

EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

**IN THE FAMILY COURT
AT HAWERA**

**I TE KŌTI WHĀNAU
KI HĀWERA**

**FAM-2017-021-000071
[2018] NZFC 10070**

IN THE MATTER OF	THE PROPERTY (RELATIONSHIPS) ACT 1976
BETWEEN	[ELLEN GREENWOOD] Applicant
AND	[REECE HENDERSON] Respondent

Hearing: 18 December 2018

Appearances: M Walden for the Applicant
The Respondent appears in Person

Judgment: 18 December 2018

ORAL JUDGMENT OF JUDGE L HARRISON

[1] This afternoon I am delivering my decision in respect of a defended hearing that has taken place today and before I deliver that decision I say that I reserve to myself the right to make any corrections, to add references to case law, statutory provisions, to add to my reasoning if necessary but the substance and the outcome of my decision will not change. In other words, you will get a written copy of this decision in due course.

[2] The sole issue for determination was when did your de facto relationship begin. Mr [Henderson], in your pleadings you allege it was from March 2015 to January 2017, having previously been in a relationship with Ms [Greenwood] until she ended

it in November 2014 and that you did not reconcile again until March 2015. I note that in cross-examination you put to Ms [Greenwood] the timeframe of between December 2013 to December 2016. Ms [Greenwood] alleges the relationship spans from February 2008 until late December 2016 or early 2017.

[3] This is an important issue to be determined because it will have an impact on the Property (Relationships) Act 1976 proceedings that have been initiated by Ms [Greenwood]. De facto relationships are generally not covered by the Property (Relationships) Act unless you have lived together as a couple for more than three years, although there are exceptions to that.

[4] So to determine this legal issue I have to give regard to the law. Whether a de facto relationship exists is a factual matter and it is to be established by the evidence on the balance of probabilities. The relevant statutory provision is found at s 2D Property (Relationships) Act.

[5] It states that a de facto relationship is a relationship between two people, whether a man and a woman, a man and a man or a woman and a woman, who are over the age of 18 years old, have lived together as a couple and who are not married or in a civil union with one another and that provision goes on to illustrate various factors that can be taken into account when determining whether two people live together as a couple. Duration of the relationship is one factor, the nature and extent of a common residence is another, whether or not it has been a sexual relationship, the degree of financial dependence or independence, arrangements for financial support between the parties, the ownership, use and acquisition of property, the degree of mutual commitment to a shared life, care and support of children, performance of household duties and the reputation and public aspects of the relationship.

[6] No finding in respect of any of those factors or any combination of them is regarded as being necessary and the Court is entitled to have regard to such matters and to attach such weight to any matter as may seem appropriate in the circumstances of the case.

[7] So, I observe that the Act does not contain a primary definition of de facto relationship. What s 2D sets out are conditions which need to be met before a relationship exists and, as I say, one of those conditions is that the parties live together as a couple. So, that is to be determined by me, having regard to all circumstances.

[8] One of the cases that you will see in my written decision referred to a quote by Gendall J. He says that:

In most cases where parties dispute the existence of or the date of the start or determination of a de facto relationship that the Court will be called upon to discern and adjudicate upon disparate strands of evidence drawn upon by each party. It is the assessment of the accumulative weight of the evidence which will be determinative.

[9] So, my task is to determine the facts. You have both given evidence today as has Ms [Bostock] in support of your case, Ms [Greenwood]. I need to acknowledge that what you both have been asked to do is recall events that go back 10 years to 2008 and in my view, the reliability of your evidence before the Court has been affected by the passing of time and also by the desire of each of you to reshape your perceptions of what happened across those years to what best suits the interests of your case. I also have to consider issues of credibility with regard to people who give evidence and on balance I find Ms [Greenwood] the more creditable witness than you Mr [Henderson].

[10] In terms of the duration of the relationship, I accept the evidence of Ms [Greenwood] that the two of you met in February 2008 and you have known each other since that period of time and that it was within a relatively short time that you were both occupying the same house and that was a house owned by Ms [Greenwood]'s mother at [address 1 deleted]. I accept the evidence of Ms [Bostock] that you, Mr [Henderson], started spending nights there. She was there for three or four weeks until she moved out in March of 2008 to pursue her own relationship but from then on you were present at the property and ultimately this is confirmed by virtue of the fact that you paid rent to live there to Ms [Bostock] from time to time, I note that it was a flexible arrangement.

[11] I accept your evidence Mr [Henderson] that it was early days in your relationship when you moved in and that you were both finding your way in respect of the relationship. Your work took you out of the Taranaki area, so I accept your evidence that although you were not there every night, you have acknowledged you were based at the [address]. Ms [Greenwood] would wash your clothes for you. Any evidence is very clear to me that over time a relationship did develop between the two of you. Clearly, you were more than flatmates, there was always a romantic and sexual element to the relationship and I accept Mr [Henderson] that you were resident at [address 1] as late as 9 January 2017, given reference in the police record which is attached to Ms [Greenwood]'s affidavit that you had belongings at that address and she was going to make arrangements for them to be returned to you.

[12] There is very clear evidence before me that over the years that you have known each other there have been numerous verbal arguments to such an extent that the police have been involved regularly in your lives. By October 2015, there had been nine family violence incidences recorded by the police. There is evidence, Mr [Henderson], that you assaulted Ms [Greenwood] in 2011 and you were charged with male assaults female. By that time, you were both the parents of [Neave], who had been born [date deleted] 2010. I classify the male assaults female conviction as intimate partner violence.

[13] There is reference in the police report of November 2012 of Ms [Greenwood] being in the process of getting a protection order. To do that, you must have been in a domestic relationship with Mr [Henderson] and I accept that you were.

[14] The police report also refers to the two of you having been in a relationship for four and half to five years at that point in time. This corroborates Ms [Greenwood]'s evidence. This document was made in 2012, so, five years before Ms [Greenwood]'s files proceedings under the Property (Relationships) Act therefore, I place weight on it.

[15] The reality for you both is that during the relationship, the verbal arguments and the emotional turmoil that was created meant that you spent time apart from time to time. I accept your evidence, Mr [Henderson], that from time to time you stayed at

[address 2 deleted]. That is certainly the intent that is referred to in the police documents. But, despite being trespassed or removed from [address 1], Ms [Greenwood] would take you back and you would resume living there.

[16] The evidence of the case summary report of 19 December 2014 is significant for me, despite your evidence, Mr [Henderson], that during a period of time that you worked for [employer deleted] specifically from 19 November 2014 to 11 February 2015, that your evidence is that you told your employer you were moving in with your grandfather in [address 2]. The fact is that that case summary report by the police refers to the informant as being your daughter, refers to the fact that she lives with you and Ms [Greenwood] and you are described as being a couple. That the relationship is of seven years between you and that you were at [address 1] and that Ms [Greenwood] is wanting you to leave and as a result of that you did leave and you stayed at your grandfather's home.

[17] I do not accept your evidence that the daily arguments that are reported in that report were, in their nature, phone calls. I find on the balance of probabilities that more likely than not that you have been having face to face arguments at [address 1], that is to say, at your home.

[18] I accept the evidence of Ms [Greenwood]. That your absences from the property were due to police intervention. Regardless of that, I find there was an ongoing emotional association and a connection between the two of you and that your relationship endured despite the very high level of conflict and despite the times that the police removed you from the property.

[19] I accept that sexual intimacy was part of your relationship. I acknowledge your evidence that it was on and off after [Neave] was born. The fact is the two of you had a child together. You were both active in his parenting and upbringing and to me that is clear evidence of being in a committed relationship, albeit one with a very complex interpersonal dynamic between the two of you.

[20] Mr [Henderson], your evidence of wanting to move to Auckland with Ms [Greenwood], her children, [and your children] around 2011 was compelling. You

considered yourself to be a family and that demonstrates to me the nature of your relationship with Ms [Greenwood] at that point in time. I find that you have downplayed and minimised the nature of your relationship prior to that. I also accept the evidence of Ms [Greenwood] regarding the use of your Holden motor vehicle that you purchased in 2008. You say it was for insurance purposes that it needed to be put into joint ownership, joint names. I say that you preferred to do this rather than simply have it noted on your policy that Ms [Greenwood] was a driver of the vehicle, that you preferred her to be joint owner because it signalled a commitment of your relationship to her from an early stage of the relationship.

[21] I accept that the two of you were also involved in the [business name deleted] which was formed during the relationship, to the extent that your truck was used and you drove the truck. That shows me, at the very least, a level of support and commitment for the business and your de facto partner.

[22] I refer to the Facebook posts that you have made 28 December 2014 where you acknowledge Ms [Greenwood]'s presence in your life throughout 2014. I refer to the Facebook post of 29 June 2015 to "eight years" as being the duration of your relationship and the intensity of your relationship is demonstrated in the post of 27 December 2015 with reference to Ms [Greenwood] as your wife.

[23] I accept the evidence that you went on holiday together as a couple. You demonstrated publicly that you were in a committed relationship and that is illustrated clearly by the photograph that was taken of the two of you, arm in arm with Ms [Greenwood] being pregnant with [Neave] at her mother's wedding in [date deleted] 2010.

[24] What I need to do today is make a retrospective assessment of your relationship. One that is objective on the evidence that has been presented to me. When I stand back and made that assessment of your relationship, I make it on a holistic basis as to when it became a de facto relationship.

[25] I find that your de facto relationship commenced when Ms [Bostock] required you to pay rent, albeit nominal rent, and when she received payments of \$50 each from

you. So, that is to say about 12 months into the two of you occupying [address 1]. It signifies to me that you were present more often than not at the property, that you were sharing the address, Mr [Henderson]. I accept your evidence that she allowed you folk to live rent free for a year but I find that the imposition of that rent signals a new legal significance in your relationship thereafter. Prior to that it had been somewhat less. So, I find that your de facto relationship endured from then until the temporary protection order was obtained in January 2017.

[26] Therefore, I find your qualifying de facto relationship spans from March 2009 to January 2017.

L Harrison
Family Court Judge