



[2016] JMSC Civ. 233

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2015 HCV 03972

IN THE MATTER of the Property
(Rights of Spouses) Act

AND

IN THE MATTER of an application for a
Declaration of a Common Law Spouse
that the relationship of Husband and
Wife existed between **HUNTLEY
JAMES GOLDING** (now deceased) and
BLOSSOM MONICA MARAGH.

Property (Rights of Spouses) Act – whether applicant and now deceased partner were unmarried and cohabited as man and wife for 5 years or more – Child born to a third party during the relationship - documentary evidence .

Stuart Stimpson and Kimberly Williams instructed by Hart, Muirhead & Fatta for the Applicant Blossom Maragh

Sheila Tomlin for the objectors.

IN CHAMBERS

HEARD: 24th November 2016 and 12th December 2016.

COR : BATTS J

[1] On the 12th day of December 2016, I granted the Declaration stated at paragraph 15 below. I promised then to put my reasons in writing at a later date. This judgment fulfills that promise.

- [2] Mr. Stimpson has made it clear that his client was not relying on the Property (Rights of Spouses) Act in order to claim an interest in 12 Lancelot Avenue. This is because those premises had never been the matrimonial home. His client's concern was to be declared a spouse and in that way share an interest in all the rights and privileges granted by law.
- [3] It was agreed between the parties that the Judges Bundle filed on the 24th November 2016 contained the relevant affidavits. It was further agreed that two of the affidavits would not be relied upon. This because Messrs. John Golding and Bernard Golding, the affiants, would not be called.
- [4] The Applicant swore two affidavits and relied on an affidavit of Aaron Yates. The objectors Sherron Golding, Orville Golding and Shaniqcoy Golding all filed affidavits and relied on the affidavit of Lorna Moulton. All affiants were cross-examined.
- [5] Having seen and heard the witnesses and received the documentary evidence I was satisfied on a balance of probabilities that the Applicant had enjoyed a spousal relationship with the deceased for in excess of 5 years. They had lived together as man and wife for in excess of that period and did so at premises owned by the Applicant. I will not restate all the evidence presented but instead will only indicate those bits of the evidence which drove me to my conclusion.
- [6] Mr. Aaron Yates had known both the deceased and the applicant for over thirty three (33) years. He lived in Nannyville and was a retired grounds man who worked at Excelsior High School. The Applicant had also been employed at Excelsior High School and also lived in Nannyville. Mr. Yates would pass her house to get to his home. His evidence was clear and I accepted him as a witness of truth. There was one major discrepancy as his affidavit stated that it was Mr. Huntley Golding who had introduced him to Ms. Maragh. However, when giving evidence he was clear that it was Ms. Maragh who had introduced him to Mr. Golding. He describes the statement in the affidavit as a "misstate". I accept his evidence, in his words:

“no we used to interact. The first time I met him Miss Blossom saw me call me and I went and she introduced me to Mr. Golding and said jokingly this is my expected husband. These were her exact words I think.”

[7] The Applicant's affidavits were as to be expected, more detailed as it related to the relationship between herself and the deceased. She said she met Mr. Golding in 1980. At first their relationship was a visiting one. She spent time at his house and he at hers. Eventually he started to live at her house in Nannyville. They lived in that way since 1981. The Applicant was extensively cross-examined. She explained that up to the 1990's she only visited Mr. Golding's house on the odd night or two. This was because her children were still small then. She was able to say that Mr. Golding's mother died in 1984, and her name was Imogene Walters. She stated that they started living together after Mr. Golding had gone to prison and returned. She was able to say that he went to prison in March 1990 and came out in December 1991. She describes a holiday they spent together in Miami for two (2) weeks. She stated, and I accept, that Mr. Golding went with her to her daughter's wedding in Montego Bay. He was the giveaway father.

[8] I found some aspects of her evidence particularly poignant:

“Q: when get title?”

A: when working at Excelsior, my title and I put children on it.

Q: Did you not consider putting Mr. Golding on it?”

A: He has his house. I did not ask him to put my name on his title because he has children.”

And,

“Q: They know each other for some time?”

A: *No when child was born he came and told me and ask me to forgive him. He told me about 6 months after.*

Q: *How?*

A: *I saw a paper with child's name. He said he did not know it. He tell me is a mistake and I must not quarrel with him because him and she have a relationship. Is by accident that he went with her and child came."*

In fact and as the uncontradicted evidence disclosed, the Applicant did forgive Mr. Golding. So much so that in his final years she nursed and cared for him during his illness.

[9] The Applicant's case was supported by documents. In particular cards and well wishes from relatives of Mr. Golding. These relatives regarded her as his spouse. The card from "Cyril & Family" to "Blossom & Family" read, "Strength & Hope will come again but for now... do what you need to honour this sorrow, letting your heart and sprit heal. Thinking of you"

The card from "Andy & Family" to "Blossom & Family" read, "We know our words can't take away your sense of loss, but were hoping you can find some comfort in knowing the memories you shared are forever."

The thank you card from May, Garfield, Nadea, Val, Steve and Senior read:

"Dearest Blossom, Thank you so much for looking after Huntley, may God bless you and may his soul rest in peace."

The Applicant also exhibited bills and receipts in her name related to the funeral expenses of Mr. Golding. This corroborated her account that she had borne all his funeral expenses.

[10] The Objectors' evidence was not convincing. In many ways it was based on conjecture. They were unable to explain the sympathy cards issued to the Applicant. Indeed when I asked Orville Golding whether he was familiar with Aunt May he answered in the affirmative. He acknowledged that the card had been

sent to the Applicant. He could give no explanation for such a card being sent if the Applicant was not living with Mr. Golding.

- [11] Other than Lorna Moulton and Shaniqcoy Golding, those giving evidence for the objectors lived outside Jamaica. They were therefore hardly in a position to speak to the residence of the deceased. Ms. Moulton admitted that her relationship with the deceased ended in 2002,

“After I received a phone call from the Applicant asserting that she and the deceased had got married.”

- [12] Sherron Golding admitted that she often spoke to her father on the phone when he was in Nannyville. She acknowledged knowing uncle Cyril. She too could not adequately explain the condolence cards sent to the Applicant.

Even her own words inadvertently suggest that the deceased had a spousal relationship:

“Q: You can’t say he was not living with Miss Maragh from 2005 until he died?”

A: He tells me that to get away from her to go over and spend a week or two. That’s why he did not sell the house somewhere to go because of argument. His clothes still there, the tables and chairs.

Q: So he could get away. But he living at 2 Nannyville?

A: No he say sometimes an argument so he get a break.

Q: Then he go back?

A: I guess so.”

Manifestly, if this is true, the deceased by those words is acknowledging that his place of abode is with the Applicant. When there is a disagreement he retreats to his house for a short period.

[13] Shaniqicoy Golding was the daughter the deceased had by Lorna Moulton. Her evidence in cross-examination was telling:

“Q: Prior to his death you see him at 2 Nannyville Boulevard?”

A: Sometimes.

Q: He lived there prior to his death?

A: Yes.

Q: From you were a little girl that’s where you went to get your lunch money for school?

A: Yes, sometimes.”

[14] I preferred the evidence of the Applicant and her witness to that of the objectors. On the evidence and on a balance of probabilities, I found that the Applicant was a single woman who lived and cohabited with Mr. Huntley Golding a single man as if she were in law his wife for a period in excess of five (5) years.

[15] I therefore made the following Order and Declaration:

1. It is declared that the Applicant Blossom Monica Maragh was the spouse of the late Huntley James Golding at the time of his death.
2. No order as to Costs.

**David Batts
Puisne Judge**