughout the period 1995 to 1999. Mr. Harrison guesses they last had sex over a year ago. Mr. Harrison described a healthy relationship with Ms. McIntyre's three children who lived with them and particularly so with the two youngest daughters who lived with them in the years in question. He attended their school events and would drive them to their activities. They continue to this day to exchange gifts on birthdays, Christmas and like events.

[9] Mr. Harrison supported Ms. McIntyre with advice and guidance when she was in financial difficulties and facing her bankruptcy. He attended her father's funeral with her, and she and her children went with him to visit his ailing mother. They attended her children's weddings. Mr. Harrison and Ms. McIntyre went out together with other couples for New Year's, for dinners and the like. They went to Mr. Harrison's horse association banquets together at times. They exchanged gifts and do things for each other. Overall, it sounds like a healthy, compassionate and supporting relationship.

[10] In 1997, Ms. McIntyre's lawyer in her family law issues with her ex-husband described Ms. McIntyre's relationship with Mr. Harrison as a romantic involvement under the same roof.

[11] Ms. McIntyre did most of the shopping and prepared the meals, which they would eat together when schedules permitted. Ms. McIntyre and the girls took care of most of the inside housework, while Mr. Harrison was responsible for the outside work. The only exceptions appear to be that Mr. Harrison has always done his own laundry and only his own laundry, and Ms. McIntyre and the girls did the outdoor gardening on their 65-acre lot.

[12] The couple has shared expenses on an informal basis throughout, and had a joint chequing account for a two-year period. Shelter, household expenses and supplies were shared roughly one-third by Mr. Harrison, one-third for Ms. McIntyre, and one-third for her children, which Ms. McIntyre and her ex-husband covered. This changed somewhat after the years in question to reflect the new joint home ownership arrangement with Ms. McIntyre's adult live-in daughter. How strictly this was followed I cannot tell, since Mr. Harrison claims to have given Ms. McIntyre cash. There was no evidence of who paid for whose clothes, cars, vacations, etc. There clearly was no strict division of expenses, and payment for their living expenditures. Ms. McIntyre took care of the household finances, and Mr. Harrison gave her cash with which to do that.

[13] The couple took vacations together with the children. This included a trip to Disneyland in the years in question. They also went camping together in the early years. In later years, they have taken trips to Las Vegas.

[14] In the British Columbia court filings involving access to Ms. McIntyre's children by their father, Mr. Harrison is described as her common-law spouse on numerous occasions. Their relationship is described as a marital relationship. Ms. McIntyre's lawyer described Mr. Harrison as her common-law husband.

[15] The above are the material facts and my findings. This was not a close case. Mr. Harrison's position regarding what he himself called their "joint household" was unreasonable. This was black and white. The facts of this case are somewhat similar to this Court's 1999 decision in *Lavoie*. They are also somewhat similar to this Court's 2000 decision in *Sanford*. Both of these cases were upheld by the Federal Court of Appeal. In *Sanford*, Justice Mogan referred to the old cliché about walking and quacking like a duck. It is equally apposite here. That cliché was in fact in my mind while listening to Mr. Harrison's testimony.

[16] When Mr. Harrison's counsel was asked which aspects of the *Molodowich* considerations did not point to a conjugal relationship, he identified three. Firstly, Mr. Harrison always did his own laundry and only his own laundry. Secondly, the couple had a joint bank account for only two years. And thirdly, the friend of Mr. Harrison who testified said he did not regard the couple's relationship the same as the relationship he had with his wife. None of these three give me any cause for pause. The first two must be looked at in the context of the overall circumstances of the parties and, either alone or in context, are far less than sufficient to show the absence of a conjugal relationship. The third is simply irrelevant, since there is no reason for Mr. Graves' marriage to serve as the threshold of a conjugal relationship.

[17] Mr. Harrison, when asked to describe his relationship, suggested it was much like a "friends with benefits" arrangement. He said they were cohabiting, but it was not marriage-like, in part because he doesn't like labels. He referred to it elsewhere in his testimony as "our joint household". I will resist trying to decide when "friends with benefits" arrangements constitute cohabiting in a conjugal relationship. Canadian family relationships and personal relationships change and reflect endless different choices that work for those involved. We are clearly beyond the traditional marital model. In Mr. Harrison's case, he more properly should have at least said his was a "roommates with benefits sharing a single bedroom" arrangement in the years in question. On the totality of evidence in his case, the relationship he shares with

Ms. McIntyre is exactly what the concept of cohabiting in a conjugal relationship is trying to describe.

[18] I must make some comments about credibility in my summary of facts and my findings of fact above. Mr. Harrison's testimony was filled with "probablys", "maybes" and "might haves". For example, he said:

- "I have kept in contact with her" over the years.
- "It is basically a sharing of rental costs."
- When asked if he shared a bedroom with Ms. McIntyre in their first one-bedroom home, he said, "I believe so."
- In the second home, he said, "I would imagine I shared a bedroom with Debbie."
- He said, "It's possible we went out together."
- In their third home, he said, "I believe I was probably sharing a bedroom with Debbie."
- On sexual relations in their third home, during the years in question, "We probably would have visited from time to time".
- It was "likely on occasion" they went out socially.
- They ate out together "but not in a dating fashion".
- They had sexual relationships but he "doesn't recall the incidence" and they "dwindled to a non-event".
- "She has been known to prepare a meal that we would sit and eat."
- He "believes" she had declared bankruptcy.
- "I believe she may have used the same accounting firm" as he did for her taxes.
- "It is possible" the kids were in that age range.
- "I think it is probably fair comment" it started as a romantic relationship.
- "I believe for the most part" she took care of the finances.

In short, I found Mr. Harrison to be a witness who did not answer completely or accurately, but spun his answers to suit him. He stretched things with a noticeable degree of glibness and of awkwardness. His responses to questions made it clear he has a less than adequate concept of truthfulness required and expected in life. His rationalizations had to be further developed after they were challenged. I do not accept his evidence as a complete or wholly accurate description of his relationship with Ms. McIntyre.

[19] Further, Mr. Harrison's description of their relationship was not corroborated by any evidence from Ms. McIntyre or her children, who are now adults. Mr. Harrison's counsel indicated he had issued a subpoena to Ms. McIntyre but understood from Mr. Harrison that she would not be attending, notwithstanding the subpoena. I offered to adjourn to allow him to have her testify under further order if necessary. That offer was declined. In these circumstances, not only has Mr. Harrison failed to satisfy the onus of proof on him by calling apparently available, relevant witnesses to testify, but I make the adverse inference that, if Ms. McIntyre or her daughters had given testimony, it would not have supported Mr. Harrison's version in material respects.

[20] The Canada Child Tax Benefit is an important and valued social programme. It is also very costly for Canadians. The law sets out who qualifies and for what amount. Those who receive amounts that they are not entitled to are rightly pursued by the Canada Revenue Agency. Similarly, the law says cohabiting common-law partners are jointly responsible to repay excess benefits paid out. CRA is also right to pursue people like Mr. Harrison. If not, Canadians might not only lose faith in the CRA as our tax administrator, but may wrongly doubt the need for the Child Tax Benefit programme for our deserving fellow Canadians.

[21] I will be signing judgment in favour of the Crown and will be awarding costs to the Crown payable by Mr. Harrison. This was an open-and-shut case. All of the time and costs and effort involved in this general procedure trial could have been avoided. Instead, there have been productions, discoveries, and a day in court. In these circumstances, my judgment will provide for costs on a Class B basis in our Tariff.

Signed at Ottawa, Canada, this 23rd day of May 2008.

"Patrick Boyle"

Boyle, J.

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STYLE OF CAUSE: BRENT HARRISON v. HER MAJESTY
THE QUEEN

PLACE OF HEARING: Vancouver, British Columbia

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