

SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Woodill v. Tiller*, 2019 NSSC 259

Date: 20190830

Docket: 109624

Registry: Sydney, NS

Between:

Keith Woodill

Applicant

v.

Kimberley Tiller

Respondent

LIBRARY HEADING

Judge: The Honourable Justice Lee Anne MacLeod-Archer

Heard: June 12, and 13, 2019 in Sydney, Nova Scotia

Written Decision: August 30, 2019

Subject: Common-law relationships

Summary: The court held a focused hearing on whether the parties shared a common-law relationship.

Result: No common-law relationship found to exist.

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Counsel: Steve Jamael for the Applicant
Christopher Conohan for the Respondent

By the Court:

Facts

[1] The parties were in a relationship for approximately eight years, though the nature of that relationship is at issue. Mr. Woodill argues that he and Ms. Tiller shared a common-law relationship which gave rise to equitable claims upon separation. Ms. Tiller rejects that argument, saying that she and Mr. Woodill never shared a common-law relationship.

The Hearing

[2] A focused hearing was held to determine the nature of their relationship. If I find that the parties shared a common-law relationship, Mr. Woodill intends to advance an equitable claim for an interest in Ms. Tiller's home in Westmount. Although much evidence was led on who made what improvements to Ms. Tiller's home, I was not asked to determine whether Mr. Woodill has proven an equitable claim at this stage.

Findings & Reasons

[3] Both parties testified, along with a number of witnesses. I accept Ms. Tiller as the more credible of the two parties. She was candid when testifying, and she presented a coherent, more cohesive version of events. She made admissions against self-interest, and she was not defensive or argumentative.

[4] Mr. Woodill's evidence was less credible. He was defensive, argumentative, and smart with the court and counsel. He made a couple of admissions against self-interest, but that was the only mitigating feature of his evidence. It's clear that he left the relationship very bitter. That bitterness permeates his attitude and perceptions, which negatively affected his credibility.

[5] In assessing the credibility of the other witnesses, I note the following: most of Mr. Woodill's witnesses had limited ability to observe his relationship with Ms. Tiller. A couple of them barely knew her and never spent time at her home. None of them discussed the relationship with Mr. Woodill. Credibility doesn't always mean disbelieving someone because they're lying. A lack of opportunity to observe a situation can impair a person's credibility.

- [6] Other problems include: Kurt Woodill conceded that he knew little about his father's relationship; Adele Woodill made assumptions about the relationship without an evidentiary basis; and Jim Taylor's evidence was strategic and evasive.
- [7] Ms. Tiller's witnesses had a better ability to observe the relationship. Her friends spent time at her home. One friend worked next door. They discussed relationships when they got together, especially Ms. Tiller's relationship with Mr. Woodill.
- [8] Facts I accept include: Janet Porter's recollection after the parties got engaged, that Ms. Tiller told Mr. Woodill she would probably never marry him; Michelle Morrison's explanation that the reason the women's potlucks were held at Ms. Tiller's home was because she lived alone; Kelly Young's recollection that she once suggested that Ms. Tiller allow Mr. Woodill to move into the home to help pay bills, which Ms. Tiller firmly rejected; none of the friends observed evidence that Mr. Woodill lived at the Tiller home.
- [9] Some examples of credibility issues with Mr. Woodill's evidence include his claim that Ms. Tiller lied to him, telling him she had cancer so that he'd help her with home repairs. He says she played on his emotions over the death of his first wife, who died of cancer. Yet Ms. Tiller testified that she told him she had to go for tests, and then told him that the tests came back clear. Text exchanges between the parties confirm this.
- [10] A second example involves the letter Mr. Woodill sent alleging that Ms. Tiller sexually harassed him, his threat to disrupt her son's employment, and his threat to see Ms. Tiller charged criminally. He claims that he'd never have pursued criminal charges, and that he had no intention of trying to interfere with her son's employment. He said he sent the letter because he wanted to get things "straightened out" and to gain "closure". I reject that explanation. There was nothing to straighten out; there was no need for closure. The letter was instead an attempt to intimidate Ms. Tiller and force a meeting. Mr. Woodill was desperate to maintain contact with Ms. Tiller through any means.
- [11] A further example involves Mr. Woodill's criminal charges, and his guilty plea to criminal harassment. Despite that plea, he denies that he harassed Ms. Tiller. Yet he subsequently breached the terms of his probation order to refrain from contact with Ms. Tiller. He attended Ms. Tiller's work to deliver breakfast he bought for her, and texted her to advise that he'd done so. He says that he was simply trying to be "reasonable". In the face of a probation

order prohibiting contact, this is not reasonable behaviour. It is a pattern of inappropriate behaviour.

[12] In addition, throughout their relationship, Mr. Woodill filed income tax returns in which he lists his address as Marion Bridge. He also lists his marital status as widowed, not common-law. He suggested this discrepancy arises because he's "not good at paperwork". I reject that excuse. He is a businessman who owns rental properties and is familiar with paperwork.

[13] Mr. Woodill acknowledged that during the relationship, he kept his residence in Marion Bridge. He acknowledged that he spent nights at this home for the first four years of their relationship, but says that he only spent the occasional night there between 2015 and 2017. He says that he stayed with Ms. Tiller instead. Yet he texted Ms. Tiller at one point asking to move in to her home, and she refused. James Tiller also asked his mother a few times whether Mr. Woodill would be moving in with her. This clearly suggests that they weren't living together when he asked.

[14] Mr. Woodill also agreed that in at least one text, he asked permission to go to Ms. Tiller's home. He suggested that on weekends, he'd want to be sure it was a good time to drop in before doing so. Even if that's the reasoning, it confirms that he needed Ms. Tiller's permission to drop in. A common-law spouse living in the same home would not need that.

[15] Further, he denied that the texts he sent, wherein he greets Ms. Tiller with "good morning", suggest that they spent most nights apart. He says that because he leaves for work early, and Ms. Tiller worked late and slept in, he would text her to say hello after he left the house. That doesn't adequately explain the texts. Their tone and consistency is that of a couple who spend nights apart.

[16] Kirk Woodill says that he lived in his father's home for two years, during which time he says that his father lived with Ms. Tiller. However, during that same period, his father was working out west, and then working for the railway. He spent long periods away from home. His mail was delivered to Marion Bridge and he listed that address for tax purposes.

[17] Adele Woodill lives out west and came home infrequently between 2010 – 2016. She used her father's cell number to reach him. She never called Ms. Tiller's home. She says that, after a motor vehicle accident in which she was badly injured, she spent about a week at Ms. Tiller's home recuperating. She

had nowhere else to go, and would not have stayed there with Ms. Tiller alone, so it makes sense that Mr. Woodill stayed there too.

[18] Ms. Woodill became very emotional recounting the fact that her father didn't fly directly to Halifax to see her in hospital, rather he flew to Cape Breton first to see Ms. Tiller, and then proceeded to Halifax. It's clear that she blames Ms. Tiller for this.

[19] Ms. Tiller acknowledges that Mr. Woodill stayed with her at times when he was back in Cape Breton. However, she says that he maintained his own residence throughout. In the early years of their relationship, this was a bone of contention for Ms. Tiller, because she wanted him to spend more time with her.

[20] The parties got engaged at one point, with Ms. Tiller wearing a ring that Mr. Woodill gave her. Ms. Tiller terminated the engagement and returned the ring. Mr. Woodill says that he didn't get the ring back until 2017, which appears to be his rationale for pursuing their relationship when Ms. Tiller wanted nothing to do with him. He also denied that they previously split up previously. He characterized their 2013 split as "just a spat". It was more than that from Ms. Tiller's perspective.

[21] Ms. Tiller gave Mr. Woodill a key to her home to perform renovations. He denied that in 2017, she told him to take his tools and return the key. He suggested that it was his decision to return the key, but first, he insisted on keeping it to complete work he'd started in her basement. Mr. Woodill denied that he refused to let the relationship die. Yet the evidence is clear that he was not prepared to accept Ms. Tiller's decision, and he pursued her even in the face of a court order to refrain from contact.

[22] Ms. Tiller says that she didn't ask for many of the renovations that Mr. Woodill completed at her home. She says they were mostly an attempt to make amends to her for his drinking. Mr. Woodill denies that during their relationship he started projects in order to make amends for his bad behaviour.

[23] Mr. Woodill concedes that he drinks and that it was a contentious issue between them. Ms. Tiller was particularly upset when she was in hospital and suspected Mr. Woodill of driving her vehicle while impaired. Mr. Woodill was aware of Ms. Tiller's feelings on the subject, though he shrugged off her concerns. I accept that some of the projects at Ms. Tiller's home were initiated to placate her, but not all.

[24] Finally, he was challenged about the message he sent to Ms. Tiller after their separation, indicating that he didn't want anything from her. He agreed that initially he didn't want anything from her, but once he was arrested for harassment, he changed his mind. This is consistent with counsel's argument that this action is founded on a desire for retribution.

1) Law & legislation

[25] Mr. Woodill relies on the definition of common-law spouse in the *Parenting and Support Act*, RSNS 1989, c 160 which requires a continuous conjugal relationship of at least two years. This case doesn't involve a support claim, so that definition isn't applicable.

[26] He also relies on the comments of the Court of Appeal in *Soper v Soper* (1985), 44 R.F.L. (2d) 308:

What is a common-law relationship? Counsel for the Appellant referred the court to the case of *Jansen v. Montgomery*, 30 R.F.L. (2d) 332, wherein Hall Co. Ct. J. said the following regarding common-law relationships:

"From the foregoing it will be seen that to 'live together as husband and wife' connotes an element of permanence and commitment to each other by the parties to the relationship to a substantial degree. Certainly it should not be thought that every arrangement where a man and woman share the same living accommodations and engage in sexual activity to some extent should be regarded as living together as husband and wife. In these times men and women have a much more casual attitude toward sexual conduct than was prevalent even two decades ago. Now it is not unusual for a man and woman to live in the same apartment, sharing expenses, and engaging in sexual activity with each other, knowing full well that the relationship will not last for the rest of their lives and will likely end when another person comes along or circumstances change. In my opinion such a relationship does not come within the definition of 'spouse' as set out in the [Family Maintenance] Act."

18 I think it would be fair to say that to establish a common-law relationship there must be some sort of a stable relationship which involves not only sexual activity but a commitment between the parties. It would normally necessitate living together under the same roof with shared household duties and responsibilities as well as financial support. I would also think that such a couple would present themselves to society as a couple who were living together as man and wife. All or none of these elements may be necessary depending upon the intent of the parties.

[emphasis mine]

[27] He also cites Justice MacDonald's decision in **Wittich v Wittich**, 2005 N.S.S.C. 265 in which she cites an Ontario decision that laid out a list of elements to be considered when deciding the nature of cohabitation, including shelter and financial arrangements, sexual and personal behaviour, social activities, and services each performed around the home. I find the above factors and list instructive, as this is a common-law claim.

Conclusion

[28] I've considered all of the evidence, the elements of cohabitation and the factors in favour of a common-law relationship enumerated above. I have also carefully evaluated the credibility of the parties and their witnesses, and weighed the evidence on the balance of probabilities. I find that the parties did not share a common-law relationship.

[29] Ms. Tiller was clear throughout the relationship that she did not want to live together. She was an independent, single mother who owned her own home and held down two jobs to make ends meet. She had concerns with Mr. Woodill's drinking, and his attitude towards her family. Although theirs was a long term, intimate relationship, that doesn't make it common-law.

[30] Further, although they were engaged for a short period, Ms. Woodill had concluded that she wouldn't marry Mr. Woodill. They never made plans for a wedding and Ms. Tiller returned the ring. An engagement alone doesn't prove a common-law relationship.

[31] The parties' relationship lacked permanency and commitment. They may have stayed together for short periods of time, but both maintained their own homes and respected each other's privacy.

[32] The parties did not share assets or bank accounts, they didn't share financial information, and they didn't share living expenses. Mr. Woodill's evidence that he paid some of Ms. Tiller's bills fall far short of the proof required to establish a common-law relationship. Even if he'd helped her financially from time to time (which I reject) that would not be conclusive.

[33] Likewise, helping Ms. Tiller with renovations where she paid for the supplies is not evidence of a common-law relationship. She helped him with

his business on occasion too. They had a mutually beneficial arrangement, but that does not make it common-law.

[34] Finally, their adult children did not treat the other party as family. Both had been married before, and both have grandchildren. Mr. Woodill's son had very limited contact with Ms. Tiller, as did his daughter. Ms. Tiller's son stayed with Mr. Woodill in Grande Prairie until he secured work one time, and they travelled together from Cape Breton on occasion, but he had little contact with Mr. Woodill otherwise.

[35] There's no evidence that Ms. Tiller's grandchildren consider Mr. Woodill their grandpa, for example. There is no evidence of shared time with either party's grandchildren at birthday parties or family outings. There's no evidence that their families presented as blended, or even close. A holiday meal together once in a while isn't enough.

[36] In the end, the evidence is clear that Mr. Woodill and Ms. Tiller dated for a long time, but never established a common-law relationship.

Costs

[37] If the parties cannot agree on costs for the hearing, they can make written submissions. Ms. Tiller's submissions are due within fourteen days and Mr. Woodill's response is due within a week thereafter.

MacLeod-Archer, J.