

BARBADOS

IN THE SUPREME COURT OF JUDICATURE

HIGH COURT

CIVIL DIVISION

No. 1021 of 2005

**IN THE MATTER OF THE ESTATE OF
WINNARD STEPHENSON CLARKE, DECEASED**

BETWEEN:

ERNA BROWNE

PLAINTIFF

AND

LANA EDGHILL

DEFENDANT

Before Dr. the Hon. Madam Justice Sonia Richards, Judge of the High Court.

2009: July 09

September 15, 16, 17, 18, 24

October 02

2010: January 07

Ms. Margot Greene Q.C. for the Plaintiff

Mr. Cecil McCarthy Q.C. and Ms. Laura Gooding for the Defendant

DECISION

The Factual Background

- [1] Winnard Stephenson Clarke (“the Deceased”) died on January 25, 2000. At the time of his death he lived at the home of Miss Erna Browne (“the Plaintiff”). The Deceased had no children, and he is survived by a sister, Mrs Elrita Lenora Sealy, and a brother, Mr. Douglas Ethelbert Straughn.
- [2] Mrs. Lana Edghill (“the Defendant”) is the daughter and niece respectively of Mrs. Sealy and Mr. Straughn. Both Mrs. Sealy and Mr. Straughn have consented to the Defendant applying for letters of administration to the estate of the Deceased.
- [3] The Plaintiff filed an Originating Summons on May 20, 2005, seeking the following relief:-
1. an Order for the administration of estate of the Deceased, with all necessary and proper accounts, directions and inquiries;
 2. further or other relief; and
 3. that provision be made for the costs of her application.
- [4] The Plaintiff’s Affidavit in support of the Summons was filed on November 18, 2008. The Defendant responded with her own Affidavit on February 23, 2009. Henson Alleyne also filed an Affidavit in support of the Defendant on the same day.
- [5] The Plaintiff’s case is that she is entitled to administer the estate of the Deceased because she is his spouse, having cohabited with him continuously for a period of five years or more preceding the date of his death. The Defendant contends that the Plaintiff is not the spouse of the Deceased. The Defendant conceded that the Plaintiff and the Deceased were living together at the date of his death, but her argument is that they lived together for a period far less than the five years prior to his death.

The Statutory Framework

- [6] The governing legislation is the Succession Act, Cap. 249, and the relevant provisions are Sections 49(2), 51 and 2(3) of the Act. Section 49 (2) enacts that:

“If an intestate dies leaving a spouse and no issue but next-of-kin, the spouse shall take two-thirds of the estate and the remainder shall be distributed in equal shares among the next-of-kin.”

Section 51 provides that:

“If an intestate dies leaving neither spouse nor issue nor mother nor father, his estate shall be distributed between his brothers and sisters in equal shares.”.

Section 2(3) defines a “spouse” as including:

“a single woman who was living together with a single man as his wife for a period of not less than 5 years immediately preceding the date of his death.”.

[7] The Plaintiff has to establish that she is the spouse of the Deceased in order to benefit from his estate under section 49(2) of the Succession Act. If she is unable to do so, the Defendant’s mother and uncle would be entitled to equal shares in the estate of the Deceased under section 51 of the Act.

[8] The issue to be decided in this case is whether the evidence presented satisfies the Court, on a balance of probabilities, that the Plaintiff was the spouse of the Deceased at the date of his death. It is not disputed that when the Deceased passed away he was a single man living with the Plaintiff, a single woman. The question to be decided is whether they lived together as man and wife “for a period of not less than 5 years immediately preceding the date of his death.”.

The Evidence Presented

[9] In addition to the three Affidavits mentioned earlier, oral testimony was given by seven individuals. The Plaintiff’s evidence is that she met the Deceased in 1980. An intimate relationship developed between them from about 1986. He came to live with her at her mother’s house at Maynard’s Tenantry in Christ Church in 1994, after his mother died. She said that the Deceased did not move in with her before because he said that he was not leaving his mother. It was after his mother died on August 19, 1993, that according to the Plaintiff, he moved from Well House in St. Philip to live with the Plaintiff in Christ Church.

[10] The Plaintiff said that the Deceased stayed with her from Monday to Friday, and returned to Well House on weekends so that he could drink with his friends and check on his house. He left around 8.30 a.m. on Saturday mornings and returned about 4.30 p.m. on Sunday evenings. His routine included eating breakfast and dinner at her home.

[11] During the week, the Deceased left the home of the Plaintiff around 8.30 a.m. to go to work, and he returned to her home between 7 to 7.30 p.m. He had a bath, ate dinner, watched television, and retired to bed with the Plaintiff. His clothes were at her home, and they were kept in her bedroom. She also washed and ironed his clothing.

[12] Another aspect of his routine was that the Plaintiff met him in town every Friday evening and collected

vegetables from him to take home. She arranged with him to collect the vegetables before he went drinking. She gave evidence of him forgetting the vegetables in town on some occasions.

[13] The Plaintiff was also aware of the close relationship between the Deceased and his niece Donna Knight-Estwick. He had raised her from a baby after her father died, and he was devoted to her. Donna lived at Well House with the Deceased. According to the Plaintiff, Donna moved out from the Well House home in 1997. Donna died in January 2000, a few weeks before the Deceased. He never came to grips with her death, and began drinking heavily.

[14] In her Affidavit, the Plaintiff also mentioned looking after a baby, the child of her niece, for two years from 1996. She deposed that the Deceased assisted with the care of this child, and that they had planned to visit the child in the United States of America.

[15] Garvon Browne is the Plaintiff's brother. He knew the Deceased from the nineteen eighties as a regular visitor to his mother's house. He saw the Deceased mostly at night around 7.30 p.m., and he would give him a lift to Oistins between 9.30 p.m. and 10 p.m. This occurred until about 1994 when he concluded that the Deceased was sleeping at the house. The Deceased would come in tipsy and go straight to the bedroom.

[16] Between 1995 and 1997, Mr. Browne picked up his mother on mornings between 7.40 a.m. and 7.45 a.m., and took her to work. If the Deceased was ready to leave he would also drop him to the Aberdeen Jones Centre at Gall Hill. In 1997 his mother retired, but he would drop the Deceased to Gall Hill if he saw him on the road. He never saw the Deceased at the house on Saturdays or Sundays. Mr. Browne dropped his mother to work from Monday to Friday, including his off days which were Tuesdays and Fridays.

[17] Nova Straughn is a neighbour of the Plaintiff, but not a next door neighbour. She said that it would take about half of an hour or less to walk from her home to the Plaintiff's home. She knew the Plaintiff from 1978 when she moved to Wotton. Ms. Straughn noticed the Deceased in the area from 1994, and he passed in front of her house regularly for some time. When she first met him he was intoxicated and stumbling, and she assisted him to the Plaintiff's house. She heard him refer to the Plaintiff as his "wife to be". Ms. Straughn usually saw the Deceased in the evening between 7.30 p.m. and 8 p.m., and on mornings between 7.30 a.m. and 8 p.m. wearing a uniform. She assumed that he was going to work in the morning because of the uniform.

[18] Jeffrey Browne is the Plaintiff's son. He lived with his mother from 1974 to 2007. He saw the Deceased visiting their home prior to 1994. When the Deceased visited before 1994, he would leave at night. He and the Deceased had a fairly good relationship. His evidence was that the Deceased slept in his mother's bedroom when he lived with them.

[19] Jeffrey Browne said that he started to see the Deceased every morning during the period 1994 to 2000.

"I first saw him living there in 1994. It was the year
before I started to work with the Ministry of Health.

I started to work in 1995. I was not working in 1994

when I saw him.”.

He saw the Deceased retire at night to his mother’s bedroom, and in the mornings he would see the Deceased having breakfast, or he would wait to use the bathroom after the Deceased, and prepare for work.

[20] The Defendant grew up in the home at Well House with the Deceased, her brother Elson Straughn, her cousin Donna Knight-Estwick, and her grandmother. She moved from that home in September, 1989, after her marriage, leaving Donna and the Deceased there. She now lives about 10 to 12 minutes walk from Well House.

[21] The Defendant’s evidence is that the Deceased continued to live at Well House until 1999, after Donna left the home to live with her boyfriend and future husband. She spoke about the very close relationship between Donna and their mutual uncle, the Deceased.

“When I go there she would always be behind him or with him or helping him do something around the home ... Donna used to wash for my uncle. She didn’t like anybody saying anything about him or coming to the house and disrespecting him. She cooked for him as well ... In 1998 she left to live elsewhere. She went to live at Bourne’s Village, St. George. The Deceased was still living at Well House when she left. I am certain of this.”.

[22] When Donna moved out, according to the Defendant, the Deceased was the only one living at the Well House home. She was concerned about him and she spoke with him about her concerns. In her own words:

“I asked him what we are going to do regarding cooking and washing. He said don’t worry about him.”.

[23] The Defendant also testified about the various interests of the Deceased. He liked cou-cou which she prepared mostly on Saturdays. It was Donna who did the cooking during the week. The Deceased was interested in local politics. The family discussed the 1997 bi-election in St. Thomas, and the Deceased went to political meetings with his late friend Frederick Inniss. The political discussions in 1997 took place at the Well House home.

[24] The Defendant said that she became aware of the Plaintiff in 1998. She heard the Deceased speak about her. The Defendant’s mother and Donna also mentioned the Plaintiff. She met the Plaintiff on two occasions in 1999 when the Plaintiff visited her home with the Deceased; and at Donna’s wedding in October 1999. According to the Defendant, the Deceased left the house the same year that Donna got married. Her evidence was that:

“After Donna left the house he was still there up to a part of 1999. Then he said that he would go by the Plaintiff He moved out in March 1999 ... His work clothes were not there after March 1999. They would usually be in his bedroom ... I am sure he left in March 1999.”.

[25] The Defendant was also certain that Donna left Well House in 1998. Donna visited the Defendant at her home around October/November 1998, and informed the Defendant that she was moving on. The Defendant recalled the year because she had gone to Puerto Rico around September 1998. She bought a pants suit there for

Donna, and gave it to her with some other things when she visited the Defendant a few weeks later.

- [26] Elson Straughn is the brother of the Defendant and nephew of the Deceased. He was certain that the Deceased did not leave Well House prior to 1999 because of a number of events. They spoke at length about Mr. Straughn's promotion to Sargeant of Police in 1994. At the time of Mr. Straughn's promotion, the Deceased was still at Well House. Mr. Straughn's father visited Barbados from England in 1996 and stayed at Well House with the Deceased. His mother also visited in 1997 and 1999; she stayed at Well House, and the Deceased was still at Well House. Mr. Straughn's evidence is that the Deceased was at Well House until 1999.
- [27] Between 1994 and 1999 Mr. Straughn said that he dropped the Deceased to Bridgetown so that the Deceased could get to work at the Customs and Excise Department. Other individuals also gave the Deceased a lift to work, Frederick Inniss, Henson Alleyne and Marcia Alleyne. He said that the Deceased like cricket, "but not to the extent that he liked politics."
- [28] Mr. Straughn also confirmed the closeness between the Deceased and Donna Knight-Estwick. The Deceased took out an insurance policy for her, and he also told Mr. Straughn that she had locked him out of the house on several occasions. Mr. Straughn defended Donna's actions because she was at Well House alone when the Deceased came home late at night. He told the Deceased that the Deceased would not want anyone to walk into the house when it was not locked and interfere with Donna.
- [29] According to Mr. Straughn, he spoke to the Deceased about going to live with the Plaintiff. In 1999, a few months after Donna left in 1998 to live in St. George, Mr. Straughn told the Deceased that he was the only one living at the Well House home. He advised the Deceased to leave Well House because the Deceased was a heavy drinker, and he was living there alone. The Deceased informed this witness that he had a friend, and that he could go and live at the friend. This friend was the Plaintiff, and Mr. Straughn said that sometimes on weekends the Deceased called him and asked to be collected from her home. In addition, Mr. Straughn collected the Deceased and the Plaintiff from her home and took them to Well House. This all occurred in 1999.
- [30] Mr. Straughn said he first met the Plaintiff in 1998 at her home. The Deceased had asked him to take them to Well House to visit his home. Mr. Straughn collected the Deceased and the Plaintiff around 11 a.m. on a Saturday morning in 1998 and took them to Well House. The Deceased told Mr. Straughn that the Plaintiff was his girlfriend.
- [31] Henson Alleyne also lived at Well House, about three houses away from the Deceased, on the opposite side of the road. Mr. Alleyne grew up in the area, and spent a lot of time playing in the backyard of the home of the Deceased. In 1994 and 1995 he collected his newspapers on mornings between 6 a.m. and 6.30 a.m. from the Deceased at the Well House home.
- [32] Mr. Alleyne went to work at the Electoral and Boundaries Commission from June 19, 1995. His workplace was at Fairchild Street, and he regularly gave the Deceased a lift to Bridgetown in his motorcar. These lifts on mornings continued to 1999. Mr. Alleyne was certain of this because he and the Deceased discussed politics in the car on mornings. They discussed the bi-election between Clyde Mascoll and Mark Williams in December 1996. The

Deceased went to a few of the political meetings, and he would tell Mr. Alleyne things that happened at these meetings while they were driving down to work. Mr. Alleyne also recalled the January election of 1999, and the fact that the Deceased “was not amused at the prospect of a Government having a 26 to 2 majority.”.

[33] Except for a brief period when the Deceased was transferred to the Airport, Mr. Alleyne dropped him to Bridgetown during the week between 1995 and 1999 about 2 to 3 times a week. Not only did they discuss politics but they talked about cricket and about his niece Donna. Although the Deceased was Donna’s uncle, he often told Mr. Alleyne that she was like his daughter. The Deceased said he was the one who raised Donna and sent her to school. The Deceased had brought her to the Well House home when her family died and he looked after her.

[34] Mr. Alleyne could not say when Donna left Well House. He knew that she had left because the Deceased told him. He recalled the Deceased saying that Donna had left “and he now had to get his breakfast on mornings.”. The Deceased did not tell Mr. Alleyne about Donna’s wedding. But the Deceased told Alleyne about Donna’s death. However, Alleyne did not think that he was driving the Deceased when he was told about Donna’s death.

[35] Mr. Alleyne also saw the Deceased about 2 to 3 nights during the week. He described a ritual that developed where he and some other men waited to see if the Bayfield bus would carry the Deceased beyond his stop because he was sleeping. This was around 9.30 to 10 at night, and the “look out” for the Deceased was on a step outside a mini mart near to the home of the Deceased at Well House. Mr. Alleyne said that he stopped going to this shop around mid 1999 “when the guys out there started doing nonsense.”.

Evaluation of the Evidence

[36] One aspect of the Plaintiff’s evidence was not confirmed by her witnesses. She told the Court that during the week the Deceased left her home at 8.30 a.m. Her brother Garvon Browne spoke about the years 1995 to 1997 when he collected his mother from the Plaintiff’s home on mornings to drive her to work. This occurred between 7.40 a.m. and 7.45 a.m., and if the Deceased was ready at that time, he also got a lift with them to Gall Hill. The Plaintiff’s son said that the Deceased left their home between 7.30 and 8 a.m. in the morning. The Plaintiff’s neighbour Nova Straughn saw the Deceased between 7.30 and 8 a.m. in the morning around working time. She said “I knew he was on his way to work because he wore a uniform and he was fresh and clean.”.

[37] It is surprising that after a friendship of 20 years, years that included a relationship as boyfriend and girlfriend, and living together for 6 years according to the Plaintiff, she knew nothing about the work hours of the Deceased. Her evidence was:

“I can’t tell you what hours he worked. He didn’t always go to work I never knew what hours he was supposed to work. I never went down that road with him yet. I knew him for 20 years and I never knew his hours of work.”.

[38] The Plaintiff’s explanation for this lack of knowledge was that the

Deceased was a very quiet fellow who did not do much talking. Her knowledge of the Deceased was limited to his heavy drinking, his Friday purchase of vegetables, and his devotion to his niece. She contends that they lived together as husband and wife from 1994 to 2000, and yet there is a paucity of evidence about the husband like services he rendered to her.

[39] The Plaintiff's evidence is that she cooked, washed and ironed for the Deceased, and that they were boyfriend and girlfriend. But other than the purchased of a fridge, and the provision of vegetables on Fridays, what else did the Deceased contribute to their relationship? There is no evidence from the Plaintiff, or from her witnesses, as to whether the Deceased contributed financially to the household, or purchased food other than vegetables on Fridays, or provided toiletries or other household necessities.

[40] There is also a lack of evidence, from the Plaintiff's perspective, about the interests of the Deceased beyond his niece, his drinking and his vegetables. Did the Deceased have any friends? Who were his drinking buddies? What were his other interests? The Plaintiff's evidence raises questions as to how well she really knew the Deceased, and whether her limited knowledge about him undermines her contention of a six year period of cohabitation with the Deceased. The Plaintiff even described as reliable an individual who she had to meet on Fridays to collect vegetables, because he was likely to forget them in town when he went drinking.

[41] The Plaintiff admitted making a mistake in an important aspect of her evidence. In re-examination, the Plaintiff retracted an earlier statement where she had agreed "that for the entire time Donna lived at Well House, the Deceased lived at Well House.". Had this statement not been retracted as a "mistake", it would have placed the Deceased in the Plaintiff's home for less than 5 years and compromised her case against the Defendant.

[42] There were conflicting statements about who reached home first on Friday nights. The Plaintiff gave evidence that she arrived first, and also that the Deceased arrived first. When counsel for the Defendant pointed out that both statements could not be true, the Plaintiff clarified that the Deceased "would always be there when I got home."

[43] During cross examination, the Plaintiff made other inconsistent statements. She stated that she and the Deceased "became boyfriend and girlfriend from around 1986.". Then, at the very end of her cross examination, the Plaintiff asserted that "It is true that we were boyfriend and girlfriend from 1994 to 2000. These apparently inconsistent statements were not clarified by the Plaintiff.

[44] The Plaintiff in her evidence referred to a neighbour of the Deceased, who opened his house on weekdays, and informed him when mail came and when freshly killed pork was to be collected. She told the Court that:

"The caretaker was there from 1995 to his death. I called her a caretaker because she checked the house for him. She was more a help than a caretaker. I am not saying that when Donna was there the caretaker was checking on the house. From 1995 to his death Ms. Browne used to check on the house."

The Plaintiff also gave evidence that Donna left Well House in 1997. Why then would there have been the need

for someone to check the house while Donna still lived there?

[45] In her Affidavit, the Plaintiff mentioned keeping a 6 month old baby at her home for 2 years from 1996. She alleged that the Deceased assisted with the care of this child. The presence of this child at the home, and the involvement of the Deceased in her care were never mentioned or confirmed by either Garvon Browne or Jeffrey Browne, the 2 witnesses who were familiar with the household.

[46] Garvon Browne did not reside with the Plaintiff and their mother, and he accepted that he could not say for a fact that the Deceased lived at the house. Neither could he say what was significant about the year 1994, that would have allowed him to pinpoint it as the year the Deceased began to live at the Plaintiff. He described the years 1994, 1995 and 1996 as holding special significance for him, but he did not highlight any particular event that made any of these years so significant.

[47] Between 1995 and 1997, Garvon Browne picked up his mother from the Plaintiff's home every weekday morning to drop her to work. If the Deceased was ready, Mr. Browne gave him a lift to the Aberdeen Jones Centre at Gall Hill. During this period Mr. Browne was employed, and he worked 5 days per week with Tuesdays and Fridays as his off days. His evidence was that even on these off days he dropped his mother to work. But, more importantly, at the conclusion of his re-examination by Counsel for the Plaintiff, Mr. Browne said that he did not see the Deceased on his off days. Therefore, this witness could not place the Deceased at the Plaintiff's home for two week days between 1995 and 1997.

[48] In addition, Mr. Browne testified that he never saw the Deceased on Saturdays or Sundays, even though he visited his mother at the Plaintiff's home on those days. It follows that he did not place the Deceased at the Plaintiff's home for 4 days out of a 7 day week between 1995 and 1997.

[49] Also of interest is the fact that Garvon Browne gave no evidence of ever seeing his nephew Jeffrey Browne either leaving for work, or on his way to get a van to work. And he gave no evidence of ever dropping his nephew to catch a van to work at any time during 1995 to 1997.

[50] Garvon Browne's evidence does not account for the movements of the Deceased between 1997, the year that his mother retired, and 1999 when he opened a bar in Oistins. He said that:

"After [my mother] retired in 1997 I opened a bar in Oistins and on my way to Oistins if I see him in the road I would give him a drop to the Aberdeen Jones Centre ... After I opened the bar I would give him a ride about twice per week."

[51] The first statement conveyed the impression that Mr. Browne opened the bar in 1997. However, in cross examination he clarified that the bar opened in January 1999. Therefore, Mr. Browne would have been dropping the Deceased to the Aberdeen Jones Centre during 1999 and early 2000, bearing in mind that the Deceased passed away in February 2000. There is no evidence from this witness of seeing the Deceased at the Plaintiff, or giving him a drop, between 1997 when his mother retired and 1999 when he opened his bar.

[52] Ruby and Noreen Norgrove are the Plaintiff's next door neighbours. The Plaintiff said that she got along well with

the Norgroves, and that they were aware that the Deceased was living with her. However, the Norgroves were not called to give evidence on her behalf. Instead, the Plaintiff relied on Nova Straughn who is a neighbour, but not her next door neighbour.

[53] Ms. Straughn lives within walking distance of the Plaintiff. According to Ms. Straughn the distance is:

“Not near and yet not far. I cannot see her house from where I live. I don’t know how long it would take me to walk to her house. It would not take an hour to get there. It could take half hour or less.”.

[54] Ms. Straughn testified to first seeing the Defendant in the area from 1994. She was curious to know where he was going. What is also curious is that she lived in the area from 1978, but she gave no evidence of seeing the Deceased between the 1980’s and 1994, the years when Garvon Browne says that the Deceased visited the Plaintiff. Ms. Straughn was also certain that she first saw the Deceased in 1994, but 1994 stood out in her mind “for no specific reason.”.

[55] Both sides agreed that the Deceased was at Well House on Saturdays and Sundays. The Plaintiff informed the Court that he left her home at 8.30 a.m. on Saturday mornings, to travel to Well House, and returned around 4.30 p.m. on Sunday evenings. The evidence of her son Jeffrey Browne, who lived with her, was not ad idem with her evidence about the movements of the Deceased on weekends. Her son said that he started to see the Deceased every morning during the period 1994 to 2000. This surely was not possible if the Deceased spent Saturday nights at Well House.

[56] Jeffrey Browne also said that he saw the Deceased at their home on weekends. In his words the Deceased “usually would leave on Saturday afternoons and come back on Sunday evening.”. This differs from the Plaintiff’s evidence that the Deceased left at 8.30 a.m. on Saturday mornings. How is this variation in their evidence possible if they were all living in the same house with the Deceased for 6 years?

[57] Mr. Browne also testified to sharing a clothesline with the Deceased on weekends. Was Mr. Browne suggesting that the Deceased did his own laundry on weekends? If so, this conflicts with the Plaintiff’s evidence that she was the one who washed clothes for the Deceased.

[58] Despite knowing the Deceased as a visitor to his home prior to 1994, and allegedly living in the same house with him for 6 years, Jeffrey Browne was unfamiliar with the hours of work of the Deceased. Neither was he 100 per cent sure if he saw anyone pick up the Deceased on mornings. He gave no evidence about seeing his uncle pick up his grandmother or the Deceased on mornings between 1995 and 1997, or at any other time. And he never spoke of getting a lift with his uncle on any of the mornings that he left home at the same time as the Deceased.

[59] The Defendant did not live at Well House at the critical time. However, she was sure that the Defendant left Well House in March 1999. Her certainty about this was based on her seeing the Deceased at Well House, and speaking to him there. It was also the same year that his niece Donna got married. According to the Plaintiff,

after March 1999 his work clothes were no longer at Well House.

[60] Counsel for the Plaintiff showed the Defendant her Affidavit in which she alleged that the Deceased lived and slept at Well House

up until 1998. The Defendant found herself having to explain her conflicting evidence on a fundamental issue in this case. Her response to Counsel was that:

“The Deceased slept up there until 1998 and then moved out in 1999. I am sure that he moved out in 1999. I guess he was between the 2 houses in 1998.”.

(61) Henson Alleyne was also certain that the Deceased was still at Well

House in 1999 because of the general election in January of that year.

Alleyne told the Court that he and the Deceased discussed this election while driving to Bridgetown in Alleyne's car. Mr. Alleyne could not recall if he gave the Deceased a lift throughout 1999, but he knew that the Deceased accompanied him for “a while in 1999.”.

[62] Mr. Alleyne went further when he declared in his Affidavit that the Deceased was still living at Well House in 2000 when his niece Donna died. When questioned about this statement in his Affidavit, Mr. Alleyne mentioned that the Deceased was still at Well House in 2000 “because I used to see him at the house 2 houses away from me.”. However, by his own admission, Alleyne saw the Deceased at the drinking house “mostly on weekends, Saturday and Sunday”, before the Deceased took sick. This Court is drawn to the conclusion that his sightings of the Deceased, after the election of January 1999, appear to be limited to weekends at the drinking house. This conclusion is consistent with one of the few areas on which there is agreement, that is, that the Deceased was at Well House on weekends. Mr. Alleyne's evidence cannot confirm that the Deceased was living at Well House for all of 1999 and until the time of his death in February 2000.

[63] Elson Straughn contradicted the Defendant's evidence with respect to the exact time in 1999 that the Defendant left Well House. The Defendant's evidence was that by March 1999, the Deceased had completely left Well House, working clothes and all. But Mr. Straughn was sure that the Deceased was at Well House in 1999 when Donna got married. He said that:

“After 1997 my mother visited in 1999 when Donna got married. My uncle was still living at the same house. He left the residence in 1999.”.

[64] According to the Defendant, Donna got married in October 1999, and the Deceased would have left Well House 7 months earlier. To the contrary, Mr. Straughn places the Deceased at the Well House home in October of 1999. Based on Mr. Straughn's evidence, the Deceased would have left Well House later in 1999, after Donna's

October wedding. The Plaintiff and Mr. Straughn agree that the Deceased left in 1999, but there is a 7 month differential in their timing of his departure.

The Court's Findings

- [65] Prior to his death, the Deceased worked at the Department of Customs and Excise at Fontabelle, St. Michael. Before taking up residence at the Plaintiff, he resided at Well House in St. Philip with his niece Donna Knight-Estwick. The Deceased and his niece shared a very close relationship akin to father and daughter. While they both lived at Well House, Donna looked after him by preparing his meals and washing his clothes. Donna moved from Well House to St. George. She was married in 1999 and died in January 2000.
- [66] At the time of his illness and hospitalisation in January 2000, the Deceased was a single man living with the Plaintiff, a single woman, at Maynard's Tenantry in Christ Church. He died intestate on February 25, 2000, a few weeks after his beloved niece. The Deceased was a heavy drinker; he drank after work in Bridgetown, and at Well House at a particular house where his drinking associates met. Even after the Deceased moved in with the Plaintiff, he returned to Well House on weekends to drink with his friends.
- [67] This action was filed by the Plaintiff in 2005, some 5 years after the passing of the Deceased. The matter was heard in 2009, 9 years after his death. Therefore, it would not be unusual for memories to dim, and the recall of events prior to 2000 to be less certain with the passing of time.
- [68] A striking feature of this case is the death of a number of individuals, who might have been in a position to assist in the determination of when the Deceased began to live with the Plaintiff. In addition to Donna Knight-Estwick, the other deceased individuals are the mother of the Deceased; Frederick Inniss, a friend of the Deceased, who took him to political meetings, and gave him a lift to work; Verna Browne, a relative of the Deceased who, according to the Plaintiff, lived in Well House and was a caretaker for his home between 1995 and 1997 when he was living with the Plaintiff; and the lady at Well House who sold newspapers to Henson Alleyne.
- [69] The Plaintiff is the individual who brought this action, and she must prove that she is the spouse of the Defendant on a balance of probabilities. Has the evidence provided in this case satisfied this Court, on a balance of probabilities, that the Plaintiff and the Deceased lived together as man and wife for 5 years prior to his death, thus making her his spouse?
- [70] The Plaintiff alleged that the Deceased came to live with her in 1994 after his mother died. According to the Plaintiff, the Deceased said that he was not leaving his mother. While the Court accepts that the Deceased was aware of his filial responsibility to his mother, all the witnesses who knew him, including the Plaintiff, agreed that he shared a special relationship and a close bond with his niece Donna Knight-Estwick. This Court is of the view that if the Deceased was unwilling to leave his mother, he would likewise be unwilling to leave the niece, who he came to regard as a daughter, to live alone at Well House.
- [71] The Deceased complained to his nephew Elson Straughn that Donna locked him out of the house at night. Mr. Straughn defended Donna's actions because if she left the house unlocked for the Deceased to get in when he

came home late, she would be alone in the house at night and in possible danger. This evidence places the Deceased and Donna at Well House together. But it does not prove that the Deceased was there up to the time that Donna left.

[72] There is, however, another piece of evidence that confirms this Court in the view that after Donna left Well House, the Deceased was still there. The Deceased told Henson Alleyne that Donna had left. This information in itself does not prove that the Deceased moved from Well House after Donna left. It is another statement from Mr. Alleyne that the Court finds has the ring of truth. He said "I recall [the Deceased] saying that she had left and he now had to get his breakfast on mornings."

[73] The Court accepts that the evidence presented by and on behalf of the Defendant was not perfect. But when compared to the evidence for the Plaintiff, it was more cogent and compelling in its delivery than that for the Plaintiff. In addition, the areas of weakness in the Defendant's case that were mentioned previously by the Court, do not assist in proving the Plaintiff's case.

[74] Although the Defendant and Mr. Straughn disagreed about the exact time in 1999 that the Deceased left Well House, they were agreed that he left in 1999. It is the view of this Court that 1999, or any time after Donna left Well House, is more consistent with the devotion of the Deceased towards his niece. It is unlikely that he would have moved out of Well House completely, to leave his precious niece totally alone at Well House.

[75] The Court also accepts the evidence of Henson Alleyne about the conversation he had with the Deceased concerning his having to make his own breakfast after Donna left. It is true that Mr. Alleyne did not realise that Deceased had actually left Well House. Because he saw the Deceased at the drinking house on weekends, he assumed that the Deceased was still living at Well House during the week. If, as the Defendant and Mr. Straughn contend, the Defendant left Well House in 1999, it would not be unreasonable to conclude that the Deceased was not gone long enough for Mr. Alleyne to miss him from Well House during the week.

[76] The Court finds as a fact that the Deceased did not leave Well House before Donna Knight-Estwick. The Plaintiff says Donna left in 1997, and both the Defendant and Mr. Straughn say that she left in 1998. It does not really matter whether Donna left in 1997 or 1998. If either year is used as a benchmark, the Deceased would have resided with the Plaintiff for less than the 5 years required to make her his legal spouse.

[77] The Court also wishes to refer again to the Plaintiff's evidence about the caretaker of the Well House home. The question posed earlier by the Court, and unanswered by the evidence, is why would someone have to check the house between 1995 and 1997, when, according to the Plaintiff, Donna was still there? It is this and other aspects of the Plaintiff's evidence mentioned before, that confirm that the quality of the evidence, presented by and on behalf of the Plaintiff, does not persuade the Court that she is the spouse of the Deceased.

Disposal of Case

[78] The Plaintiff's case is dismissed, and an Order for the administration of the estate of the Deceased, Winnard Stephenson Clarke, is granted to the Defendant. The Defendant is to have taxed costs out of the corpus of the

estate of the Deceased.

SONIA RICHARDS

High Court Judge