

Judgment Book

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN CIVIL DIVISION
CLAIM NO 2006/HCV05107

BETWEEN MILLICENT BOWES CLAIMANT
AND KEITH ALEXANDER TAYLOR DEFENDANT

IN CHAMBERS

Mr. Sean Clarke instructed by Clarke & Gammon for the claimant.

Mr. Jermaine Spence and Ms. Teri-Ann Lawson instructed by DunnCox for the defendant.

HEARD: July, 1 & 21, 2008 & January 19, 2009

Property Dispute – parties unmarried - claim for half-interest on basis of the “equal share rule”- whether a common law relationship existed between the parties- whether claimant a “spouse” for the purposes of the rule - factors to be considered – whether property is the “family home”- The Property (Rights of Spouses) Act, ss 2(1), 6(1) & 13

McDONALD-BISHOP, J

1. Miss Millicent Bowes, the claimant, contends that she is the common law wife of Mr. Keith Alexander Taylor, the defendant, having cohabited with him at several locations in Manchester from May, 1985 until October, 2006.

2. By Fixed Date Claim Form filed on December 28, 2006, she commenced proceedings under the **Property (Rights of Spouses) Act** (the Act) for court orders in the following terms:

- “1. A Declaration that the Defendant and the Claimant are equally beneficially entitled to the FAMILY HOME situated at Hopeton in the parish of Manchester.
2. That the FAMILY HOME be valued and the Defendant pay to the Claimant a sum equal to 50% of the net value of the said property.
3. That the FAMILY HOME be valued and sold on the open market and the net proceeds of sale be divided and apportioned to the parties equally.
4. Such further and other Orders as the Court deems fit.”

3. The defendant, in his response, has challenged the claim on the grounds that the claimant is not and never was at any time his common law wife and therefore not his spouse within the meaning of the Act so as to entitle her to a half- share interest in the property in question. He contends further that the claimant has made no contribution to the acquisition, maintenance or improvement of the said property and so she is not entitled to any interest in it whatsoever.

CLAIMANT'S CASE

4. The claimant, in seeking to establish her claim for half share interest in what she claims to be the family home, has relied on two affidavits: her affidavit filed on December 28, 2006 in support of the Fixed Date Claim Form and that of Gladys Givans filed on June 25, 2007. Although liberty was given at first hearing to the claimant to file further affidavits in response to the defendant's affidavits, no other affidavit was put before me and it was expressly stated by her counsel at the commencement of the hearing that the claimant would rest her case on only those two affidavits. The claimant and her witness were not cross- examined by the defence. The claimant's case is therefore embodied within the confines of these two affidavits.

5. The evidence as advanced by the claimant in her brief affidavit is summarized as follows. She is a housewife and the common law wife of the defendant having started cohabiting with him in May, 1985. At the time of their cohabitation, the defendant was a farmer and she was a housewife. They lived together at Balvenie Heights and Kendal Road in Mandeville, Manchester prior to moving into the house at Hopeton which is the subject matter of the claim.

6. It was in 1993 that the defendant bought a parcel of land at Hopeton on which they built the family home. They started cohabiting in that house in 1994. In 2003, they built a flat on the said land at Hopeton. They contributed equally to the construction of the family home from income derived from their respective occupations but no account was kept by them as to their respective contributions. The defendant presently resides in the family home and she lives elsewhere as she was forced to leave the family home on October 1, 2006 because of verbal abuse from the defendant.

7. The affidavit evidence of the claimant's witness, Gladys Givans, is just as brief as the claimant's and can also be summarized without much difficulty. It is the evidence of Miss Givans that she knows both the claimant and the defendant. She has a very good relationship with both of them. She contends that "to the best of her knowledge, information and belief," the claimant was the common law wife of the defendant. She used to visit both parties occasionally and would stay overnight in the house at Hopeton in which the parties lived for about 13 years. "To the best of her knowledge, information and belief," the defendant only had one common law wife for the past 21 years who is the claimant.

THE DEFENDANT'S CASE

8. In refuting the claimant's case, the defendant relies on his two affidavits: one filed February 8, 2007 and the other filed July 31, 2007. He also relies on the affidavit of Carol Wilson filed on July 31, 2007 and that of Kleon Taylor filed on November 9, 2007. The

defendant's evidence as embodied in these affidavits proves to be more comprehensive than that of the claimant and her witness. For the sake of brevity, I do not propose to give every minute detail of that which is asserted by him but every effort will be made to highlight those aspects that are considered most germane. His response to the claimant's case will now be examined.

9. The defendant is a farmer and business man and a divorcee. The claimant was never a housewife to him and he denies the entire evidence contained in her affidavit. All her assertions concerning them living together as man and wife at the places she mentioned are denied.

10. He and his former wife employed the claimant as a live-in household helper in or about May, 1985. At that time, the claimant would go home on weekends before his ex-wife left the matrimonial home at the end of 1985. In 1985, the claimant received a salary of \$50.00 per week in her capacity as a household helper. This sum was increased over the years so that up to September, 2006, she was paid \$3000.00 weekly with bonuses from time to time.

11. When he first employed the claimant, he was living at Balvenie Heights and then he relocated to Kendal Road in or around 1986. In 1993, he purchased the parcel of land at Hopeton and built a house on it for himself and his children (this is the house that the claimant is claiming to be the family home). He moved to that house in 1994 and the claimant was given a room in that house as a household helper. In 2004, he built a flat on the said property. He built these premises solely from his own resources and with assistance from the bank. He did so without any help from the claimant. The claimant has made no contribution to this house and she did not assist in furnishing it. At no point in time did he intend for the claimant to have an interest in his property. He has exhibited 117 receipts evidencing his expenditure on the construction of the house and to prove that all the expenditure was done by him.

12. In 1987, following his wife's departure from the matrimonial home in 1985, he 'succumbed to temptation' and started a sexual relationship with the claimant that lasted until 2004. During all this time, she was in his employment as a paid household helper and her status never changed.

13. Since 1987, he has had a serious ongoing relationship with Miss Wilson (his witness) that produced a child born in 1994. While the claimant lived in his household, Miss Wilson did everything for him as a wife except living in his house. She would however visit with his child who would spend weekends and holidays with him. He would eat and sleep by Miss Wilson's house from time to time. He was treated as a son-in-law by her mother. They would also go to public functions together and go out generally in public as man and wife. They also had bank accounts in their joint names. This relationship with Miss Wilson was opened and public during the time the claimant contends that they cohabited together. He now lives with Miss Wilson since 2006. It is Miss Wilson whom he intends to marry and he had indicated that to the claimant on more than one occasion.

14. The claimant advised him in 1994 that she had a boyfriend (George) in the United States of America (USA) from around 1980 and she asked him for his help to obtain a visa to go visit him. He assisted her in getting the visa and he would pay her plane fare from time to time for her to go to the USA to see George. In 2005, he told the claimant he would stop paying her plane fare for her to visit her boyfriend overseas. He is aware that up to September, 2006, that boyfriend had wired money to the claimant.

15. The claimant contributed nothing to household expenses and on the rare occasions that she might have expended money on groceries or other household items when the money he gave her to do so might have been insufficient, he had to refund her immediately.

16. They never shared financial resources. However, after the divorce, he placed the claimant's name on two accounts- a savings account and an investment account. He did

this in an effort to safeguard the accounts, in the event of his death, for the benefit of his children who were very young at the time. This was done on the advice of his bank manager and was strictly as a matter of convenience. The claimant had no authority to sign in relation to the accounts as his signature alone was necessary and neither did she have the authority to operate any of his accounts. She made no deposits to his account because she was not authorized to do so. She would go to the bank occasionally on his behalf as bearer to collect money and to pay bills. He would always give her a withdrawal slip signed by him with a cover letter requesting the bank to deliver to her.

17. Between 2001- 2004, there were frequent disagreements between the claimant and him and he repeatedly threatened to fire her. In or around 2004, he became ill and underwent surgery however the claimant did little to assist him. They stopped having sexual relations in 2004. In 2006, she left his employment and left the house.

18. The defendant was cross- examined and it is observed that several suggestions and questions were put to him by counsel for the claimant on matters that did not form part of the claimant's case. The practical effect of this is that the answers of the defendant on those matters stand unrefuted by any evidence to the contrary coming from the claimant.

19. The unchallenged evidence of the defendant that was elicited upon cross-examination is as follows. He was never romantically involved with the claimant apart from what he called a sexual affair. He never approached the claimant when he was driving in Mandeville in 1985 with a view to seeing her romantically. He never engaged in a sexual relationship with the claimant for 17 years as sometimes he would go for months without any involvement with her. This involvement with her did not go up to 2006. He did not share a bedroom with the claimant; she was given a room to carry out her duties as a household helper. During the years the claimant lived in his house at Kendal, other women did not live with him but they would come and spend time with him at his house.

20. He has never publicly displayed any relationship with the claimant over the years. He kissed and embraced her in public only once and that was at her 50th birthday party when he gave a speech on her behalf. He acted spontaneously and at the demand of the crowd. He was not the only one who kissed her on that occasion. She asked him to cut her cake with her and he did. He did not pay for the event and he did not in his speech acknowledged any long standing relationship with her.

21. Miss Wilson, in giving evidence on behalf of the defendant, supports his contention that they are involved in a common law relationship. Their relationship started in 1987 and produced a child in 1994. In 1987, the defendant introduced her to the claimant as his girlfriend and the claimant was introduced to her as the household helper. She knows that the claimant had a room at the defendant's house that facilitated her status as the live-in helper.

22. Between 1987 and 2006, she did not move into the defendant's house out of respect for her mother's wishes. In October 2006, she moved in to live with the defendant as the defendant was ill and needed constant care following on one of his surgeries. Since 1987, she has been involved in his business and would take care of his banking transactions. The claimant is the household helper who made no contribution to the acquisition of the property in which she is claiming an interest. Under cross -examination, she stated that she was not aware of the defendant having any relationship with the claimant. She was not aware that the claimant and the defendant shared a bedroom.

23. The next witness for the defence, Kleon Taylor, gave affidavit evidence that he is the son of the defendant. He stated that the claimant was employed by the defendant as a household helper and that she would cook meals and wash clothes for everyone living at the house. The claimant did not sleep in his father's room. He would see the defendant leave the claimant's weekly pay on the table in the living room. He was also aware of the defendant's relationship with Miss Wilson for a long time as he would accompany his

father to visit Miss Wilson at her house. He would also go there on his own and would eat there. He was not cross-examined. His evidence therefore stands unchallenged.

ISSUE

24. The question that arises ultimately for determination is whether the claimant is entitled to a one half-share in the property in question by virtue of the Act on the basis that it is the family home. This question, however, turns on the resolution of the central issue that forms the bone of contention between the parties and that is whether the claimant is a "spouse" within the meaning of the Act.

THE LAW: Relevant Provisions of the Property (Rights of Spouses) Act

25. The Act was passed 'to make provisions for the division of property belonging to spouses and to provide for matters incidental thereto and connected therewith.' The Act therefore is designed to deal with property questions arising between spouses only. A spouse is defined under section 2(1) of the Act to include:

"(a) a single woman who has cohabited with a single man as if she were in law his wife for a period of not less than five years;

(b) a single man who has cohabited with a single woman as if he were in law her husband for a period of not less than five years,

immediately preceding the institution of proceedings under this Act or the termination of cohabitation, as the case may be."

The Act also provides that the terms "single woman" and "single man" used in the definition include widow, widower or a divorcee.

26. The Act, also in section 2 (1), defines the concept "cohabit" as used in reference to the definition of a spouse to mean "to live together in a conjugal relationship outside of marriage" and that the term "cohabitation" should be construed accordingly.

27. Section 6 (1) of the Act then provides that subject to sections 7 and 10, each spouse is entitled to one - half share of the family home upon the occurrence of three specified

events. In so far as is relevant to the instant case, the particular event that would trigger the application of the rule in respect to unmarried spouses would be upon termination of cohabitation.

28. Under Section 13 (1), an unmarried spouse is entitled to apply to the Court for a division of property within twelve months of termination of cohabitation or such longer period as the Court may allow. In this case, there is no issue that the claimant's application is properly within time and, based on her claim, she would have satisfied the provisions of section 13(2) for making an application under the Act.

29. For the claimant to succeed on her claim for a half interest share in the disputed property, it must be established that the property is the "family home." "Family home", as defined under section 2 (1), of the Act means:

"the dwelling- house that is wholly owned by either or both of the spouses and used habitually or from time to time by the spouses as the only or principal family residence together with any land, buildings, or improvements appurtenant to such dwelling- house and used wholly or mainly for the purposes of the household, but shall not include such a dwelling house which is a gift to one spouse by a donor who intended that spouse alone to benefit."

30. Essentially then, the presumptive half- share property entitlement or the "half-share rule" or "equal share rule", as it is conveniently called interchangeably, applies only to persons who fall within the definition of a "spouse" and only in respect of property that fits within the definition of the "family home." The claimant must bring her case within the ambit of these definitions in order to succeed on her claim.

ANALYSIS AND FINDINGS

IS THE CLAIMANT THE DEFENDANT'S SPOUSE

31. The first and fundamental issue that must be examined is whether the claimant qualifies as a "spouse" within the meaning of the Act in order to invoke the operation of the half- share rule in her favour. The question as to whether she is a spouse is both a

question of law as well as of fact. The onus of proof is on the claimant to satisfy the court on a balance of probability, both as a matter of law and as a matter of fact, that she is the defendant's spouse.

Whether the claimant is a "single woman" and the defendant a "single man"

32. The first precondition that must be satisfied to fall within definition of spouse is that both parties must have been single during the period of alleged cohabitation. Evidence as to the marital status of both parties during the relevant period is therefore required. The claimant has merely said that she is a housewife and the common law wife of the defendant. Apart from calling herself the common law wife, she has not demonstrated on the evidence that she is in fact so. She must show on the evidence that she was a "single woman" at the material time. The defence has put the claimant to strict proof of her averments. She asserts it, she must prove it. The duty is on her to bring evidence to satisfy every aspect of her claim. She has failed to do so.

33. Similarly, she must prove that the defendant was a "single man" during the relevant period of alleged cohabitation. Again, the claimant has made no mention as to the status of the defendant at the material time. It is the defendant who gave evidence, from which it is gleaned, that since 1991 he has been divorced and that he has not re-married. This would mean that as a divorcee, he would fall within the meaning of a "single man" as contemplated by the Act. This lacuna in the claimant's case has been filled by the defendant on his case.

34. While it is established, through evidence from the defendant, that he is a "single man" within the meaning of the Act, there is, however, no evidence from which it can be found conclusively that the claimant is a "single woman" as required by law. I do agree with the submission of counsel for the defence that the question as to whether the claimant is a common law spouse is "eminently and ultimately" a question of law for the court to determine on the evidence and so her evidence only to the effect that she is a common law

wife is not sufficient to prove her case that she was in law and in fact a “single woman” at the time she said she lived with the defendant.

35. The failure of the claimant to prove her status as a “single woman” at the time she claims she cohabited with the defendant goes to the heart of her claim. It is a fatal omission that adversely affects the validity of her claim to be a spouse under the Act. This, without more, could be determinative of the claim but I will, nevertheless, proceed to examine her claim in its entirety to see if she has properly established the other aspects of her claim, in the event it could be argued that her marital status was not in dispute.

Whether there was cohabitation as husband and wife

36. The next question that now falls to be examined in determining whether the parties are spouses for the purposes of the Act is whether the claimant has proved, on a balance of probability, that she had cohabited with the defendant “*as if she were in law his wife*” and “*as if he were in law her husband*”. In other words, was there a conjugal relationship outside of marriage between them?

37. It is seen that while the Act has defined “*cohabit*” and “*cohabitation*”, it really has not offered a comprehensive and workable definition of what is meant to cohabit as if they were in law husband and wife. Nor does it seek, in anyway, to enumerate the indicia that would point to the existence of such a union. It therefore becomes a matter strictly for judicial interpretation and determination as to when persons are cohabiting as if they are in law husband and wife for the purposes of the Act.

38. In starting with the ordinary dictionary meaning of the word “*conjugal*” as used in the Act in reference to definition of “*cohabit*”, it is seen that it means “*relating to marriage or the relationship between husband and wife*”. It stands to reason therefore that for a relationship to qualify as a conjugal relationship outside of marriage within the meaning of the Act, it must be a relationship that bears a likeness to marriage or being the equivalence of marriage. The concept imports the requirement that not only must the

parties forming the union be single (just as parties who join in matrimony) but that the interaction between them must be such as if they are in law married to each other.

39. The learned authors of **Bromley's Family Law**, 10th edition p. 100, after a review of some relevant authorities, observed that there are problems inherent in determining what living as husband and wife entails. However, in an attempt to illuminate the essence of the concept, they state at page 102:

"To live together as "husband and wife" implies some quality in the arrangement which differs from, say, that of landlord and lodger, or flat-sharing friends, or even family members of different generation. It goes to the essence of the relationship, but what does it entail?"

40. In **Ghaidan v Mendoza** [2004] 3 WLR p. 113, Baroness Hale, in speaking to a similar phrase contained in an English statute, also expressed similar sentiments when she stated:

"Working out whether a particular couple are or were in such a relationship is not always easy... what matters most is the essential quality of the relationship, its marriage-like intimacy, stability, and social and financial inter-dependence."

41. In **Mummery v Mummery** [1942] P. 107, Lord Merriman, P opined that the term must mean 'setting up a matrimonial home together and that involves a bilateral intention on the part of both spouses to do so'. Similarly, In **Thomas v Thomas** [1948] 2 K.B. 294 at 297 Lord Goddard, C.J., in giving his opinion as to the nature of such a relationship, stated:

"Cohabitation does not necessarily depend upon whether there is sexual intercourse between husband and wife. "Cohabitation" means living together as husband and wife... cohabitation consists in the husband acting as a husband towards the wife and the wife acting as a wife towards the husband, the wife rendering housewifely duties to the husband and the husband cherishing and supporting his wife as a husband should."

42. The question as to whether parties are cohabiting for the purposes of the law was also considered in some detail in **Kimber v Kimber** [2000] 1 FLR 384 (one of the cases

relied on by the defence). The authorities on the point were reviewed by Tyrer, J and in assessing the relationship in that case to see whether there was cohabitation, the learned judge made an important point worthy of direct repetition. He cautioned:

“It is foolhardy to attempt to reduce to a judicial soundbite a comprehensive list of criteria and the authorities are replete with warnings of the dangers of doing so. But through what I hope has been a careful reading of the cases, whilst it is impossible to provide a checklist or set of factors or criteria to cover every scenario, it is possible to draw some factors together. Such factors cannot be complete nor comprehensive but should be sufficient to cover the facts of the case that I am called upon to decide.”

43. After a review of some relevant authorities, he then identified as some ‘signposts’ of cohabitation the following:

- (1) *Living together in the same household*
- (2) *A sharing of daily life*
- (3) *Stability and a degree of permanence in the relationship; that is not a temporary infatuation or passing relationship such as a holiday romance*
- (4) *Finances, that is to say, is the way in which financial matters are being handled an indication of a relationship?*
- (5) *A sexual relationship*
- (6) *Children*
- (7) *Intention and motivation*
- (8) *The ‘opinion of the reasonable person with normal perceptions’.*

44. There is also authority for the proposition that in keeping with marriage being a lifetime commitment, a conjugal union outside of marriage should be one that reflects a mutual lifetime commitment of the parties to each other. This consideration was given due weight in **Nutting v Southern Housing Group Ltd** [2005] 1 FLR 1066. In that case, the court, in determining the question as to whether a same sex couple was living together as husband and wife for the purposes of section 17 of the **Housing Act 1988** (U.K), looked at the degree of permanent commitment in the relationship.

45. In examining the issue, the court emphasized two factors: (a) the need to establish that the relationship was “*an emotional one of mutual lifetime commitment rather than simply one of convenience, friendship, companionship or the living together of lovers*” and (b) the need for the relationship to have been presented to the outside world “*openly and unequivocally so that society considers it to be of permanent intent- the words “till death us do part” being apposite.*” Evans- Lombe, J clearly made the point that “*without a lifetime commitment, at least at some point in the relationship, there is no similarity to marriage.*”

46. **Bromley** (supra) has criticized this position as being too strict and as going too far as circumstances may well arise where a couple who ‘cohabit’ would find it difficult to honestly say that they intended or even hoped to do so for the rest of their lives. Also, that there may be persons who are living together as husband and wife but who may chose to hide their relationship from others and so this need for the relationship to be presented to the world ‘openly and unequivocally’ may be going too far.

47. These criticisms might, perhaps, be well-founded and so not without merit since a conjugal union outside of marriage is not in the full sense of the term a marital union. The insistence on evidence of the existence of a mutual lifetime commitment might, indeed, be stringent. It is really in marriage that the ultimate vow would normally be taken that ‘*until death do us part.*’ However, the common law union could be taken as having not reached that level of commitment and so that could be taken as one of the crucial things that would render it short of being a marriage. I would, however, say that while there might not need to be the demonstration of a mutual “lifetime’ commitment on the same level as would be expected in a marriage, there should, nevertheless, be a level of commitment that seems serious and stable and with an apparent degree of permanence that bears a likeness to marriage. So, the level of commitment of the parties to the union cannot be ignored and must be a relevant consideration. So too would be the manner in which they presented themselves to the world, even though this cannot be, in and of itself, conclusive.

48. So, it seems safe to argue that the conjugal union outside of marriage, even if not identical to marriage, must be, at least, akin to it. This means too that the union should be monogamous in that there can only be one common law spouse at a time (as distinct from mere sexual partners or lovers) for the purposes of the law since in marriage there can only be one husband and one wife at any given time. This would be necessary in order to give effect to the statutory phrases "*as if she were in law his wife*" and "*as if he were in law his husband.*" I believe that to hold otherwise would be an affront to common sense.

49. In examining the question before me against the background of the authorities I have had the opportunity to review, I too will agree that no single factor can be conclusive of the question whether a man and woman were living together as if they were in law husband and wife. I have come to the conclusion too that there is not (and there might never be) a closed and exhaustive list of criteria that may be used to determine the question. It requires, to my mind, a thorough examination of the circumstances of the parties' interaction with each other as well as their interaction with others while bearing in mind that there will always be variations in the personalities, conduct, motivations and expectations of human beings. The court, indeed, will have to make a value judgment taking into account all the special features thrown up by a particular case to see whether the lives of the parties have been so intertwined and their general relationship such that they may be properly regarded as living together as if they were, in law, husband and wife. It has to be inferred from all the circumstances.

50. Whether parties share a conjugal union outside of marriage seems, ultimately, to be ascertainable upon the application of an objective test after taking into account subjective elements of the parties' conduct and interaction with each other. That is to say the consideration must be not only what the relationship, on the evidence, might have meant to the parties themselves or what they claim it to be but, above all else, what it would appear to be to the ordinary and reasonable person of normal perception looking on with full knowledge of all the pertinent facts.

51. The question now to be determined is whether, having regard to the law and the circumstances of this case, it can be said that the claimant and the defendant cohabited as if they were, in law, husband and wife. For convenience, I will adopt the useful guidelines proposed in **Kimber v Kimber**, to the extent that they are relevant, in my attempt at determining the nature of the relationship between the parties.

52. I must commence by stating that it is observed, as pointed out by counsel for the defence, that the claimant's evidence as contained in her affidavit and that of her sole witness is rather sparse. The claimant does not seek to demonstrate on the evidence the basis for her assertion that she is the common law wife of the defendant. She has given no evidence as to the nature and extent of her interaction with the defendant and his family except that she lived with him and that she assisted in constructing the house in question. Her witness, Miss Givans, does not help in any way in this regard. She has not given the factual basis upon which she arrived at her conclusion that the claimant is the common law wife of the defendant.

53. As a result, the assertions of the claimant and her witness, as to the existence of a spousal relationship between the claimant and the defendant, remains materially unsubstantiated at the end of the case in the face of the challenge of the defendant that she is not his spouse. The circumstances of the relationship between the parties are largely provided by the defendant and his witnesses and because the claimant has not responded to some critical aspects of the defendant's evidence, a substantial portion of the defendant's case stands virtually unchallenged thereby weakening the claimant's case.

Living together in the same household

54. The question as to whether the parties lived together in the same household is one of the factors to be considered in determining whether a spousal relationship exists although it is not, by itself, determinative of the issue. It is not enough to just live in the household, the living must be such as between husband and wife. The fact that the parties

(in the instant case) lived together in the same household between 1985 and 2006 is taken into account. Also taken into account is the duration of the period of residence which is noted as being rather considerable. However, the unchallenged evidence of the defendant and his son, which I accept in light of there being no evidence to the contrary, is that the claimant lived in the household for the period under a contract of employment as a paid household helper. It is also the unchallenged evidence of the defence that the claimant lived in a separate room from the defendant. So, although the parties lived under the same roof, the evidence before the court is that the claimant did so as an employee providing paid services to the household and a room was provided to her to facilitate this role. There is no credible evidence, therefore, of a mutual agreement between the parties that they would at any time set up house together as man and wife. The fact that the parties resided under the same roof for a long time, while relevant, is not by itself of sufficient weight on which to hinge a finding that a spousal relationship existed.

Sexual relationship

55. Mr. Clarke has asked me to find that the claimant was the defendant's spouse partly on the basis of the long standing sexual relationship between them. There is no dispute that the parties had a sexual relationship. It is accepted that sexual relationship between the parties living under the same roof and over a prolonged period might be a strong indicator of a defacto relationship but it is, of course, not conclusive of the matter. It is just one factor to be weighed in the equation in the totality of the circumstances.

56. Interestingly, the claimant offered no evidence about this sexual relationship the defendant spoke about. The defendant's evidence has established the relationship as a sexual affair between employer and employee rather than as an emotional, romantic and committed involvement between them as persons living as husband and wife. I am left only with the defendant's assertion.

57. The weight to be accorded to the sexual relationship in this case as a strong indicator of a spousal relationship must be determined by taking into account other circumstances of the case. It is noted that this sexual relationship existed within the context of an employer/ employee relationship with the parties sharing separate rooms. The authorities do emphasize, that which is in keeping with common sense, that living together as if in law husband and wife is not the same as living together as companion or lovers. It certainly cannot be the same as living together as employer and employee who engage in a sexual relationship. It certainly requires something more.

Was there stability and degree of permanence in the relationship?

58. The evidence of the defendant and that of his witnesses that the defendant was involved with other persons, to the knowledge of the claimant, during the relevant period stands to be considered in determining the strength of the sexual relationship as being indicative of a spousal one. It remains unchallenged that the defendant had a long standing relationship with Miss Wilson that produced a child during the period asserted by the claimant as the period of cohabitation. The undisputed evidence is that the claimant was introduced to Miss Wilson as the household helper and Miss Wilson was introduced to her as girlfriend of the defendant. This relationship between the defendant and Miss Wilson seems on the evidence to have been open, public and unequivocal. The defendant also said that at some point other women would come to his house and stay from time to time while the claimant lived there.

59. It is also the unchallenged evidence of the defendant that the claimant, known to him, had a boyfriend during the relevant period with whom she was in contact. This again stands as a critical and uncontroverted bit of evidence that must be weighed in the equation in considering whether a spousal relationship existed between the parties.

60. I find that the parties' known involvement with other persons to such an extent and within the context of an employer/employee relationship has taken away substantially

from a finding that the essence and quality of their interaction was as if they were husband and wife. There is the absence of an indication of mutual commitment to a shared life with some measure of stability required for a union that should resemble a marriage. The sexual relationship within such a context would therefore carry no significant weight in defining the relationship as a spousal one.

Finances

61. It is also contended by Mr. Clarke that the established sexual relationship coupled with the joint involvement of the couple in personal finances would serve to qualify the claimant as a spouse. The claimant has said that the house in question was built with their joint resources. It is noted that she said she was a housewife and that she assisted in building the home from her income as a housewife. She has failed to indicate the source and nature of such income in light of the fact that she has stated no occupation in which she was engaged at the material time. It is the defendant who said she was paid an income by him as helper. The claimant has not said otherwise.

62. The claimant has not demonstrated on the evidence the nature and extent of her contribution to the acquisition of the property. Having seen the defendant's receipts tendered into evidence, and given the absence of any credible and cogent evidence from the claimant, I believe the defendant, on a balance of probability, that the house was built from his own resources without any financial help from the claimant. There is thus no evidence to show any intention or course of dealing between the parties to jointly acquire, own and use the property for their mutual benefit as partners. The claimant's assertion that they acquired the property as a result of a joint effort is rejected.

63. There is also within this context no evidence from the claimant that she otherwise shared in the day to day expenses of the household or in other financial undertakings. She paid no bills and did not meet any family expenses. The defendant's evidence is that he

bought groceries and did everything in relation to the household and that if the claimant spent any money on groceries, he would immediately reimburse her.

64. Furthermore, it is the defendant who gave evidence speaking to the addition of the claimant's name on two accounts that he had at two financial institutions. The claimant has indicated nothing in this regard. Even though the defendant gave evidence as to the reason for the claimant's name been added, the claimant has given no evidence challenging the defendant's assertion that it was as matter of convenience. There is thus no evidence of fiscal collaboration or financial interdependence between the parties which, when coupled with the sexual relationship, could lead to a positive finding that the parties lived together as if they were in law husband and wife.

Was there sharing of daily life?

65. The claimant has given no indication of any sharing between herself and the defendant of different aspects of daily life. She has pointed to no shared tasks, obligations and duties in the course of their daily lives. Mr. Clarke, on her behalf, has submitted many things that he said were done by the claimant and which, he submitted, would tend to demonstrate the claimant's contribution to the acquisition, construction and maintenance of the family home and her contribution to the welfare of the family unit. This includes, caring for all the defendant's children, the care she provided for the convalescent defendant himself and her services rendered as housewife in cooking, cleaning and washing for all members of the household.

66. The sad thing is that Mr. Clarke's submission lacks evidential foundation and as such cannot be accepted as one with merit. The claimant has given no evidence as to her contribution to the family home or family unit outside of her assertion that she assisted in construction of the family home. She has not furnished any evidence as to her precise role in the day to day operation of the household or in the maintenance and preservation of the disputed property nor has she given any evidence as to her role in the care and upbringing

of the children of the household so as to ground her claim. It is the defendant who has asserted that the role of the claimant in the household was as a paid helper whose task was also to care for his young children. The claimant has failed to prove that this was not so.

67. I therefore find on the evidence before me that the claimant's performance of household duties which would include caring for the defendant's children would have been part and parcel of her existing contractual duties to provide paid services to the household and not as a result of any conjugal union between herself and the defendant. The fact that the claimant's children did not factor into any arrangement between the defendant and the claimant also serves to cast some doubt on her assertion that there was a conjugal union outside of marriage. There is thus no evidence of a mutual sharing of daily life towards a common goal as would usually be part of a union between husband and wife.

The parties' motivation and intention

68. It is the defendant who gave evidence that it was never his intention to treat the claimant as his spouse. The claimant has not given evidence of any conduct or communication between them or any representation made by the defendant to her that would cause her to believe and for the objective onlooker to perceive that sexual contact had led to a change in their original status as employer/employee. The continued payment of wages is a strong indicator that the 'substratum' of the relationship never changed. The fact that both were free to pursue other relationships, to the knowledge of each other, is also a strong indicator that there was the absence of a common intention and mutual commitment to live as husband and wife.

69. The defendant has indicated that his intention, as apparently backed by his conduct, was to have a permanent relationship with Miss Wilson. It is Miss Wilson who is the mother of his child and who now lives with him. There is no evidence of any motivation

and intention on the part of either the claimant or defendant to enter into a committed, monogamous and stable union on a permanent basis equivalent to marriage.

The public and outward aspects of the relationship

70. The external interaction, if any, between the defendant and the claimant must also be examined in trying to ascertain whether it can reasonably be concluded that the defendant acted towards the claimant as if she were in law his wife and as if he were in law her husband. While too much weight cannot be placed on outward manifestations, in and of themselves (as persons can cohabit in private as if they are in law man and wife and nobody knows), it is nevertheless a relevant factor to be considered, particularly in the context of this case, where another person is being presented as the rightful partner of one of the parties.

71. The claimant, however, has not given any evidence of any interaction between herself and the defendant in public or at all. Although the claimant's witness, Miss Givans, has stated that the claimant is the spouse of the defendant, she has not shown the basis for her conclusion. The only evidence about any contact between the parties in public came from the defendant when he was cross-examined and that relates to the claimant's 50th birthday party celebration, nothing else. The defendant claims that it is Miss Wilson whom he presents to the public as his spouse. There is nothing from the claimant to contradict this. I cannot presume anything about the parties' relationship; everything must be proved on the evidence and it is the duty of the claimant to do so. There is nothing to indicate that the relationship was presented as an open and unequivocal one as would normally be expected between husband and wife.

The opinion of the reasonable person with normal perception

72. There is no evidence from anyone to demonstrate that from a third party perspective, it would occur to the reasonable onlooker that the parties were spouses. Miss Givans, the claimant's witness, has given no evidence as to her observations and

experiences in her meetings with the parties from which it could be inferred that they were spouses. On the evidence, there is nothing to establish that the ordinary and reasonable person with normal perception looking on the relationship between the parties in all the circumstances of the case could conclude that the parties were living together if they were in law husband and wife.

Conclusion

73. I am compelled on the evidence to the inevitable conclusion that the claimant did not cohabit with the defendant as if they were in law husband and wife. When all the available evidence in relation to the relationship between the parties is considered, I find that the relationship lacks that essential quality necessary for it to be seen as one akin to marriage. I find that the claimant has failed, on a balance of probability, to prove her legal standing as a spouse for the purposes of the Act.

WHETHER THE CLAIMANT IS ENTITLED TO A HALF- SHARE

74. The claimant would only be entitled to a half- share of the property in question if she was a spouse and the house was the family home. The fact that she was not a spouse leads logically to the conclusion that the house in which she resided with the defendant cannot be taken as the family home for the purposes of the law. In the premises, the claimant has failed to establish her claim to a half- share interest in the property in question as set out in her Fixed Date Claim Form.

ORDER

75. Accordingly, the claimant's claim is dismissed and there shall be judgment for the defendant with costs to be agreed or taxed.