

PARTIES: Robson, Michelle

v

Territory Insurance Office

TITLE OF COURT: IN THE MOTOR ACCIDENTS
(COMPENSATION) APPEAL
TRIBUNAL
SUPREME COURT OF THE
NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE
TERRITORY EXERCISING
TERRITORY JURISDICTION

FILE NO: M4 of 2012 (21227434)

DELIVERED: 4 JUNE 2013

HEARING DATES: 23-24 APRIL 2013

JUDGMENT OF: KELLY J

CATCHWORDS:

MOTOR ACCIDENTS COMPENSATION — PERSONAL INJURIES — Reference to Motor Accidents (Compensation) Tribunal — Whether applicant's vehicle was deemed to be unregistered — Section 4; 9(7) *Motor Accidents (Compensation) Act* — Whether the driver was a resident of the Northern Territory — Held that driver was not a resident

MOTOR ACCIDENTS COMPENSATION — PERSONAL INJURIES — Reference to Motor Accidents (Compensation) Tribunal — Whether applicant was in a de facto relationship with driver of vehicle — Section 33(6) *Traffic Act* — Held that applicant was not in a de facto relationship

DE FACTO RELATIONSHIPS — Indicia of — Whether use of the term 'partner' is evidence of de facto relationship — Held that 'partner' not synonymous with 'de facto spouse'

Motor Accident (Compensation) Act (NT) s 4, s 9(7)

Traffic Act (NT) s 33(5), s 33(6)

De Facto Relationships Act (NT) s 3A

Shepperbottom v TIO [2005] NTSC 81; *Robertson v TIO* [2005] NTSC 74,
followed

REPRESENTATION:

Counsel:

Applicant: D McConnell

Respondent: A Ward

Solicitors:

Applicant: Cridlands MB

Respondent: Minter Ellison

Judgment category classification: B

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IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

Robson v Territory Insurance Office [2013] NTSC 27
No. M4 of 2012 (21227434)

BETWEEN:

MICHELLE ROBSON
Applicant

AND:

TERRITORY INSURANCE OFFICE
Respondent

CORAM: KELLY J

REASONS FOR JUDGMENT

(Delivered 4 June 2013)

- [1] From May to late August 2008 the applicant Michelle Robson was living and working as a nurse in Launceston in Tasmania. She owned a house in Trevallyn in Tasmania but was living in the nurses' home in Launceston as her house was rented out. Earlier that year, from February to May Ms Robson had worked in Darwin as a nurse on a temporary contract.
- [2] Ms Robson had met Ihab Hassan at a Christmas party in 2007 before travelling to Darwin. Around about June 2008, after she had returned from Darwin, Ms Robson and Mr Hassan began seeing each other and entered into a sexual relationship. They did not live together but saw each other about once a week.

- [3] At some point during this time, while she was living in Launceston, Ms Robson applied for and was successful in obtaining a temporary three month contract to work as a nurse in Alice Springs. She initially intended to fly to Alice Springs but Mr Hassan suggested that he accompany her and that they could drive. Ms Robson had bought a car in June 2008. She liked the idea, and she agreed.
- [4] In August 2008 Ms Robson and Mr Hassan drove to the Northern Territory and Ms Robson began working at the Alice Springs Hospital on 23 August 2008.
- [5] Ms Robson was provided with accommodation by the Northern Territory Department of Health as part of the terms and conditions of her employment. The accommodation was a unit in Railway Terrace, Alice Springs. The unit was fully furnished and came equipped with linen, crockery, cutlery, cooking utensils etc.
- [6] Mr Hassan lived in the unit with Ms Robson and they maintained a sexual relationship. Mr Hassan had not secured employment in Alice Springs before they left Tasmania: Ms Robson found him a job with a security company through her contacts at the Alice Springs Hospital after they arrived.
- [7] Ms Robson gave evidence that she and Mr Hassan owned no joint property of any kind, did not have a joint bank account and did not pool their finances.

- [8] Her evidence was that she did all the domestic work in the house, cooking, cleaning etc. They went shopping for groceries together and she paid for them. She also paid for petrol for the car. They both usually walked to work but Mr Hassan would use her car if he had to drive to work as he worked in different locations from time to time.
- [9] Ms Robson says they argued from time to time because she thought he should be contributing to the expenses for the household and the car. She thought that was only fair.
- [10] She said they worked very hard in Alice Springs and had very little time off. However when they did have time off they would sometimes eat out together and sometimes go sight-seeing together in the country side around Alice Springs.
- [11] After Ms Robson's initial three month contract had expired, she was offered and accepted, a further three month contract. She moved from the unit in Railway Terrace to another unit in Nicker Crescent in Alice Springs which was also provided by the Department of Health as part of the terms and conditions of her employment. That unit too came fully furnished and equipped with linen, cutlery, crockery and cooking utensils. Mr Hassan moved with her and they continued the relationship on the same terms.
- [12] Ms Robson and Mr Hassan remained at the Nicker Crescent accommodation for about three months.

- [13] Before the second temporary contract expired, Ms Robson applied for, and was successful in obtaining, a permanent position as mental health nurse N3. That was a promotion for her but it meant that she was no longer entitled to the assisted accommodation.
- [14] Accordingly, Ms Robson looked for alternative suitable accommodation in Alice Springs. She and Mr Hassan moved out of the Nicker Crescent accommodation and, for a short period of time, moved to a unit in Heavy Tree Gap. However, that unit was not suitable. She could not get telephone reception there and so could not receive calls from the hospital when she was on call. She could not find alternative suitable accommodation and resigned her position with the Department of Health. Her resignation took effect on Tuesday 21 April 2009.
- [15] Mr Hassan also resigned his employment and they left Alice Springs in Ms Robson's car.
- [16] Their plan was to travel through the Kimberly Region of Western Australia, go to Broome to see Ms Robson's sister who had been diagnosed with cancer, travel down the coast of Western Australia to Perth to visit Ms Robson's niece, and thereafter return to Tasmania. Ms Robson intended to live in her house in Trevallyn in Tasmania and resume her employment as a registered nurse at the Launceston Hospital as a position had been kept open for her. She gave evidence that she needed to take up that position by the end of June 2009. Mr Hassan apparently intended to live with her there.

- [17] While they were living in Alice Springs, Ms Robson left Alice Springs temporarily on three occasions. In December 2008 she went to Tasmania for a little over two weeks for the birth of her daughter's baby. Mr Hassan did not go with her. She and Mr Hassan travelled to Adelaide together for four days in late December and in early February Ms Robson and Mr Hassan travelled to Singapore for five days for a holiday.
- [18] Unfortunately, on 21 April 2009, while Mr Hassan was driving the car, on the Stuart Highway near the Devils Marbles, the left rear tyre blew out, Mr Hassan lost control of the vehicle which rolled several times, and Ms Robson was severely injured.
- [19] Mr Hassan dragged Ms Robson from the wrecked vehicle and left her next to a tree while he went to get help. While she was there she was bitten on the hand by a dingo which she fended off with a tree branch. She remembers very little else from that time. She was finally taken to Alice Springs Hospital for treatment and was discharged eight days later and returned to Tasmania.
- [20] After Ms Robson returned to Tasmania she and Mr Hassan lived together in her house and their relationship continued for approximately four years. The relationship is now over and Mr Hassan has left Australia.
- [21] Following the accident, Ms Robson made application to the Territory Insurance Office ("the Office") for benefits under the *Motor Accidents (Compensation) Act* ("MACA"). By a decision dated 20 October 2011 she

was refused benefits by the application of MACA s 9(7). Section 9 is a section which excludes an injured person from entitlement to benefits under MACA in certain prescribed circumstances. The relevant sub-section, s 9(7) is set out below.

[22] Ms Robson asked the designated person to review that decision pursuant to MACA s 28A. On 21 June 2012, the designated person confirmed the original decision to refuse Ms Robson benefits on the application of the exclusion in s 9(7), and Ms Robson has referred the matter to this Tribunal pursuant to MACA s 28E(2).

[23] Ordinarily, the onus is on an applicant to establish that he or she comes within the relevant provisions of the Act entitling the person to benefits. However, as the Office relied on an exclusion to refuse Ms Robson's application for benefits, the onus is on the Office to prove that the relevant exclusion applies.¹

[24] MACA s 9(7) provides:

A person is not entitled to benefits to which this section applies² for an injury suffered in, or as a result of, a motor accident if:

(a) the motor vehicle was unregistered and had been unregistered (in circumstances in which registration was required) for a period of at least 3 months; and

¹ *Shepperbottom v TIO* [2005] NTSC 81 at para [9]; *Robertson v TIO* [2005] NTSC 74 at para [12]

² compensation for loss of earning capacity or lump sum compensation for a permanent impairment: s 9(8)

(b) the injured person is the owner or driver of the unregistered motor vehicle and, if the driver, knew or ought to have known that the vehicle was unregistered.

[25] At the time of the accident, Ms Robson's car was registered in Tasmania, but not in the Northern Territory. MACA s 4 provides that a motor vehicle is to be regarded as unregistered if:

(a) it is neither registered under the *Motor Vehicles Act* nor the corresponding law of another jurisdiction and is not deemed to be registered for the purposes of the *Traffic Act*; or

(b) it is deemed to be unregistered for the purposes of the *Traffic Act*.

[26] Section 33(5) of the *Traffic Act* provides (relevantly):

For the purposes of subsection (1),³ a motor vehicle shall be deemed to be not registered, notwithstanding that it is registered under a law of another country or of a State or another Territory of the Commonwealth relating to the registration of motor vehicles, where it is being driven by a person who is:

(a) a resident of the Territory; and

(b) the owner of the vehicle,

and the vehicle has been in the Territory continuously for:

(c) more than 28 days.

[27] Section 33(6) of the *Traffic Act* gives an extended definition of "owner" for the purposes of s 33(5). It provides:

³ which makes it an offence to drive an unregistered vehicle on a public street or in a public place

For the purposes of subsection (5)(b), but without limiting that subsection, a person shall be deemed to be the owner of a motor vehicle if it is registered under a law of another country or of a State or another Territory of the Commonwealth in the name of that person or in the name of a spouse, de facto partner, dependant or parent, who is a resident of the Territory, of that person.

[28] For s 9(7) to apply, the Office must prove that Ms Robson's car was deemed to be unregistered for the purposes of the *Traffic Act*,⁴ that is that the conditions set out in s 33(5) of the *Traffic Act* exist, and had existed for a period of at least 3 months.⁵

[29] There is no dispute that the car had been in the Territory for more than 28 days, and that that condition had been satisfied for a period of at least 3 months: the car entered the Territory on (or shortly before) 23 August 2008; the accident occurred on 21 April 2009.

[30] There is no dispute that at the time of the accident the car was being driven by Mr Hassan. The Office must therefore prove that at the time of the accident on 21 April 2009 Mr Hassan was a resident of the Territory,⁶ that he was the de facto spouse of Ms Robson who was herself a resident of the Territory,⁷ and that these conditions had persisted for at least 3 months,⁸ ie from at least 21 January 2009.

⁴ MACA s4 definition of "unregistered" para (b)

⁵ MACA s 9(7)(a)

⁶ *Traffic Act* s33(5)(a)

⁷ *Traffic Act* s33(6)

⁸ MACA s 9(7)(a)

[31] Counsel for Ms Robson, Mr McConnell, submitted that none of these conditions had been made out. As at 21 April 2009, neither Mr Hassan nor Ms Robson were residents of the Territory. Neither one had a job in the Territory; neither one had a home in the Territory. They were on their way back to Tasmania (via a road trip through Western Australia) where Ms Robson owned a home that she, at least, intended to live in, and where she had a job waiting for her at the Launceston Hospital which she had to take up by the end of June 2009. I agree that on those undisputed facts neither Mr Hassan nor Ms Robson were Territory residents on the date of the accident and that, therefore, the exemption in MACA s 9(7) does not apply to exclude Ms Robson from an entitlement to benefits.

[32] It is, therefore, not strictly necessary for me to determine whether the other conditions have been satisfied. If it were necessary for me to decide, I would have found that the Office had not satisfied the onus of establishing that Mr Hassan was the de facto spouse of Ms Robson, thus rendering him the owner of the car within the extended definition of owner in s 33(6) of the *Traffic Act*, and that this had been the case since at least 21 January 2009.

[33] It is not the case that if a person has a sexual relationship with another person and the two live together in the same house, they are necessarily de facto spouses. It was agreed by both counsel that in determining this question it would be appropriate for me to take into account the indicia of a de facto relationship set out in s 3A of the *De Facto Relationships Act*. For

the purposes of that Act, two people are in a de facto relationship if they are not married but have a marriage-like relationship.⁹ In determining whether two people are in a de facto relationship, all the circumstances of their relationship must be taken into account, including the following matters where relevant:¹⁰

- (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 them;
- (e) the ownership, use and acquisition of property;
- (f) the degree of mutual commitment to a shared life;
- (g) the care and support of children;
- (h) the performance of household duties;
- (i) the reputation and public aspects of their relationship.

[34] Here, Ms Robson and Ms Hassan had been in a sexual relationship since about June 2008, but before they went to Alice Springs they did not live

⁹ *De Facto Relationships Act* s 3A(1)

¹⁰ *De Facto Relationships Act* s 3A(2)

together in the same house and saw each other about once a week. It was not a joint decision to move together to Alice Springs as a couple. Ms Robson had applied for and obtained a job at the Alice Springs Hospital and intended to fly there on her own. It was after she had made that decision that Mr Hassan suggested that he go with her and that they drive with him sharing the driving, and Ms Robson agreed.

[35] Thereafter, in Alice Springs, they lived together in a sexual relationship, in accommodation provided to Ms Robson as part of her conditions of employment. That accommodation was fully equipped with furniture, crockery, cutlery, cooking utensils and linen. Ms Robson and Mr Hassan did not buy any of those things with a view to setting up house together, and they did not own any other joint property.

[36] They did not mix their finances: there were no joint bank accounts. She paid all the household expenses. On one view of the matter this might be seen as evidence of financial dependence. However, Mr Hassan had a job and so did not need to be financially dependent on Ms Robson. Moreover, she was not willingly supporting him. She says they argued because she thought he should contribute to those expenses as it “was only fair”.

[37] There is little evidence of a commitment to a shared life together. Ms Robson gave evidence that the reason they went to Alice Springs together is that they both liked to travel. She said that at the date of the accident there was some strain in the relationship as a result, chiefly, of arguments over his

failure to contribute to expenses. She was asked in cross examination whether they intended to continue the relationship at that time and she said it depended upon how things worked out.

- [38] They did not have any children together and there is no evidence that Mr Hassan had adopted a fatherly role towards Ms Robson's daughter or a grandfatherly role towards the daughter's child. When Ms Robson went to Hobart for the birth of her daughter's baby, Mr Hassan did not go with her, although he did accompany her on her other trips out of the Territory during their time in Alice Springs when they went on holiday together.
- [39] Ms Robson's evidence about the performance of household duties is that she did them all, but I do not think this points strongly to the existence (or non-existence) of a de facto relationship. He may just have been lazy.
- [40] Nor is there much evidence about the reputation and public aspects of their relationship. Ms Robson said in cross examination that they went out to restaurants together from time to time and drove to scenic spots in the vicinity of Alice Springs sometimes when they had time off. Mr Ward, counsel for the respondent, relied heavily on the fact that in their statements made after the accident, both Ms Robson and Mr Hassan referred to each other as "my partner". While I agree that that is one piece of evidence which might point towards the existence of a de facto relationship, it is by no means conclusive. "Partner" is not necessarily synonymous with "de facto spouse" – although it can mean that. It has a wide range of

connotations and is used by different people to mean different things, ranging from a boyfriends/girlfriend relationship of relatively short duration (whether or not the “couple” live together or are even in a sexual relationship at all) to a long established de facto (or even de jure) marriage relationship. In particular, with people of Ms Robson’s and Mr Hassan’s age, to whom the terms “girlfriend” and “boyfriend” would seem to be too juvenile to be quite apt, no real significance can be attached to the use of the label “partner”.

[41] Taking all of those factors into account, it seems to me that the evidence falls well short of establishing that Ms Robson was Mr Hassan’s de facto spouse so as to make him the owner of Ms Robson’s car by virtue of the operation of s 33(6) of the *Traffic Act*.

[42] I therefore find that the designated person was in error in determining that the motor vehicle involved in the motor accident in which Ms Robson was injured was unregistered at the time of the accident and in determining s 9(7) applied to exclude her from an entitlement to benefits.