[2024] JMCA Civ 42

JAMAICA

IN THE COURT OF APPEAL

BEFORE: THE HON MISS JUSTICE P WILLIAMS JA
THE HON MRS JUSTICE DUNBAR-GREEN JA
THE HON MRS JUSTICE G FRASER JA (AG)

SUPREME COURT CIVIL APPEAL NO COA2022CV00139

BETWEEN	**SASHANA DALEY**	**APPELLANT**
AND	**WILWARD ALPHONSO HARRIS**	**RESPONDENT**

Ms Debbie Ann Hutchinson and Ludlow Black instructed by Westinson Law for the appellant

Steven O Jackson for the respondent

10 October and 20 December 2024

Family Law - Whether the learned judge erred in her determination that the parties were not common-law spouses - Precondition of single woman and single man - Whether sufficient evidence of the parties' status was provided - Property (Rights of Spouses) Act, section 2(1)

P WILLIAMS JA

[1] I have read the draft reasons for the judgment of G Fraser JA (Ag), and I agree with the reasons she gives for the decision of this court that was handed down on 10 October 2024.

DUNBAR-GREEN JA

[2] I, too, have read the draft reasons for judgment of G Fraser JA (Ag). I agree with the reasons and have nothing useful to add.

G FRASER JA (AG)

Introduction

[3] On 10 October 2024, after considering this appeal against the decision of O Smith J (Ag) ('the learned judge'), this court made the following orders:

> "1. The appeal is dismissed.
>
> 2. The judgment of O Smith J (Ag) delivered on 18 November 2022 is affirmed.
>
> 3. No order as to costs."

At that time, we had undertaken to provide reasons in writing. We now fulfil that promise.

Background

[4] Ms Sashana Daley ('the appellant') and Mr Wilward Harris ('the respondent') were in an intimate relationship spanning many years. Both parties agree that, initially, the relationship was a visiting one, which morphed into what the appellant classified as a common-law relationship, which commenced when they started living together as man and wife in 2009. Eventually, the relationship soured and ended with the parties permanently separating in 2018. The respondent denied that the appellant was his common-law wife and averred that their relationship was sporadic, and further, he was involved with another woman whom he regarded as his common-law wife. For the protection of the named female, who had no part in this matter, I will refer to her as 'TR'.

[5] After the relationship between the appellant and the respondent ended, the appellant filed a fixed date claim form, on 4 December 2018, seeking the following declarations and orders:

> "1. A Declaration that the property located at Lot 12, 24 Clinton Close, Presidential Estate, Old Harbour in the parish of Saint Catherine, registered at Volume 1440 Folio 54 is the family home.

2. A Declaration that the [appellant] is entitled to fifty percent (50%) of the family home located at Lot 12, 24 Clinton Close, Presidential Estate, Old Harbour in the parish of Saint Catherine.

3. An Order that the said property be valued by a reputable valuator chosen with the consent of the parties within thirty (30) days of the date of this Order failing which, the said property is to be valued by David Thwaites and Associates and the cost of the said valuation is to be borne by the parties in keeping with their proportional share of the property.

4. An Order that the [respondent] has the first option to purchase the [appellant's] interest in the property located at located at Lot 12, 24 Clinton Close, Presidential Estate, Old Harbour in the parish of Saint Catherine registered at Volume 1440 Folio 54 of the Register Book of Titles and that this option is to be exercised in writing within ten (10) days of the date of this Order, with a ten percent (10) deposit, failing which, the said property is to be sold on the open market with the net proceeds being divided equally between the parties.

5. That the [appellant's] Attorney-at-Law [sic] to have carriage of sale.

6. The Registrar of the Supreme Court is empowered to sign any and all documents necessary to bring into effect any [sic] all orders of the Honourable Court if either party is unable or unwilling to do so.

7. A Declaration that the [appellant] is entitled to a share in the assets and proceeds of their business and/or emoluments for nine (9) years of work in their said business.

8. An Order that the [respondent] pay to the [appellant] in a lump sum, the sum of Five Million Nine Hundred and Forty Thousand Dollars ($5,940,000.00) for her said nine (9) years of work in their business.

9. An Order that the [appellant] is entitled to fifty percent (50%) of the value of the 2012 BMW X6 motor vehicle bearing registration #6512 HL, purchased in or around May 2017 registered in the name of the [respondent].

> 10. An Order that the said-motor vehicle listed at paragraph 9 herein be valued and fifty percent (50%) of the value thereof be paid over to the [appellant] by the [respondent] or that same be sold and fifty percent (50%) of the net proceeds thereof, be paid over to each party.
>
> 11. An Order that the [appellant] is entitled to fifty percent (50%) of the value of the 2007 Toyota Voxy motor vehicle bearing registration # 7604 GG, purchased and registered in the name of the [respondent].
>
> 12. An Order that the [appellant's] Attorney-at-Law shall deduct from the [respondent's] share of any or all proceeds of sale, any sum therein ordered to be paid to the [appellant] by the [respondent] before payment over to him.
>
> 13. An Order that the [appellant's] Attorney-at-Law shall have carriage of sale made necessary by any order made herein.
>
> 14. An Order that the cost of this Application to be borne by the [respondent].
>
> 15. Such further any other relief as this Honourable Court shall deem fit."

[6] In support of her claim, the appellant also filed three affidavits. In response, the respondent filed two affidavits. These five affidavits, together with the parties' answers elicited through cross-examination, formed the aggregate of the evidence before the learned judge. The proceedings before the learned judge hinged substantially on the presented pleadings and evidence. As neither party called any witnesses, only their evidence was available for the learned judge's consideration. At para. [8] of her oral decision, the learned judge stated that the issue of whether a party is a spouse is a matter of law and fact to be determined by examination of the evidence. She also concluded that the burden of proof was for the appellant to discharge.

[7] Having reviewed the evidence and submissions, the learned judge formulated the issues for her determination as follows:

> "The issues that I have identified in this court are as follows:

1. Whether or not the [appellant] is a spouse as defined by the law

2. Whether or not the property is a family home.

3. Whether the [appellant] is entitled to an equal [s]hare

4. Whether the [appellant] is entitled to the division of any other property."

[8] The learned judge in her assessment of the criteria to be satisfied by the appellant under the Property (Rights of Spouses) Act ('PROSA'), in a very concise oral decision, expressed the following:

> "[9] The first hurdle that must be satisfied is that they were both single.…To my mind what is required is actual proof that neither of them were [sic] married during the relationship. She [the appellant] has not done this.
>
> [10] Secondly, [the appellant] must satisfy this Court that she and Mr. Harris cohabited as man and wife. It is accepted that there is no formula for determining this. The court is expected therefore, to make a thorough examination of the circumstances in each case. (See **Thomas v Thomas** [1948] 2 K.B. 294 and **Kimber v Kimber** [2000] 1 FLR 33. The Court considered the following factors
>
> I) Living together in the same household
>
> II) Sharing daily life tasks, Managing finances together
>
> III) Existence of children, attitude towards each other's children,
>
> IV) [O]ngoing sexual relationship
>
> V) [O]bjective perception of the relationship by a reasonable person."

[9] The learned judge judiciously weighed the varying averments of the parties as to the status of their relationship and cohabitation, recognising that the credibility of the parties was crucial to the assessment process. Ultimately, she preferred the appellant's

version of events as to the timeline of when the parties met, when they started cohabiting together, when the disputed property was acquired and when they commenced living there. As regards the issue of whether the parties had lived together, the learned judge observed the following at paras. [11] and [12] of her oral decision:

> "[11] …There is no disagreement from [the respondent] on this point, except that he would prefer 2010 to be the year they met. The issue of whether or not they had a visiting relationship prior to 2009 or 2010 does not affect this specific finding.
>
> [12] By extension I prefer the evidence given by the [appellant] pertaining to where they lived during the currency of their relationship, in particular, when they moved to the Clinton Close residence."

[10] Having resolved the issues as to facts as she did, the learned judge, in her determination of whether the appellant and respondent were spouses, stated that:

> "[18] Although she [the appellant] has satisfied the second hurdle I do not believe that I need go any further. Reference in PROSA to being single means not legally married. The [respondent] refers to one [TR] as his common law wife and said that the [appellant] was not. She refers to him consistently as her spouse and says that they lived together as man and wife. Her reference to him as her spouse was not, I believe in recognition of the legal requirements under the law but based on her view that they were in a relationship living as man and wife. This is not enough. There is no evidence directly or indirectly from which this court can conclude that she or [the respondent] were [sic] single during the course of the relationship as contemplated by PROSA. (See **Millicent Bowes v Keith Alexander Taylor** Claim No. 2006/HCV05107)."

[11] The learned judge found that the appellant was not the respondent's common-law spouse. By effect, this decision denied the appellant the declaration sought, as to a 50% share in the property located at Lot 12, 24 Clinton Close, Presidential Estate, Old Harbour in the parish of Saint Catherine, registered at Volume 1440 Folio 54, being the family home.

The appeal

[12] Aggrieved by the decision of the learned judge given on 18 November 2022, in favour of the respondent, the appellant, on 30 December 2022, filed notice and grounds of appeal. The findings of law and fact challenged were as follows:

> "**THE FOLLOWING FINDING OF LAW IS CHALLENGED**
>
> That the Appellant does not satisfy the requirements of being a 'Spouse', as contemplated by The Property (Rights of Spouses) Act.
>
> **THE FOLLOWING FINDING OF FACT IS CHALLENGED**
>
> That there is no evidence directly or indirectly from which the Court can conclude that the Appellant and the Respondent were single during the course of the relationship."

[13] The grounds on which the appellant relied in her notice of appeal were as follows:

> "**1) The learned trial Judge erred in fact in holding that the Appellant had not provided any direct/indirect evidence that herself and the [respondent] were single during the relationship**
>
> **2) The Learned trial judge erred when she failed to consider that the [respondent] did not assert nor did he produce any evidence to show that he was in a common law relationship with the mother of his first child, [TR], during the five year period prior to the ending of the relationship with the Appellant**
>
> **3) The Learned Trial Judge erred when she failed to consider that whether the Appellant and the [respondent] were legally married was not an issue in dispute and there was no evidence produced by either party that indicated that the parties were legally married**
>
> **4) The Learned Trial Judge erred in Law when she failed to conclude that the parties were Spouses, as contemplated by The Property (Rights of Spouses) Act (PROSA)**." (Emphasis as in the original)

[14] The appellant, in contending that the learned judge erred in arriving at her decision, asked this court for the following relief:

> "1) That the Judgment of the Supreme Court per the Honourable Miss Justice Opal Smith be set aside
>
> 2) A Declaration that the Appellant was a Spouse of the Defendant
>
> 3) A Declaration that the property located at Lot 12, 24 Clinton Close, Presidential Estate, Old Harbour in the parish of Saint Catherine, registered at Volume 1440, Folio 54 is the family home
>
> 4) A Declaration that the [appellant] is entitled to fifty percent (50%) of the family home located at Lot 12,24 Clinton Close, Presidential Estate, Old Harbour in the parish of Saint Catherine
>
> 5) A Declaration that the [appellant] is entitled to a share in the assets and proceeds of their business and/or emoluments for nine (9) years of work in their said business
>
> 6) The Registrar of the Court of Appeal is empowered to sign any and all documents necessary to bring into effect any and all orders of this Court if either party is unable or unwilling to do so
>
> 7) That the costs of the appeal and of the court below be the [respondent's]"

Issue

[15] The thrust of the appellant's complaint was that the learned judge erred in law and fact when she concluded that the appellant had not provided any evidence that the parties were "single" during their relationship and that, accordingly, they were not spouses under the provisions of PROSA. Although four grounds of appeal were advanced, the issue determinative of the appeal was whether the learned judge erred in fact or law in her finding that the parties were not spouses.

Submissions on behalf of the appellant

[16] Counsel on behalf of the appellant submitted to this court that the learned judge erred when she found that the appellant had not provided indirect or direct evidence of the parties being single to meet the criteria of a spouse under PROSA. Counsel referred to para. [18] of the oral decision where the learned judge determined that the term single under PROSA meant "not legally married". Counsel argued that though PROSA incorporated widow and widower in its definition of single, it was, however, silent on the general meaning of "single woman and single man". Counsel eventually conceded that by rational deduction, single meant not legally married as indicated by the learned judge.

[17] Counsel, however, was adamant that there was sufficient evidence on which it could have been ascertained that the parties were not legally married, although it was not an assertion made by either party. Additionally, the respondent, if he was married, would have provided the court with evidence that would have irrefutably overcome the appellant's claim. The status of the respondent being single was, therefore, to be inferred from the circumstances.

[18] Counsel contended that "[t]he issue of whether either party was single was never directly addressed as it was not a fact in issue". This was so, as the parties had agreed to have been in a relationship for more than five years. Counsel directed the court's attention to a number of excerpts from the appellant's affidavit evidence and contended that the text spoke "to the appellant's state of mind whilst she was in the relationship". This counsel urged, was indirect evidence that the learned judge should have taken into consideration in arriving at her decision. According to counsel, that evidence demonstrated that the parties functioned as a couple to the outside world, including residing at the appellant's mother's house during the weekdays to avoid traffic woes and going home to the disputed property to spend the weekends as a family. Notwithstanding all the evidence provided by the respondent in an effort to discredit the appellant's claim, the learned judge made a finding that the parties co-habited as "man and wife". It was,

therefore, remarkable that the learned judge made the determination she did relative to the parties' status as spouses.

[19] Counsel posited that if the evidence supplied by the appellant was found to be sufficient for a finding that the parties had cohabited, then so too was that evidence sufficient as indirect evidence of the parties' status as single and should have been accepted as such.

[20] Counsel argued that the respondent, in an attempt to rebut the appellant's claim of being a spouse, named TR as his common-law wife, with whom he shared a child, and that the learned judge erred when she did not contemplate that the respondent, too, had failed to provide evidence that the relationship between himself and TR had ended. Moreover, this child of the respondent and TR was living with the parties for approximately one year, a fact not disputed by the respondent. This was evidence, counsel urged, that supported the presumption that the common-law relationship between the respondent and TR was not extant during the five-year period prior to the ending of the relationship between the appellant and the respondent. In any event, counsel contended, the learned judge could have inferred that fact because there was no issue joined between the parties as to whether either was single. In that regard, the appellant relied on the case of **Ivan Williams v Yvonne Thompson** (unreported), Supreme Court, Jamaica, Claim No 2010HCV03404, judgment delivered 15 July 2011 ('**Ivan Williams**').

[21] While counsel acknowledged the decision of **Millicent Bowes v Keith Alexander Taylor** (unreported), Supreme Court, Jamaica, Claim No 2006/HCV05107, judgment delivered 19 January 2009 ('**Millicent Bowes**') counsel, nonetheless submitted that it was distinguishable from the case at bar, and maintained that the appellant had supplied the learned judge with adequate indirect evidence on which she could have found in favour of the appellant.

Submissions on behalf of the respondent

[22] Counsel on behalf of the respondent submitted that the learned judge did not err in law when she found that no direct or indirect evidence was provided by the appellant in proving that the parties were single during their relationship. The learned judge was guided by the evidence before her or lack thereof, and her determination was grounded by the "viva voce evidence of both parties" despite there being no assertions of either party being single.

[23] There was no duty on the respondent to establish his status. It was, therefore, incumbent on the appellant to do so as it was her duty in law to prove or assert at trial on a balance of probabilities. The appellant, as such, had the burden to prove to the court the required evidence for a determination to be made in her favour.

[24] Counsel further contended that PROSA required that it be established that the parties were spouses within the meaning of the provisions of section 2. The question, therefore, was whether or not there was evidence upon which the learned judge could make such a finding. For that reason, whether or not it was in issue between the parties that either of them was married was beside the point and did not render the learned judge's decision erroneous.

[25] On the foregoing, counsel maintained that the learned judge "made no legal mis [sic] step in concluding that the parties were not spouses" as required under the Act. He submitted that the appeal lacked merit and should be dismissed, and the decision of the learned judge be affirmed by this court.

Law and discussion

Statutory interpretation

[26] The determination of this appeal hinged on whether the criterion of being a single man and a single woman must first be satisfied in order to establish the status of being a spouse as provided under PROSA. Although the issue raised was not entirely novel, it appeared that this court had not previously addressed this specific point. Nevertheless, it

was a matter of considerable importance with broad implications. To resolve it, it was necessary to conduct a detailed analysis of the relevant legislative provision, applying the established rules and principles of statutory interpretation.

[27] This appeal has brought into question the learned judge's interpretation of the term "spouse" as defined in PROSA. The relevant portions of the legislation are set out below. As provided by section 2(1) and (2) of PROSA, a 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.
>
> (2) The terms 'single woman' and 'single man' used with reference to the definition of 'spouse' include widow or widower, as the case may be, or a divorcee." (Emphasis added)

[28] It is acknowledged that PROSA was enacted as social legislation to address a longstanding reality of Jamaican society that was not adequately reflected in the common law or statutory law inherited from England. Historically, relationships in which individuals cohabited as man and wife without being legally married were not recognised under the colonial legal and judicial framework, often resulting in inequitable outcomes. Until the enactment of PROSA in 2006, Jamaican law did not provide property rights to a partner in a common-law relationship. Cohabiting partners who were not married had no automatic claim to a share in "the family home" or other property.

[29] The major shift was introduced by section 2(1), which redefined the term "spouse" for the purposes of property rights and property division under PROSA. Previously, the term "spouse" referred exclusively to legally married individuals. However, the statutory

redefinition expanded the term to include unmarried individuals in committed relationships. This section explicitly recognises that individuals who cohabited as man and wife for the statutory period of five years immediately preceding the end of the relationship are entitled to a share in the family home and other contested property. In effect, the section extended property rights to unmarried cohabiting partners.

[30] In light of the redefined meaning of "spouse", what, if any, significance does the term "single" carry? The proper approach to interpreting words or phrases in a statute involves considering their natural and ordinary meaning within the context of the statute as a whole. In **Special Sergeant Steven Watson v The Attorney General and Others** [2013] JMCA Civ 6, Brooks JA (as he then was), at para. [19] of the judgment, referred to and applied Lord Reid's guidance from **Pinner v Everett** [1969] 3 All ER 257, stating:

> "In determining the meaning of any word or phrase in a statute the first question to ask always is what is the natural or ordinary meaning of that word or phrase in its context in the statute? It is only when that meaning leads to some result which cannot reasonably be supposed to have been the intention of the legislature, that it is proper to look for some other possible meaning of the word or phrase. We have been warned again and again that **it is wrong and dangerous to proceed by substituting some other words for the words of the statute**." (Emphasis as in the original)

[31] In **Powys v Powys** [1971] 3 All ER 116 at 124, Brandon J, speaking of the general rules of statutory interpretation, said:

> "The true principles to apply are, in my view, these: that the first and most important consideration in construing an Act is the ordinary and natural meaning of the words used; that, if such meaning is plain, effect should be given to it; and that it is only if such meaning is not plain, but obscure or equivocal, that resort should be had to presumptions or other means of explaining it."

[32] There was no issue that between the years 2010 and 2018, the parties had resided together as a couple at several addresses, including the disputed property, albeit the

respondent averred that it was an intermittent cohabitation. It being a common-law relationship, the appellant's first duty in the court below was to show (especially in the face of allegations to the contrary) that she was qualified to be treated as a spouse under PROSA.

[33] Section 2 of PROSA defines a "spouse" as a "single man" or "single woman", with the term "single" appearing no fewer than five times in this definition. This repetition is no accident. In my view, the inclusion of the word "single" is deliberate and underscores the significance of the parties' status in determining property rights. Its persistent use establishes it as a critical legal requirement. According to Black's Law Dictionary 9th edition, 2009, "single" is defined as "unmarried and consisting of one alone". Similarly, the Oxford English Dictionary defines a "single woman/man" as "unmarried". It is clear that the ordinary and natural meaning of "single" refers to a person who is not still involved in a prior legally recognised union or is not lawfully married.

[34] Section 2(1) of PROSA introduces a significant provision that could be interpreted as a limiting factor. Specifically, a claimant must not be married to someone else while asserting their status as a common-law spouse under the Act. As a result, if a man or woman has cohabited with a partner for the requisite five-year period but was legally married to someone else during all or part of that time, the legislation precludes recognising such persons as a "spouse" under PROSA. This restriction ensures that a single individual cannot be considered the spouse of a married person (or *vice versa*) within the framework of the Act. However, this limitation does not apply if both parties were single before and throughout the period of common-law cohabitation. In my opinion, if the intent of the legislators was to base property division solely on cohabitation with no reference to the parties' spousal status, then the inclusion of the word "single" would be redundant.

[35] When these foregoing statutory principles are applied to the relevant words used in PROSA, there is a contextual basis to suggest that Parliament intended that common-law spouses under PROSA must fulfil the criterion of "single" in order to access the

benefits of PROSA. There was no inconsistency or ambiguity within the statute itself as to what "single" entailed.

[36] The term "spouse", as further refined in the context of "single woman" and "single man", also includes widows, widowers, and divorcees. Applying the *ejusdem generis* rule, it can be inferred that the term "spouse" is specifically limited to individuals belonging to the same kind or class as those explicitly mentioned. The primary relevance of a claimant being divorced, widowed, or never married is to eliminate the legal impediment that would otherwise operate to prevent treating a "single" individual in a relationship with a married person as a legitimate spouse.

[37] A relevant example of such a scenario can be seen in the case of **Claudette Crooks-Collie v Charlton Collie** [2022] JMCA Civ 7. In that case, the appellant and the respondent had been in a long-term relationship. However, for the majority of their time together, the respondent was legally married to someone else. It was only shortly before their marriage in March 2012 that the respondent divorced his previous spouse. Unfortunately, their marriage was brief, and, by August 2013, the parties had separated. The respondent subsequently filed a claim under PROSA, seeking 50% of a house that he claimed was the family home. This property, however, had been solely acquired by the appellant nearly nine years before their marriage. While the couple had lived together in the house for about four years before their marriage, one of the key issues raised on appeal, as noted by Brooks JA (as he then was) in para. [8] and Edwards JA in para. [59], was whether this arrangement fulfilled the statutory definition of cohabitation and property rights under PROSA. Both judges queried:

> "[W]hether the learned judge erred in considering the pre-marriage period of the parties' relationship as relevant to his assessment of the intentions of the parties in light of the definition of 'spouse' in section 2 of PROSA, and as a result made erroneous findings of law and fact…"

[38] After referring to section 2(1) of PROSA, Edwards JA enunciated at para. [119] of the judgment that:

> "The word 'spouse' therefore refers not only to parties that are married, but also couples in common law relationships of the specified nature and duration. It is clear from this definition that a married man, as the respondent was for most of the parties' relationship, could not be deemed the spouse of a woman other than his wife, as he would not have been a 'single man'. Since, by definition, only a spouse can be a beneficiary of the entitlement of a half-share of the family home under section 6, and the family home could only entail a dwelling house used by 'spouses', as was correctly found by the learned judge, it is clear that the period of the relationship during which the respondent was still married to his ex-wife could not have been used to determine what was the family home and any entitlement thereto…"

[39] Although, there was no specific pronouncement as to the evidential requirement to establish the status of the parties as "single", the authority did raise the significance of establishing the parties to be spouses within the meaning of PROSA and also directly alluded to the significance of the parties being single while in a common-law union.

[40] My diligent industry has not unearthed any decision by the appellate court addressing the specific issue of establishing, as a matter of law, the parties' status as "single". However, several decisions from the Supreme Court have done so. As recently as 2022, judgments from the Supreme Court acknowledged the importance of a party claiming to be a spouse having to satisfy the courts that they are a single man or a single woman as contemplated by the legislation (see **In the matter of Robert Charles Morrison** [2016] JMSC Civ 18 and **Winnifred Fullwood v Paulette Curchar & Or** [2022] JMSC Civ 59). Notably, the case of **Millicent Bowes** has traversed the issue in a detailed exposé of the law on this point. In fact, the learned judge in the instant appeal, relied on that authority in her formulation of what was required as a matter of evidence to bring a claimant within the definition of spouse as provided in PROSA.

[41] In the decision of **Millicent Bowes**, McDonald-Bishop J (as she then was), at paras. 32 - 35, addressed the qualifying criteria of what constitutes a common-law spouse. McDonald-Bishop J stated that:

"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." (Emphasis added)

[42] I adopt the foregoing analysis regarding the evidential requirements a claimant must meet to establish the parties' status as spouses under PROSA, deeming it an accurate interpretation of the law. Accordingly, in a common-law union, only one spouse can exist at a time. Like marriage, only one man and one woman can form a common-law union for the purpose of the law as it is in the case of a marriage. This element is crucial to fulfilling the statutory requirements of PROSA.

Whether the learned judge erred in law when she concluded that the parties were not spouses

[43] Whether the parties were single during their relationship was clearly a factual question for the learned judge's determination. It is well established that appellate courts are reluctant to overturn factual findings unless the trial judge's decision is shown to be plainly wrong due to an error in evaluating the evidence (see **Watt or Thomas v Thomas** [1947] AC 484 and **Rayon Sinclair v Edwin Bromfield** [2016] JMCA Civ 7).

[44] Although the appellant's counsel argued that the question of whether the parties were single was not a fact in issue, this court rejected that argument. The appellant had a legal obligation to prove her status as a spouse under PROSA before invoking its provisions for a 50% share of the family home. Additionally, this argument overlooked the respondent's denial of being in a common-law relationship with her, as stated in his affidavit, where he averred:

> "5. The claimant is not my common law wife, although it is the case that I was in and out of a common law relationship with her from about May 2010 to June 2018. The relationship with the claimant was not consistent in that we broke up…
>
> 6. …In 2006 my common-law wife was [TR] and that relationship produced a child born in August 2011 and at the time of the birth of that child, the claimant and I were not yet in any common law relationship."

[45] Contrary to the submissions made by the appellant's counsel that "the issue of whether either party was single was never directly addressed as it was not a fact in issue", in the face of the respondent's denial and or qualification of the parties' status, it was very much a key fact in dispute. It was, therefore, incumbent on the appellant to discharge her onus of proof by adducing evidence to not only counter the respondent's denial that she was his common law wife but satisfy the spousal status requirement as a matter of law.

[46] I, therefore, concurred with the learned judge's view that establishing whether the parties were a "single man" and a "single woman" was a critical issue for bringing the matter within the scope of PROSA. Consequently, the appellant bore the burden of proving, on a balance of probabilities, that both she and the respondent were single during the required period of cohabitation. This criterion of being single was especially significant since the respondent denied being in a common-law union with her. In light of the respondent's denial, the appellant was required to address the status of both parties as "single", either through an affidavit or oral testimony in response. An obligation the appellant failed to discharge.

Whether the appellant established that she was a spouse pursuant to PROSA

[47] In ground four of the appeal, the appellant complained that "[t]he Learned Trial Judge erred in [l]aw when she failed to conclude that the parties were Spouse…". It appears from the latter submissions made on that point that the initial stance was somewhat tempered, in that the appellant highlighted that there was no definition within the legislation as to the meaning of single man or single woman. However, it was ultimately accepted that "[i]t is therefore a reasonable presumption that 'single' means 'not legally married'" and in that respect, I agree with the learned judge's opinion. Notwithstanding that concession, the appellant maintained that the learned judge "erred when she concluded that there was no evidence directly or indirectly from which the Court, could conclude that the Appellant or the Respondent [was] single (not legally married) during the course of the relationship". Certain averments from the appellant's

affidavits were highlighted as "indirect evidence on which the Learned Judge should have relied to find that the parties were not legally married".

[48] It was observed that none of the appellant's affidavit evidence, highlighted by counsel in support of the contention that there was evidence on which the learned judge could have found that the parties were spouses, contained any relevant evidence as to the status of the parties and specifically that they were "a single man" and "a single woman". I noted that the paragraphs referenced by counsel spoke to such matters as the purchase of the disputed property, an alleged common understanding as to beneficial interests in the disputed property, expenses undertaken by the parties and the alternative living arrangement of the parties during the weekdays. Having conceded that "neither party asserted that they were not legally married," the appellant's contention that there was sufficient evidence on which the learned judge could have relied to find that the parties were not legally married (single) was misconceived.

[49] Although the appellant contended that the respondent admitted to having lived together as man and wife, this was not entirely accurate. Whilst the respondent admitted to living with the appellant at two separate addresses, he did not state that they had done so as man and wife; the parties' status was a fact he continuously disputed. By his evidence, the respondent advanced that the relationship was not exclusive as he had mentioned a prior relationship with TR in 2011 and the birth of a child with that "common law spouse" in 2011. He, however, subsequently amended his evidence in relation to the birth date of that child to be in 2008 and remained adamant that the relationship between himself and the appellant was not exclusive. Neither birth dates averred by the respondent seemed to be correct as the appellant exhibited an undisputed copy of that child's birth certificate showing the year of birth as 2007.

[50] The respondent, in his further denial of the existence of a common-law relationship between him and the appellant, averred that when he first began dating the appellant, he was already in a common-law relationship with TR, of which the appellant was aware. In her evidence, the appellant conceded such knowledge and admitted that the

respondent was in another relationship at the commencement of their friendship. The respondent did not specify when that prior relationship ended, if indeed it had ended, and neither did the appellant prove that the respondent's prior relationship had ended and they became exclusive. In fact, on both sides, there were allegations and counter-allegations of relationships with other people. The respondent repeatedly averred several reasons that marked the relationship as lacking in exclusivity and, by extension, affected the party's status as being single.

[51] The continuity of the relationship was also a fact in issue, that the learned judge did not address. It could not, therefore, be assessed whether the evidence of the respondent as to breaks in the relationship was accepted or rejected by her. Those averments, however, would have affected whether the appellant had satisfied the requisite period of continuous cohabitation for five years or more.

[52] The appellant sought to rely on the case of **Ivan Williams** for the proposition that when neither party presents direct evidence regarding whether they are legally married to someone else, it is irrelevant if the status of the parties is not in issue, and further submitted that, in such situations, the court is entitled to draw an inference as to their status. The case is distinguishable from the present appeal. The claimant, in that case, averred that the respondent proposed marriage to her, which she rebuffed. At para. [45] of the judgment, E Brown J (as he then was) said:

> "[45] In the instant case, there is no positive evidence of the marital status of the parties. Neither was it averred in the statements of case. Under cross-examination Ms. Thompson asserted that Mr. Williams made a proposal of marriage to her which she turned down. That refusal to stand at the altar was not because of any legal impediment but the amorphous family setting. Presumably, it was accepted between the parties that each was a single person, but neither so asserted. So, inferentially, the court accepts that each was a single person for the purposes of the Act, since it was not an issue between them."

[53] Although there was no direct testimony in **Ivan Williams** that the claimant was "single", nonetheless, direct evidence was elicited from that claimant that her status was such that she could have accepted a proposal of marriage and, therefore, inferentially single. Furthermore, E Brown J had made the finding that both parties accepted that each was a "single person". In the instant case, no such evidence was before the learned judge of the appellant's or respondent's status so as to enable her to draw proper inferences.

[54] Ultimately, there was no discernible evidence in the affidavits or the *viva voce* evidence that the appellant had addressed the issue of the parties being single. The respondent denied there was a common-law relationship. This denial would have alerted the appellant that she was being put to strict proof as to her claim of being the common-law wife of the respondent in fact and law. The failure of the appellant to provide evidence as to the status of the parties being single was an incurable error that adversely impacted the cogency of her claim as a spouse under PROSA.

Conclusion

[55] The complaint against the learned judge's order, as it correlated to her finding of fact that the appellant had not provided any evidence directly or indirectly that the parties were single, depended on her assessment of the evidence before her. There was no direct nor indirect evidence before her to support any other finding of fact than that which she made. The provisions of PROSA are clear as to the meaning of spouse. For the appellant to succeed in obtaining a declaration that the property was the family home or of a 50% share entitlement in the family home, she had to bring herself within the ambit of PROSA and, as a criterion ante, satisfy the court that she was a spouse of the respondent. To bring herself within the definition of a spouse, she had to prove to the required standard that she and the respondent were single and had cohabited in an exclusive relationship for the requisite period of at least five years. This she had failed to do. Accordingly, the appeal from the decision of the learned judge was refused.

[56] It was for those reasons that we made the orders outlined at para. [3] above.