

**THE HIGH COURT
COHABITATION**

[2019 No. 17 Sp.]

**IN THE MATTER OF THE CIVIL PARTNERSHIP AND CERTAIN RIGHTS AND
OBLIGATIONS OF COHABITANTS ACT 2010**

BETWEEN

G. R.

PLAINTIFF

AND

NIAMH REGAN

DEFENDANT

JUDGMENT of Mr. Justice Allen delivered on the 25th day of February, 2020

Introduction

1. This is an application pursuant to s. 194 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act, 2010 for an order for provision for the plaintiff out of the net estate of the plaintiff's deceased alleged cohabitant.
2. As required by O. 70B of the Rules of the Superior Courts, the application was made by special summons. The summons was not, as by O. 70B, r. 16 it ought to have been, marked as a cohabitation summons. Neither the special endorsement of claim nor the grounding affidavit set out all of the particulars which, by O. 70B, r. 17, ought to have been included but a supplemental affidavit of the plaintiff eventually disclosed sufficient evidence to allow the court to adjudicate on the application. The relief claimed in the summons was a claim to a beneficial interest in the deceased's immovable property and bank accounts rather than for provision from his net estate, but no objection was made as to the form of relief claimed and the application was moved and answered on the basis that it was an application under section 194.
3. The deceased died intestate, unmarried and without issue. He had four siblings, three of whom survived him. The deceased's siblings declined to take out a grant of administration and on 27th November, 2017, on the application of the plaintiff pursuant to s. 27(4) of the Succession Act, 1965, Ms. Niamh Regan, solicitor, was appointed administrator.
4. Following her appointment as administrator, Ms. Regan wrote to the deceased's three brothers and sister notifying them of the proceedings. She suggested that they might instruct their own solicitors.
5. The first to reply was the deceased's brother, Mr. E.D., who introduced himself as the spokesman of the siblings of the deceased. He informed Ms. Regan that one of his siblings, K.D., had died. E.D. acknowledged that the plaintiff had been his brother's friend for many years and had given up her job to care for him when he had been taken ill. E.D. reminded Ms. Regan that he had agreed to her appointment as administrator strictly subject to Ms. Regan presenting to the court an accountant's letter of 19th July, 2006, and a letter from St. James's Hospital of 28th March, 2007 - to which I shall come. E.D. took the position that it was a matter for the plaintiff's solicitor to establish the

required five years cohabitation, and for Ms. Regan to “*defend the status quo of the 1965 Act*”.

6. Mrs. W.D., the widow of the deceased’s brother K.D. who had died in 2018, replied to Ms. Regan by e-mail, questioning the plaintiff’s claimed status and asserting that she had been the deceased’s housekeeper.
7. The deceased’s sister, Mrs. C.B., responded to Ms. Regan by telephone. Mrs. B. expressed concern about the application and the status of the plaintiff - specifically the plaintiff’s claim to have been in a committed relationship with the deceased. Mrs. B. informed Ms. Regan that another of the deceased’s brothers, J.D., was in a nursing home in England, suffering from vascular dementia.
8. After the proceedings issued, the deceased’s siblings declined an invitation to retain their own solicitors, but E.D. swore a short affidavit and attended court for the hearing of the application.
9. The application came before the court in the Monday afternoon list, which is ordinarily an administrative list. By O. 70B, r. 10 (as applied to cohabitation proceedings by r. 16(5)) the hearing of the substantive application is to be on the oral evidence of the parties, save where the court otherwise directs.
10. Mr. Ó Dúlacháin S.C., for the plaintiff, submitted that it was an appropriate case to be dealt with on affidavit evidence because the evidence was uncontradicted. Mr. D’Arcy, for the defendant, acquiesced. He said that Ms. Regan had had little in the way of communication from the beneficiaries of the estate and that he had no instructions which would have justified him in contesting the plaintiff’s evidence.
11. Absent opposition, it seemed appropriate to hear the application on affidavit evidence.

The evidence

12. The plaintiff’s case is that she was in an intimate and committed relationship with the deceased for 40 years and that they lived together for 32 years until his death on 5th December, 2013.
13. The deceased’s death certificate shows that he was 62 years’ old when he died. The plaintiff did not state her age, but she must be in or about the same age.
14. The plaintiff and the deceased met in 1981 (she does not say in what month) in a city in the United Kingdom where they were both then working. The plaintiff’s case is that they more or less immediately formed an intimate relationship. At the end of 1981 the plaintiff returned to Ireland. She says that she returned for Christmas, but I understand her to mean that she returned at Christmas because she immediately goes on to say that in January, 1982 the deceased gave up his job in the United Kingdom and moved to Ireland. For about a year, the plaintiff and the deceased lived together in a rented house in the west of Ireland and, following a transfer of his employment, in a house which the deceased owned in the city in the United Kingdom where they had met. The city in the

U.K. to which the deceased's employment had been transferred was about 140 miles from his house and for a time the deceased commuted on a weekly basis.

15. In due course (the plaintiff does not say when) the deceased found suitable rented accommodation in the city where he worked, and he and the plaintiff moved to there. Subsequently (the plaintiff does not say when) the deceased bought a house in the city where he worked, or at least where he was based. The deceased's work required a lot of travel and he was sometimes away for weeks at a time. The plaintiff was lonely when the deceased was away for long stretches.
16. The evidence is sometimes rather vague and sometimes patchy, but it is not inconsistent and was not challenged. In 1987 the plaintiff's father was terminally ill and the plaintiff returned to Dublin to be with him and near to her own family. The plaintiff's father died later that year. The deceased came to Dublin at weekends and for holidays. In 1991 or 1992 the deceased was made redundant by his U.K. employer. He tried, but failed, to find work in Ireland and in the following 13 or 14 years found work in Scotland and Germany.
17. In July, 1998 the deceased bought a house in South Dublin where he and the plaintiff lived until his death and where the plaintiff has continued to live since.
18. In about 2006 the deceased began to suffer from vascular dementia. His health deteriorated rapidly. In 2007 the plaintiff gave up her job as a cook to care for the deceased and did so for the remainder of his life. Initially the plaintiff cared for the deceased alone and later with the assistance of carers provided by the Health Service Executive and the Alzheimer's Society of Ireland. On the day before he died, the deceased was moved to Our Lady's Hospice, Harold's Cross, Dublin.
19. The plaintiff and the deceased had no children together or individually.
20. The deceased's death certificate shows the plaintiff to have been the informant and it was she who made the arrangements for his funeral and paid the funeral expenses - which appear not to have been reimbursed to her until towards the end of 2018.
21. The estate is not very extensive. It comprises bank deposits amounting in total to a little over €82,000 and the house in South Dublin which was valued at €490,000. One of the deceased's bank accounts was held in joint names with the plaintiff. At the date of the deceased's death that account had a small credit balance of €62.48. The largest deposit is an account in the name of the deceased with a credit balance of €73,109.99. This deposit appears to be the proceeds of a transfer made after the deceased's death of the balance standing to the credit of an account in the name of the deceased in the United Kingdom.
22. As I have said, notice of the proceedings was given to the deceased's three surviving siblings and to the widow, and later to the executor, of the deceased's predeceased brother.

23. Mrs. W.D., the widow of the deceased's brother, in correspondence with the defendant on 6th March, 2019 disputed the plaintiff's assertion that she was cohabiting with the deceased, asserting that she was his housekeeper. Mrs. D. died on 8th April, 2019. Soon after, Ms. Regan was in correspondence with Mrs. D.'s executor, who was also K.D.'s executor, but no affidavit was filed on behalf of the interest of K.D.
24. The deceased's brother, E.D., swore a short affidavit in which he deposed that the plaintiff - who he identified as his brother's carer - was not in an intimate relationship with him from 28th March, 2007, until his death on 5th December, 2013, "*because of his severe mental incapacity*". Mr. E.D. also asserted, by reference to a letter dated 19th July, 2006 written by the deceased's accountant, that the deceased had lived and worked abroad from 1983 to 2005 and visited Ireland for holidays. The underlying proposition was that there could not have been an intimate and committed relationship between the plaintiff and the deceased outside the period between 1st January, 2005 and 28th March, 2007: so that the plaintiff was not a qualified cohabitant.
25. The significance of 28th March, 2007 is that that was the date of a letter written by a doctor at St. James's Hospital "*to whom it concerns*" at a time when the deceased was inpatient in that hospital. The letter conveyed the opinion of two consultant neurologists and a consultant psychiatrist that the deceased no longer had capacity to make decisions regarding his health, welfare and estate. The letter recorded that the deceased's "*partner*" and family had contemplated that he might be made a ward of court. The deceased was not made a ward of court, but it appears that E.D. assumed the role of *de facto* committee of his estate, by taking control of a bank account in the U.K. in the name of the deceased and remitting monies to the plaintiff as required to allow her to keep up the house and care for the deceased. Following the death of the deceased, E.D., quite properly, paid the balance of those monies into an AIB Bank account in Ireland in the name of the deceased.
26. The letter from the deceased's accountant was a letter dated 19th July, 2006, to the inspector of taxes for the district in South Dublin in which the deceased was living. This letter offered confirmation to the inspector of taxes that the deceased had been living and working outside Ireland from 1983 and had become tax resident in Ireland from 1st January, 2005. It was said that the deceased did not then have employment in Ireland and was living on savings which he accumulated while abroad.
27. The two letters are not strictly speaking evidence of their contents but E.D.'s positive averments, albeit by reference to the letters, as to the deceased's incapacity is supported by the evidence of the plaintiff and it is common case that between 1983 and 2004 the deceased was working outside Ireland.
28. In a supplemental affidavit in reply to the affidavit of E.D., the plaintiff filled in some of the detail of where the deceased, and where she and the deceased, had lived over the years. She acknowledged that the deceased did work abroad throughout many years of the relationship but said that he returned home to her at the weekends and holiday periods.

29. The plaintiff also put before the court a greeting card sent by E.D. to the deceased and the plaintiff at the house in South Dublin, addressed to them jointly by their Christian names. There was no direct evidence as to when this card was sent but it was obviously sometime after the plaintiff and the deceased had moved into the house together but before his health deteriorated. E.D. thereby conveyed his best wishes and his hope that *“your kitchen will soon be finished and you can enjoy this summer in your garden and conservatory. I guess you will be off to the seaside at [B] or [K] soon with the sunshine coming”*.
30. The plaintiff also exhibited a series of letters written by the deceased’s doctors in which she was identified as the deceased’s partner and carer, and which showed that the plaintiff attended medical appointments with him.

Legal principles

31. This, as I have said, is an application pursuant to s. 194 of the Act of 2010. This provision allows a *“qualified cohabitant”* to apply to court after the death of his or her cohabitant for provision to be made for her or him out of the net estate of the deceased.
32. By s. 172(1) of the Act of 2010, a *“cohabitant”* for the purposes of Part 15 of the Act is defined as:-
- “...one of 2 adults (whether of the same or the opposite sex) who live together as a couple in an intimate and committed relationship and who are not related to each other within the prohibited degrees of relationship or married to each other or civil partners of each other.”*
33. By s. 172(5) a *“qualified cohabitant”* is defined as:-
- “...an adult who was in a relationship of cohabitation with another adult and who, immediately before the time that that relationship ended, whether through death or otherwise, was living with the other adult as a couple for a period –*
- (a) of 2 years or more, in the case where they are the parents of one or more dependent children, and*
- (b) of 5 years or more, in any other case.”*
34. Section 172(2) requires that in determining whether or not two adults are cohabitants, the court shall take into account all the circumstances of the relationship and in particular the seven factors specified in paras. (a) to (g).
35. By s. 194(2) an application may not ordinarily be made where the relationship ended two years or more before the death of the deceased.
36. The overarching requirement of the Act of 2010 is that the relationship must be *“intimate and committed”*. As Baker J. pointed out in *D.C. v. D.R.* (Unreported, High Court, Baker J., 5th May 2015), [2015] IEHC 309, the relationship must be, or must have been, sexually intimate. By s. 172(3) a relationship does not cease to be intimate merely

because it ceases to be sexual in nature, but the requirement that the relationship be committed remains, as does the requirement that the couple live together.

37. As Baker J. did in *D.C. v. D.R.*, I will examine *seriatim* the statutory requirements and considerations.
38. It is uncontested that the plaintiff and the deceased were living together – in the sense of living under the same roof – from 1st January, 2005 (the date referred to in the accountant's letter) until 5th December, 2013 (the date of the deceased's death). It is also uncontested that the house in which the plaintiff and the defendant lived in those years was bought by the deceased in July, 1998 and was from that time onwards the only property which the deceased owned. Similarly, it is common case that from 1998 to 2004 the deceased worked for some time in Scotland and for some time in Germany. The plaintiff's case is that during those years the deceased returned home at weekends and holidays. E.D.'s perception is that the deceased visited Ireland for holidays.
39. In *M.W. v. D.C.* (Unreported, Court of Appeal, 2nd October 2017), [2017] IECA 255, one of the issues considered by the Court of Appeal was whether the law required that a couple should have lived physically in the same shared residence at all times. Finlay-Geoghegan J. (with whom Irvine and Hogan JJ. agreed) said, at para. 29 of her judgment: -

"The concept of 'living with the other adult as a couple' or living 'together as a couple' as stated in s. 172(1) is a legal concept for the purposes of s. 172. There was considerable debate in the submissions before this Court as to whether the concept of living together as a couple for the purposes of s. 172 required both adults to live physically in the same shared residence at all times. Examples were given of persons in an intimate and committed relationship living together as a couple and holding themselves out as a couple but where either work demands of one or other or ill health and hospitalisation require the couples to physically live in different places or even different countries for periods of time. I conclude that the legal concept of living together as a couple for the purposes of s. 172 does not require two persons to live physically at all times in the same shared premises. Hence, notwithstanding that a couple may not be physically living day by day in the same residence during the two-year period immediately prior to the end of the relationship, s. 172 envisages that a court may decide on all the relevant facts that they, nonetheless continued to live together as a couple during that period."

40. While the plaintiff's evidence as to the nature of her relationship with the deceased was doubted by the deceased's sister in correspondence with the administrator, it was not contested. E.D.'s affidavit was short and careful. He did not suggest that the relationship had not been intimate. E.D.'s position was set out in an e-mail to Ms. Regan and it was that because the deceased had been living abroad from 1983 until 1st January, 2005, the plaintiff could not have been cohabiting with him in Ireland until that date; and that he lacked mental capacity to "*decide to remain resident*" with the plaintiff after 28th March, 2007. From E.D.'s point of view, the plaintiff could only "*claim from 1st January,*

2005, until 28th March, 2007, as a period of willing cohabitation, which is less than the five years required."

Analysis

41. Mr. Ó Dúlacháin's submission was succinct. On the uncontested evidence, he argued, the plaintiff was a qualified cohabitant. The court has a wide discretion, and in the circumstances, it was said, the plaintiff should have the entire estate. The court was urged to have regard to the duration of the relationship, the extent of the care provided by the plaintiff to the deceased, and the absence of any evidence of financial hardship on the part of the deceased's siblings. The evidence was, it was submitted, that the deceased had followed the plaintiff to Dublin and had bought the house with a view to it being their home.
42. Mr. D'Arcy was similarly economical in his submissions. He suggested that while the rights of a cohabitant are not equivalent to the rights of a surviving spouse, the court could have regard to the entitlement of a surviving spouse to a legal right share. Mr. D'Arcy pointed out that there was no averment of a promise by the deceased to the plaintiff that she would have anything. He attached significance to the fact that the deceased's bank account had been administered by E.D., rather than by the plaintiff.
43. Mr. D'Arcy pointed to s. 194(5) of the Act of 2010 which precludes the court from making an order where the relationship ended before the death of the deceased unless the applicant is financially dependent on the deceased. He argued that there was no evidence that the applicant was financially dependent on the deceased but conceded that the evidence was that the relationship had continued until the death. I am satisfied that s. 194(5) has no application to this case.
44. I am satisfied on the evidence that the relationship between the plaintiff and the deceased was intimate and committed. I am satisfied that the couple lived together at the addresses given by the plaintiff in the U.K. between 1982 and 1987. The deceased's work in those years kept him away from home frequently, sometimes for weeks at a time, but his home was with the plaintiff.
45. In 1987 the plaintiff's father became ill and the plaintiff returned to Ireland to be with him and to be near her family. The plaintiff's father died later that year. The fact that the plaintiff came back to Ireland to be with her father in his decline did not necessarily mean that she was no longer living with the deceased but the plaintiff's narrative jumps from the death of her father in 1987 to 1991 or 1992 when the deceased was made redundant from his employment in the U.K. and unsuccessfully tried to find a job in Ireland, and from there to 1998 when they again moved in together. I have clear evidence that from 1st July, 1998, the plaintiff and the deceased were living together in the house in South Dublin. Between then and 2005 the deceased was working abroad and commuting home at weekends and for holidays but, again, the fact that the deceased was away from home regularly, and sometimes for long periods, did not mean that he and the plaintiff were not living together.

46. As for the period between 1987 and 1998, I am satisfied that the intimate relationship between the plaintiff and the deceased continued but not that the plaintiff and the deceased were living together. The plaintiff's evidence is that coming up to 1987 she was lonely and found the deceased's absences from home very difficult. After she returned to Dublin, the deceased came to see her at weekends and for holidays. The plaintiff's evidence is that she worked as a cook in a convent in South Dublin for 15 years between 1992 and 2007 - so she could not have been living with the deceased between 1992 and 1998.
47. The case pleaded – that the plaintiff and the deceased were in an intimate and committed relationship for upwards of 40 years – fails as a matter of arithmetic.
48. Section 172(5) of the Act of 2010 provides that the qualifying period is to be calculated by reference to the period of 2 or 5 years, as the case may be, immediately before the time that the relationship ended, whether by reason of death or otherwise. It seems to me that it is clear from the Act and at least implicit in the decision of the Court of Appeal in *M.W. v. D.C.* that broken periods of cohabitation may not be aggregated and that in determining whether a plaintiff is a qualified cohabitant the court may not look beyond the period of cohabitation which ended at the time the relationship ended.
49. The evidence as to the seven factors identified in s. 172(2) which the court is required to take particularly into account, is patchy.
50. I have no evidence of the financial arrangements between the plaintiff and the deceased prior to 1998. The plaintiff has deposed that from the time they moved into the house in South Dublin on 1st July, 1998, until 2006, the gas bill was in her name. During that time the plaintiff was working, and I infer that she was paying the gas bill. I think that I am entitled also to infer that the plaintiff was contributing otherwise to the joint household expenses.
51. In 2005 the deceased's health deteriorated rapidly to the point that by early 2007 he required full time care. In April, 2007 the plaintiff gave up the job she had had for 15 years to care for him and from later that year the plaintiff ran the house using money remitted from time to time by E.D. from the deceased's bank account in the U.K. From 2007 until his death the deceased was very frail and dependent on the plaintiff for his care. I characterised Mr. E.D. as the *de facto* committee of the deceased's estate, and I think that it is fair to characterise the plaintiff as the *de facto* committee of his person. During the same time the plaintiff became entirely financially dependent on the deceased for her accommodation and her support.
52. I find that the plaintiff and the deceased were in an intimate relationship from 1982 until the deceased's death in 2013 and that in those years they lived together between 1982 and 1987 and from 1998 until 2013. I find that from 1998 the relationship was intimate and committed. I find that from 1998 to 2007 the plaintiff and the deceased both contributed to the upkeep of the home they shared and to the shared household expenses. The intimacy and commitment of the relationship was demonstrated in 2006

and thereafter when the plaintiff willingly took on the burden of caring for the deceased and gave up such financial independence as she had had from her employment.

53. I am satisfied that from 1998, at least, the plaintiff and the deceased presented themselves as a couple and were recognised as such by the deceased's doctors, bank manager and at least his brother E.D. Neither the fact that following the deterioration of the deceased's health the relationship ceased to be sexual, nor the deceased's lack of capacity from 2007, meant that the relationship ceased to be intimate.
54. The fact that the deceased worked and often stayed away from home between 1998 and 2005 did not mean that the couple was not living together.
55. In *D.C. v. D.R. Baker J.* attached particular importance to the rituals of death as indicative of the role of a surviving cohabitant. In this case I do not have evidence of the role of the plaintiff at the deceased's funeral, but I do have the deceased's death certificate which identifies the plaintiff as the informant, and a letter from Ms. Regan, as the deceased's legal personal representative, to the plaintiff's solicitors, of 19th November, 2018, recouping to the plaintiff the funeral expenses which she had paid.
56. As Baker J. explained *D.C. v. D.R.* at para. 107:-

"The scheme of the Act envisages the court looking at the seven identified factors in s. 172(2) not as conclusive as to the nature of the relationship but as indicative of that relationship and how it is to be properly characterised. I consider that the test requires the court to determine whether a reasonable person who knew the couple would have regarded them as living together in a committed and intimate relationship, and that the individual and many factors in how they are perceived must be taken into account."

Provision

57. In determining whether, and if so what, provision ought to be made for the plaintiff, I have had considerable assistance from the judgment of Baker J. in *D.C. v. D.R.*
58. Baker J. accepted the submission of counsel for the defendant in that case that Part 15 of the Act of 2010 was part of the nexus of family and succession legislation and that some assistance could be derived from the jurisprudence under s. 117 of the Succession Act, 1965. That said, it seems to me that much of the value of comparing and contrasting s. 194 of the Act of 2010 with s. 117 of the Act of 1965 is to identify the differences, rather than similarities, in the approach.
59. While both ss. 117 and 194 use the same language of "*proper provision*", the right to make a claim under s. 194 is not founded on the mere fact of the relationship. In the case of a qualified cohabitant the court is required to consider the nature and duration of the relationship and the mutual contribution to welfare made in the relationship.
60. In *D.C. v. D.R.*, as in this case, there were no children.

61. *D.C. v. D.R.* was, as is this, a case in which the deceased died intestate. In that case, as in this, there was no evidence that the deceased's siblings were financially dependent on him or had any particular needs that might have been affected by an order that provision be made for the plaintiff but Baker J. (unsurprisingly, if I may so) rejected an argument that the scheme of the legislation intended that consideration be given to the interests of spouses or children of a deceased only, and not to siblings. In that case, as in this, the mere fact that the deceased's siblings are entitled to succeed on intestacy means that they have rights to which the court was and is bound to have regard. In that case, as in this, the court was required to balance the interests of the deceased's siblings who benefited from the deceased's death intestate, against the factors which suggest that provision ought to be made for the plaintiff.
62. In *D.C. v. D.R.* the court noted that in Irish law marriage enjoys a constitutionally protected status and that the Act of 2010 does not make automatic provision for a surviving cohabitant. It also rejected an argument that an applicant under s. 194 of the Act of 2010 carries the "*relatively high onus*" which is borne by adult children who apply for provision under s. 117 of the Act of 1965.
63. While *D.C. v. D.R.* was, and this case is, a case in which the deceased died intestate, it seems to me that the circumstances of the intestacy in this case are different. Ms. J.C., the cohabitant of D.R., was a lady who was of sound mind, memory and understanding until the time of her death. She had a diagnosis of secondary cancer which she knew in the year prior to her death was likely to be fatal. Ms. J.C. had prepared a document outlining her wishes for the distribution of her property, which she had put away safely until shortly before her death when she directed the plaintiff to where he would find it: but she had not made a will. In the circumstances of that case, Baker J. inferred that J.C. had chosen to die intestate.
64. In this case the deceased was about 55 years of age when, following a collapse, he was diagnosed with a hereditary neurodegenerative condition which causes strokes and dementia. If not immediately, then very soon after, he lacked capacity to make a will. It is the fact that the deceased died intestate, but I am not confident to infer that he did so deliberately.
65. The court has a wide discretion in determining whether, and if so what, provision ought to be made for a surviving qualifying cohabitant. As Baker J. explained, the requirement that the court should have regard to the factors set out in s. 173(3) imports a degree of objectivity, so that the motivation of a deceased in not making provision during his or her lifetime - or, I would add, by will - is not determinative but in an appropriate case it is something which the court may take into account. It seems to me that this is not such a case. It is true, as Mr. D'Arcy pointed out, that there is no evidence in this case of any promise by the deceased, but his health failed rapidly at an age at which, perhaps, fewer people that ought to have contemplated their mortality. This is not a case in which the deceased cohabitant decided not to make provision for the survivor.

66. By s. 194(7) of the Act of 2010, the total value of any provision ordered to be made from the estate of a deceased (aggregated with the value of any provision previously ordered to be made during the lifetime of the deceased) may not exceed the legal right share that the applicant would have been entitled to if the qualified cohabitants had been married or civil partners: which in this case, if the deceased had made a will, would have been half of the estate. On the other hand, the deceased in this case, would have been perfectly entitled, while he still had capacity, to have made a will leaving everything to the plaintiff. In a case, such as this, where it is not apparent that the deceased decided not to make a will, I am not persuaded that it would be particularly useful to contemplate what the position might have been if he had.
67. As I have observed, the discretion of the court imports a degree of objectivity, but I do not understand that discretion to extend to writing for the deceased what might be objectively thought to be a reasonable will. Just as Part 15 of the Act of 2010 is not based on a moral duty to make proper provision for a surviving cohabitant, neither does it incorporate the notion of a just and prudent cohabitant. Nevertheless, I believe that the court is entitled to take into account the closeness, or otherwise, of the relationship between the deceased and those entitled on intestacy and whether there was any financial dependence on the deceased. To take an extreme example, the entitlement on intestacy of, say, a cousin in Australia whom the deceased had never met would carry less weight than that of, say, a sole surviving unmarried sister of the deceased who had lived with the cohabiting couple in a house in which she and the deceased had grown up together and which the deceased had inherited from the survivor of their parents. I leave over to a case in which it might arise the potentially very great difficulty of weighing the interest of a class when there might be, among those within the class, a great disparity in their relationship with, or financial dependence on, the deceased.
68. It is clear that when the deceased bought his house in Dublin he intended that it would be a home for himself and the plaintiff. While the deceased's relationship with the plaintiff was then of sixteen years' duration, they had not lived together for ten or eleven years. I find it unsurprising, then, that the deceased did not put the house into joint names when he bought it. Unlike *D.C. v. D.R.* there is no evidence in this case of a proposal or discussion of marriage and no direct evidence of the deceased's wishes or intentions as to the devolution of his property. What is, I think, clear is that the deceased's wish and intention at and after the time he bought his house was that it would be, and continue to be, a home for himself and the plaintiff.
69. By s. 194(4) the court, in considering whether to make an order, must have regard to all the circumstances of the case, including the interests of the beneficiaries of the estate and the factors set out in section 173(3).
70. The direct evidence as to the financial circumstances, needs and obligations of the plaintiff is thinner than I would have liked but I believe that I have sufficient evidence to draw the necessary inferences. In 2007 the plaintiff gave up a job she had held for fifteen years to care for the deceased and from then until the time of his death was

financially dependent on him. As of the date of the application now before the court, the deceased's house in Dublin was the plaintiff's home and had been for upwards of twenty years. For the future, the plaintiff will need somewhere to live for the rest of her life. While it would have been better if the plaintiff had directly said so, I believe that I am justified in inferring from the fact that she was employed in what must have been modestly paid employment for fifteen years that her means and resources are limited to the point that she is not in a position to buy a house for herself.

71. In this case there are no spouses or civil partners, or former spouses or civil partners, and no children.
72. By s. 173(3)(f) the court is required to take into account the duration of the parties' relationship, the basis on which the parties entered into the relationship, and the degree of commitment of the parties to one another.
73. In this case the plaintiff and the deceased were in a relationship for upwards of thirty years but on the authority of *M.W. v. D.C.* [2017] IECA 255, the relevant relationship is that during which the parties lived together as a couple. As I understand the law, the fact that the plaintiff and the deceased previously lived together between 1982 and 1987 and the fact that their intimate relationship continued between 1987 and 1998 are relevant in assessing the intimacy and commitment of their relationship from the 1st July, 1998, but the duration of their relationship is to be measured from that date. Accordingly, I find that the duration of the relevant relationship was fifteen years.
74. This is a case in which it cannot be gainsaid that the plaintiff made a huge contribution to the welfare of the deceased by caring for him and looking after the home. There is direct evidence that the plaintiff gave up her job in which she was long established to care for the deceased. While there is no direct evidence, I nevertheless believe that I am justified in inferring that the plaintiff's prospects of re-joining the labour market after an absence of seven years and in competition with other candidates who are likely to be younger, are such as to amount to an impairment of her future earning capacity.
75. In *D.C. v. D.R. Baker J.* held that the conduct of the plaintiff to which the court is entitled to have regard under s. 173(3)(j) is not limited to poor conduct or bad behaviour and can overlap considerably with the contribution to welfare identified in section 173(3)(f). I find that the loyalty with which the plaintiff embraced the challenge of the deceased's illness and the dedication with which she cared for him over many years is such that it would be unjust to disregard it.
76. Against, or with, the factors in favour of making provision for the plaintiff are to be balanced the rights of the deceased's siblings on his death intestate. As previously observed, the mere fact that the deceased's siblings are entitled to share in his estate means that they have rights to which regard must be had. The weight that is to be attached to those rights must be separately assessed.

77. As, again, Baker J. explained in *D.C. v. D.R.*, the scheme of the legislation is to make financial provision for a surviving qualifying co-habitant. Necessarily the making of such an order will reduce *pro tanto* the rights of those who would otherwise take on the intestacy. In that case there was some evidence as to the financial circumstances of the deceased's siblings. In this case, there is none. On the evidence, I find in the balance an established need on the part of the plaintiff for financial security and the legal rights of the deceased's siblings, but no means of assessing the practical impact of the modification of those rights.
78. On the evidence, at least after July, 1998 when the deceased bought his house in Dublin, the relationship between the deceased and his siblings, other, perhaps, than E.D., does not appear to have been particularly close. Mrs. C.B., the deceased's sister, was unaware of the relationship between the plaintiff and the deceased. The plaintiff was certainly not, as Mrs. W.D. the widow of the deceased's brother K.D., thought, his housekeeper.
79. Mr. E.D., by contrast, was sufficiently close to the deceased to have been aware of the relationship and of the challenges posed by the deceased's decline in health. E.D.'s affidavit, as I have said, was careful. It contested the plaintiff's status as a qualified cohabitant on what were essentially legal grounds, rather than the reliability of the plaintiff's evidence. If I take E.D.'s reference to the St. James's Hospital letter as an averment of the truth of the contents of that letter, E.D. was involved with the plaintiff in the decision as to what was to be done having regard to the deterioration in the deceased's health: and the evidence is that E.D. took control of the deceased's bank account. Again the evidence is rather thin, but if I take E.D.'s reference to the accountant's letter as an averment of the truth of the contents of that letter, the deceased had been living on his savings since 1st January, 2005. By reference to the death certificate, he was then 55 years of age. There is no evidence of what the deceased's savings then amounted to, but whatever he had was all that he had, and all that he was likely to ever have. The position was that the deceased needed to be cared for and his fortune needed to be husbanded. The plaintiff did what was necessary, and E.D. did what was appropriate. There is no direct evidence that the plaintiff and E.D. cooperated but I am confident to infer that they did. I am satisfied that E.D. acted entirely in the best interests of his brother, as he would have if he had had an enduring power of attorney or had been formally appointed as committee of his brother's estate, to balance the need to ensure the deceased's care and comfort against the need that the deceased's savings would last. When the time came, E.D. released the balance of the fund to the deceased's legal personal representatives.
80. In balancing the interests of the plaintiff and the deceased's siblings, I must take account of the value and nature of the estate, and the number of the deceased's siblings. If some provision is to be made for the plaintiff, whatever, if anything is left will be divided at least four ways, and perhaps more, depending on the terms of the wills of K.D. and W.D. On an arithmetical basis, the detriment to each of the deceased's siblings would be one quarter of the benefit to the plaintiff. On the evidence, I can immediately see the

effect of making – and of limiting - the provision for the plaintiff on the plaintiff's future life, but not the effect of making provision for the plaintiff on the lives of the deceased's next of kin.

81. In this case, as in *D.C. v. D.R.*, there is no person other than the plaintiff to whom the deceased had a financial commitment, or in respect of whom he might have had an obligation to provide. The relationship was of 32 years duration and it was committed for at least the fifteen years prior to the deceased's death. For so long as she could, the plaintiff contributed to the household income. While again – apart from the reference to the gas bill - the plaintiff does not spell it out, I believe that I am justified in inferring that she contributed to looking after the home. I find that until the deceased became ill, the plaintiff and the deceased each contributed to the welfare and life of the other. It is uncontested that the plaintiff made an enormous contribution to the physical and emotional welfare of the deceased after he became ill. It is uncontested that the deceased made no provision for the plaintiff during his lifetime.
82. I had no great difficulty in coming to the conclusion that some provision ought to be made for the plaintiff from the net estate of her deceased partner. After careful consideration I have come to the conclusion that proper provision will be that the plaintiff should have the house in South Dublin where she and the deceased lived together for fifteen years. This will provide the plaintiff with security and will keep her in what, from the time the deceased purchased it, was intended to be her home. I am mindful of the fact that the house accounts for the great majority of the value of the estate and that the costs of this application will account for a good deal of the money, but that is what I believe the justice of the case requires.
83. By s. 196 of the Civil Partnership and Certain Rights and Obligations of Cohabitants Act, 2010 the Circuit Court has concurrent jurisdiction with the High Court to deal with applications under section 194. I see no reason why it was thought necessary to bring the application in relation to this relatively modest estate in the High Court. There will be an order for the costs of the plaintiff and the defendant out of the estate, limited to Circuit Court costs. The usual order on the application by an intended plaintiff under s. 27(4) of the Succession Act, 1965 to appoint an administrator to substantiate proceedings is to reserve the costs to the trial judge. If that was the order made, the parties must have the costs of that application as well. Mr. E.D. will have his expenses of attending court.