



[2022] JMSC Civ.215

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2019CV02319

IN THE MATTER OF ALL THAT PARCEL OF LAND part of NUMBER EIGHTY-SEVEN HOPE ROAD in the parish of ST. ANDREW being Lot numbered SIX on the plan of No. 87 Hope Road now known as Townhouse 7, Hope Glade Mews, 87 Hope Road, Kingston 6 in the parish of St. Andrew registered at Volume 1234 Folio 110 of the Register Book of Titles.

AND

IN THE MATTER of the Property (Rights of Spouses) Act 2004.

BETWEEN

MONA YVONNE JAMES

CLAIMANT

AND

SATRICURL WILSON

DEFENDANT

IN CHAMBERS

Mr. Gordon Steer and Ms. Abigail Heslop instructed by Chambers Bunny & Steer for the Claimant

Mr. Ravil Golding instructed by Lyn-Cook Golding & Co. for the Defendant

Heard: July 27, 28 and December 9, 2022

Sections 2 and 6 of the Property (Rights of Spouses) Act – Whether the Claimant is a spouse as defined by the Property (Rights of Spouses) Act – Division of property – The definition of the family home – Principal family residence.

CARR, J

Introduction

[1] Mona James and Satricurl Wilson met some time in the late 1980's. They became intimately involved and their union produced three children. During their relationship Mr. Wilson acquired property located at Hope Glade Mews St. Andrew (**the property**). Ms. James seeks a declaration that the property was the family home and that upon their separation she was entitled to a half share of its value in accordance with the provisions of the Property (Rights of Spouses) Act (**PROSA**).

Issues

- a) What was the date of separation.
- b) Whether Ms. James and Mr. Wilson were “spouses” as per Section 2 of PROSA.
- c) Whether the property was the family home.

The Law

[2] There is no longer a distinction between persons who are married and those who are in a common law union. The law recognizes the property rights of spouses to include persons in a common law union. These provisions are encapsulated in PROSA. Ms. James has the burden of establishing on a balance of probabilities that she was Mr. Wilson's spouse and that the property was the family home.

[3] Section 2 (1) of PROSA defines a spouse in this way;

"In this Act-

"spouse" includes-

(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.

"cohabit" means to live together in a conjugal relationship outside of marriage and "cohabitation" shall be construed accordingly;"

[4] The family home is defined as follows;

"family home" 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..."¹

[5] Section 6 (1) of the Act has provided that upon the separation of a husband and wife the family home shall be divided equally between them. The section is set out below;

¹ Section 2(1) of the Property (Rights of Spouses) Act

“Subject to subsection (2) of this section and sections 7 and 10, each spouse shall be entitled to one-half share of the family home—

(a) on the grant of a decree of dissolution of a marriage or the termination of cohabitation;

(b) on the grant of a decree of nullity of marriage;

(c) where a husband and wife have separated and there is no likelihood of reconciliation.”

[6] The court’s determination of the issues in this case will turn primarily on the credibility of the witnesses. Ms. James filed four affidavits in this claim dated June 6, 2019, June 26, 2020, September 10, 2021, and September 10, 2021. This evidence was supported by an affidavit from her sister Ms. Glodel James which was also filed on September 10, 2021.

[7] Mr. Wilson filed three affidavits in response to the claim on July 17, 2019, October 28, 2019 and December 23, 2020. He was supported by the evidence contained in the affidavit of the couple’s daughter Ms. Jahrene Wilson which was filed on February 24, 2021 the affidavit of Leroy Smith filed on June 10, 2020, and the affidavit of Andre West filed June 10,2020.

[8] A recitation of the evidence contained in the Affidavits would not be possible given the volume of the material presented. In the circumstances therefore, I will only be making reference to the portions of the evidence which are relevant to a determination of the issues as outlined.

Findings

[9] Upon an examination and analysis of the evidence I made the following findings:

a) the parties separated in 2005.

b) the parties did not cohabit as husband and wife for a period of not less than five years immediately preceding the institution of these proceedings.

c) the property was not the family home.

What was the date of separation?

- [10] Mr. Golding submitted that there is a major hurdle that Ms. James has failed to cross, that of jurisdiction. PROSA provides that an application for a determination as to the entitlement of a spouse must be made within twelve months after the date of the termination of cohabitation or separation².
- [11] Mr. Wilson averred that since 2005 he has not had any sexual relations with Ms. James and since then he had ceased all communication with her. He admitted that he visited Jamaica in November 2017 however he stated that he did not see Ms. James at that time. He returned to the property in September 2018 with the police in order to collect items from the home.
- [12] Ms. James has disputed this evidence. She averred that up to 2017 Mr. Wilson was still supporting her financially and they were still in a relationship. The date of separation she said was September 2018.

Analysis and Discussion

- [13] During their relationship the couple shared three children together. The first child was born on February 24, 1992 and the last child (who regrettably died) was born on September 19, 2005. Ms. James averred that subsequent to the death of her last child she was so devastated that she decided to return to Jamaica to live. Upon her return, the couple resumed living together at the property. Their relationship became strained due to the issues they were having with their daughter Jahrene. Despite this, they continued to live together as husband and wife until 2018 when Mr. Wilson came to the house and collected his things.

² Section 13 (2) of the Property (Rights of Spouses) Act

- [14]** There were several discrepancies and inconsistencies in the evidence of Ms. James. In cross-examination, she agreed that she was not living at the property since 2004. She listed seven addresses in the corporate area where she said she resided from 2005 to 2012. This was never mentioned in her first affidavit in support of this application. In fact, it was her evidence that they had lived continuously at the property from 1991 up to the date of the filing of this claim. In a further affidavit she indicated that this was a mistake and that they lived as man and wife since 1991 but lived continuously at the property since 2012 until 2018. In cross-examination she stated that she lived at the property from 1991 to 2018. Later she admitted that she was living continuously at the property since 2012.
- [15]** Mr. Wilson denied living at the property between 2012 and 2018. He stated that his daughter went to live with her mother during the years 2012 – 2017. He would go there to visit her but he never lived there. Jahrene supported her father on this issue and stated that he never lived there from 2012 to 2018. I do not accept that Ms. James was living at the property with Mr. Wilson from 2005 to 2018. That could not have been the case since she herself was not living at the property until 2012.
- [16]** Mr. Wilson's assertion that the couple had no sexual relations subsequent to 2005 was never refuted. Ms. James was never questioned on this and no suggestion was made to her to counter this evidence. In the circumstances I accept Mr. Wilson's evidence that from 2005 the parties were not sexually involved.
- [17]** There is no dispute that Mr. Wilson sent money during the years 2006 to 2017 to Ms. James. He said that it was for the maintenance of his daughter. He however admitted that the money was sent to Ms. James and that he did not know what she did with it. What is clear, is that his daughter was living in Jamaica with her mother from 2006 to 2017. It is also evident that throughout the years, Mr. Wilson never failed to support his children. The fact that the money was also used to support the household in which Ms. James lived is inconclusive.

- [18] It was suggested to Mr. Wilson that in 2014 he fell and injured himself and he had to go to the hospital. Upon being discharged he was taken to the property where he stayed. He denied this and indicated that he stayed at the Medallion Hotel. Even if it was accepted that he went to the property to recover from his injury, I do not find that this is sufficient to establish that he and Ms. James were still in a relationship.
- [19] Exhibited to Ms. James's affidavit filed September 10, 2021 (**MYJ11**) is an email from Mr. Wilson's sister Jackie. In that email Jackie refers to Ms. James as Ms. B and her brother as Mr. J. She was encouraging Ms. James to get the communication channel going if only for the sake of the children. The date of the email is important. It was dated March 24, 2006, and it supports Mr. Wilson's evidence that from 2005 he had ceased all communication with Ms. James.
- [20] The evidence presented by Ms. James which includes, photographs, emails and an application for a settlement visa are all consistent with a finding that there was some type of relationship prior to 2005. However, since her return to Jamaica, the parties were no longer on good terms. In the circumstances I find that there is insufficient evidence to support Ms. James's averment that the parties were in a relationship subsequent to 2005. The application filed in 2019 would therefore be out of time as the date of separation or the cessation of cohabitation was 2005 and the claim was filed in 2019.

Did the parties cohabit as husband and wife?

- [21] Mr. Wilson averred that he and Ms. James could not have cohabited as husband and wife as defined by PROSA for two reasons. Firstly, he was not a single man at the time of the commencement of their sexual relationship. Secondly, they never cohabited as husband and wife for a period of not less than five years immediately preceding the date of the institution of this claim.

Analysis and Discussion

[22] PROSA makes reference to a single woman who has cohabited with a single man as if she were in law his wife. Ms. James's evidence is that she was single. She was not involved with anyone else apart from Mr. Wilson during the course of their relationship. Mr. Wilson in his affidavit averred that at the time he met Ms. James she was involved with another man and he was married to another woman. He later gave evidence that he obtained a divorce some time in 1995. While still married, he was also engaged in a long term relationship with another woman, Beverly Anderson. It is his evidence that she was his common law spouse from 1991 to the date of the filing of the claim.

A single man and a single woman

[23] I accepted Ms. James' evidence that she was, at the time when their relationship commenced and throughout, a single woman. Apart from a reference to another man at the commencement of their relationship, Mr. Wilson spoke about a man taking care of Ms. James's financial needs. He also said that he was told by several persons as well as his children that Ms. James was involved with someone else. In spite of this, his evidence is that he paid her rent and he supported her financially.

[24] I find it difficult to accept that armed with the knowledge of the presence of another man, Mr. Wilson would have continued to support Ms. James financially during the years 1991 to 2005.

[25] I also find that Mr. Wilson was a single man. His evidence on this issue is contradictory and appears to this court to be contrived. In his first affidavit he said that he was married and as such could not have been in a common law union with Ms. James. It is after being confronted with the affidavit in response filed by Ms. James that he mentioned he was divorced. Prior to that the impression was given that he was a married man for the entirety of his relationship with her.

[26] Having admitted to the divorce he then refers to another relationship. If this relationship with Ms. Anderson was so important and had been going on while he was married, why wouldn't he have mentioned it in his first affidavit in response to the claim. Such an important union which continued up to the time of the filing of his defence could not have been forgotten by him.

[27] Mr. Wilson in a further attempt to prove his long-standing relationship with Ms. Anderson, also asked the court to find that he was living with her up to the time of filing the claim. His evidence is that he and Ms. Anderson had a child together. That child was born in 1991. That was prior to, or around the same time, that Ms. James said that she and Mr. Wilson became intimate. The birth certificate produced for that child lists two separate addresses for the parents. Mr. Wilson in court gave his address as 75 Atlantic Road, Brixton. Ms. Anderson's address was given as 20 Scooter Court, London.

[28] To this day, Mr. Wilson's address is different from that of Ms. Anderson. Additionally, Jahrene gave evidence of her father's address in England as 75 Atlantic Road. Given the conflicting evidence, and the lack of candour on the part of Mr. Wilson, I find that at the time of his relationship with Ms. James he was a single man and she was a single woman.

Cohabiting as husband and wife for a period of not less than five years preceding the institution of these proceedings

[29] PROSA does not outline the factors that a court ought to consider in making a determination as to cohabitation as husband and wife. Counsel on behalf of Ms. James submitted that the court should be guided by the Supreme Court decision of **Millicent Bowes v. Keith Alexander Taylor**³. McDonald Bishop, J, as she then

³ Claim No. 2006/HCV05107, heard July 1 and 21, 2008 and January 19, 2019.

was, in delivering the judgment reviewed the law on this area and summarized it this way;

“...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.”

[30] In that judgment the court relied on the case of **Kimber v. Kimber**⁴ which provided what that court termed “signposts” of cohabitation they are listed below;

- (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*

⁴ [2000] 1 FLR 383

(5) a sexual relationship

(6) children

(7) intention and motivation

(8) the opinion of the reasonable person with normal perceptions.

[31] The overarching principle to be distilled from the cases is simply this, there can be no one size fits all approach in the determination of whether or not a man and woman are cohabiting as husband and wife. Although the factors listed are useful the absence of one is not fatal. The court must be aware of the fact that people have different views as to what defines a marriage. The traditional approach to marriage is no longer the norm but the exception. In that, there are married couples who live in different countries, different rooms in the same household, and even in different parishes in Jamaica that are still “husband and wife” within the context of a loving relationship. Bearing all of this in mind, I now turn to the evidence in this case.

Living together in the same household

[32] In her first affidavit Ms. James stated that she met Mr. Wilson some time in 1987. They became intimately involved in 1989. At the beginning of their relationship she lived at 5 Dee Side Avenue Dunrobin Acres in St. Andrew. Although Mr. Wilson was residing in England at the time, he would travel to Jamaica to visit her. He would stay for several weeks and sometimes months at a time. During those visits he would reside with her at her residence which included Deeside and Gallery apartments in Kingston. He kept his clothes and personal belongings at these premises. Ms. James has exhibited several photographs of Mr. Wilson at birthday parties for the children at both Gallery apartments and the property.

[33] Mr. Wilson in his evidence denied that he ever lived with Ms. James at any of the premises that she resided at. He did not have any of his belongings at her home, because when he visited her in Jamaica he would stay at the Hotel Four Seasons. When Ms. James visited him in England she never stayed with him. On one

occasion she stayed with her brother and on another she stayed with his sister. On one of the visits to England, Ms. James and the children stayed at his home, however, he did not stay there with them.

- [34]** Jahrene averred that after her birth she, her mother and other relatives lived at Gallery Apartments in Kingston. Her father never lived there with her mother, but would visit on occasions. When she left Gallery Apartments with her mother and brother they lived at several places in the Corporate Area but her father never lived with them at any of those other places. When they visited England they did not stay at her father's house but that of her mother's brother. She also denied that her mother and father lived at the property together from 2012, which is when she started living there.
- [35]** Mr. Wilson was ordered by the court to disclose his United Kingdom passport, as it was alleged that he used that along with his Jamaican passport when visiting the country. When asked if he made disclosure of the passport he said yes. However, the page exhibited was his Jamaican passport. Once again Mr. Wilson has demonstrated his reluctance to be frank with the court.
- [36]** Despite this the evidence of his visits to Jamaica would not necessarily confirm that the two lived together in the same household. I am mindful of the fact that Mr. Wilson resides and has his business in England. This creates a difficulty as there is no clear or established place of residence for the parties. At one point, Ms. James said she lived in England with him from 2002 to 2003.
- [37]** Her evidence is that they lived together as husband and wife after 2005 up until 2018 when they separated. I did not find the evidence on this point to be compelling. Ms. James stated that they lived at various addresses since 1991. She admitted that she moved to seven different locations up until 2012. I did not find that she was wholly truthful with the court. The details of their living arrangements after 2005 were sketchy at best. In one affidavit she indicated that Mr. Wilson stayed with her in 2012 at her brother's house in Sterling Castle. She

also exhibited a booking confirmation (**MYJ1**) as proof that Mr. Wilson was slated to arrive in Jamaica in December 2015 and depart the following year in February.

[38] There were also photographs showing her children at birthday parties and Mr. Wilson at family events. Beneath those photographs Ms. James explained what was happening. Apart from birthday parties for the children she also exhibited pictures of family events that she said were attended by Mr. Wilson and herself.

[39] Glodel James's evidence was more detailed. She stated that after her sister returned in 2005 they stayed at Ms. James's Rock Hall home until January 2006 when they moved to the property. They were joined by Mr. Wilson in June of that year and he stayed there until he returned to England. In February 2007 Mr. Wilson came to Jamaica and stayed with them at Chancery Hall. In 2007 they were at Golden Acres and Mr. Wilson also stayed there. The last year she spoke of was 2011. At that time, she and her sister were living at their brother's house in Sterling Castle. Mr. Wilson stayed with them for six weeks. Ms. James puts that time at 2012. The visits she said continued after they moved back to the property.

[40] In cross-examination, Glodel was asked how long she had been living at the property. She replied since 2012. She was asked how long her sister had been living there and she responded 1990 -1991 somewhere around there. When asked if this was continuous, she replied "*apart from when she was in England*". The evidence contained in her affidavit does not accord with that statement.

[41] Further, she was also asked if she knew where her sister lived between 2005 and 2012 and she said "*2005 after her daughter died, she came here and stayed with my sister after the funeral then went to 7 Hopeglade Mews.*" The evidence of the witnesses is contradictory. Ms. James could not have been living at the property from 2005. Glodel tried to explain it by saying she stayed at the other places and that she did not live there. I did not find her to be a credible witness. I also did not find that Ms. James was credible. The detailed evidence as to their residence did not come from her but her sister. One would think that this evidence as to their

residence and living arrangements was critical and ought to have come from Ms. James. I do not find that the parties lived together in the same household.

Shared a daily life

- [42] Ms. James's photographs of birthday parties and events that she said were attended by herself and Mr. Wilson was the only evidence of a shared life. The photograph taken at the wedding of Mr. Wilson's brother does not have Mr. Wilson in it. The photographs at the birthday parties suggest that Mr. Wilson was a present and active father. As the mother of three of his children it is not difficult to find that the family would have invited her to functions. Although Ms. James gives evidence that they lived together in England for a year, she does not state what their relationship was like during that time. I do not find therefore that there was sufficient evidence for me to find that they shared a daily life.

Stability and degree of permanence

- [43] During the years 1991 and 2005 when their last child was born, Mr. Wilson continued to reside in England and Ms. James, apart from the years 2002 – 2003, resided in Jamaica. The evidence of Mr. Wilson's application for a settlement visa is perhaps the only indicator of a desire for something more permanent. Ms. James said the application was made in 2006, and instructions were given in 2018 to have the process restarted. Mr. Wilson denied knowledge of any such application. He admitted to doing DNA tests for his children but said he knew nothing of a settlement visa.
- [44] It was his evidence that what he had with Ms. James was an on again off again relationship which rekindled when he visited Jamaica. In his view, they were not in a stable or permanent relationship. I am minded to accept his evidence in that regard. There is no evidence to suggest that this was a stable relationship. They did not share a permanent home and although they had three children together there was no evidence of any future plans.

The handling of financial matters

- [45] Mr. Wilson admitted to the fact that he supported Ms. James financially. He indicated that he assisted her with rent, maintained their children and took care of the bills at home. Mr. Wilson also spoke about a discussion that he had with Ms. James in which he told her that he decided to rent the property, and asked Ms. James how much she thought he could get in rental. He then agreed with her that she should collect the rent and pay over a portion to the mortgage company and the balance to his personal bank account. There is no evidence that the two shared a bank account, or that Ms. James was named as a beneficiary on any insurance policy taken out by Mr. Wilson. There is no dispute that he took care of her and his children, however, there is no indication that they jointly handled financial matters for the sake of the family.

Sexual relationship

- [46] There is no dispute that up to 2005 the parties were intimately involved. The three children born to them is testament to that fact. However, since then Mr. Wilson said they did not have a sexual relationship. Ms. James just says that since 2005 they lived together as husband and wife she never specifically states that the two were intimately involved. The evidence of Mr. Wilson stands unchallenged on this issue.

Intention and Motivation

- [47] On the question of intention and motivation, I cannot find that the evidence supports a finding that Mr. Wilson intended to be in a relationship which was akin to that of husband and wife. It is clear from the outset that he was involved with several women. He visited Jamaica however he had no intention of permanently residing here with her. His role as the financial provider for Ms. James is a typical one and is inconclusive.

Opinion of a reasonable person observing the relationship

- [48] The evidence of Ms. James is that Mr. Wilson's family acknowledged her as his wife. To that end, she exhibited an email from Mr. Wilson's sister who referred to Ms. James as her sister-in-law. There was a document from the inquest into her daughter's death which showed that Mr. Wilson was not only present but actively there for Ms. James during that difficult time.
- [49] The email shows that up to 2005 the parties were on good ground. Thereafter, there was a lack of communication between them that resulted in Mr. Wilson's sister's email to Ms. James. I find that after 2005 the relationship had changed. Ms. James's attendance at family events shows that she is still regarded as a part of the family but that is not unusual given that over the years with the birth of their children she would have developed relationships with family members.
- [50] In summary, the evidence outlined does not lend itself to a finding that the parties cohabited as husband and wife for a period of not less than five years preceding the date of the institution of this claim.

Was the property the family home

- [51] Counsel on both sides relied on the case of **Weir v. Tree**⁵. Phillips, JA in delivering the judgment referred to the Supreme Court decision of **Peaches Stewart v. Rupert Stewart** and defined the family home as the "*property which was used habitually or from time to time by the spouses as the only or principal family residence.*" The undisputed evidence is that the property was purchased by Mr. Wilson some time in 1991. There is ad hoc evidence of the parties at gatherings there sometime after 1991 and again in 1997.

⁵ [2014] JMCA Civ. 12 at para. 39

[52] The property was not the habitual or principal family residence. The parties stayed there occasionally but the property was used primarily for rental purposes. Ms. James herself accepted that since 2005 she did not reside at the property. It is only after 2012 that she continuously lived there. Her evidence that Mr. Wilson lived there from 2012 to 2018 is rejected. I find that he merely visited his children there. Even if it is accepted that he stayed there, nothing turns on this as it was in fact his home and he had a right to be there. The property was never occupied by the parties habitually or from time to time as a family residence.

[53] This is further compounded by the fact that the property was used primarily for rental. It was never used wholly or mainly for the purposes of the household. From the outset the property was rented so that the mortgage could be paid. In the late 1990's Ms. James stated that she had to move to Gallery Apartments because Mr. Wilson had allowed unsavoury characters to stay there and she was fearful. Had the property been wholly or mainly for the purposes of the household, the parties would have resided there continuously while Ms. James was living in Jamaica. It is my considered view that Ms. James has failed to establish that the property was the family home.

Order:

1. The orders sought on the fixed date claim form are refused.
2. Costs to the Defendant to be agreed or taxed.