

**IN THE SUPREME COURT OF BELIZE, A.D. 2017**

**CLAIM NO. 452 of 2017**

**DELSIE FLOWERS**

**CLAIMANT**

**AND**

**ALTON JEFFORDS**

**DEFENDANT**

**In his personal capacity and  
Administrator of the Estate of  
Calbert Jeffords**

**BEFORE the Honourable Madam Justice Sonya Young**

Hearings

2017

22<sup>nd</sup> November

Written Submissions

Claimant – 15.12.2017

Defendant - None

Decision

15.1.2018

Mrs. Agnes Segura-Gillett for the Claimant.

Ms. Stacey Grinage for the Defendant.

**Keywords: Administration of Estates – Grant – Entitlement to Grant –  
Female Party of a Common-Law-Union – Continuous Cohabitation**

**JUDGMENT**

1. When Calbert Jeffords died, he left no Will. His youngest son, Alton Jeffords applied for and received a Grant to administer his estate. Part of his estate was a plot of land with a wooden house on Neal Pen Road, in which

Delsie Flowers lives. Alton, as administrator, attempted to evict her and then sought possession through the Magistrate's court. She in turn brought this administrative action to have him removed as Calbert's personal representative. She relied on the ground that he had procured the grant by fraud. She said that he knowingly concealed, from the court, her existence as Calbert's common law spouse. She claimed a superior right to the Grant and so sought leave for one to be issued to her instead. She asked that Alton be made to render a full inventory and account of the estate and that a permanent injunction be issued to prevent him from dealing with the estate.

2. In his defence, Alton averred that Delsie was known to him only as his father's caretaker. She had never been and was not at the time of his death, his common-law spouse. She is, therefore, no more entitled to a Grant, than she is entitled to any part of his father's estate.
3. The court decided to determine Delsie's status before dealing with the substantive claim as this would dictate whether Delsie had any legal standing whatsoever.

**The Issue:**

4. 1. Was Delsie Flowers the female party to a common law union with the deceased Calbert Jeffords.

**Was Delsie Flowers the female party to a common law union with the deceased Calbert Jeffords:**

**The Law:**

5. The Administration of Estate Act by section 54.01 recognizes a party to a common law union and the issue and child of that union as beneficiaries equal to a party legally married and their issue or child. Section 59(2)

explains that the expression “*common law union*”: *as used in this Act shall have the meaning assigned to it in section 148.04 of the Supreme Court of Judicature Act.* That section reads:

“... “*common law union*” or “*union*” means the relationship that is establish when a man and woman who are not legally married to each other and to any other person cohabit together continuously as husband and wife for a period of at least five years.”

6. It is clear therefore that the conditions needed to established a common law union is that there must first be an unmarried man and an unmarried woman, who share a mutual commitment publicly to live their life together as a couple and in fact do so for a continuous period of five years or more.
7. ***Kimber v Kimber [2000] 1 FLR 383*** as applied in ***B v B [2012]EWHC 314*** outlines the manifestations of such a union. The parties share the same household; the relationship is stable; there is financial support or the pooling of financial resources; there is a sexual relationship; there is public acknowledgment of the relationship and there may be children.
8. In defining the term “*cohabitation*” or “*living together,*” the author of the text, **Commonwealth Caribbean Family Law: Husband, Wife and Cohabitation**, Karen Tesheira, refers to the term “*consortium vitae*” taken from Australian jurisprudence with a definition, taken from the Australian text **Finlay’s Family Law, page 59**:

*“the matrimonial relationship consisting of the various incidents that go to make up such a relationship and in which the absence of one of those usual elements or incidents did not mean that the marital relationship had broken down provided that the element did not play an important role in that particular relationship.”*

Tesheira explained the elements of consortium vitae as the duration of the relationship, whether or not a sexual relationship exist, the degree of financial dependence or interdependence and arrangements for financial support, marital commitment to a shared life, care and support of children (if any), performance of household duties, the reputation and public aspects of the relationship.

9. The learned author then went on to explore the physical component of living together through the analysis of regional case law particularly Barbados, and Trinidad. The legislation in both of these jurisdictions does not prescribe that the cohabiting man and woman must be unmarried, as Belize's legislation does. One must, therefore, be quite careful in proposing certain aspects of these decisions. Although persons may have satisfied the requirements of cohabitation, unless they were both unmarried at the relevant time they can form no part of a common-law union in Belize.
10. The Jamaican and Guyanese definition more closely resembles Belize's and offers more suitable guidance. What is clear however is that no single factor can be conclusive of whether cohabitation actually exists. The court must consider all the circumstances, including the intricacies of living and the idiosyncrasies of humankind and make a value judgment. *Bowers v Taylor Claim 2006/HCV05107* explains this quite adequately and Griffith J takes this precise approach in *Ruthilia Olivia Supaul v Gulab Lalchand et al, Supreme Court of Belize, Claim No. 17 of 2016 (unreported)*. There, a relationship, not found to be defined by traditional markers such as shared bank accounts, purchase of and residence in a single matrimonial home or

children was nonetheless found sufficient, within the parties' peculiar context, to be a common-law union.

11. Let us therefore now consider the most interesting peculiarities of Delsie and Calbert.

**The Evidence:**

12. There is no doubt that prior to Calbert's death, he and Delsie were both unmarried and shared the same household. This is not in contention. So now we consider whether they were in fact cohabiting and for what duration.
13. Delsie, her daughter and her sister both testified for the Claimant. Delsie explained how her relationship with Calbert began since she was 18 and he was 37. She said she knew that he was engaged in another relationship, but she nonetheless found him attractive and acceded. She recognized him as a womanizer.
14. That relationship broke because of his infidelity, by which time Calbert had gotten married. Delsie then entered another relationship and had children one of which (according to her) may or may not be Calbert's. This relationship also broke down and Calbert's wife died. In the many years that followed, she and Calbert shared an arrangement where he had other relationships, moved a number of other women into his home, at Neal Pen Road, but continued to openly visit her home and to treat it as his own. He, helped her to build her house and attended to her and her children as his family. He spent entire nights and weekends there, ate meals, paid bills and bought groceries. Her children called him their stepfather. She often went

with him when he worked in the out districts. In public, they behaved as a couple.

15. Delsie's daughter, Janice Lynch, testified to Calbert's constant presence at their home and his relationship with the family and Delsie. However, she also stated that while he spent time with her family, she knew he lived at Neal Pen Road with Fabiana and that was his home. She never went to Neal Pen Road as a child.
16. Delsie says Fabiana Scott, Alton's mother, was one of the women who lived with Calbert at Neal Pen Road. Fabiana knew of their relationship because they often fought about it. After Fabiana's relationship ended, Calbert rarely slept at Neal Pen Road. He actually lived with Delsie. Delsie was never invited to live at Neal Pen Road until Calbert's relationship with another woman, Sonia, ended on her death in late 2000.
17. Delsie had remained with Calbert throughout that relationship and soon after Sonia's death, openly moved into Neal Pen Road where Calbert, his daughter and Sonia's aunt (Ms. Pearline) were then residing. Ms. Pearline soon moved out and Calbert's daughter returned to her matrimonial home leaving she and Calbert as the only occupants. They shared a room and pooled their resources to pay the bills and buy groceries.
18. Calbert became ill not long after and she lent him some of her sister's money to get a CT Scan done of his brain. He eventually paid this back. He was diagnosed with a brain tumour and with her sister and brother-in-law's help he went to the United States for attention. He returned to the United States for invasive treatment. Following the surgery, he lost his sight entirely. Her

sister and her husband cared for him during his sojourns in the United States and she cared for him on his return.

19. Merlene Fuller, Delsie's sister explained that Calbert stayed at her home two times while he was ill. She and her husband arranged for him to come and took care of him until he returned to Belize. Her husband, in fact prepared an invitation letter to assist his visa application process. She knew Calbert and Delsie had lived together at Neal Pen Road in 2002, but in the 1980/1990 they lived at Dolphin Street which was where she first met him. She exhibited photographs evidencing her familiarity with Calbert and his familiarity with her own immediate family. She referred to Calbert as her brother-in-law. However, under cross-examination Merlene did not seem particularly certain that Calbert actually lived at Dolphin Street, but she knew that he at all time had his home at Neal Pen Road.
20. Delsie says that on Calbert's return to Belize she sold bun and bread to support them both and to buy his medication. She was assisted by his social security pension which was deposited directly into her bank account, with his authorization. He developed diabetes and became helpless and unpredictable.
21. He needed constant care and attention. None of his own children assisted even when she asked. So, she took care of his every need which included baths, feeding and keeping his clothing and surroundings clean. She was never paid to do any of this. She did it out of love and affection for him and he died in her arms on 12<sup>th</sup> March, 2006. They had, by then, been living together for ten years and had known each other for over thirty-five years.

22. After he died, she collected his certificate of death, widow's pension and funeral grant. She arranged his funeral and tried to satisfy his wishes as he had made them known to her. None of his children challenged her right to have conduct of his funeral.
23. Alton, three of his siblings and his mother, Fabiana, testified for the defence. The siblings supported Alton in most material particulars. So too did his mother Fabiana.
24. Julian Davis, Calbert's daughter says Delsie started "*coming around the house and offer assistance*" from around early 2001". Alton says she only offered to assist after September 2001. No one has explained Delsie's presence in what seems to be intimate family affairs or even how it came to be that her offer to have Calbert stay with her sister in the United States was so easily and readily available and accepted. Their version, that she suddenly materialized, just does not ring true. Particularly because Alton under cross-examination admitted that Delsie had been living at Neal Pen Road before his father went to the United States and she was still living there when he returned. Even Julian volunteered that Delsie told her she would look after Calbert because of all he had done for her in the past.
25. Under re-examination Juliana revealed something even more interesting. She said Ms. Pearline left because Delsie came and took over the "*ironing and so*" for Calbert and they could not get along because of that. Be reminded that Ms. Pearline left before Calbert went to the United States for the first time why would this particular household chore cause an issue between two '*caregivers*'! Therefore, it is my belief that Delsie was well entrenched in Calbert's life before he first went to the United States.



Another daughter Diane also testified that Delsie had been living at Neal Pen Road since early 2001. It is peculiar therefore that none of the witnesses for the defence could speak to the reason for her presence at Neal Pen Road prior to their father's illness if indeed she was only there as a caregiver.

26. Even his trips to the USA, some of the children seemed to think he got a loan to facilitate this. Julia says she and her siblings paid for the final plane ticket back home. In her examination-in-chief she does not say which sibling and this is significant. Delsie and her sister Merlene attest that it was Merlene and her husband who assisted and I believe that they did. Although, my faith in humanity is not dead, I do not know that this brand of milk of human kindness flows so freely for a stranger, or a person, barely known.
27. The defence witnesses say Delsie offered to attend to Calbert's needs full-time and they happily accepted. There was no remuneration. She simply lived there and his children simply dropped off groceries and provided "*financial assistance to the Claimant to care for Calbert.*" There isn't a single episode recited of how much was given, by whom and at what intervals. Alton said he gave money whenever Delsie came around asking. He only helped however he could because she was getting the "*social*". The court understood "*the social*" to be Calbert's pension. However, he later said he only knew she had been getting the pension after Calbert had died.
28. Diane, another daughter, says in the same vague way that she gave financial support, assisted with emergency trips to the hospital, visited frequently and supplied his diabetes medication. They all maintain that it was Delsie who refused payment when it was discussed. This makes no sense, if indeed

Delsie was only a caretaker. Moreover, since they knew she was only a caretaker how did they expect her to take care of their father if their remittances were neither constant nor significant.

29. Fabiana declared that Calbert was a very good, if somewhat delicate, man. She knew of him having no other women during the currency of their relationship. However, she returned from her own medical sojourn abroad to find herself replaced by Ms. Sonia at Neal Pen Road. She also admitted that prior to this, her relationship with Calbert actually overlapped with that between him and his wife. When Fabiana denied knowing anything about his alleged relationship with Delsie during her own relationship with him, her demeanor seemed to say otherwise. When she added that she does not listen to gossip, the court understood her demeanor entirely. She got noticeable very upset when it was suggested to her that Delsie washed and cooked for Calbert as she was often sick and could not do it. She insisted that during those periods her mother assisted as Calbert was “*delicate.*”
30. Finally, Fabiana informed that on visiting Calbert, after he returned from the United States, she saw him sleeping on a sponge in the living room while Delsie slept in the room. Under cross-examination it was revealed that she visited the house only once and was unable to say whether this was during the day or night time. Moreover, she was unable to say with any certainty what room they each slept in or whether Delsie was only Calbert’s caregiver. On the other hand, Alton, himself, said Delsie and Calbert lived in the same bedroom although he could not say whether they slept together.

**Determination:**

31. There is no doubt in my mind that Delsie and Calbert shared an intimate visiting relationship for a number of years. However, one cannot be said to cohabit continuously if one cohabits at one's own address with another during this period. Calbert seems to have lived at Neal Pen Road cohabiting with a number of other partners (including those to whom he was legally married and with whom he had children) while he sometimes visited Delsie for varying intervals. Delsie herself said she only visited Neal Pen Road, she never lived there before Sonia died. Delsie herself recognized these other women who lived at Neal Pen Road whether as Calbert's "*wife*" or "*common law*" and our laws do not envisage a man to have more than one wife or I dare say, '*common law*' at a time. It is here that the word continuously becomes incredibly significant.
32. The relationship must be unbroken or uninterrupted throughout its course. That break need not only be physical in nature. It entails a break in intent as well. From all the evidence provided I find it true to say that Calbert demonstrated his intention to cohabit continuously by moving those women into Neal Pen Road. Delsie herself is very well aware of this peculiarity. She did not hesitate to move there once he invited her. Therefore, for those many years, Delsie cannot be said to have shared a common law union with Calbert. Time, to my mind, really begun to run from the moment she moved in with Calbert at Neal Pen Road.
33. From the evidence provided I find this to be after Sonia died, that is, late 2000 and before Calbert went to the United States in March 2001. That Calbert spent some of that time away from their shared home at Neal Pen

Road does not break the continuity, as the relationship subsisted even then with him returning there to Delsie afterwards. The relationship was indeed stable. If one calculates from January 2001 to 12<sup>th</sup> March, 2006 when Calbert died then they lived together for five years and two months approximately.

34. Her sister supported her in her allegation that it was Delsie who arranged for Calbert to go to the United States and stay with her and be in her care while he was there. She says she did all of this because Calbert, in her eyes, was her brother-in-law. Delsie provides his funeral program containing his eulogy which states her as the common-law-wife and her children as his step-children. She received the widow's pension from Social Security. This is all public acceptance and recognition of the union.
35. On the other hand, the Defendant offers no evidence whatsoever to support the allegation that Delsie was only the caretaker. He nor anyone else paid her for her services. He nor any of his witnesses spoke knowledgeably to Calbert's condition or, how he was maintained daily. In fact, they offered at best that whenever they could they gave money or bought groceries. Delsie denies this and I could find no reason to doubt her. To my mind even with the pension, this arbitrary largesse could certainly not support a man as sick as Delsie says Calbert was, as well as a caretaker. It was Delsie who generally assisted Calbert financially.
36. Delsie has remained at Neal Pen Road ever since Calbert died. To my mind, with his death, her employment and the trappings thereof would necessarily have ended, either simultaneously or shortly thereafter. She was clearly not only a caretaker.

37. From the evidence provided by Delsie I do believe that she and Calbert shared an intimate relationship prior to his illness. They were both older folk and Calbert became ill. However, sex alone is no indication of intimacy. That they shared a room, that she took care of his every need (financial and otherwise) and that he died in her arms signifies the bond they had. They were like husband and wife and she will be recognized by law.
38. On a balance of probability, I therefore find that Delsie Flowers was the female party to a common-law union with Calbert Jeffords up until the time of his death.

**IT IS DECLARED THAT:**

1. Delsie Flowers and Calbert Jeffords did cohabit together continuously as husband and wife for a period which exceeds 5 years up until his death.
2. Delsie Flowers is one of the lawful beneficiaries of the estate of Calbert Jeffords, deceased.
3. Costs shall be considered on full determination of the claim herein.

**SONYA YOUNG  
JUDGE OF THE SUPREME COURT**