



[2024] JMSC Civ.49

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2021CV04003

IN THE MATTER OF all those parcels of land contained in certificates of title Registered at Volume 1493 Folio 37 and Volume 1493 Folio 38 of the Register Book of Titles

AND

IN THE MATTER OF Jaguar motor car registration letters and numbers 1169 HX

AND

IN THE MATTER OF The Property (Rights of Spouses) Act

BETWEEN

WINSTON DOUGLAS

CLAIMANT

AND

YASMEEN TRAILLE

DEFENDANT

IN CHAMBERS

Mrs. Symone Lawrence Henry instructed by Murray and Tucker Attorneys-at-Law for the Claimant

Mr. Mikhail Jackson and Ms. Julian Walters instructed by Livingston Alexander and Levy for the Defendant

Heard: March 12 and 13, 2024 and April 19, 2024

Section 2 (1) of The Property Rights of Spouses Act – Definition of spouse – The intention of the parties.

CARR, J

Introduction

[1] The Claimant, Winston Douglas, was in an intimate relationship with the Defendant, Yasmeen Traille from on or about 2010 to October 2020. It is his contention that he and Ms. Traille were more than intimate partners and that in fact they operated as husband and wife in accordance with the definition of spouse under the Property Rights of Spouses Act (**PROSA**). If the court makes such a finding, he has asked for a declaration that (a) the property owned by Ms. Traille registered at Volume 1493 Folio 37 and Volume 1493 Folio 38 was the family home, (b) that he is entitled to a fifty percent share and interest in the property and (c) that he is entitled to a fifty percent interest or share in a Jaguar motor vehicle registered 1169 HX belonging to Ms. Traille.

Decision

[2] After a careful analysis of the evidence on behalf of both parties I did not accept that Mr. Douglas had satisfied the burden of establishing that he and Ms. Traille were cohabiting as husband and wife for the period outlined by him and the orders sought on the fixed date claim form were refused.

Analysis and Discussion

[3] The main contention in this matter was whether Mr. Douglas and Ms. Traille were spouses as defined under Section 2 (1) of PROSA. The burden of establishing this fact rests on Mr. Douglas. It is only if this question was answered in the affirmative, that a further discussion as to the status of the properties in dispute would ensue.

The Provisions of PROSA

[4] Section 2 (1) of PROSA states:

"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;

The Evidence

Single man and Single woman

[5] There is no dispute that at the time Mr. Douglas and Ms. Traille met in 2010 she was married. The marriage was dissolved on April 25, 2013, when a Decree Absolute was issued by the Supreme Court of Jamaica.

[6] An examination of the evidence on this issue therefore must commence after the date of the Decree Absolute. Mr. Douglas provided three affidavits in support of his claim. He was also supported by the affidavit of his son Sekani Douglas. Ms. Traille filed three affidavits in response to the claim and was supported by two witnesses Donovan Blake and Charmaine Edwards. All the witnesses were cross-examined.

[7] Sekani was a child at the time the relationship commenced, and his evidence surrounded his observations and what he perceived as his father's role in the operation of the business owned by Ms. Traille. I did not find his evidence credible as he would not have been privy to the inner workings of the business. The remainder of his evidence focused on the relationship between his father and Ms.

Traille. The most important aspect of which, is that he had not seen Ms. Traille with an engagement ring, which is in stark contrast to his father who said that the couple were engaged.

- [8] Mr. Blake's evidence was focused on the role of Mr. Douglas in the business. He indicated that Mr. Douglas was on the payroll as a driver and was paid a salary. Mr. Douglas has not denied this. Ms. Edwards was a helper at the home in Richmond Estate and she merely outlined the happenings there.
- [9] The evidence of Mr. Douglas and Ms. Traille was the focus of the judgment as the remaining witnesses did not assist in arriving at the decision.
- [10] In matters of this nature the court must grapple with the issue of credibility. Mr. Douglas was quite candid with the court as to his relationship with other women while he was involved with Ms. Traille. He stated that he was single during the period of 2013 to 2020, in that he was not married. He did however admit under cross-examination that he had relationships and sex with other women during that time.
- [11] Ms. Traille also gave evidence in her affidavit filed on May 17, 2022, that Mr. Douglas was far from single during what she described as their casual sexual relationship. She stated that he *"...routinely had sexual relationships with other women, even getting another woman pregnant and having another child during the alleged period..."*¹. She also exhibited Whatsapp messages between Mr. Douglas and other women², which was never denied by him. The messages and photographs reaffirm the evidence of both parties that Mr. Douglas was involved with other persons in a sexual as well as romantic relationship.
- [12] The word "single" is not defined in PROSA it is therefore to be given its ordinary meaning. When used as a noun the word single means an individual person or thing rather than part of a pair or a group. When used as an adjective the word means only one, not one of several. In reference to a single man or single woman it is defined as a person who is unmarried or not involved in a stable sexual

relationship. In this case it is clear from the evidence that Mr. Douglas was not married, and he was not involved in a stable sexual relationship with any of the women that Ms. Traille speaks of, by the definition of the word therefore he was single.

- [13]** Ms. Traille has admitted that following the dissolution of her marriage she was intimately involved with Mr. Douglas she does not mention any other relationship in her Affidavits. I therefore concluded that during their relationship both Mr. Douglas and Ms. Traille were single.

Did they cohabit as if they were in law husband and wife?

- [14]** It is accepted that PROSA does not outline what a court ought to consider in examining the question of cohabitation as husband and wife. There are however several authorities which outline the signposts or criteria that the court can utilize as a guide to making a finding on this issue. I have set them out below:

- a. Living together in the same household.
- b. A sharing of daily life.
- c. Stability and a degree of permanence in the relationship; that is not a temporary infatuation or passing relationship such as a holiday romance.
- d. Finances, that is to say, is the way in which financial matters are being handled an indication of a relationship.
- e. A sexual relationship.
- f. Children.
- g. Intention and motivation.
- h. The opinion of the reasonable person with normal perceptions.³

- [15]** This list is not exhaustive. The court must examine all the circumstances of the case as relationships will differ. In the round it must be shown by Mr. Douglas that the parties were sharing their life in a manner which would demonstrate that their intention was to do so as husband and wife.

- [16]** There is a dispute as to whether Mr. Douglas and Ms. Traille lived in the same household. Mr. Douglas said that he moved in with Ms. Traille at the property he regarded as the family home in 2017 and that they lived there together until 2020. Prior to that they were living together at a rented premises. Ms. Traille denied this and stated that Mr. Douglas had his own premises and maintained a residence in Brown's Town St. Ann. He would come over to have sexual relations and leave. There were some occasions where he would stay the night, but he did not live with her.
- [17]** Mr. Douglas admitted that in 2014 he was a gym instructor at Sans Souci and that he had staff accommodations there. He also indicated that he would go to Brown's Town on weekends but that during the week he would be at the rented premises of Ms. Traille where they shared a two-bedroom apartment with her three children. He eventually moved in fully after she made constant requests for him to do so. In cross-examination he agreed that he would use the staff accommodations during the week and go home to Brown's Town on weekends. This contradicted his previous evidence that he lived with her.
- [18]** The gist of the evidence which is accepted is that prior to the purchase of the disputed property by Ms. Traille in 2017 the parties were not living together in the same household. Even if it is accepted that they were living together in the same household after 2017 this would not be sufficient to establish that they cohabited together for a period of five years prior to the termination of the relationship or to the filing of this claim, since the relationship ended in 2020.
- [19]** The evidence of a sharing of daily life was also refuted by Ms. Traille. Mr. Douglas gave evidence that he assisted Ms. Traille in the handling of her business, that he would often take her children to school and would attend graduations and PTA meetings. He also stated that he would cook meals on Sundays when the helpers were not around and that he would prepare breakfast for the family. Ms. Traille accepted that he might have attended graduations, but she denied that he attended any school meetings without her being present. She stated that Mr.

Douglas was around because he was also her driver, a task for which he was paid. She denied that he assisted her with her business when he accompanied her on business trips and to meetings as on those occasions, he was her escort and or her driver. She also denied that he cooked for her and the family, as she indicated that she had helpers to assist her with those chores and activities.

[20] I did not find that Mr. Douglas's actions as he described them amounted to a sharing of daily life in the context of a husband and wife. His evidence was not suggestive of anything more than a supportive boyfriend.

[21] I am fortified in this view because of the lack of stability and permanence in the relationship which was evident from his many other relationships which has not been denied. In addressing this issue in submissions, Counsel Mrs. Lawrence-Henry asked the court to find that despite the challenges of the relationship, Mr. Douglas always returned to Ms. Traille and that I should therefore find that his commitment was to her. I reject that explanation. I find that Ms. Traille's evidence in this regard is more reliable. She has explained that due to the transient nature of Mr. Traille and his many sexual relationships of which she was very aware she did not want a permanent relationship. As she stated in her evidence this was a casual sexual relationship which was punctuated by infidelity on the part of Mr. Douglas, as a result she was not interested in anything more permanent.

[22] The parties' intentions are also seen in how they carried out their finances. Mr. Douglas admits that he paid no bills during the relationship with Ms. Traille. He did not contribute to the financial affairs of the household and there is no evidence that they had any joint bank accounts or joint financial dealings.

[23] Although they had a sexual relationship, they did not share any children together. However, Mr. Douglas admitted to fathering two children during their affair. The first admittedly, was prior to the dissolution of Ms. Traille's marriage, however, the second child was conceived during the final year of their relationship and was born in December of 2020. Based on the evidence, I do not accept that Mr. Douglas's

intention towards Ms. Traille was one based on commitment or permanence. Despite the varied views on relationships that have sparked debates around the world, I do not find that in the eyes of a reasonable person with normal perceptions that there could be any other conclusion about the relationship between the parties. Mr. Douglas was involved with several women and showed no signs of being faithful to Ms. Traille, and Ms. Traille accepted this position until her decision to terminate the relationship in 2020.

[24] It is for these reasons that I concluded that Mr. Douglas failed to establish on the evidence that he was entitled to a declaration that he and Ms. Traille were spouses. In the circumstances therefore, the provisions of PROSA would not be applicable to him and he would not be entitled to any property that is owned solely by Ms. Traille.

Order:

1. Judgment for the Defendant.
2. The orders sought on the Amended Fixed Date Claim Form filed on January 19, 2024, are refused.
3. Costs to the Defendant to be agreed or taxed.