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[SQUARE BRACKETS]

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**IN THE FAMILY COURT
AT LEVIN**

**I TE KŌTI WHĀNAU
KI TAITOKO**

**FAM-2020-031-000091
[2021] NZFC 13019**

IN THE MATTER OF	THE PROPERTY (RELATIONSHIPS) ACT 1976
BETWEEN	WILLIAM ADAM MULLEN Applicant
AND	BONNIE-JOE MEKURA POPE Respondent

Hearing: 20 September 2021

Appearances: S Thompson for the Applicant
F Vining for the Respondent

Judgment: 23 December 2021

RESERVED DECISION OF JUDGE K BROUGHTON

Introduction

[1] These proceedings are between Mr William Mullen (Mr Mullen) and Ms Bonnie-Joe Pope (Ms Pope).

[2] The issue for this Court to determine is whether the parties were in a qualifying de facto relationship as defined in the Property (Relationships) Act 1976 (the Act).¹

[3] This a preliminary issue. It must be determined first as the outcome will have a direct impact what other issue(s) arise relating to the status and division of property.

[4] In these proceedings, the onus is on Mr Mullen to satisfy the Court that on the balance of probabilities, a de facto relationship existed.²

The law

[5] Section 2D of the Act defines the term “de facto relationship” as follows:

2D Meaning of de facto relationship

- (1) For the purposes of this Act, a **de facto relationship** is a relationship between 2 persons (whether a man and a woman, or a man and a man, or a woman and a woman)—
 - (a) who are both aged 18 years or older; and
 - (b) who live together as a couple; and
 - (c) who are not married to, or in a civil union with, one another.
- (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;

¹ Property (Relationships) Act 1976, s 2D.

² *Hiroki v Gilbert* FC Lower Hutt FAM-2005-032-000527, 6 December 2006.

- (h) the performance of household duties;
 - (i) the reputation and public aspects of the relationship.
- (3) In determining whether 2 persons live together as a couple,—
- (a) no finding in respect of any of the matters stated in subsection (2), or in respect of any combination of them, is to be regarded as necessary; and
 - (b) a court is entitled to have regard to such matters, and to attach such weight to any matter, as may seem appropriate to the court in the circumstances of the case.
- (4) For the purposes of this Act, a de facto relationship ends if—
- (a) the de facto partners cease to live together as a couple; or
 - (b) one of the de facto partners dies.

[6] It is a matter of evidence and degree as to whether a couple are in a de facto relationship. As Miller J observed in *DM v MP*:³

The legislation delegates to the courts the work of deciding what minimum characteristics are required of a de facto relationship or, to put it another way, what it means to live together as a couple. An inquiry into substantive characteristics is unavoidable not because de facto relationships need differ from marriage but because, unlike marriage, they need not be created by the ex ante agreement... Marriage and civil unions are opt-in relationships in which the commencement date is known, but the law may impose the legal status of a de facto relationship retrospectively upon parties whose relationship gradually and without conscious election assumed that character.

[7] The focus of the inquiry as to the existence of a de facto relationship at the relevant time must be on s 2D(1)(b); being, whether the parties were living together as a couple.

[8] Asher J in *L v P* reinforced the importance of the central concept of living together as a couple in finding whether or not there exists a de facto relationship.⁴ On appeal, his Honour considered that the Family Court Judge had “treated a number of individual factors listed in s 2D(2) as determinative of the existence of a de facto relationship, rather than treating them as no more than factors to assist the Court in deciding on the primary issue, namely whether the two parties were living together as

³ *DM v MP* [*De facto relationship*] [2012] NZHC 503; [2012] NZFLR 385, at [23].

⁴ *L v P* [*Division of Property*] [2008] NZFLR 401.

a couple”.⁵ The concept of ‘living together’ is therefore a holistic one, where various factors need to be considered.⁶

[9] Section 2D(2) provides a list of factors that are to be taken into account. It is not an exhaustive list. The prefatory words in s 2D(2) that “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” indicate that all the circumstances must be considered, although not all of the factors set out in paras (a)-(i) are necessarily relevant. The words “including any of the following” also indicate that the list is not exhaustive. Furthermore, none of the factors are essential. The Court is therefore entitled to attach such weight to any matter as is appropriate in the circumstances of the case.⁷

[10] Further, no singular factor set out in paras (a)-(i) of s 2D(2) is a necessary condition for the purposes of determining whether there is a de facto relationship.⁸ The approach to be taken was helpfully summarised by Katz J in *PH v GH*:⁹

The indicia set out in s 2D are inclusive, not exclusive. No particular indicia are necessary for a positive finding to be made, nor is any grouping of indicia necessary. As was said by the full High Court in *Scragg v Scott* [2006] NZFLR 1076, the test must inevitably be evaluative, with the judge having to weigh up all of the factors as best he or she can – not only those contained in s 2D but also any others there may be – and applying a commonsense objective judgment to the particular case.

[11] I therefore consider it appropriate to evaluate the evidence provided by the parties against the factors listed at s 2D(2) of the Act, but with it being at the forefront of my mind that s 2D(2) does not provide an exhaustive list. I must evaluate the circumstances as a whole and holistically. I do that exercise as follows.

⁵ At [48].

⁶ *Cooper v Sydney* FC Dunedin FAM-2005-012-157, 28 September 2006.

⁷ Property (Relationships) Act 1976, s 2D(3).

⁸ Property (Relationships) Act 1976, s 2D(3)(a).

⁹ *PH v GH* [*De facto relationship: no substantial contribution*] [2013] NZHC 443, at [16].

Evidence and analysis

Duration of the relationship

[12] The parties met in 2007. Ms Pope claims that they were a couple for a period of only seven months following this meeting in (she says) January 2007. Ms Pope's evidence is that they shared a sexual relationship during this time, but not at any other time. Ms Pope's evidence is that the relationship ended because of Mr Mullen's involvement with a previous partner, Ms Bridget O'Dae.

[13] Mr Mullen claims that the parties did not begin a relationship until 2008. In oral evidence he conceded that he may have this date wrong and that he would accept Ms Pope's evidence that their relationship actually began in 2007. He, however, still maintains that the relationship continued until their separation in 2018.

[14] The dynamics of these years will be traversed when analysing the other factors to follow. It can be said however, that in these circumstances, the parties' opinions of the length of the relationship has not been overly helpful in inferring and determining the nature of the relationship. Nevertheless, it is still noted that both parties accept a relationship to have existed between them – the contention is the length of that relationship.

Nature and extent of common residence

[15] Sharing a home together is an important indicator of a de facto relationship. Despite this, the absence of sharing a common residence is not determinative.¹⁰ Nor does the fact that the parties shared a residence for a long period of time necessarily point to the existence of a de facto relationship. In *Scragg v Scott*, the parties lived separately for a large portion of the relationship.¹¹ However, the Court still found a de facto relationship existed:¹²

...the absence of sharing a common residence is not determinative...Couples may cohabit from time to time where, for example, one party has to spend long periods away from home for reasons of occupation...Once a relationship (de facto or marriage or civil union) commences then where a physical

¹⁰ At [40].

¹¹ *Scragg v Scott* [2006] NZFLR 1076, (2006) 25 FRNZ 942.

¹² At [40]-[41].

separation thereafter occurs on a voluntary basis the Court has to closely examine how that originally came about and what a party's attitude to the relationship then was and whether the Court is satisfied that then or at some later time the parties or one party ceased to recognise the existence of the relationship.”

[16] Further, in *PZ v JC*, PZ had boarded with the deceased, AB.¹³ The Court had to consider whether the relationship had changed in nature and whether the applicant and deceased had lived together as a de facto couple. It was found that AB and PZ had kept their finances and property largely separate. Additionally, any financial support offered by AB was modest. The Court also found there to be a lack of emotional commitment by either party to a shared life and that there was a lack of public disclosure of the relationship to show that the landlord/boarder relationship had become more intimate.

[17] In this case, Mr Mullen submits that the parties shared a common residency from early 2008. He states that they lived in two rental properties together, being Fincham Road (circa May/June 2008) and Harry Shaw Way (December 2008).

[18] In 2012, the parties moved and lived together at [location 1], that property being purchased in Ms Pope's sole name.

[19] Mr Mullen's evidence is that when they lived together, they shared a bedroom and a bed. He does acknowledge that there were periods during the times listed above that the parties did not share common residency, as follows:

- (a) Mr Mullen lived in Seaview Road for a period of two weeks to give them space after a disagreement.
- (b) Mr Mullen moved to Castlepoint in March 2010, to work on building a house for his brother for several months. He says he drove back to stay with Ms Pope every weekend.
- (c) Mr Mullen moved to Christchurch for a period of one year in 2013, for work. He acknowledged in oral evidence that he also spent some time

¹³ *PZ v JC* [2006] NZFLR 97 (FC).

following this, working in Kaikoura. He says that during this period he consistently drove and flew back to Levin to stay with Ms Pope when he was able. He says he stored his things in the Levin property and that he sent his wages to Ms Pope, although noting that no evidence has been provided of this.

[20] Ms Pope says that the parties were in a boarding arrangement. She says she was simply a “soft touch”. She allowed Mr Mullen to stay with her, as a friend, for the years following their separation. She says there was no monetary exchange for his boarding, but instead he would do things such as work around the home or provide meat from hunting.

[21] In line with Mr Mullen’s evidence, Ms Pope also states that he was away a lot for work. She claims that along with living separately, when they did share the same residence, they had a landlord/boarder relationship. Ms Pope says this is why Mr Mullen lived in the garage or “the shed”. She also states that when Mr Mullen was working in Christchurch, his belongings were merely stored in her garage for his convenience and because she had no issue in offering to help as a friend.

[22] Evidence was provided by witnesses in support of Mr Mullen, claiming the parties shared a bedroom.

[23] Mr Charles Mackie (Mr Mackie) is a friend of Mr Mullen’s. Mr Mackie accepted that while his affidavit evidence stated that he visited [location 1] two to three times per week when Mr Mullen first moved in, that was incorrect. Mr Mackie accepted that he was in jail at the time that Mr Mullen moved into the property. He conceded that he started visiting him after his release. He also said in oral evidence that he visited once per month, which contradicts his written evidence.

[24] Mr Mackie said that he saw both Ms Pope and Mr Mullen walk upstairs together to bed. He disputed that you could not see the bedroom when sitting in the lounge. This is despite Exhibit A, which was photograph produced from a valuation, showing the stairwell and entrance to the lounge. The photograph shows that there

was a 'return' and small landing before the stairs carried through to the next floor. The view from the lounge is obscured by this design.

[25] Mr Mackie was adamant the view was clear. He also disputed Mr Mullen's own evidence that he slept on the same floor as the lounge. He was insistent that Mr Mullen's bedroom was upstairs. Mr Mackie's evidence was confusing and contradictory.

[26] Mr Jeffrey Allen (Mr Allen) also provided evidence in support of Mr Mullen. They have worked together previously. Mr Allen in evidence said that when he stayed with the parties, they slept in the same room. In oral evidence, Mr Allen said that the bedroom was upstairs but also conceded that he had never been upstairs – just that he had said goodnight to Mr Mullen one evening and that Mr Mullen walked upstairs. While I do not believe that Mr Allen was intending to mislead, I think he assumed that because Mr Mullen walked upstairs, he was walking to the parties bedroom.

[27] Neither party has provided corroborating evidence to support their narrative of a common residence (or not). Ms Pope has no evidence of a boarding arrangement. Mr Mullen has no evidence of a shared bedroom.

[28] I therefore find that a common residence has been shared but not to the extent that the parties actually shared a bedroom.

Whether there was a sexual relationship

[29] Mr Mullen says that a sexual relationship existed for the entirety of the claimed duration of the relationship (2007/2008-2018).

[30] Ms Pope accepts that a sexual relationship existed between the pair, but that it only existed for the first seven months of the relationship (being 2007). Her evidence is that even during this period, Mr Mullen's medical issues meant that sex was not a regular part of their relationship.

[31] This factor is further complicated by the parties' disagreement as to whether or not they shared a bedroom. Oral evidence provided by Mr Mackie and Mr Allen

speaks to the parties sharing a bedroom. Exhibit A provides somewhat of a discredit to the oral evidence provided by Mr Mullen's witnesses and does place doubt over whether their statements could be conclusive evidence that the parties shared a bedroom.

[32] The evidence from the parties is that they had a sexual relationship. The question is how long this sexual relationship lasted for. There is room for speculation when I consider this factor. Thus, the existence of a sexual relationship in this situation is not determinative of the existence of a de facto relationship.

Degree of financial dependence or interdependence

[33] Financial interdependence may be an important sign of a de facto relationship.¹⁴ However, this is not essential in the context of the Act. Two people, who keep their finances separate, may still be living together as a couple.

[34] However, where there is some degree of common residence, coupled with financial interdependence, the Court may have a greater willingness to deem the relationship a de facto one. As found in *C v S*, the absence of any financial dependence or interdependence was an important factor in finding against there being a de facto relationship.¹⁵

[35] On the evidence, it appears that the parties maintained their own bank accounts and managed their own finances. While Mr Mullen's affidavit evidence claims that expenses were shared in early years of the relationship, there is no evidence to support this. Mr Mullen also claims that while he was working away, he sent his wages to Ms Pope. Again, he has not provided evidence of this.

[36] There was a joint bank account opened by the parties in 2008. This bank account was closed on 23 January 2009. While the reason for this joint bank account existing is disputed, its existence for a somewhat significant period of time cannot be disputed. It is also noted that the bank account was created and closed during a period where Ms Pope claims the parties were no longer in a relationship.

¹⁴ *Ruka v Department of Social Welfare* [1997] 1 NZLR 154.

¹⁵ *C v S* FC Dunedin FAM-2005-012-157, 28 September 2006.

[37] There is controversy surrounding the property at [location 1]. Ms Pope claims that she bought this, in her sole name and Mr Mullen stayed as a boarder, living in the garage.

[38] Mr Mullen claims that the parties lived at [location 1] as a family, along with Ms Pope's two children. Mr Mullen acknowledges that he did not pay the mortgage, but says he made non-financial contributions by way of kai/food and work around the home.

[39] The parties agree that in 2016, they invested in a property together – [location 2]. Records show that this property was purchased in Mr Mullen's name only. Ms Pope's evidence is that this is because she could not service a mortgage in her name. It is agreed that they respectively paid \$10,000 deposit for this property and that it was then rented out to Ms Pope's mother. Mr Mullen submits that the revenue gained from this was kept in Ms Pope's bank account.

[40] The proceeds from the sale of [location 2], is a contentious and rather confusing point. Mr Mullen effectively claims that Ms Pope kept all sale proceeds in her sole bank account. He says he did this to help her, so that she could use these funds towards the starting of her new business. Ms Pope alternatively claims that she was holding funds and that it was always the intention for this amount to be repaid to the applicant.

[41] In oral evidence, there was further confusion surrounding whether the amount of \$50,000 shown in exhibits was used to pay for a new Toyota Hilux for Mr Mullen or paid into the bank account of Ms Pope. While there is a lack of clarity on this point, for the purposes of evaluating this factor, the central point remains; it appears that Mr Mullen purchased a Toyota Hilux and the remainder of the proceeds of sale were placed in Ms Pope's bank account. As far as the evidence shows, Mr Mullen has still not been repaid this sum, noting that part of the remaining sum had been advanced to start Ms Pope's business.

[42] On the evidence available, it appears as though the parties were self-supporting on a day-to-day basis. In saying that, it is also evident that they discussed their financial circumstances, intended investments and financial intentions with one

another. Furthermore, there was a pooling of resources to provide benefit to one another. It is also important to recognise that even in times where Mr Mullen did not provide monetary support to Ms Pope, there is evidence of his non-financial contributions to the household, such as repairs made to the [location 1] property.

[43] I find the balance to fall in favour of their being financial interdependence to an extent. It must, therefore, follow that these circumstances slightly tip this factor in favour of a de facto relationship existing.

Ownership, use and acquisition of property

[44] Where a couple share their incomes, savings and investments, they are more likely to be found to be living in a relationship if there is evidence of a common residence. However in saying this, in *Watene v Lord*, the keeping of separate finances and a failure to operate a joint bank account was not regarded as a reliable indicator of the nature of the relationship.¹⁶ The High Court stated this is because “separate financial arrangements can be quite a common feature of settled de facto or married couples”.¹⁷ Thus, again this factor is not in and of itself determinative of a de facto relationship, however, it may work to qualify the relationship as a de facto relationship.

[45] As above, Mr Mullen’s evidence is that the parties lived together throughout the duration of their relationship, some ten years. Ms Pope denies this but says Mr Mullen was a boarder at her home.

[46] The realty properties owned were:

- (a) [location 1] – The parties agree that this was purchased in Ms Pope’s sole name.
- (b) Castlepoint forestry block – a whānau arrangement between Mr Mullen and his father only. There is no dispute in this regard.

¹⁶ *Watene v Lord* [2017] NZHC 388.

¹⁷ At [31].

- (c) [location 2] – agreed that this purchased as a rental property by the parties jointly, but that it was registered solely in Mr Mullen’s name.

(a) *[Location 1] property*

[47] The [location 1] property was purchased in 2012. It is registered solely in Ms Pope’s name. She moved into the home on 1 April 2012. She claims that Mr Mullen was not around at this time and was not involved in the move in any way. Ms Pope made all mortgage repayments on this property.

[48] Mr Mullen claims that he was involved in the purchasing process of this home. He says that he attended a property viewing with Ms Pope and that he helped move in. Further, while he lived in the home and did not pay a monetary amount towards the household, he says he still contributed in a non-financial form. He submits that he carried out significant modifications to the property and absorbed the expenses of these repairs. Mr Mullen’s evidence is that the repairs are as follows:

- (a) Installing a pre-made garage, putting up retaining walls, tiling and painting.
- (b) Electric gates purchased for \$700 in 2015. Ms Pope paid for the automation of the gate. Mr Mullen states he paid for the gates and for an electrician to install them.
- (c) Replacement of an old oven: \$2,200.
- (d) Purchase of a heat pump: \$3,100.
- (e) Plumbing materials and work, and other building materials during 2018.

[49] It is not disputed by either party that Mr Mullen began to live there almost immediately, following Ms Pope’s move into the property. Ms Pope, however, says he lived there independently. She disputes he was involved in the house purchase to the point of them looking at it together. She says Mr Mullen ceased living at [location

1] in March 2013, returning in May 2013, only to leave his belongings in the garage while he worked in Christchurch.

[50] Mr Mullen disputes this. He says he lived at the property until 2018, when the relationship ended. His evidence is that when he went away for work, he consistently drove and flew back to Levin to stay with Ms Pope, however, there is no evidence provided to support this.

[51] As this factor focuses simply on the ownership, use and acquisition of property, that is what my enquiry will focus on.

[52] I do not find that there is sufficient evidence that [location 1] was a joint property venture between the parties. While I accept that the parties lived there together and that Mr Mullen performed work on the property, this does not appear to be an action of investing in the property. Rather, these appear to be actions, which have come about as a result of Mr Mullen's commitment to what he perceived to be a shared life. In the alternative, the circumstances demonstrate the actions of two people whose friendship included assisting one another.

(b) The [location 2] Property

[53] This property was purchased in 2016, once Mr Mullen had ceased working away.

[54] The parties agree that they purchased this property together, despite it being registered solely in Mr Mullen's name. They agree that it was purchased with the intention of renting it to Ms Pope's mother.

[55] Mr Mullen's evidence is that he was happy to invest in Ms Pope's family and provide a degree of support by doing so. Ms Pope views the investment somewhat differently. She claims that she purchased the property for her mum to live in. She says she suggested to Mr Mullen that they purchase it together and sell it in a few years, thus it being merely a good investment opportunity for him.

[56] There is little evidence to further Ms Pope’s perspective of the joint venture of this property. What is evident, however, is that Mr Mullen completed a Will on 17 June 2016, shortly after the property was purchased. In this Will, he appointed Ms Pope as sole beneficiary and executor of his estate. He referred to Ms Pope as his “partner” in this Will. He claims that she attended the appointment to make this Will with him. Ms Pope denies this. She said in evidence that she has never been to a lawyers office with Mr Mullen. She disputes that she was made his “executor” because they were in a relationship. She said in evidence that she expected him to put his brother’s name down.

[57] Mr Mullen claimed to only hear from Ms Pope sporadically during the time that he was working in Christchurch/Kaikoura. Ms Pope’s oral evidence was that there were sometimes months between hearing from him and that when he did ring, he would simply be saying hello. Her narrative affidavit states that Mr Mullen returned to Levin in 2016. This is the same year that [location 2] property was purchased.

[58] In accordance with Ms Pope’s version of events, for a period of two years their relationship consisted of sporadic phone calls and the applicant storing his belongings in her garage. Yet, quite curiously, Ms Pope’s evidence is that she then suggested they invest in a property for her mother together, which was purchased in Mr Mullen’s name. I find it highly unusual that Ms Pope would put forward the idea of the parties entering into a joint property venture in light of the state of their relationship at that time. It is at odds with her evidence.

[59] I find that [location 2] property was a joint venture. This further supports the discussion surrounding financial interdependence above. I conclude that this factor supports a finding of a de facto relationship.

Degree of mutual commitment to a shared life

[60] In *K v I*, the Court observed that in order to establish a de facto relationship existed, it is necessary to establish a relationship of “the same level of commitment as when two people decide to join their lives together in marriage”.¹⁸

¹⁸ *K v I* FC Napier FAM-2006-041-390, 2 March 2007, at [62].

[61] In *Watene v Lord*, the issue of mutual commitment was central to the case.¹⁹ The parties met and had two children together, they lived in a house owned by one party (although there were periods where they did not live together), they maintained separate bank accounts and shared little financial information. They began to sleep in separate bedrooms some time into their relationship. The High Court found that:²⁰

The absence of any sufficient mutual commitment to a shared life was available to the Judge as a criterion that would epitomise whether the parties lived together as a couple and thereby establish the presence or absence of the requisite de facto relationship.

[62] In *Llamas v Massaar*, the appellant's case failed for lack of evidence demonstrating a mutual commitment to a shared life.²¹ The appellant relied on the points that they attended various family and social functions together, they spent holidays together, financial and domestic support had been provided to the respondent and the appellant had undertaken repairs and maintenance to the respondent's house. The respondent denied being in a de facto relationship with the appellant at any stage. The High Court found that the relationship was more akin to that of landlord and tenant or flatmates, it may have even been exploitative but that did not mean it was a de facto relationship. The High Court upheld the Family Court decision that a de facto relationship did not exist and commented:²²

Much of Mr Llamas' evidence regarding the assistance he provided to Ms Massaar was not contested. However, it does not follow that his generosity should be interpreted as contributions to a shared life together as a couple in the absence of reciprocity or evidence of the other party's willingness or acceptance of such a relationship... The difficulty for Mr Llamas is the absence of evidence which demonstrates a mutual commitment by Ms Massaar to engage in a joint life with him... Overall, the evidence is to the contrary.

[63] At para [23] of counsel for Mr Mullen's written submissions, it is submitted there was "a high degree of mutual commitment to a shared life" and that this is evidenced by:²³

¹⁹ *Watene v Lord*, above n 16.

²⁰ At [37].

²¹ *Llamas v Massaar* [2017] NZHC 357.

²² At [122].

²³ Synopsis of Submissions for Applicant dated 17 September 2021, para [23].

... continued cohabitation, intermingling of finances, Mr Mullen making Ms Pope the sole beneficiary of his estate, and the sharing of household tasks and expenses for over a decade.

[64] As mentioned above, there are other various elements, which work towards displaying a commitment by Mr Mullen to a shared life with Ms Pope. This includes the work conducted by Mr Mullen on the [location 1] property and claims that while he was working away, he would come back and visit Ms Pope as often as he could. In addition, he says he would send her his wages.

[65] Conversely, Ms Pope explicitly states that she did not believe the parties to be in a relationship beyond the seven months after they met. In oral evidence, she claims that she has dated throughout the time during which Mr Mullen says they maintained a relationship. However, no evidence of this dating life or other relationships was provided.

[66] In looking at the evidence in totality, I have found very little to show any commitment by Ms Pope to a shared life with Mr Mullen. I therefore find there not to have been a mutual commitment to a shared life. The circumstances are quite analogous to the circumstances in *Llamas v Massaar*. While Mr Mullen was committed to a life shared with Ms Pope, I do not find this to have been reciprocated.

Care and support of children

[67] The parties did not have children together. Ms Pope has two children of her own, [a son – name deleted] and Rhiannon.

[68] Mr Mullen considers that he was more than just a family friend to the children. His evidence is that he provided care and support for them, who lived with the parties through the duration of their relationship. Mr Mullen's witnesses also described a relationship beyond friendship between Mr Mullen and Ms Pope's children. There is evidence tendered of Mr Mullen riding motorbikes with them and Mr Mullen raising parenting issues with Mr Allen.

[69] Ms Pope submits that Mr Mullen was nothing more than a friend to her children. She rejects evidence about Mr Mullen riding motorbikes with them. She said that this was not the kind of activity [her son], , enjoys as he is not “outdoorsy”.

[70] Ms Pope’s evidence has been corroborated by her daughter, Ms Rhinannon Rizvi (Ms Rizvi). Ms Rizvi said that Mr Mullen was not involved in parenting herself or [her brother] at all. She did not view the parties as being in a relationship. Ms Rizvi further stated that Mr Mullen did not attend any significant events in her life. Ms Rizvi does not recollect any outings made by the parties, herself and her brother. She remained consistent on these points throughout both her affidavit and her oral evidence. I note for the court record that evidence was not provided by [the respondent’s son].

[71] In relation to [the respondent’s son], there is some discrepancy around his name. In his Will, Mr Mullen referred to “[name deleted]”, meaning Ms Pope’s son. Ms Pope said in oral evidence, that her son’s name is “[different to the name mentioned in the will]”. Counsel for Mr Mullen did not clarify this issue therefore I have not acknowledged this as evidence that demonstrates care and support of children. I do not believe I can in the absence of any clear identity.

[72] On considering this factor, I find Ms Rizvi’s evidence herself the most compelling and telling in terms of true nature of the relationship. While it is perhaps easier for either party to form a perception to others, a child living in the home is privy to the reality of the situation. There is also a lack of evidence from Mr Mullen around his involvement with school, knowledge of school friends or their activities. It is also difficult to reconcile Mr Mullen’s acknowledgment that he went away for long periods of time, yet spent quality of time with the children to establish care and support. Therefore, I find that Mr Mullen did not care for and/or support the children. Accordingly, this factor does not support the existence of a de facto relationship.

Performance of household duties

[73] There is little evidence speaking to the division of household duties. I therefore find this factor is a moot point in the determination of a de facto relationship.

Reputation and public aspects of the relationship

[74] It is indicative of a relationship of mutual commitment where two people hold themselves out as a couple, socialise together and bring the other to social events as a partner. If other factors are also present, this may qualify the relationship as a de facto relationship.

[75] In *Scragg v Scott* the parties resided together only intermittently, and despite both parties having other relationships, the Court concluded that “they presented to the outside world generally as a couple”.²⁴

[76] Mr Mullen claims that he and Ms Pope attended family gatherings as a couple. Ms Pope says that they attended events together, such as a birthday party and the wedding of a mutual friend, but that they did not attend as a couple. Again, the theme of friendship is suggested – that Mr Mullen attended a birthday party as he was around at the time and that there was a sense of convenience for them to attend a mutual friend’s wedding together.

[77] Mr Russell Packer (Mr Packer) gave evidence in support of Mr Mullen. He is Ms Pope’s uncle. Mr Packer said that he understood the parties to be in a relationship and that he had spent a Christmas with them. Mr Packer’s evidence is that Ms Pope referred to Mr Mullen as her partner at a tangi and that he went to [location 1] and watched two games of league with the parties.

[78] There is sufficient to support the claim that the parties socialised and presented themselves to others as a couple. One of the troubling factors is that Mr Mullen claims that they were together for ten years yet there is no corroborating evidence of this. I accept that there are photographs of the parties at a wedding but Ms Pope’s explanation of that is just as plausible – they went together as friends and as a group went to Rainbows End. Further, with the growing of Ms Pope’s children, there are significant milestones and the celebration of special events. Mr Mullen says that he spent Christmases with Ms Pope and the children and went to Ms Rizvi’s 21st birthday. Ms Rizvi recalls one

²⁴ *Scragg v Scott*, above n 11, at [65].

Christmas shared together. She is adamant that Mr Mullen did not come to her party at Lonestar.

[79] The onus however is on Mr Mullen to prove factors such as this. On the evidence provided, I cannot find that the parties had a reputation to their family and friends that amounted to them being a couple in a long term, serious relationship. No mutual friends gave evidence in support, who could have provided more of an insight into how the parties interacted and whether they were committed to each other. I accept that time was spent together but there is certainly not sufficient evidence to support the claim that they were in a committed relationship and were socially considered as “being together”.

Outcome

[80] This is a finely balanced case.

[81] When a global analysis of all circumstances is undertaken, I find against there being a de facto relationship between Mr Mullen and Ms Pope. I accept that a relationship existed at some stage between the parties, albeit that being a complicated and unconventional one. I find that Mr Mullen has not fulfilled his obligation to prove the relationship extended beyond this in order to establish and reach the threshold of a de facto relationship.

[82] I find that there is no qualifying de facto relationship for the purposes of the Property (Relationships) Act 1976.

Judge KNP Broughton
Family Court Judge | Kaiwhakawā o te Kōti Whānau
Date of authentication | Rā motuhēhēnga: 23/12/2021