



[2024] JMSC Civ 105

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CIVIL DIVISION

CLAIM NO. SU2020CV05149

IN THE MATTER OF the Intestate Estate and Property Charges Act

AND

IN THE MATTER of the **Estate of Dwayne Romans** otherwise called Dwayne Ricardo Roy Romans, deceased intestate

AND

IN THE MATTER an application by **Serene Gopaulsingh** for a Declaration of Spouseship

AND

IN THE MATTER of the **Administrator General for Jamaica**, duly authorized personnel representative of Dwayne Romans

Re: DWAYNE ROMANS

Mrs Pauline Brown Rose instructed by Natalie Robb Cato for the applicant

Mrs Geraldine Bradford, for the Administrator General

Mesdames Rosalee Thompson and Affia McBean instructed by Thompson Fenton Legal Suites for the Objectors

Heard: February 7, 2023, April 28, 2023, June 1, 2023, and October 11, 2024

Declaration of spousal relationship under section 2 of the Intestates Estates and Property Charges Act - Whether the applicant was a single woman - Whether the deceased was a single man - Whether the applicant and the deceased cohabited together as though they were man and wife for a period of not less than 5 years prior to the death of the deceased

IN CHAMBERS

CORAM: JARRETT, J

Introduction

[1] Serene Gopaulsingh of 231 Clipper Street, Bogue Village, Montego Bay ('the applicant'), claims that she and Dwayne Romans who died intestate on October 27, 2020, ('the deceased'), were in a common law relationship from June 2015 until the time of his death. In the application currently before the court, she seeks a declaration that she is the deceased's surviving spouse within the meaning of the Intestate Estate and Property Charges Act ('the Act'). The Administrator General is the administrator of the deceased's estate because he died leaving four minor children. She is joined in these proceedings in that capacity. Denisha Savage and Aneisha Howlett are the mothers of three of the deceased's children and they object to the application ("the objectors").

[2] I will consider the Act, and the principles derived from decided cases which are relevant to the application; review the evidence, and in the end show why I find that the claimant was in a common law relationship with the deceased, from June 2015 until the time of his death, and is therefore his surviving spouse under the Act.

The law

[3] Section 2(2) of the Act provides that: -

“For the purposes of this Act, where a person who is a single woman or single man may be regarded as a spouse of an intestate, then as respects such estate

- a) only one such person shall be so regarded; and
- b) to be identified as the surviving spouse, that single man or woman, as the case may be, shall make an application to the Court for an order declaring that person to be the surviving spouse of the intestate.

[4] “Spouse” is defined in section 2(1) as including: -

- a) a single woman who has lived and cohabited with a single man as if she were in law his wife for a period of not less than five years immediately preceding the date of his death; and
- b) a single man who has lived and 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 date of her death.

[5] The Act does not define the word “single”, but it’s obvious meaning includes not being married, and not being in a legally recognized common law relationship. In other words, the man and the woman must not be legally married, or in a common law relationship with someone else for a period of not less than 5 years preceding the date of death.

[6] The position of the court on what it means for a single woman and a single man to live and cohabit as if they were in law man and wife, for purposes of the Act is

settled¹. It is most helpfully reflected in the following dicta of Evans J(Ag) (as he then was) in **Ivan Williams v Yvonne Thompson, Claim No. 2010 HCV03404, unreported Supreme Court decision delivered July 15, 2011**, in which he referred to the oft-cited judgment of McDonald-Bishop J (as she then was), in **Millicent Bowes v. Keith Alexander Taylor, Claim No. 2006/HCV05107 unreported Supreme Court decision delivered January 19,2009:-**

“[43] In **Millicent Bowes v. Keith Alexander Taylor 2006/HCV05107 January 19, 2009**, McDonald-Bishop, J reviewed the authorities and accepted some ‘signposts’ distilled by Tyner, J in **Kimber v. Kimber [2000] 1 FLR 384**:

(i) Living together in the same household.

(ii) A sharing of daily life.

(iii) Stability and a degree of permanence in the relationship; that is, not a temporary infatuation or passing relationship such as a holiday romance.

(iv) Finances, that is to say, is the way in which financial matters are being handled an indication of a relationship?

(v) A sexual relationship.

(vi) Children.

(vii) Intention and motivation.

¹ See for example, **ReThe Estate of Dexter Harriott [2016] JMSC Civ15; Marva Tucker v The Administrator General of Jamaica [2023] JMSC Civ119**

(viii) The 'opinion of the reasonable person with normal perceptions.'

[44] This court concurs with the conclusion of McDonald-Bishop, J supra (Paragraph 15, paragraph 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.'

[7] In the final analysis, each case turns on its own unique set of facts. This point was clearly made in **Millicent Bowes (supra)**, where the court was considering whether parties were cohabiting as man and wife for purposes of the Property (Rights of Spouses) Act (PROSA). PROSA has an almost identical definition for spouse as the Act. McDonald - Bishop J, made the point this way at paragraph 49:-

"...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.”

- [8] A very similar point was made by Neuberger J in **Re Watson [1999] 1 FLR 878**. In that case the learned judge was considering whether a woman had lived together with the deceased for two years as though they were husband and wife, as required by the Inheritance (Provision for Family and Dependants) Act 1975. This is what he said at page 883: -

“The question therefore to be decided ... is whether, during the relevant period of 2 years, the applicant ‘was living ... as the ... wife of the deceased’. In agreement with both counsel, it seems to me that, when considering that question, one must beware of indulging in too much over-analysis. Anyone who reads newspapers or law reports does not need to be told that marriages, like, perhaps even more than other human relationships, can vary from each other in multifarious ways. However, in my judgment, when considering whether two people are living together as husband and wife, it would be wrong to conclude that they do so simply because their relationship is one which a husband and wife could have. If the test were as wide as that, then, bearing in mind the enormous variety of relationships that can exist between husband and wife, virtually every relationship between a man and a woman living in the same household would fall within s 1(1A). It seems to me that, when considering the question, the court should ask itself whether, in the opinion of a reasonable person with normal perceptions, it could be said that the two people in question were living together as husband and wife; but, when considering that question, one should not ignore the multifarious nature of marital relationships.”

The evidence

[9] The affidavit evidence before the court is copious. In support of her application the applicant relies on several affidavits sworn by her as well as affidavits of Renae Nelson, Shawn Gray-Logan, Nicholas Gray and Ruel Barnett. The objectors also rely on affidavits sworn by each of them. I have considered all the evidence but will only refer in this judgment to those aspects of it which are germane to my decision. Save for several WhatsApp messages which were removed as exhibits by the affiants to whose affidavits they were exhibited, and the evidence in relation to them redacted, all the exhibits were agreed documents and admitted into evidence at the start of the hearing.

The applicant

Serene Gopaulsingh

[10] The applicant is a realtor. She says she met the deceased, a real estate developer, valuator and businessman, around April 2014 in Montego Bay, St James. At that time, she was living at Westgate Hills in the same parish. According to her she moved in with him at 231 Clipper Street, Bogue Village in Montego Bay (“231 Clipper Street”), in June 2015 after their vacation together in Florida in the United States of America. Thereafter, they lived together as husband and wife until his death on October 27, 2020.² When they began to live together, the deceased was a single man, and she was a single woman.³ She says that the deceased acknowledged her as his wife, always treated her as such, and they discussed having children together and getting married⁴. She exhibits several photographs of herself and the deceased together.

² Para 2 of Affidavit of Serene Gopaulsingh In Support of Fixed Date Claim Form filed December 31, 2020.

³ Para 7 *ibid*.

⁴ Para 9 *ibid*.

- [11]** The deceased had four minor children from previous relationships, and during the course of their relationship, the applicant says she looked after those children, and they stayed with her and the deceased for extended periods and during the holidays. She and the deceased renovated their house at 231 Clipper Street, and this included extensive kitchen remodelling and outfitting the house with new furnishings and fittings ⁵.
- [12]** During their relationship, they entered into several business ventures together, including Romans Auto Sales Limited of which she owns 50% of the shares. According to the applicant, she assisted the deceased and invested in the construction and management of his Plaza on 32 Union Street, in Montego Bay. She liaised with contractors, sourced fixtures, fittings and suppliers of services, paid workmen, prepared leases for the tenants and arranged and collected rent.⁶ In addition to her shareholding in Romans Auto Sales Limited, she invested Seven Thousand United States Dollars (USD \$7,000.00), towards the construction of the Plaza at 32 Union Street and gave the deceased approximately One Million Jamaican Dollars (JMD\$1,000,000.00), to pay workmen and for other expenses, between 2019 and 2020⁷. She and the deceased also entered into a transaction to purchase property registered at Westgate Hills, in Montego Bay, but the vendor was unable to complete the sale. ⁸
- [13]** When the deceased fell ill, she cared for him and paid his medical bills, and on his death, she was the one to notify his parents, his siblings and his children. She also made all the funeral arrangements and paid all the expenses⁹. In a later affidavit filed on March 28, 2022, in response to an affidavit of Denisha Savage, the

⁵ Para 12 ibid

⁶ Paras 13 and 14 ibid.

⁷ Para 18 of Affidavit of Serene Gopaulsingh in response to Affidavit of Denisha Savage filed March 28, 2022

⁸ Para 22 of Second Affidavit of Serene Gopaulsingh filed September 20, 2021.

⁹ Paras 17 and 19 of Affidavit of Serene Gopaulsingh in Support of Fixed Date Claim Form filed December 31, 2020

applicant denies that she did not keep the deceased's family informed of the funeral arrangements and says that she had discussions with his family, and it was the deceased's father who officiated and planned the order of service. She says further that she and the deceased's siblings selected the casket and the burial lot. When there was some concern about financing the funeral, she paid for it fully, as she did not believe that the money should come from the deceased's bank account. She was the person the attending physician called, and it was she who was notified of the deceased's death.¹⁰ It was known to everyone that she was the deceased's spouse, and this was stated on the funeral programme and is engraved on his tombstone¹¹.

[14] Denisha Savage is the mother of two of the deceased's children.¹² Prior to his death, the deceased purchased Denisha Savage's half interest in the house at 231 Clipper Street, after she applied for its partition in August 2015. This house was the family home. It consists of five bedrooms for her, the deceased and his four children whenever they visited.¹³ She and the deceased both attended her aunt's 50th birthday celebrations on July 11, 2015, and the 40th wedding anniversary of the deceased's parents. The deceased hosted birthday parties for her and he invited members of his family, his staff and close friends.¹⁴ Photographs of these events exhibited by the applicant were agreed documents and tendered into evidence.

[15] They both celebrated the deceased's 37th birthday, at Sandals Royal Bahamian in Nassau, The Bahamas, between November 20 to 24, 2015. For his 38th birthday, on November 19, 2016, they both travelled to Fort Lauderdale, Florida, in the United States of America and had dinner with his two children by Denisha Savage

¹⁰ Para 17 ibid

¹¹ Para 18 ibid

¹² Para 11 of Second Affidavit of Serene Gopaulsingh filed September 20, 2021

¹³ Para 13 ibid.

¹⁴ Paras 14 -17 ibid

at Dave & Buster's Restaurant in Fort Lauderdale. At that time, the children and their mother were living in Florida.¹⁵ She hosted several other parties for the deceased including his 40th birthday, which was celebrated on a catamaran and was attended by family and friends¹⁶.

[16] The deceased relationship with Denisha Savage ended in June 2015. She denies that the deceased and Denisha Savage continued cohabitation after that date.¹⁷ As for the deceased's relationship with Aneisha Howlett, the applicant says that she believes that relationship ended when Aneisha Howlett got pregnant, and the deceased did not want her to keep the child. That child was born on September 28, 2014.¹⁸ She denies that the deceased continued in a relationship with Aneisha Howlett up to sometime in 2017 and says that when she started to live with the deceased in June 2015 his relationship with Aneisha Howlett had ended¹⁹. In October 2015 when the deceased's brother Damion came to stay with them, he stayed downstairs and she and the deceased stayed in their bedroom, and at nights they all stayed up late, eating, talking and watching television.²⁰

[17] The applicant admits to owning property at Freeport, in Montego Bay with a previous partner. That property is an investment and is rented to tenants. She says that her relationship with that person ended before she got involved with the deceased²¹. She denies that she refused to accept the son the deceased has with Aneisha Howlett, and says it was Aneisha Howlett who placed restrictions on that child's visits with the deceased and to their home. According to her, she encouraged the deceased to have a good relationship with his son.²²

¹⁵ Para 18 ibid

¹⁶ Para 19 ibid

¹⁷ Para 4 Affidavit of Serene Gopaulsingh in Response to Affidavit of Aneisha Howlett filed March 28, 2022

¹⁸ Para 6 ibid

¹⁹ Para 7 ibid

²⁰ Para 15 ibid

²¹ Para 16 ibid

²² Para 17 ibid

[18] Several emails correspondences between the deceased and Aneisha Howlett were exhibited by the applicant. According to her, they show that the relationship between the deceased and Aneisha Howlett had ended when she became pregnant.²³ One such email from Aneisha Howlett to the deceased dated October 6, 2015, with time stamp 10:38: 44pm, reads in part as follows:

“You are focused on making another woman happy n secured in your life while u treat me like shit. I love and appreciate you and that won’t change overnight but I realise your interest is with someplace else...I feel so burdened by this situation. I mean u nothing but sincerely the best but I can’t hang around waiting for u to realize while u are busy loving someone else. I’m hurting too much, and you just don’t care...You are not willing for us to work on a better future hence I’m left with no option but to transition from this situation as it is really taking a toll on me emotionally and physically...”

[19] In another email to the deceased dated February 6, 2016, with time stamp 12:16:09 am, Aneisha Howlett wrote among other things that: -

“I never dreamt that one’s decision not to abort their child would leave to their biggest nightmare. Your lack of acceptance towards your son is where the breakdown of our relationship started and ended. You neglected to assist me with the medical bill for his delivery...You had no remorse or willingness to provide emotional support ... Instead u verbally abused me and constantly reminded me that I was the one who wanted him. I was left with no support! You never commit yourself to come by for a hr or two n spend some time with the baby so I could get a break, I was left to do it all in my own. No fatherly support, no bonding with your own child... He was your biggest secret even from your own family... I was too blind to see that

²³ Paras 6 – 8 ibid

u had no interest in been apart of [your son] and I life at no point. Instead, you were busy investing your time and focus on a new relationship

The SLUT ensured it fed on all your weaknesses to distract u From your own family n u fell for it. All your trips were planned to take u away from significant things in your children life. [Your son] got sick and you ignored our calls even when I came to your house because you respected your SLUT too much to even attend to your sick child. [Your son] didn't get to give u a gift on his 1st father's day for u because you were away with the SLUT, his 1st birthday u returned from another trip n was too guilty to even come to the house to cut his cake with him...Then your birthday approached n again, the SLUT had plans...U hated us more n more each day. U didn't even care to wish him merry Christmas or took pride to hand him his gift...All I ever wanted was for our life to be better n support u in all u do for success. I invested time n money to further my career, u turned your back on me last minute to take me to Kgn to start school, u never made the effort to visit me there on not 1 occasion ...Nevertheless I remained loyal n worked with u. I was forced to make it in my own which I have no regrets...U fail to recognise that I hunt for listings on my own, while others wait to inherit. You curse me like a dog n changed the lock on the office door, routed all calls to mobay n told me I don't work there anymore... With that said I will be departing from Romans n Company along with avoid contacting or forcing u to be apart of your son's life nor seek your commitment to financially support him."

- [20]** In an email dated September 9, 2018, and time stamped at 11:32:24 pm, Aneisha Howlett wrote to the deceased and told him that she was using the medium of email correspondence to communicate a few things regarding the deceased's son since they cannot have: "a civil discussion". She then says, among other things that he had blocked her number again, after he had done so for over a year prior to the date of the email and that:

“You spend time with your other kids every summer, take the time to travel with them while its almost 3 years since you last have a meal with your son & bond with him”.

[21] When Denisha Savage and her two children moved out of 231 Clipper Street, the applicant says that the deceased asked her to move in.²⁴ The locks were changed after Denisha Savage moved out, but she returned in late June 2015 to print some documents and collect a bumper, and again in March 2016 to collect some furniture.²⁵ She denies that she was not living in the house on the two occasions Denisha Savage returned to remove her things. The furniture in the home was the subject of a property dispute between the deceased and Denisha Savage and was not removed until the court arrived at a decision in March 2016²⁶. After Denisha Savage left the house, the applicant says she immediately moved in her personal belongings²⁷. On cross examination she said that she had lived with her mother up to that point and therefore her belongings were only her clothes and shoes. When she moved in with the deceased, none of Denisha Savage’s clothes and shoes or things relating to her profession as a pharmacist were in the house, nor where her children’s clothes and shoes there.

[22] The applicant says she and the deceased purchased and made furniture for their home, including their bed set. They also imported from Florida, various household items for their home, including a refrigerator, a television set and window blinds. She exhibits a bill of lading from Antilles Freight Corporation dated July 10, 2015, in both her name and the deceased, showing the household items purchased overseas and shipped to Jamaica. The address on the bill of lading for her and the deceased being 231 Clipper Street.²⁸ After the court ruled on the property dispute

²⁴ Para 5 Affidavit of Serene Gopaulsingh in response to affidavit of Denisha Savage filed March 28, 2022

²⁵ Para 7 ibid

²⁶ Para 8 ibid

²⁷ Para 9 ibid

²⁸ Para 9 ibid and para 20 of Affidavit of Serene Gopaulsingh in response to Affidavit of Aneisha Howlett filed March 28, 2022.

between the deceased and Denisha Savage in March 2016, she began to paint the exterior of the house. They did not start the kitchen renovation until 2018 as it was expensive, and they had to save towards it²⁹. Both of them shared the renovation expenses, the household expenses including bills and supermarket expenses³⁰. According to her, she was the only woman in a serious romantic relationship with the deceased after June 2015 and until his death³¹. She denies that she did not look after the deceased's children. She accepted them and treated them as her own, as they were the children of the man she loved. The oldest ones stayed at the home with her and the deceased during weekends and summer holidays. She took them regularly to the beach and to breakfast on Sundays when they went to Sea Garden Beach Hotel to use the pool. ³²

[23] They both tested positive for COVID 19, and the deceased was advised by a doctor that because his oxygen levels were low, he should seek admission at the Cornwall Regional Hospital (CRH). The deceased however wanted to go to a private hospital due to his concerns about patient care at CRH. He was permitted admission to Baywest Wellness Hospital. When he was not improving there, the deceased contacted Denisha Savage's mother who worked at the CRH, for her assistance with his admission to that facility. According to the applicant, during the deceased's illness it was she who kept in contact with the deceased's family and updated them on his progress³³.

[24] She denies that Denisha Savage retains any interest in 231 Clipper Street, because the deceased paid Denisha Savage for her half interest and the agreement was that he would pay the balance outstanding on a National Housing

²⁹ Para 20 of Affidavit of Serene Gopaulsingh in response to Affidavit of Aneisha Howelett filed March 28, 2022

³⁰ Para 18 of the Second Affidavit of Serene Gopaulsingh in response to Affidavit of Aneisha Howelett filed May 16, 2022

³¹ Para 13 Affidavit of Serene Gopaulsingh in response to affidavit of Denisha Savage filed March 28, 2022

³² Paras 14 and 15 ibid

³³ Para 21 - 23 ibid

Trust mortgage. The applicant exhibits a copy of the purchase and sale agreement between the deceased and Denisha Savage, as well as a letter from Denisha Savage's attorney-at-law to the deceased's attorney-at-law, acknowledging receipt of a cheque in the sum of USD\$ 35,786.01, representing the purchase price for Denisha Savage's half interest in 231 Clipper Street. The letter indicates that the funds had been paid over to Denisha Savage.³⁴

[25] On cross examination the applicant says her weekend get away with the deceased in June 2015 was June 18 to 22, 2015 as evidenced by the plane tickets she exhibited. As far as she knew, the furniture at 231 Clipper Street was owned by both the deceased and Denisha Savage. Prior to her moving in with the deceased, she had visited the deceased at 231 Clipper Street while they were dating and had seen Denisha Savage's belongings. It was after Denisha Savage had left the house and after she and the deceased returned from their trip, that the locks were changed.

Renae Nelson

[26] Renae Nelson is a housekeeper. She has known the deceased for over six years and the applicant for over five years. She worked as a housekeeper for the deceased at 231 Clipper Street and thereafter for him and the applicant when they began living together in June 2015. She has known them as living together from that time until the deceased's death on October 27, 2020.³⁵ According to her, she often heard the applicant and the deceased discussing marriage and having children together. She observed the applicant treating the deceased's children as if they were hers and when those children came to the house on weekends or on holidays they treated the applicant as a mother. ³⁶

³⁴ Paras 27 and 28 *ibid*

³⁵ Paras 1-3 Affidavit of Renae Nelson filed on December 31, 2020

³⁶ Paras 5 and 6 *ibid*

[27] On cross examination Renae Nelson said she is currently employed to the applicant. She said that she started working with the deceased in September 2014. At that time Denisha Savage and her two children lived with the deceased. She recalls when Denisha Savage moved out of 231 Clipper Street. It was around June 18 or 19, 2015. She was at her home at the time, but Denisha Savage contacted her and told her not to come to work that day as no one would be there. According to her, the day the deceased left to go overseas was the same day that Denisha Savage moved out of the house. When she subsequently reported to work on Tuesday June 23, 2015, she did not see Denisha Savage, her children or their clothing. But she saw the deceased, the applicant and the applicant's clothes, and that was when she assumed that Denisha Savage had moved out. There used to be a television in the front room, which she no longer saw, and about two days later, Denisha Savage returned to pick up a bumper for her vehicle.

[28] On further cross examination, Renae Nelson said that from June 23, 2015, when she saw the applicant at the house, she formed the view that the applicant had moved in, as she saw her there in the mornings when she turned up to work. She said she knew that the applicant slept at the house and was not just visiting because she saw her when she arrived at the house in the mornings, she left her there in the evenings, and the applicant asked her to wash for her. When asked whether the applicant had moved in with any articles of furniture, she said she did not. When asked how she was sure that the clothes she saw in the house belonged to the applicant, her response was that the applicant was the only woman she saw in the house. She was aware that the deceased and Denisha Savage had gone to mediation over the furniture in the house in August 2015, and when mediation ended, Denisha Savage moved the bedroom set, the refrigerator and the sofa. The deceased and the applicant thereafter had a bedroom set made.

Shawn Gray-Logan

[29] Shawn Gray - Logan is a valuation surveyor. He says that the deceased was his friend for over sixteen years. They met through work as the deceased was also a

valuer and real estate broker.³⁷ They had a good friendship and met at professional functions and events. They also visited each other's homes. He first met the applicant in early 2015, when she was introduced to him by the deceased at his office on Great George Street in Westmoreland. She had accompanied the deceased to do a valuation inspection in the area. He knows that they both moved in together at 231 Clipper Street in mid-2015. He visited them at their home and had Christmas dinner there with them over the years. He attended their birthday parties and recalls the deceased's 40th birthday celebration. He said that in his opinion the deceased and the applicant were living happily as husband and wife³⁸.

[30] On cross examination Mr Gray-Logan said the applicant was introduced to him by the deceased as his girlfriend, and this was around mid-2015. When he was reminded of his direct evidence that this introduction was early 2015, he said it was around the time the deceased's first relationship ended and that was: "around 2015". Pressed on what he means by "early 2015", he said: "up to April or May". The applicant moved into 231 Clipper Street no later than mid- 2015. He said he remembered the event more than the specific date. He could not say if she moved in with any furniture but when he visited the house, she was the lady he saw there. When he was asked the names of the deceased's children, he said he did not know their names.

Nicholas Gray

[31] Nicholas Gray is a businessman. He lives at 203 Clipper Street, Bogue Village, Montego Bay. The deceased was his neighbour. He lived immediately in front of him. When he first met the deceased, it was about ten years ago and at the time he was living with Denisha Savage and their two children. He says he saw Denisha

³⁷ Paras 1 -3 of the Affidavit of Shawn Gray - Logan filed October 22, 2021.

³⁸ Para 9 *ibid*

Savage move out of 231 Clipper Street with a truck moving her household belongings. He first met the applicant in mid-2015 when she moved into 231 Clipper Street immediately after Denisha Savage moved out. He has known her for the past six years. According to him, the applicant and the deceased were a loving couple, and he saw the applicant kiss the deceased in the mornings and send him off to work and greet him on his return in the evenings. They appeared to spend weekends together and made various trips in and out of their yard on weekends, returning with groceries and other items. He observed the applicant take care of the deceased's children when they visited, and they appeared to be a happy family. He also observed the deceased, and the applicant engage in renovation and home improvement projects on the house. He said that in his opinion, they were living as man and wife even though they were not married.

[32] On cross examination Nicholas Gray said that he first saw Denisha Savage move out in June 2015. He saw her taking out clothes and boxes. She did not use a moving truck. When he was reminded of his affidavit evidence in which he said that he saw a truck moving her belongings, he said he was not referring to June 2015, but: "further down". He said she used to drive a white Prado and that is what she used to remove the boxes and clothes. A few months later, she came with a truck, and she took a bed set and other belongings. When asked why he did not mention in his affidavit that Denisha Savage moved her belongings on two occasions, he said he did not know why.

[33] On further cross examination Nicholas Gray said that it was the following week after Denisha Savage moved out that the applicant moved in with the deceased. He could not say the exact date she moved in, but it was not long after Denisha Savage moved out. When asked if he observed the items the applicant moved in, he said he could not tell as the truck had backed up into the yard.

Ruel Barnett

[34] Ruel Barnett is an Executive Manager, living at Adelphi District, Adelphi P.O in St James. He says the deceased was one of his best friends. They were very close. They met when the deceased sold him his car. They became fast friends and often socialised together and visited each other's homes.³⁹ The deceased introduced him to the applicant in mid-2015 as his girlfriend.⁴⁰ He knew when they moved in together at 231 Clipper Street after the deceased ended his relationship with Denisha Savage.⁴¹ He often visited the deceased and the applicant at their home for Christmas dinners and they attended each other's birthday celebrations. He attended the applicant's 30th and 32nd birthday celebrations and the deceased's 40th.⁴² According to him, when the deceased fell ill in October 2020, he spoke with him, and they talked about the deceased and the applicant getting married when he came out of hospital and having several children.⁴³

The Objectors

Denisha Savage

[35] Denisha Savage is a pharmacist and the mother of two of the deceased's children. She lives in Florida in the United States of America. She was in a long-term relationship with the deceased since June 1995 and cohabited with him at 231 Clipper Street until June 2015 when she terminated their relationship. They remained friends up to the time of his death. She continued visiting 231 Clipper Street until early 2016 when she permanently removed all her belongings including her furniture. The applicant was not living at the house during that time as none of her belongings was there when she visited. The deceased was never legally

³⁹ Paras 1 – 3 Affidavit of Ruel Barnett filed October 22, 2021.

⁴⁰ Para 5 *ibid*

⁴¹ Para 6 *ibid*

⁴² Para 8 *ibid*

⁴³ Para 9 *ibid*

married, but she is aware that between 2011 and 2017 he had a serious romantic relationship with Aniesha Howlett that produced a child born on September 28, 2014.⁴⁴The applicant did not look after the deceased's children and was never considered their primary caregiver. Her two children were only allowed to visit 231 Clipper Street when the deceased was there to take care of them and when he was not there, he would leave them in the care of the housekeeper.⁴⁵ As for the deceased's last child, he was rejected by the applicant.⁴⁶

[36] In August 2015, she applied to the Family Court for a partition of property, and an order was subsequently made that she was entitled to a 50% interest in 231 Clipper Street. She entered into an agreement with the deceased for him to purchase her interest, but she only received a portion of the purchase price, and the transfer was never effected⁴⁷. In an affidavit filed on April 28, 2022, she says that her belongings were not removed from the house until December 2015.⁴⁸ She says it was impossible for the applicant to observe her moving her belongings from the house as she was not present at that time.⁴⁹ She says the furniture in the house was removed before the division of property matter was settled.⁵⁰According to her, the deceased had multiple sexual relationships during her own relationship with him and the applicant was: "one such conquest". The deceased maintained a relationship with both the applicant and Aneisha Howlett, and the applicant is: "unclear" as to when the deceased's relationship with Aneisha Howlett ended.⁵¹ She maintains however that the applicant did not move into 231 Clipper Street in June 2015⁵². Prior to her removing her belongings including furniture, she and the

⁴⁴ Paras 1 -7 of the Affidavit of Denisha Savage in response to Affidavit of Serene Gopaulsingh filed February 18, 2022.

⁴⁵ Para 10 ibid

⁴⁶ Para 11 ibid

⁴⁷ Para 21 ibid

⁴⁸ Para 4 of the Affidavit of Denisha Savage in response to Affidavit of Serene Gopaulsingh filed on April 28, 2022.

⁴⁹ Para 4 ibid

⁵⁰ Para 8 ibid

⁵¹ Para 10 ibid

⁵² Para 5 ibid

deceased tried many times to reconcile their relationship without success. According to her, neither the deceased nor the applicant was truly single at the inception of their relationship.⁵³

[37] On cross examination, Denisha Savage said she lived with the deceased beyond June 2015 and that they lived together until August 2015. When pressed on the inconsistency of this evidence and her affidavit evidence, she said that her relationship with the deceased was legally terminated by the court when it: “decided on the matter”. The court proceeding was settled in January 2016. When she took the deceased to court in August 2015, she says she was still in a relationship with him. It was therefore not possible for the applicant to move into 231 Clipper Street in June 2015. She said it is not correct to say that she moved out in June 2015. She did not “physically” move out as her belongings were still there. When asked if she heard the housekeeper Renae Nelson say that she had moved out in June 2015, she responded by saying: “I was listening”. According to her, when she ended the relationship with the deceased, she did not move out of the house, and she could not recall if she had given this evidence in any of her affidavits. She could not recall if she knew Shawn Gray-Logan, but said it is quite possible that she may know him. She could not recall if he had ever visited the house. On further cross examination, she said she became aware of the deceased’s relationship with Aneisha Howlett in May 2015. She was not aware of the relationship the deceased had with the applicant until: “later in 2015”.

Aneisha Howlett

[38] Aneisha Howlett is a realtor and has a son for the deceased.⁵⁴ She denies that the common law relationship between the applicant and the deceased began in June

⁵³ Para 19 *ibid*

⁵⁴ Para 1 of Affidavit of Aniesha Howlett in response to Affidavit of Serene Gopaulsingh filed on February 18, 2022.

2015.⁵⁵ She was in a serious romantic relationship with the deceased from 2011 to 2017 and their son was born on September 28, 2014.⁵⁶ She says that the deceased ensured that their son had a good relationship with his siblings and as such he took all his children on outings, and she was usually present. According to her, his older children regarded her as their stepmother. As her son was never able to visit the deceased's home, he would take his other children to visit him at her home.⁵⁷ Her relationship with the deceased was public knowledge, they attended church and functions together and did family photoshoots. The last such photoshoot was in December 2015.⁵⁸ The deceased's family accepted her as the deceased's partner. She attended his father's book launch and was his sister's maid of honour at her wedding in August 2015.⁵⁹ She guided the deceased through his degree, and they stayed together in Kingston to facilitate his research papers. On these trips, they purchased bathroom and kitchen fixtures for the house he lived in with Denisha Savage⁶⁰.

[39] The deceased encouraged her to become a real estate agent and to join the family business. In September 2015 she began working for the company as an office manager and real estate agent until their relationship ended in 2017. In September 2019, she rejoined the company at the deceased's request. She said that the deceased and the applicant had a visiting relationship up until 2017 when she moved in with him.

[40] Between June 2015 and July 2015, she pursued the real estate salesperson course in Kingston and rented an apartment there. The deceased travelled to Kingston with their then 8-month-old son to be with her, and they spent weekends together. While she was in Kingston, the deceased left their son with her mother

⁵⁵ Para 4 ibid

⁵⁶ Para 6 ibid

⁵⁷ Para 7 ibid

⁵⁸ Para 8 ibid

⁵⁹ Para 11 ibid

⁶⁰ Para 10 ibid

in Trelawny. In June 2015, the deceased slept at her house most nights while she was in Kingston and therefore the deceased could not have been living with the applicant at that time⁶¹ The email correspondences exhibited by the applicant were private conversations between herself and the deceased.

[41] When her attention was drawn in cross examination to the emails exhibited by the applicant and referred to earlier in this judgment, she said they were not authenticated and so she could not speak to them. On further cross examination she said that she was not referring to the applicant in the October 6, 2015, email to the deceased.

Analysis and discussion

[42] To succeed on her application, the applicant needs to prove, on a balance of probabilities, that she was a single woman, the deceased was a single man, and that they both lived together as if they were wife and husband for a period of not less than five years immediately before the deceased's death on October 27, 2020.

Were the applicant and the deceased 'single' within the meaning of the Act

[43] There is some veiled suggestion from the objectors, that the applicant was not a single woman because she purchased property with a former partner in early 2015. There is however no evidence that the applicant was lawfully married or in a legally recognised common law relationship with another man during the time she lived with the deceased. With no credible challenge to the applicant's evidence in this regard, I accordingly find that during the material time, she was a single woman. As for the deceased, it is agreed among the parties that he was never legally married, however the objectors say that he was not a 'single man', as he was

⁶¹ Para 4 and 5 of Affidavit of Aneisha Howlett in response to Affidavit of Serene Gopaulsingh filed on April 22, 2022.

always involved in multiple romantic relationships with women and the applicant happened to be one of them. Based on the meaning of 'single' under the Act, I cannot accept this logic, as there is no evidence before the court showing that the deceased was in a legally recognisable common law relationship during the time that the applicant alleges that he was in one with her. I therefore find that during the material time the deceased was a single man.

Did the applicant and the deceased cohabit as though they were man and wife for a period of not less than 5 years prior to his death

[44] Citing the rule in **Brown v Dunn (1893) 6 R 67 (HL)**, that where a party wishes to challenge the credibility of a witness' evidence they must confront the witness with the challenge, Mrs Brown - Rose, counsel for the applicant in her submissions argued that it was never put to the applicant during cross examination that she did not begin to cohabit with the deceased in June 2015, therefore it is open to the court to take this into account in assessing the evidence of the objectors. Ms Thompson, counsel for the objectors, in her written submissions argued that her clients accept that the applicant and the deceased lived together at 231 Clipper Street, but they contend that that relationship began sometime in 2017, and therefore the applicant cannot meet the threshold test of five years' cohabitation to qualify as the deceased's spouse under the Act. Having carefully considered the evidence, I disagree with Ms Thompson.

[45] I am satisfied and find, that the applicant and the deceased began living together in June 2015, after they both returned from a trip overseas and after Denisha Savage had moved out of 231 Clipper Street. The applicant's evidence that she moved in with the deceased on his invitation, after they returned from a getaway overseas on June 22, 2015, withstood very vigorous cross-examination. Denisha Savage, despite attempting on cross examination to resile from her earlier evidence, stated in her affidavit filed on February 18, 2022, that she moved out of

231 Clipper Street in June 2015, and that the long-term relationship she had with the deceased was terminated by her in June 2015. Courts do not put an end to romantic relationships other than legal marriages. I therefore reject her evidence given on cross examination that her relationship with the deceased was brought to an end by the court in January 2016. I do not find her evidence to be credible when she says that the applicant did not move in with the deceased before 2016 as she continued to visit 231 Clipper Street after June 2015 and the applicant was not there. For the reasons which follow, I find it more probable than not that the applicant did in fact move in with the deceased, when Deisha Savage moved out.

[46] Aneisha Howlett's email correspondences with the deceased which were exhibited by the applicant and referred to earlier in this judgment, go a far way in supporting the applicant's evidence that her cohabitation with the deceased began in June 2015. Although Aneisha Howlett acknowledged the existence of these emails in her affidavit evidence in response to the affidavits of the applicant, and described them as "private conversations", in a rather curious and incredulous 180 degree turn on cross examination, she challenged the emails authenticity and said she had never seen them before, even though the emails are agreed documents and were admitted into evidence as such at the start of the hearing. What is even more remarkable is that while reversing her position during the course of cross examination, she nevertheless admitted to the emails but said she was not referring in them to the applicant.

[47] In the email dated October 6, 2015, Aneisha Howlett clearly acknowledged in October 2015, that the deceased's: "interest is with someplace else" and that he was: "busy loving someone else". Although she denied that she was referring to the applicant, I am satisfied that she was, because it is consistent with the applicant's evidence that she moved in with the deceased in June 2015 and that she and the deceased celebrated his 37th birthday in The Bahamas between November 20 and 24, 2015. The applicant's evidence that she moved in with the deceased in June 2015 is also supported by Renae Nelson's evidence. She was the housekeeper in the house and would have had a bird's -eye- view of the

happenings in it. I accept her evidence that the applicant moved in in June 2015 when Denisha Savage moved out. She said the applicant was the only woman she saw in the house after Denisha Savage left. I believe her. In my view she stood up well on cross examination. I find her to be credible. Counsel Miss Thompson argued that as she is still employed to the applicant as her housekeeper, I should reject her evidence as she has a personal interest to serve. I disagree.

[48] The email dated February 6, 2016, from Aneisha Howlett to the deceased also supports the applicant's evidence that she began cohabiting with the deceased in June 2015. In it, Aneisha Howlett bemoans the fact that her son did not get to give the deceased a gift on his first Father's Day, and that on their son's first birthday, the deceased had just returned from a trip and was too guilty to come to her house to cut their son's birthday cake. She also lamented the fact that the deceased did not care to wish their son a merry Christmas.

[49] I take judicial notice of the fact that Fathers' Day is celebrated in the month of June each year, and given the date of the email, the reference by Aneisha Howlett to her son's first Father's Day was clearly a reference to June 2015, since the email was written in February 2016 and her son was born in September 2014. I have absolutely no doubt, that Aneisha Howlett's reference to "SLUT" was indeed a reference to the applicant. The deceased's birthday was in November, and therefore her reference in February 2016, to his birthday when the "SLUT" "again" had plans, was undoubtedly a reference to November 2015. The applicant's own evidence is that on the deceased's 37th birthday in November 2015, they celebrated in The Bahamas. Aneisha Howlett's son's first birthday, referenced by her in the same email of February 6, 2016, would have been September 2015 and "Christmas", would have been a reference to December 2015.

[50] Aneisha Howlett's email of September 9, 2018, is also telling. In it, she again lamented the deceased's abandonment of their son and says it had been almost three years since he last had a meal with him, and that the deceased had again, blocked her telephone number. I truly cannot agree with the submissions made

by Miss Thompson that in December 2015, Aneisha Howlett and the deceased were a: "family unit". The fact that Aneisha Howlett was the maid of honour at the deceased's sister's wedding in August 2015, merely suggests that she had a good relationship with the deceased's sister, nothing more.

[51] I do not accept the evidence of the objectors that the relationship the deceased had with Aneisha Howlett ended in 2017. Aneisha Howlett's emails to the deceased which I have referred to and quoted from, suggest to me that her romantic relationship with the deceased ended either when she became pregnant and decided to keep the baby, or shortly thereafter. Her son was born in September 2014. Her emails indicate that the deceased lost interest on her decision not to abort the baby and he did not support her during her pregnancy. Her evidence which suggests otherwise is simply not credible. Her evidence that while she was studying in Kingston in June and July 2015, the deceased visited with her and that in June 2015 he slept at her apartment in Kingston most nights is plainly contradicted by her own email of February 6, 2016, to the deceased. In that email she said that:

"I invested time n money to further my career, u turned your back on me last minute to take me to Kgn to start school, u never made the effort to visit me there on not 1 occasion."

[52] I do not find the evidence of either Shawn Gray Logan, or Ruel Barnett to be particularly helpful on the question of when the applicant and the deceased began to cohabit. I recognise the contradictions in Nicholas Gray's evidence, concerning whether the applicant moved in with the deceased immediately or the following week after Denisha Savage moved out. But on his evidence, the applicant moved into 231 Clipper Street in June 2015. Therefore, whether this was immediately after Denisha Savage left, which was on or about June 18 or 19, 2015; or the following week, really does not matter, because any of those dates would see the applicant moving into 231 Clipper Street in June 2015. His evidence that the applicant moved in with a truck was also clearly contradicted by her own evidence, but this

does not diminish the value of his evidence that when Denisha Savage moved out, the applicant moved in shortly thereafter.

[53] Miss Thompson, counsel for the objectors argued that there is no cogent evidence that the applicant and the deceased lived together, shared a daily life, or had stability and permanence in their relationship until 2017. She argued further that there is no evidence that they handled their finances together or even had a joint bank account. According to learned counsel, the deceased was involved with Aneisha Howlett up to 2017. I have already explained why I do not accept that Aneisha Howlett and the deceased were in a long-term relationship up to 2017.

[54] The applicant's evidence that she and the deceased discussed getting married and having children together is unchallenged. So too is her evidence that: a) she invested USD\$7,000.00, towards the construction of the Plaza at 32 Union Street in Montego Bay; b) gave the deceased approximately JMD\$1,000,000.00 to pay workman and for other expenses; c) they purchased various household items from overseas ; d) they purchased and made furniture for their home including getting a bed set made; and e) that they both shared the renovations expenses for the home as well as the household expenses. Ruel Barnett's evidence is that during the deceased's hospitalisation, they discussed him getting married and having children with the applicant. I accept this evidence as admissible, it being a statement made by the deceased against his interest and therefore an exception to the hearsay rule. I find that the evidence in this case is indicative of a couple living together in a stable relationship, evincing permanence and the sharing of a life together. The applicant's intimate involvement during the deceased's hospitalisation and in his funeral arrangements, reinforces this view.

[55] I make no finding whether Denisha Savage retains an interest in 231 Clipper Street. That issue is not before me. What however is clear from the unchallenged evidence of the applicant is that there was an agreement between the deceased and Denisha Savage for him to purchase her half interest in the property. There is

also a letter from Denisha Savage's attorneys-at-law to the deceased's attorney-at-law, acknowledging receipt of USD \$35,786.01 representing the purchase price.

[56] In closing, I make the observation that the absence of evidence of a shared bank account does not, by itself, mean that the parties were not cohabiting together as man and wife. It would be a fallacy to suggest that all husbands and wives share bank accounts. As McDonald Bishop J (as she then was) said in **Millicent Bowes** (supra):

“... 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.”

After a careful examination of the evidence, it certainly appears to me that: “a reasonable person with normal perceptions” would opine that the applicant and deceased were living together as husband and wife from June 2015 until the deceased's death in October 2020.

Conclusion

[57] In the result, I hereby declare that the applicant Serene Gopaulsingh is the surviving spouse of Dwayne Romans deceased, pursuant to the provisions of the Intestate Estate and Property Charges Act.

[58] I make no order as to costs.

A Jarrett
Puisne Judge