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**IN THE FAMILY COURT
AT LEVIN**

**I TE KŌTI WHĀNAU
KI TAITOKO**

**FAM-2018-031-0000002
[2022] NZFC 3580**

IN THE MATTER OF	THE PROPERTY (RELATIONSHIPS) ACT 1976
BETWEEN	[CLAUDIA ALDEN] Applicant
AND	[DENNIS LEVITT] Respondent

Hearing: 20 April 2022

Appearances: M O’Sullivan for the Applicant
Respondent appears in Person
M Duston as Counsel to Assist

Judgment: 2 May 2022

RESERVED DECISION OF JUDGE J F MOSS

[1] The parties were in a de facto relationship from the late months of 2001 until [date deleted] 2015 with some periods apart. At separation, [Claudia] and [Dennis] had four children, ranging in age from 11 years to 16 months. [Dennis] is the registered proprietor of two properties. [Claudia] left the home she shared with [Dennis] after a verbal confrontation on [date deleted] 2015, and has not returned. [Dennis] has

remained in possession of both of the properties. He has also retained possession of family chattels.

[2] The application before the Court is for classification and division of relationship property. Although, at the pre-trial directions conference, the Court recorded that the date of separation was at issue, that date was found to be [date deleted] 2015 when the Court considered the matter in Care of Children Act proceedings. In the Care of Children Act proceedings, Judge Smith's judgment addressed the circumstances of separation and found that [Claudia]'s account, recorded at paras [24]-[26] was reliable.¹ Those findings included findings related to [Dennis]'s abusive behaviour towards [Claudia]. Those findings are recorded at para [36].

[3] It is not necessarily usual for the Court to focus on behaviour of parties to one another during a relationship in order to determine matters of relationship property. There is no qualifying behaviour pleaded which gives rise to a claim by [Claudia] for additional property, because of [Dennis]'s behaviour.

[4] The findings of Judge Smith, and the findings which appear in this judgment are, however, necessary because [Dennis] has alleged that the relationship fell into distinct parts. In relation to the longest part (commencing 2006 and ending 2012) [Dennis] says [Claudia]'s claim is out of time. In relation to the last segment of the relationship, with an uncertain commencement date, but finishing in [date deleted] 2015, [Dennis] says this was a relationship of short duration and does not qualify as a de facto relationship in order to provide the Court jurisdiction to divide property.

Timeline

[5] The parties met in 2001. [Claudia] then had a three-year-old child, [Jensen]. Sometime around [Jensen]'s fourth birthday ([date deleted] 2001), [Claudia] and [Dennis] began to share a house for the first time at [location 1 deleted]. [Claudia] says the relationship began then. [Dennis] disputed there was a relationship.

¹ [Levitt] v [Alden] [2017] NZFC 7234, at [20]-[41].

[6] In 2002, [Claudia] moved to the house next door to [Dennis]. [Dennis] finalised purchase arrangements for a property in [location 2 deleted], which settled on [date deleted] 2002. For some months prior to that, [Dennis] had possession of the property, and lived between [location 1] and [location 2]. By then [Claudia] had moved back to [Dennis]'s property from her own separate tenancy. By October 2002, [Claudia] and [Jensen] moved to [location 2]. [Jensen] started school at the [location 2] School. [Dennis] disputes there was any relationship. His evidence is that [Claudia] was in need of housing, and that he allowed [Claudia] and [Jensen] to move in.

[7] In [date deleted] 2004, the first child, [Maya], was born. [Alec] (the second baby) followed in [date deleted] 2006.

[8] Sometime between [Dennis] agreeing to purchase the [location 2] property and [Maya] being born, [Claudia] sustained a finger injury. This is important because it marks the time of [Claudia]'s contributing to the move to [location 2], and setting up the property. The injury was sustained in [date deleted] 2002

[9] Both [Claudia] and [Dennis] continued to live in the property at [location 2] until the [location 3 deleted], was purchased in 2006. The move was forced on them because a neighbour in [location 2] objected to their living within a commercial property. [Dennis] arranged the purchase of [location 3]. This was completed in [date deleted] 2006, when [Alec] was [under one year] old. [Madeleine] was then born in [date deleted] 2011, and when she was [under 2] old there was a brief separation. At that time, [Claudia] left the house with [Jensen], who was then [under 16], [Maya], aged [under 9], [Alec], aged [under 7] and baby [Madeleine]. The separation lasted nine or 10 weeks. [Claudia] struggled to find new housing and returned to live with [Dennis]. As a result of contact with WINZ, which was facilitated by the Women's Refuge in those weeks, a series of benefit irregularities emerged. After a period of investigation, [Claudia] was charged with benefit fraud. In that time, she had claimed a benefit for [Jensen] (DPB or its equivalent) but not the other children. When she applied for a protection order she deposed that [Dennis] had controlled her finances. That included controlling her statements relating to renewal of her benefit. In evidence before me, she said that she was always nervous when she met WINZ in case the

dishonesty was revealed. She said that [Dennis] reminded her each time not to say anything about the true nature of her domestic situation.

[10] After the investigation, [Claudia] was prosecuted because, since the birth of [Maya], WINZ determined that she and [Dennis] were in a relationship in the nature of marriage. [Claudia] pleaded guilty. [Dennis] was also prosecuted, though for a lesser sum. He also pleaded guilty. The prosecution was launched on the basis that he did not disclose that he was in a relationship in the nature of marriage.

[11] The mother gave birth to [Errol], the final child, in prison. She was supported to retain his care in prison. [Dennis] agreed that he had somewhat assisted by arranging support through a friend for that to occur. He agreed that he visited three times. That equates to about once a month.

[12] Parentage of the four children is not in question. The guilty pleas for the prosecutions are not in question. The move from [location 2] to [location 3] was undertaken as a group.

Was there a de facto relationship, and if yes, in which periods of time?

[13] [Claudia] has deposed and given oral evidence that the parties began to live together as a couple in the middle part of 2001 at [address 1]. [Jensen] was then [under five]. Because [Jensen]'s father raised concerns about [Jensen] living with [Dennis], [Dennis] and [Claudia] arranged for her to move next door to [address 2 - on the same street as address 1]. Other than having separate addresses, [Claudia] says the relationship continued. [Dennis] generally slept at her place. She said that the move had the desired effect, in terms of pressure from [Jensen]'s father. He then no longer saw [Jensen], and there was no need to continue to have two addresses. She returned to [address 1].

[14] By that time, the move to [location 2] was commencing. From [Claudia]'s point of view the move was complex and carried out over months. [Dennis] dealt in [details deleted]. [Claudia] described him as a hoarder. She described her work in

assisting to move cars from [address 1] to [location 2], which she did during school hours ([Jensen] started school in [date deleted] 2002 at [school deleted]).²

[15] Once at [location 2], after settlement in [date deleted] 2002, [Claudia] deposed that she and [Dennis] slept together in a sofa bed and [Jensen] had a bunkbed in a small room off the lounge. [Claudia] deposed that they worked hard to make order from the minimal surroundings. [Claudia] deposed that in [date deleted] 2002, while the moving of chattels was underway, but before settlement, her finger was broken because her dog and [Dennis]'s dogs got into a fight, and she was injured in trying to break them up. She deposed that she went from [location 1] with her injured finger to [location 2], and [Dennis] went with her to the hospital. She produced a medical record, derived from ACC, which dates the injury to [date deleted] 2002.

[16] In further support of the existence of a de facto relationship in [location 2], [Claudia] referred to her father coming to stay. He gave evidence confirming that he did, on one occasion, stay at [location 2]. He said that there was no doubt in his mind that they were living together as a family. On that occasion, [Dennis] took [Claudia]'s father back to [location deleted] at the end of the stay. [Jensen] went with them, and they did some business on the way.

[17] Further, [Jensen] deposed that both his grandparents visited each three or four months and would sit and talk with them, and said, "although [Dennis] would mostly be out working in the yard".³

[18] [Claudia] also produced the record of [Maya]'s birth, which shows the parties living at the same address. The document is signed by [Dennis] as the father.

[19] In evidence, [Dennis] denied the existence of a relationship, living together as a couple, throughout this period. He said that there was an initial period in 2001 and 2002 when [Claudia] lived at his place, because she did not have anywhere else to live. When she moved to [address 2], he said that they separated. He denied any ongoing

² Affidavit of [Jensen], 23 September 2021.

³ Ibid.

relationship. He denied that the reason for the move was as [Claudia] had described it.

[20] In relation to the move to [location 2], [Dennis] described his finding the property in [location 2] through a friend, making a private arrangement for paying it off over five years and three months, and moving to [location 2] prior to the date of settlement. He gave evidence that [Claudia] remained at [address 2].

[21] In relation to the incident with the finger, [Dennis] denied it occurred when [Claudia] said. He said she was pregnant with [Maya] at the time, and the only reason he assisted [Claudia] was because she was carrying his child. [Dennis] did not accept, in cross-examination, that the ACC record was reliable, and that the event must have been before the pregnancy with [Maya].

[22] [Dennis] denied that [Claudia] did anything to support the move or to work on the property. He deposed that [Claudia] slept in a top bunk, with [Jensen] down below and he slept in the lounge on the sofa bed. He denied any financial interdependence, and in particular, denied that he had controlled, or exercised influence, in relation to [Claudia]'s benefit.

[23] [Dennis] said he was paying about \$130 a week over five years and three months for the balance property, which would have equated roughly with the stated purchase price of \$36,000. Through most of that period, [Dennis]'s income derived from the sickness benefit. WINZ records show that, at the time of the move to [location 3], [Dennis]'s sickness benefit, claimed as a single person, was about \$178. [Dennis] correctly commented that he would have been entitled to some accommodation assistance.

[24] [Dennis] denied that the family aspects of the household were as [Claudia] or her family described. He conceded that he got along well with [Jensen] in the early years.

[25] In relation to the move to [location 3], [Dennis] focused, again, on his sole reasonability for making financial arrangements. By then the household included

[Claudia], [Jensen] and two of [Dennis]'s children. [Dennis] did not address the reason for [Claudia] moving with him, and I infer from submissions filed by counsel to assist the Court that [Dennis] conceded they were living in as a couple from the time of the move to [location 3] until [date deleted] 2012. In this six year period, one further child was born. [Dennis]'s evidence is that the separation in [date deleted] 2012 was final and that he and [Claudia] did not live together as a couple again.

[26] [Dennis] denied control of [Claudia]'s finances. Although [Claudia] and [Jensen] deposed that the purchase of [location 3], was a joint family enterprise, and that the couple discussed renovations and plans, [Dennis] denied that. [Dennis] also denied that [Claudia] contributed around the household. [Claudia]'s description of [Dennis]'s behaviour towards her around the household was contained in the application for a protection order in [date deleted] 2012, and reproduced in the judgment of Judge Smith in September 2017.⁴ Because those proceedings ended when the temporary order was discharged on [Claudia]'s application, the allegations of violence were not tested. However, the picture within the evidence portrayed events of a household where the adults were living as a couple.

[27] In [date deleted] 2015, [Dennis] applied for a protection order. It was necessary, at that time, for him to satisfy the Court that there was a close personal relationship (see Family Violence Act, ss 14 and 60). Ultimately, [Dennis] did not obtain a protection order, but there was no doubt about the presence of the relationship at that time.

Legal principles

[28] In order for the Court to find that there has been a qualifying de facto relationship, the matters set out in s 2D(2) of the Property (Relationships) Act must be considered. The definition of a de facto relationship appears in s 2D, and the jurisdiction for the Court to divide property for those in a de facto relationship depends upon fulfilling that definition. If the definition is met, property is divided in accordance with the principles of the Property (Relationships) Act on the same basis as if the parties were married.

⁴ [Levitt] v [Alden] n 1 above, at [10]-[12].

[29] Section 2D(2) reads:

2D Meaning of de facto relationship

...

- (2) In determining whether 2 persons live together as a couple, all the circumstances of the relationship are to be taken into account, including any of the following matters that are relevant in a particular case:
- (a) the duration of the relationship:
 - (b) the nature and extent of common residence:
 - (c) whether or not a sexual relationship exists:
 - (d) the degree of financial dependence or interdependence, and any arrangements for financial support, between the parties:
 - (e) the ownership, use, and acquisition of property:
 - (f) the degree of mutual commitment to a shared life:
 - (g) the care and support of children:
 - (h) the performance of household duties:
 - (i) the reputation and public aspects of the relationship.

...

[30] Not all of the elements need to be present for all of the time, nor at the same periods.

[31] What is not in dispute is that [Claudia] and [Dennis] had an intimate relationship between 2003 and 2013. Four children prove this proposition. What is also not in dispute is that they resided at the same address from [date deleted] 2002 until [date deleted] 2015, other than for a period of nine or 10 weeks at the end of 2012. I specifically reject any suggestion that [Claudia]’s imprisonment marked a period of separation. There are a number of reasons for this. The first is that she bore a baby while in prison, which was [Dennis]’s baby. The second is that both [Claudia] and [Dennis] were prosecuted on the basis that they were living together as a couple prior to the imprisonment and both pleaded guilty. If there were evidence that, at the point of [Claudia] being sentenced to imprisonment, [Dennis] repudiated the relationship, it may be possible to argue that the relationship ended at the point when

[Claudia] went to prison. However, their resumption of a common residence approximately three months after she was sentenced, provides strong circumstantial evidence that [Dennis] did not repudiate the relationship. Third, in Care of Children Act proceedings, [Dennis] deposed that [Claudia] abandoned her partner (meaning himself).⁵

[32] I am satisfied that, during a period of enforced absence, the relationship continued. Therefore, whether for the entire period it was a relationship where the parties lived together as a couple, from the later months of 2002 until [date deleted] 2015, the relationship subsisted. In that 13 years, they produced four children, and substantially brought up a fifth.

[33] The degree to which the parties litigated over the care of the children indicates that, at least after the relationship ended, both desired to care for and support their children. None of the evidence casts any doubt on the commitment of either [Claudia] or [Dennis] to the care of their children.

[34] There is a dispute about their performance of household duties. [Dennis] alleged [Claudia] did nothing. [Claudia] alleged that she worked very hard under trying circumstances. There will be matters of detail which each has remembered wrongly, and for that reason my assessment does not focus on any one individual matter. However, overall, I prefer the evidence of [Claudia] to that of [Dennis]. [Dennis]'s evidence has, through the proceedings, been inconsistent. In [date deleted] 2015, he alleged a close personal relationship, and before me, he alleged that by that date it did not exist. [Dennis] denied a close relationship from 2002 in [location 2], despite the parties having two children. Findings of fact made by Judge Smith in relation to reliability of the evidence is also persuasive. Judge Smith found him to be coercive, abusive, and exploitative. In particular, the fixed abusive view of [Claudia] as a parent, at the time of separation in 2015, was found by Judge Smith to be wrong.

[35] I consider that [Dennis]'s evidence before me continued a trend which was identified by the psychologist assessing the children in 2017. Excerpts are reproduced in Judge Smith's judgment of 20 September 2017. His observations of the way in

⁵ Ibid, at [23].

which [Dennis] portrayed himself and treated the historical events and their impact is consistent with his presentation as a witness before me.

[36] In addition, the lengths to which [Dennis] went to frustrate the progress of these proceedings further exemplifies his determination to prevail. As examples, I note the 13 months between September 2017 and October 2018, which it took [Dennis] to file his response to the property proceedings. I accept the record of the solicitor instructed by the Court to facilitate valuation of the property as accurate. [Dennis] has successfully frustrated completion of the valuations. In disputing that matter, [Dennis] was focused on blaming others for the difficulties. Valuation is a simple matter. Even if there were issues with appointments, it was in [Dennis]'s hands to solve those issues. His actions have frustrated the progress with this matter causing delay and increased cost.

[37] Having considered those matters which cast a doubt on the reliability of [Dennis] as a cooperative participant in this litigation and as a reliable witness of events, I prefer [Claudia]'s account of the domestic situation throughout. I consider that she did her best in difficult circumstances in the performance of household duties. I accept that she felt pressure to attain the standards of performance which [Dennis] required. I also accept that he found her wanting.

[38] The matter of financial dependence or interdependence has, in part, been considered above. I accept [Claudia]'s evidence that she did not exercise free judgment as a partner, but rather complied with [Dennis]'s demands. Although the purchase of [location 3] was, I consider, something upon which there was consultation, [Claudia] accepted that the financial recording demonstrated no contribution from her. I accept [Claudia]'s evidence that she felt unable to resist [Dennis]'s expectation that she lie to WINZ. The deception enabled financial support from [Claudia] to the household and to [Dennis]. Without that, it may be that the purchase of real estate could not have occurred, alongside raising the children.

[39] There is little evidence from either [Dennis] or [Claudia] about the reputation and public aspects of the relationship. The only evidence came from [Claudia]'s father. He regarded [Dennis] and [Claudia] as a couple. He recalled their planning the

move to [location 3], and their hope that it would then lead to the purchase of land on which they could establish their own space. More sadly, [Jensen] recalled abusive aspects of the relationship. Although not wholly a public aspect, the degree of abuse recorded by [Jensen] is consistent with the findings made by Judge Smith in the Care of Children Act proceedings.

[40] Having considered the matter in relation to each of the factors in subs 2, the Court must consider the circumstances of the relationship as a whole. This relationship was abusive, imposing adversely on [Claudia]. None of [Dennis]'s evidence portrayed a commitment to anyone but himself. But length, progeny, common residence and the adverse results of financial deception, all lead to a positive finding of the existence of a relationship, because although the living together as a couple was not a partnership in which [Claudia] was respected, each party played the role delineated for them or by them in a way which secured both the length and the productivity of the relationship.

[41] I conclude that [Claudia] and [Dennis] lived together as a couple from the last months of 2002 until [date deleted] 2015.

[42] This is, therefore, a qualifying relationship.

What is relationship property?

[43] Section 8 defines relationship property. At the commencement of the relationship in 2001, there is no evidence that either [Dennis] or [Claudia] owned any assets. Neither of them owned residential property or other land. [Dennis] was living in rented or borrowed accommodation. [Claudia] was living in rental accommodation. There were certainly vehicles, but the detail is beyond the Court's knowledge. Vehicles are, of course, family chattels, and become relationship property. The property in [location 2] was lived in as a family home from the last months of 2002 until the last months of 2006. It acquired the status of relationship property. It did not lose that status. In any event, it was property acquired by [Dennis] after the relationship began and was, in the first years, for their common use and benefit. The deposit for the purchase, [a luxury vehicle] was a family chattel.

[44] [Location 3] was acquired, in the same way. It was the family home from the end of 2006 to [date deleted] 2015. It was acquired during the relationship. It retains the status as relationship property. All family chattels, being furniture, appliances, household equipment or articles for household and family use and amenity are relationship property. Likewise, any motor vehicle owned at the point of separation is a chattel, as are trailers or caravans. Motor vehicles not used for family purposes which were purchased after the relationship began are relationship property.

[45] I heard no evidence which could suggest that the presumption of equal sharing in relationship property would be displaced. I direct equal sharing of all relationship property.

[46] Implementation will not be straight forward. The two properties are to be placed on the market for sale by [date deleted]. Although there will be scant time for preparation, I consider there is less chance of preparation for sale being undertaken than of securing [Dennis]'s cooperation for valuation. The Court used months of time waiting for [Dennis]'s cooperation, which was not, ultimately, forthcoming. I am not prepared for there to be delay. Counsel to assist the Court is asked to instruct a real estate agent on behalf of the Court, and to undertake the legal work for the sale on behalf of the registrar. It will be necessary for realistic conditions to be included in any agreement for sale and purchase, because the chance of the properties being well presented is low. Once sale is finalised the proceeds are to be held to the credit of both parties. Costs, fees and agreed debts are to be repaid. The balance is to be divided equally, subject to resolution of court costs. Counsel for [Claudia] is asked to advise by 25 May 2022 whether an application for costs is to be made. The full cost of counsel to assist prior to hearing is to be met from [Dennis]'s share. That includes the costs of Mr Montague and Mr Duston. The costs of undertaking the sale are to be shared equally.