

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Clark v. Matossian Estate*,
2026 BCCA 27

Date: 20260116
Docket: CA50348

Between:

David Clark

Appellant
(Defendant)

And

**Marcus von Albrecht in his capacity as Executor of the Estate of
Dikran Matheos Matossian, Deceased**

Respondent
(Plaintiff)

And

**David Westall Clark in his capacity as Administrator of the Estate of
Sharon Patricia Clark, Deceased**

Respondent
(Defendant)

Before: The Honourable Chief Justice Marchand
The Honourable Justice Fleming
The Honourable Justice Iyer

On appeal from: An order of the Supreme Court of British Columbia, dated
December 6, 2024 (*Matossian Estate v. Clark Estate*, 2024 BCSC 2214,
Vancouver Docket S214877).

Oral Reasons for Judgment

Counsel for the Appellant:

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Albrecht:

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Place and Date of Hearing:

Vancouver, British Columbia
January 12, 2026

Place and Date of Judgment:

Vancouver, British Columbia
January 16, 2026

Summary:

Sharon Clark died without a will and had no children or surviving parents. Her only sibling, the appellant, challenges the trial judge's finding that she and her former partner were spouses under the Wills, Estates and Successions Act, S.B.C. 2009, c. 13. He argues the trial judge erred in failing to consider Ms. Clark's subjective intentions and in finding there was a marriage-like relationship. Held: Appeal dismissed. Determining whether a relationship is marriage-like involves a fact-driven contextual analysis of all the evidence relevant to the various indicia of a spousal relationship. The trial judge did not err in considering the parties' intentions or in her approach to assessing the indicia of a marriage-like relationship.

FLEMING J.A.:**Introduction**

[1] Section 20 of the *Wills, Estates and Successions Act*, S.B.C. 2009, c. 13 [WESA], provides the estate of a person who dies without a will and has no children passes to their spouse. Absent a spouse, their estate passes to their parents, and absent surviving parents, to their siblings: WESA, s. 23(2). This appeal concerns the estate of Sharon Clark who died without a will and had no children or surviving parents. Her estate, which consists of investments and proceeds from the sale of her house, is valued at over \$3.1 million.

[2] Ms. Clark had one sibling, the appellant David Clark, who is also the administrator of her estate. At the time of her death in December 2020, Ms. Clark was 79 years old and had been in a relationship with Dikran Matossian for 38 years. Mr. Matossian passed away about two years later at the age of 88. In a will made after Ms. Clark's death, he named the respondent Marcus von Albrecht as executor and as one of several beneficiaries. Mr. Clark is also a respondent in his capacity as administrator, but I will refer to him as the appellant because that is how he participated in the appeal.

[3] The respondent applied for an order declaring Ms. Clark and Mr. Matossian were spouses under s. 2(1)(b) of WESA. The application resulted in a 13-day trial that occurred after Mr. Matossian's death.

[4] Multiple witnesses testified at the trial including the parties, friends and acquaintances of Ms. Clark and Mr. Matossian, staff from Jericho Tennis Club where they spent a great deal of time together, Jericho members, Mr. Clark’s wife and other members of each family. In addition, there was a significant body of documentary evidence comprised of photographs depicting Ms. Clark and Mr. Matossian together, records from Jericho detailing charges posted to their accounts, cards and emails sent or received by Ms. Clark, her calendars, medical records, travel documents, and income tax returns. Admissions from Mr. Matossian’s examination for discovery along with an affidavit he swore a few months before his death also formed part of the evidence.

[5] In reasons for judgment indexed at 2024 BCSC 2214, the trial judge found Ms. Clark and Mr. Matossian were in a marriage-like relationship for at least two years up until her death, and therefore were spouses as provided for in s. 2(1)(b) of *WESA*.

[6] On appeal, Mr. Clark argues this finding reflects an error of law and a palpable and overriding error of mixed fact and law. He identifies those errors as failing to consider Ms. Clark’s subjective intentions, and in finding Ms. Clark and Mr. Matossian had a marriage-like relationship.

Overview

[7] Ms. Clark and Mr. Matossian met at Jericho in 1982, soon after Ms. Clark became a member. She was 40 and divorced. He was 48, had never been married and, like Ms. Clark, had no children.

[8] The two had separate finances throughout the relationship and did not provide for each other in a will or through beneficiary designations. Each also indicated they were single on their income tax returns. However, Ms. Clark and Mr. Matossian each contributed some funds to the other, him to a much greater extent than her, “to support spending time together as a couple and to render assistance”: at para. 100. For example, Mr. Matossian would pay for Ms. Clark’s drinks and meals, one or the other would pay the cost of their accommodation in

Hawaii where they vacationed every year for decades, and Mr. Matossian occasionally assisted Ms. Clark with home repairs.

[9] Ms. Clark and Mr. Matossian also maintained separate residences, although they discussed moving in together early on in their relationship. In his affidavit, Mr. Matossian deposed to asking Ms. Clark to move into his apartment. It was not possible for him to contemplate moving into her house because it was overcrowded with belongings and barely livable for her. According to Mr. Matossian, Ms. Clark did not want to go through the process of getting her house ready for sale. Moving in together was never seriously discussed again. Ms. Clark had an undisputed “hoarding problem” that was also evident from the state of her house when she died: at para. 102.

[10] Although Ms. Clark slept at her house most nights, she had a parking stall in Mr. Matossian’s building, and a key to his apartment. He too had a key to her house.

[11] She and Mr. Matossian did reside together when they travelled to Hawaii for two to eight weeks each year from 1982 to 2015 (apart from one or two years). Those trips ended after Ms. Clark became ill in Hawaii and was reluctant to return.

[12] The relationship between Ms. Clark and Mr. Matossian included sexual intimacy that was exclusive, with one exception. Some witnesses testified to them being affectionate with each other, which was also depicted in photographs. Some witnesses described them treating each other as a couple. Some witnesses initially assumed Ms. Clark and Mr. Matossian were married or lived together. There was no evidence of either of them being observed with or talking about anyone else in a romantic sense in the 38 years they were together.

[13] Ms. Clark and Mr. Matossian’s daily routines revolved around each other, and they spent significant portions of their days and evenings together. Ms. Clark retired in 2006. After that, she and Mr. Matossian typically met for coffee in the morning and for drinks and dinner at Jericho, unless they had plans to meet friends for dinner. Mr. Matossian also prepared dinner for the two of them at his home sometimes.

Together they attended dinner parties hosted by the respondent around the major holidays and to celebrate birthdays. Ms. Clark was a part of Mr. Matossian's family events and considered part of his family. Ms. Clark's family, in contrast, did not see Mr. Matossian as a member of the family, although she brought him to family events prior to 2000. After that, she herself stopped participating in such events more than once or perhaps twice a year.

[14] Other aspects of their relationship included Mr. Matossian's support for Ms. Clark's involvement in flamenco dancing, a particular passion of hers, and a level of involvement with one another's health and health difficulties.

Trial Judge's Analysis

[15] The trial judge began her analysis of whether Ms. Clark and Mr. Matossian were in a marriage-like relationship by instructing herself on the legal framework. Her fulsome discussion of that framework included:

- Section 2(1) of *WESA*;
- The changes in the statutory definition of a marriage-like relationship that removed the requirements for cohabitation and maintenance, reflective, as she stated, of the evolution in social norms regarding marriage and relationships;
- The generally accepted characteristics of a marriage-like relationship set out many decades ago in *Molodowich v. Penttinen*, 17 R.F.L. (2d) 376, 1980 CanLII 1537 (Ont. Dist. Ct.): shared shelter, sexual and personal behaviour, the provision of services, social activities, children, economic support and the social perception of the couple;
- A shorter list of five considerations or factors identified in the much more recent decision of Justice Matthews in *McDowell v. Andrews*, 2018 BCSC 2216 at para. 23; and

- The well-established approach to the factors and the evidence in determining whether a relationship is marriage-like.

[16] Addressing this approach, the trial judge recognized that the factors are not to be treated as a checklist and the presence or absence of any particular factor is not determinative, based on leading authorities. Instead, each relationship must be assessed based on a contextual and holistic approach to the evidence, recognizing the diversity of spousal relationships and how they are structured: at para. 60 citing *Austin v. Goerz*, 2007 BCCA 586 at para. 58.

[17] The trial judge also highlighted the legal treatment of the parties' intentions, noting the critical intention is the intention to enter into a relationship similar to marriage as discussed in *Weber v. Leclerc*, 2015 BCCA 492 at para. 17. The key question is whether the couple saw their relationship as one of indeterminate, lengthy duration: at para. 17.

[18] In applying the law, the trial judge analyzed the evidence based on the five considerations set out in *McDowell*.

[19] Starting with the intentions of the parties, the trial judge pointed to the obvious challenge involved in ascertaining Ms. Clark and Mr. Matossian's subjective intentions given they had passed away. She then turned to Mr. Matossian's affidavit, where he deposed in some detail to the history, nature and various aspects of their relationship. Based on his affidavit, corroborated by the evidence of several witnesses, the trial judge found that Mr. Matossian considered himself to be in a lengthy, indeterminate relationship with Ms. Clark. Addressing the corroborative evidence, she noted the witnesses regarded them as a couple and several, who knew them well, viewed them as a long-standing, committed, exclusive couple.

[20] During the course of analyzing the balance of the considerations, the trial judge continued to make specific findings about the relevant circumstances, many of which I have already outlined.

[21] Addressing Ms. Clark and Mr. Matossian’s financial independence from one another, she noted this Court’s rejection of the notion that shared finances are a hallmark of a marriage-like relationship. The trial judge concluded it was understandable they did not feel the need to merge their finances, having met in their 40s and given both were financially self-sufficient: at para. 100.

[22] Regarding “co-residence” or living together, she ultimately found that despite “the overnights they spent in their own homes”, Ms. Clark and Mr. Matossian generally “lived together” as a couple in the sense that they spent the majority of their time together sharing meals, doing activities, vacationing and socializing with friends: at para. 122.

[23] Under the rubric of objective evidence of their lifestyle and interactions, the trial judge considered a range of circumstances including family events, Mr. Matossian’s support for Ms. Clark’s participation in flamenco dancing, the components of their daily routines and different aspects of their relationship, the absence of estate planning, health matters and what Mr. Clark identified as Mr. Matossian’s lack of involvement with Ms. Clark during the last few weeks of her life, which coincided with the height of the COVID-19 pandemic. During most of that time, Ms. Clark was in hospital.

[24] The trial judge rejected Mr. Clark’s argument that Mr. Matossian did not provide Ms. Clark with the care one would expect of a spouse or conduct himself in that way after her death. Mr. Clark pointed to, for example, Mr. Matossian not accompanying her in the ambulance, not visiting every day, not attending the hospital the night she died, and not participating in discussions about her care or after death rituals such as writing an obituary or planning a memorial, as well as turning over the key to her house and not making statements to the effect that he was her spouse.

[25] The trial judge accepted Mr. Matossian’s evidence that he visited Ms. Clark every second day because he understood patients were only allowed one visitor per day due to pandemic restrictions, she had already lost consciousness when he saw

her the day before she died and he was concerned about breaking down emotionally. Further, the trial judge took into account Mr. Matossian's advanced age and the reality that he would have been unable to act as a caregiver or take control of her house. Regarding his conduct after her death, the trial judge observed there is no prescribed way for a spouse to respond in times of grief. She also accepted the evidence of others that he was depressed and deteriorated quickly and found his conduct consistent with the depression associated with losing one's partner of 38 years.

On Appeal

[26] The appellant challenges the trial judge's finding that Ms. Clark and Mr. Matossian were spouses under *WESA*.

[27] First, he alleges she erred in law by failing to consider Ms. Clark's subjective intentions. Acknowledging the trial judge correctly stated the parties' intentions to have a committed relationship of indeterminate duration is an essential question, the appellant argues that because the authorities required her to consider the subjective intentions of the parties, she was obliged to consider Ms. Clark's separate intentions. He emphasizes the absence of any discussion of her intentions under the subheading "Parties Intentions" or at all and submits the absence of findings on the issue establishes that it was not considered.

[28] In my view, there is no merit to this ground of appeal.

[29] Returning to the authorities, it is the intentions of the parties plural that is identified as a factor and, in *Mother 1 v. Solus Trust Company Limited*, 2021 BCCA 461, as a factor that must be considered in deciding whether a relationship was marriage-like. *Mother 1* also provides a finding of *mutual intention* is not a prerequisite as explained in *Weber*. That explanation informs what I see as the requisite approach to considering the parties' intentions:

[23] The parties' intentions – particularly the expectation that the relationship will be of lengthy, indeterminate duration – may be of importance in determining whether a relationship is "marriage-like". While the court will consider the evidence expressly describing the parties' intentions during the

relationship, it will also test that evidence by considering whether the objective evidence is consonant with those intentions.

[24] The question of whether a relationship is “marriage-like” will also typically depend on more than just their intentions. Objective evidence of the parties’ lifestyle and interactions will also provide direct guidance on the question of whether the relationship was “marriage-like”.

[Emphasis added in *Mother 1*.]

[30] Similarly, *Jones v. Davidson*, 2022 BCCA 31, endorsed a contextual characterization of the relationship that may or may not include a party’s subjective intention. The Court opined, “subjective evidence, where there is evidence of such, may be tested by reference to the objective evidence”, which, in turn, may address a wide assortment of characteristics or indicia: *Jones* at para. 24 (emphasis added).

[31] There can be no dispute that the trial judge was fully alive to this approach and tested the direct evidence from Mr. Matossian about his intentions against the objective evidence. After finding he viewed himself as being in a lengthy indeterminate relationship with Ms. Clark, she looked to other evidence and found “this intention” was corroborated by the evidence of those who socialized with and observed them in various contexts. Again, many witnesses testified to viewing Ms. Clark and Mr. Matossian as a couple and several who knew them well viewed them as a long-standing, committed and exclusive couple.

[32] There was no direct evidence of Ms. Clark’s subjective intention. The trial judge’s subsequent discussion of the objective evidence, which was more expansive and multi-dimensional than her discussion of the corroborating evidence, explicitly informed her ultimate finding that “[h]aving considered all of the evidence of the mutual intentions of Dick and Sharon as well as the objective evidence regarding those intentions, I find on a balance of probabilities that Dick and Sharon were in [a] committed, marriage-like relationship ...”: at para. 198.

[33] Reasons must be interpreted holistically, as well as generously and functionally. Implicit in a consideration of all the evidence of mutual intentions is a consideration of any indirect evidence of Ms. Clark’s intentions. It is not possible for me to conclude, based on both the trial judge’s express grounding of her ultimate

finding of a marriage-like relationship in a consideration of all the evidence of mutual intentions and her discussion of the evidence throughout the Reasons, that she failed to consider that indirect evidence. I see no error in the trial judge's consideration of the parties' intentions.

[34] The second issue the appellant asserts is the finding of a marriage-like relationship reflects a palpable and overriding error. Accepting, he says, all of the trial judge's specific findings about the characteristics of the relationship, he contends that taken together they cannot support the finding. Or, as he also put it, all of the trial judge's specific findings "overwhelmingly" support a conclusion that Ms. Clark and Mr. Matossian were not living with each other in a marriage-like relationship.

[35] I have a number of difficulties with the argument. First, it includes the alleged error of failing to consider Ms. Clark's intentions, which I have rejected. Second, the appellant characterizes Mr. Matossian's direct evidence about his subjective intentions as minimal, of limited assistance, which is at odds with the trial judge's specific finding about this evidence. And he does not allege this finding involved a palpable and overriding error.

[36] Third, in advancing the argument, the appellant relies on some of the trial judge's specific findings but neglects others. For example, he underscores that Ms. Clark and Mr. Matossian maintained separate homes and finances; they did not name each other as beneficiaries or include each other in estate planning; and each identified themselves as "single" on their income tax returns. He also points to Mr. Matossian's lack of involvement in Ms. Clark's hospitalization leading up to her death and in arrangements after she died.

[37] Fourth, most of the specific findings identified by the appellant are decontextualized or taken outside of how the trial judge treated them.

[38] Fifth, a number of other findings about various circumstances that the appellant does not mention, on my reading of the reasons as a whole, played a

significant role in her finding of a marriage-like relationship. For instance, there is the extraordinary length of the relationship, which only ended in death. For those 38 years, the relationship was exclusive in terms of sexual intimacy; Ms. Clark and Mr. Matossian's daily routines revolved around each other and they spent the majority of their time together sharing meals, doing activities, vacationing and socializing with friends; they resided together every year for decades while vacationing in Hawaii; friends and others viewed them as a couple and those who knew them well, viewed them as a long-standing, committed, exclusive couple; and Mr. Matossian's family viewed Ms. Clark as a family member.

[39] Ultimately, we are not left with the issue as identified — that all of the specific findings about the circumstances of the parties' relationship taken together demonstrate the finding of a marriage-like relationship is a palpable and overriding error. Instead, we are left with an argument that depends on some of the specific findings, many of them taken out of context and devoid of the trial judge's treatment of them.

[40] In the absence of a challenge to any of the trial judge's specific findings about the circumstances of the parties' relationship as palpable and overriding errors, it is not open to the appellant to make an argument that amounts to an assertion the trial judge should have weighed the facts differently, or relied on only some of them.

[41] The cases establish what is required is a fact-driven contextual analysis of all the evidence relevant to the various factors, indicia or characteristics of a spousal relationship, in order to characterize the relationship. The exercise, as Justice Saunders observed in *Jones*, is not capable of precision: at para. 21.

[42] It is clear to me that the trial judge properly engaged in the requisite analysis. While another judge may have concluded the respondent failed to establish Ms. Clark and Mr. Matossian were in a marriage-like relationship, I am satisfied the trial judge was entitled to find that they were.

[43] For the reasons given, I would dismiss the appeal.

[44] **MARCHAND C.J.B.C.:** I agree.

[45] **IYER J.A.:** I agree.

[46] **MARCHAND C.J.B.C.:** The appeal is dismissed.

“The Honourable Justice Fleming”