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THE JURISPRUDENTIAL CRITERIA FOR THE RECOGNITION OF STABLE UNION AND QUALIFIED DATING: A COMPARATIVE ANALYSIS OF LEGAL ASSUMPTIONS AND EFFECTS

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ABSTRACT

The present research aims to analyze the concepts of stable union and qualified dating, presenting the fundamental requirements to characterize each of the institutes. In order to better understand the topics addressed, a brief historical explanation was made about the evolution of the concepts of stable union and qualified dating, seeking to understand its origin and legislative evolution. In addition, an analysis of decisions of the Brazilian Federal Supreme Court (STF) and Superior Court of Justice (STJ) on the recognition of stable union and qualified dating, identifying the criteria used by magistrates to characterize these affective relationships. Finally, the legal effects arising from the recognition of stable union and qualified dating were also pointed out, analyzing the patrimonial and succession consequences for those involved, based on court decisions and applicable legislation.

Keywords: Qualified Dating. Stable Union. Legal Effects. Jurisprudential criteria.

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INTRODUCTION

The differentiation between stable union and qualified dating is a recurring theme in Brazilian courts, as both relationships have similarities, but have different legal effects. Stable union is recognized as a family entity by the Federal Constitution of 1988 (art. 226, §3) and by the Civil Code of 2002 (art. 1.723), while qualified dating has no specific regulation, being analyzed by jurisprudence (Brasil, 1988; Brazil, 2002).

Thus, we will seek and analyze the decisions of the courts that address the present theme of our study, aiming to answer the following question: what are the criteria adopted by the Brazilian courts to differentiate the stable union from qualified dating and what are its legal effects?

The relevance of the topic lies in the fact that the mischaracterization of a relationship can generate patrimonial and succession impacts for those involved (Gonçalves, 2021).

To this end, the research is structured in three parts. The first chapter presents the conceptualization of stable union and qualified dating, based on legislation and doctrine. The second chapter examines the jurisprudence of the Superior Court of Justice (STJ) and the Federal Supreme Court (STF) on the subject, highlighting the criteria used to distinguish the institutes. Finally, the third chapter addresses the patrimonial and succession effects of these relationships.

The methodology used consists of bibliographic and documentary research, with a qualitative and exploratory approach. The main sources are doctrinal works, scientific articles and jurisprudential decisions extracted from databases such as Google Scholar, SciELO and IBDFAM. Thus, it seeks to provide an in-depth and well-founded understanding of the subject, contributing to academic discussion and legal practice.

ANALYSIS OF THE LEGAL CONCEPTS OF STABLE UNION AND QUALIFIED DATING

The research begins with the legal concept of stable union, observing the objective and subjective criteria for its characterization, as public, continuous coexistence and with the objective of establishing a family. With regard to qualified dating, its concept will be described as being a relationship that is close to stable union, although there is still no plan to form a family, highlighting the essential characteristics that distinguish qualified dating from stable union, and the criteria adopted by the courts to recognize each of the relationships.

The analyses focus on judicial decisions that evaluate aspects such as coexistence, *animus* to form a family and other relevant characteristics to differentiate the two forms of

relationship. In addition, the patrimonial and succession effects arising from the recognition of these relationships will be analyzed.

STABLE UNION AND ITS REQUIREMENTS

The love relationship between two people has existed since the beginning of time. Although the Catholic Church frowned upon informal marriages, it was not uncommon. Over the years, society has changed, and so have relationships and families, now, there are so many different means of making up families that it can be tricky to tell the difference between a marriage and a serious dating relationship.

Stable union, an affective relationship in fact, has existed for a long time, the big difference today is that it is now recognized by law.

Paulo Lôbo (2019) believes that living together is a verifiable union: it is lawful, as it does not necessarily require the fabrication of an act to be valid; The communion between the couple derives from certain legal and constitutional rules that force cohabitation to turn into a legal relationship.

With the Federal Constitution of 1988, relationships outside marriage began to receive adequate state protection, being regulated in article 226, § 3, which says that the stable union between a man and a woman is recognized as a family entity, and the community formed by the father or mother and their descendants is also included. Thus, the term concubinage came to refer only to romantic relationships between people who could not marry because they were already married and to other hypotheses of legal impediments.

The Civil Code of 2002, in article 1,723, mentions the fundamental requirements for the constitution of a stable union, which says that "[...] the stable union between a man and a woman is recognized as a family entity, configured in public, continuous and lasting coexistence and established with the objective of establishing a family (BRASIL, 2002).

For a better understanding, he highlights the legislative evolution on the subject, he sees that the already repealed Law No. 8,971/94, in its article 1, determined the rules on alimony and inheritance rights to partners, defining stable union as the union of single, separated, divorced or widowed people, who cohabited for more than five years or with offspring, who can be entitled to the rights guaranteed by law. Subsequently, with the also repealed Law No. 9,278/96, there was no longer any talk about how many years they would need to live together for the relationship to be considered a stable union. Now, what really must be demonstrated for the recognition of the stable union is that it is a public, uninterrupted, lasting relationship with the objective of forming a family. So, there is no

longer a minimum time to establish a stable union, what really counts is how the relationship is sustained. In this sense, the current Civil legislation clearly recognizes the stable union, unlike the previous rules, it also regulates the destination of the partners' assets.

Marriage has always been the milestone of marital status, whereas stable union is different and, even without a defined beginning, it also generates legal consequences, such as the division of assets acquired during cohabitation, because of this, when a family begins to form, we have a new marital status. (DIAS, 2016).

The assets of the partners, according to article 1,725 of the Civil Code, says that in a stable union, unless there is a written contract, the partial community of property regime applies, and for people over 60 years of age in a stable union, the regime adopted is that of mandatory separation of property, except in the case of Precedent No. 377 of the STF, which establishes that the assets acquired during the union communicate with each other, due to the presumption of common effort (BRASIL, 2002).

According to Gonçalves (2014, p. 410), to understand how a stable union is formed, we can divide the requirements into two categories: objective and subjective. In the objectives, we have: a) diversity of sexes; b) notoriety; (c) stability or a longer duration; d) continuity; e) not have any impediments to marriage; and f) living in a monogamous relationship. The subjective ones are: a) living together as a couple; and b) *marital affection*, which is basically the desire to form a family.

The Civil Code states that there is general discrimination against stable unions because it benefits family entities formed by a man and a woman, not recognizing that it is possible to establish a relationship between people of the same sex. Jurisprudence had to expand the application of the law (Maria Berenice mg 585) to include these cases.

Thus, the characterization of stable unions for same-sex couples stems from the judgment of Direct Action of Unconstitutionality (ADI) No. 4,277 and the Allegation of Non-Compliance with a Fundamental Precept (ADPF) No. 132, processed in the Federal Supreme Court (STF). By ruling in favor of the requests, the STF equated homosexual relationships with heterosexual ones, making same-sex couples adhere to the same rules for stable unions as heterosexual couples.

The judgment and favorable decision in the Direct Action of Unconstitutionality No. 4,277 and the Allegation of Non-Compliance with a Fundamental Precept No. 132 by the Federal Supreme Court (STF), began to recognize the stable union between same-sex couples, both of which must be regulated by the stable union of couples. The denial of recognition of a love relationship between people of the same sex, based on the Federal

Constitution of 1988, offends the principles of equality, freedom and the principle of human dignity, formed by the Federal Constitution.

As mentioned earlier, Justice Ayres Britto of the Federal Supreme Court (STF), when analyzing ADIN 4.277, recognized that the union between individuals of the same sex is a type of family, as can be seen in the excerpt transcribed below:

> STABLE UNION. CONSTITUTIONAL NORM REFERRING TO MEN AND WOMEN, BUT ONLY FOR THE SPECIAL PROTECTION OF THE LATTER. FOCUSED ON THE CONSTITUTIONAL PURPOSE OF ESTABLISHING HORIZONTAL OR NON-HIERARCHICAL LEGAL RELATIONS BETWEEN THE TWO TYPOLOGIES OF THE HUMAN RACE. CONSTITUTIONAL IDENTITY OF THE CONCEPTS OF FAMILY ENTITY AND FAMILY. The constitutional reference to the basic duality of man/woman, in paragraph 3 of its article 226, is due to the focused intention of not missing the slightest opportunity to favor horizontal legal relations or without hierarchy within the scope of domestic societies. Normative reinforcement for a more efficient fight against the patriarchal reluctance of Brazilian customs. Impossibility of using the letter of the Constitution to resurrect article 175 of the 1967/1969 Charter. There is no way to roll the head of article 226 on the scaffold of its third paragraph. A provision that, by using the terminology family entity, did not intend to differentiate it from the family. There is no hierarchy or difference in legal quality between the two forms of constitution of a new and autonomous domestic nucleus. Use of the phrase family entity as a perfect synonym for family. The Constitution does not prohibit the formation of a family by people of the same sex. Consecration of the judgment that nothing is forbidden to anyone except in the face of a right or protection of a legitimate interest of another, or of the whole society, which does not occur in the hypothesis under consideration. Inexistence of the right of heteroaffective individuals to their non-legal equivalence with homoaffective individuals. Applicability of paragraph 2 of article 5 of the Federal Constitution, to show that other rights and guarantees, not expressly listed in the Constitution, emerge from the regime and principles adopted by it, verbis: The rights and guarantees expressed in this Constitution do not exclude others arising from the regime and principles adopted by it, or from international treaties to which the Federative Republic of Brazil is a party. (STF, ADI 4277, Federal District, rel. Min. Ayres Britto. Judged on 5.5.2011. Available at: http://redir.stf.jus.br/paginadorpub/paginador.jsp?docTP=AC&docID=628635.

Based on the related decision, the Federal Supreme Court established the understanding that our legal system recognizes both the heterosexual stable union and the homoaffective stable union, however, it is necessary that constitutional values and intention to form a family be observed.

Considering what has been presented, there is an evolution in the concept of family, especially in relation to stable union. This shows how the forms of relationship are changing and, in addition, the State, as a regulator, needs to pay attention to the reality of people in society.

As for notoriety, according to article 1,723 of the Civil Code, it is important because it makes public the relationship between the partners, showing that they live together as if they were married. Although the law mentions the word 'public' as one of the requirements for stable union, it is not necessary to interpret it at the extremes of its meaning, because what matters is notoriety. Everything that is public is notorious, but the opposite is not

always true, and this notoriety must manifest itself within the social circle of the partners, to make it clear that it is not an informal relationship, but as if they were married.

With regard to stability or prolonged duration, the very name "stable union" shows us that the relationship between partners needs to be lasting, and not something fleeting or momentary. Law No. 8,971/90 and Law No. 9,278/96 established minimum terms for coexistence in the relationship, this requirement was excluded by the current Civil Code. Therefore, the period can be considered in a relativized way to characterize the union, provided that the other requirements of the Civil Code of 2002 that demonstrate the stable union with the objective of forming a family are met.

The relationship needs to be stable and continue over time, that is, it means that the union cannot have long interruptions, it can have brief breakups, as they do not lead to the definitive loss of the continuity requirement required by law, which does not happen in permanent loss, since there will be a breach of one of the requirements of the stable union, thus leading to its dissolution. Fleeting relationships, even if intense, such as passions that last no more than a night or a carnival, do not become a family modality, this helps to distinguish, right away, stable union from dating. Moreover, the absence of marital impediments legitimizes the stable union, as the Brazilian legislator itself makes clear in articles 1.51 and 1723 of the Civil Code (BRASIL, 2002).

In this context, the only exception is the relativization of stable unions between people who are still married, if they are already separated de facto or judicially. Thus, the following are not considered partners: ascendants with descendants, relatives in a direct line, siblings, collaterals up to the 3rd degree and the surviving spouse with the one convicted of homicide or attempt against his consort (BRASIL, 2002).

The bond between people in a stable union must be exclusive, as in conjugal unions, because of the monogamous nature of the relationship. Thus, it is not allowed that those who are married and not separated in fact, or who already live in a stable union, form another relationship.

The State values the family structure, to the point of stating that the family is the basis of society. Therefore, monogamy has always been seen as an organizing element of the family. It did not arise because of love, but it is a convention that comes from the victory of private property over the old form of community coexistence.

A connection of lives is necessary, both in the material and immaterial sense analogous to that of a couple, this encompasses reciprocal help from both parties, so that the family base is built. On the subject, Minister Vasco Della Giustina of the Superior Court of Justice (STJ), decided on the dispensability of cohabitation, as can be seen below:

> CIVIL. FAMILY. FOOD. CHARACTERIZED STABLE UNION. DISPENSABILITY OF COHABITATION. APPEAL KNOWN AND GRANTED IN PART. UNANIMOUS DECISION. I - **For the configuration of the stable union, unity of residence between the partners is not required**, such a situation only helps to demonstrate the intensity of the relationship between the parties.II - Public coexistence can be concluded due to the social conduct of the partners, when both maintain a continuous and solid affective relationship, without there being any reason to conceal this situation. (STJ - REsp: 805265, Rapporteur.: Minister VASCO DELLA GIUSTINA (SUMMONED JUDGE OF THE TJ/RS), Publication Date: DJe 06/09/2010).

In order for a stable union to be configured , cohabitation can be waived, serving only to demonstrate the existence of the relationship between the parties, that is, that there is *affectio maritalis*. As already solidified by precedent 382 of the STF, the coexistence between the parties has its importance, but it does not become indispensable for the characterization of the stable union, as long as the other requirements are present. (BRAZIL, 1964).

The intention to form a family is considered the most important requirement for the characterization of the stable union, because even if the other requirements mentioned above are present, if there is no intention to constitute a current family, the stable union will not be configured.

It is necessary that there be between the parties involved, in addition to affection, the requirement of family formation, this requirement gains emphasis, because it differentiates stable union from qualified dating.

In order for the distinction between stable union and qualified dating to occur, it is essential to have the purpose of creating a present and current family nucleus, and it is up to the magistrate to assess whether the relationship presented has the *affectio maritalis.*

As stated by Judge Rubens Schulz of the Court of Justice of Santa Catarina (TJSC, 2017), special attention is needed to identify the *animus* of forming a family, as the simple coexistence of the partners is not a sufficient attribute to configure the *affectio maritalis*, as explained below:

> CIVIL APPEAL. ACTION FOR COMPENSATION FOR MORAL DAMAGES. DEATH OF A PRISONER INSIDE A PRISON ESTABLISHMENT. DISMISSAL AT THE ORIGIN. INSURGENCY OF THE PLAINTIFF. PLAINTIFF WHO DID NOT PROVE THE STABLE UNION WITH THE DECEASED. ABSENCE OF EVIDENCE OF THE CONSOLIDATION OF THE MARITAL BOND, WITH A COMMON DESIRE TO FORM A FAMILY. RECOGNITION, EX OFFICIO, OF THE ILLEGITIMACY AD CAUSAM. DISMISSAL OF THE PROCEEDING WITHOUT JUDGMENT ON THE MERITS. APPEAL KNOWN AND DISMISSED. "For the recognition of the stable union as a family entity, therefore, the objective (notorious, constant, lasting coexistence) and subjective (marital relationship with a common spirit of forming a family) requirements must be met. **The simple cohabitation does not have the power to prove the affectio maritalis**, that is, the consolidation of the bond between two people formed by affection and stability, with a clear family character" (TJSC, Interlocutory Appeal No. 4011724-31.2016.8.24 .0000, de Lages, rel. Des.

Rubens Schulz, Second Chamber of Civil Law, j. 21-9-2017). (TJSC, Appeal No. 5005941-48.2021.8 .24.0038, of the Court of Justice of Santa Catarina, rel. Júlio César Knoll, Third Chamber of Public Law, j. 11-06-2024) . (TJ-SC - Appeal: 5005941-48.2021.8.24 .0038, Rapporteur: Júlio César Knoll, Judgment Date: 06/11/2024, Third Chamber of Public Law- Court of Justice of Santa Catarina TJ-SC - Appeal: 5005941-48.2021.8.24.0038 | Jurisprudence).

Qualified dating is seen as a phase that precedes the formation of a family, characterized by the affective bond between two people, the form of relationship is not provided for in the legislation and, therefore, its requirements come from society and customs, therefore, it does not generate any type of legal effect between the partners. Dating is a cultural practice where two people create an affective bond based on respect and love, if this bond is strengthened, it can evolve into a stable union or a marriage.

QUALIFIED DATING

People's behaviors and the way they relate to each other today gave rise to the emergence of qualified dating, in an attempt to disfigure stable unions, shield assets and exclude rights. Qualified dating is a relationship that enjoys publicity, continuity and durability, and there is also the *animus* of forming a family, however, it is future, and this fact differentiates stable union from qualified dating.

Dating was once seen as a step before the kiss and served to get the family's approval, but today everything has changed, relationships are more open and evolve both emotionally and physically, faster and more intensely, regardless of the family's approval for many.

The difference between simple dating and qualified dating is that simple dating is easy to distinguish from stable union, because it does not have the basic requirements, it can be, for example, a confidential dating, where few people know, a casual dating or open relationships that have no commitment, allowing infidelity and maintaining the interests of each one. On the other hand, qualified dating has characteristics similar to stable union, as they are more serious relationships, which involve continuous and public coexistence.

Qualified dating for Maria Berenice Dias (2021), is an intimate and sexual relationship between two people, with or without cohabitation, in which the lovers usually visit each other's homes, participate in social events, travel and spend vacations together, behaving like a couple in love. Although it seems like a stable union, an essential aspect is missing, which is the immediate desire to form a family, even if the courtship is long, there is not, at this moment, the intention to form a family, although it may be something thought for the future, because of which the issue of legal rights and duties does not apply, such as

property regime, alimony or inheritance between lovers. According to the doctrine of Rolf Madaleno (2018, p.1490):

> With sexual freedom and the ease of affective breakups, without taking on the characteristics of a marriage or a stable union, the so-called "stable or qualified dating" arises, reserved for those couples who want to have the right not to make any commitment between them and much less intend to start a family, although they are always together on trips and especially on weekends, and that they routinely stay overnight in each other's homes, and attend family celebrations in common.

In Brazil, the law does not recognize qualified dating as a family union, since the boyfriends do not share the same coexistence and their interests are different. Qualified dating is similar in parts to stable union, but it is not confused, as it does not have as its main focus the formation of a family, although the criteria for this can be met later.

In this sense, the jurisprudence of the higher courts has defined affectio maritalis as a distinctive element between qualified dating and stable union, a subjective element that is characterized by the purpose of forming a family. As a way of clarifying this point, the judgment rendered below by the Third Panel of the STJ in 2012:

> CIVIL. CIVIL PROCEDURE. SPECIAL APPEAL. STABLE UNION. RECOGNITION. DEMONSTRATION. ABSENCE. 1. The configuration of the stable union is dictated by the confluence of the parameters expressly declined, today, in article 1,723 of the CC-02, which has objective elements described in the rule: public coexistence, its continuity and reasonable duration, and a subjective element: the desire to form a family. 2. **The congruence of all the objective factors described in the rule do not necessarily lead to the conclusion about the existence of a stable union**, but only inform the existence of a relationship between the parties. 3. **The desire to form a family, in turn, is essential for the characterization of stable union, because it distinguishes a relationship, giving it the mark of stable union, compared to many others that, although public, lasting and often with offspring, do not have the scope of being a family, because their main actors did not want it to be so.** 4. The declaratory demand for stable union cannot dispense with a diligent scrutiny of the "wanting to form a family", a **soul desire, which must be nurtured by both cohabitants, and the lack of this conclusion prevents the recognition of the stable union.** (STJ - REsp: 1263015 RN 2011/0143716-0, Rapporteur: Justice NANCY ANDRIGHI, Judgment Date: 06/19/2012, T3 - THIRD PANEL, Publication Date: DJe 06/26/2012).

In qualified dating there are no rights or duties of a patrimonial nature between the lovers, so it makes no sense to discuss the property regime, pension, alimony or inheritance. Qualified dating has its free form, which is why it is so common and natural for couples to maintain a sexual relationship, without this meaning a courtship, it is also very common for men to see the relationship only as a courtship, while women, more connected to commitment, see it as a stable union, this generates conflicts and many cases end up in the courts, where it is decided whether it is a qualified dating or a stable union. The situation intensified after Law No. 9278/96, which eliminated the five-year period to define stable union, previously stipulated by Law No. 8,971/94.

Some couples have made a dating contract or "dating declaration", in order to ensure that the dating relationship would not be confused later as a stable union, and if there is in the reality of life, the mischaracterization of dating for stable union, the type of property regime that will be adopted by them is already registered in the contract. It often happens that the couple of lovers become common-law partners and do not even realize it, due to the transformation of their personal relationships, such as respect, loyalty, material and moral assistance.

For a contract to be valid, it must follow the requirements of article 422 of the Civil Code, which include probity and good faith. If the information in it is false or attempts to deceive, the contract will be considered invalid. A contract that simulates a stable union, even if it has never occurred, is just a paper based on lies, and a stable union contract that states that the couple has no intention of forming a family will also not be valid.

The president of IBDFAM-TO, Rodrigo da Cunha Pereira, points out that many couples chose to live together when the pandemic occurred, in order to share expenses. She warns: "if the couple does not intend to form a family immediately and does not want patrimonial effects of this union, the ideal is to look for a lawyer and formalize a dating contract. However, a dating contract that is not renewed can turn into a stable union." (Judgment of the TJ/TO - 1st Civil Chamber of the Court of Justice of the State of Tocantins).

According to the authors Maluf and Dabus:

> In everyday life, it is quite common for couples to exist, usually already mature, or not who maintain an affective relationship with another person (traveling together, attending restaurants and social and family events, staying overnight at the other's house, but who maintain their own personal life, independent of the other, with their habits, bills to pay, investments and income separate from the other). They certainly do not lack love or affection, but the animus to found a family, the main element of the stable union, either because they are already widowed or divorced - with grown children or even without children, or because they desire in this period of their life, the simple cheerful company of others: autonomy of will, particular desires, valorization of personality rights as the right to intimacy of the couple. In these cases, the so-called "qualified dating", not stable union, is maintained. (DABUS, MALUF, 2016).

JURISPRUDENTIAL CRITERIA FOR RECOGNITION OF STABLE UNION AND QUALIFIED DATING

Brazilian doctrine and jurisprudence have recognized qualified dating, a form of relationship that is common today, where the couple lives a lasting, continuous, public and notorious relationship, even sharing the house without necessarily having the intention of forming a family. However, according to Maria Berenice Dias (2016, pg. 433), it is still difficult to define whether this love bond is just a courtship or is already configured as a stable union, which depends on the couple's commitment.

In view of this difficulty, we must consider the recognition of qualified dating not only by legislation, but also by doctrinal and jurisprudential issues, since the elements that define stable union and qualified dating are close.

Judges can use the weighting technique when analyzing matters considered complex, thus, Statement No. 17 of the Brazilian Institute of Family Law - IBDFAM, approved in October 2015, provides: "The weighting technique, expressly enshrined in article 489, § 2, of the CPC, is adequate to solve practical problems within the scope of Family and Succession Law as a whole".

Carlos Roberto Gonçalves (2017, p. 803) says, "most of these similarities with stable union make the understanding of the family unstable. Just because the couple sees each other often, has sex, goes on dates, or travels together or attends social events together doesn't mean they're in a committed relationship unless they both intend to start a family. Not all long-term cohabitation proves the existence of a stable union, since the partners need to have a mutual commitment to raise a family."

In the same sense, the 4th Civil Chamber of the TJ/MG decided:

> SUMMARY: CIVIL APPEAL - ACTION FOR RECOGNITION AND DISSOLUTION OF STABLE UNION WITH DIVISION OF ASSETS - ARTICLE 1,723 OF THE CIVIL CODE - REQUIREMENTS - ABSENCE - QUALIFIED DATING - UNDERSTANDING OF THE SUPERIOR COURT OF JUSTICE - SENTENCE UPHELD. - The stable union is a family entity that is configured with public, continuous and lasting coexistence and established with the objective of establishing a family (article 1,723, caput, of the Civil Code) - According to the understanding of the STJ collegiate, **in the case of stable union, what the law intends to protect is the family entity**, and this must be proven absolutely and incontestably. The evidence must be certain, secure and incontrovertible in order to recognize the desired union, to be distinguished, even, from what is called "qualified dating" - In the absence of documents in the records capable of proving, in a substantiated manner, the existence of a stable union between the parties, the sentence that dismissed the initial request must be maintained.
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> (TJ-MG - Civil Appeal: 5137205-08.2022.8.13.0024, Rapporteur: Des .(a) Roberto Apolinário de Castro, Judgment Date: 04/04/2024, 4th Specialized Civil Chamber, Publication Date: 04/08/2024).

The aforementioned case is a civil appeal Action for recognition and dissolution of stable union, where the appellant claims to have maintained a relationship with the appellant between July 2020 and January 2022, with the intention of starting a family. The appellant, in turn, argues that the relationship was limited to a "qualified courtship", without the necessary requirements for the configuration of a stable union, according to article 1,723 of the Civil Code. The central controversy resided in the absence of evidence that demonstrated the public, continuous and lasting coexistence, with the objective of forming a family entity, leading to the dismissal of the initial request (BRASIL, 2002).

The rapporteur highlighted that the objective of forming a family must be present throughout coexistence, with a true sharing of life and mutual support, both emotional and financial, that is, the family really must be constituted. He also mentioned the words of Milton Paulo de Carvalho Filho, exposed below:

> [...] It is not just any love relationship that characterizes the stable union. Even if entered into in a written, public and lasting contract, with sexual relations, with offspring, and even with a certain sharing of a roof, the fundamental element consisting of the desire to form a family may not be present. Thus, open dating, 'colored friendship', engagements do not constitute stable union. This subjective element is indispensable for the configuration of the stable union. For Zeno Veloso, it is absolutely necessary that among the cohabitants, framing their relationship of affection, there is this spiritual element, this affectiomaritalis, the deliberation, the will, the determination, the purpose, in short, the personal and mutual commitment to form a family. The presence or absence of this subjective element will be defined by the judge, in view of the peculiar circumstances of each concrete case [...] (BRASIL, 2005, p.10, CARVALHO FILHO, 2012, p. 2007-2008).

Cohabitation, in isolation, does not ensure the formation of a stable union, as it is only a requirement that may or may not materialize. Dating qualified for the Superior Court of Justice is a relationship of commitment, in which the couple of lovers wants to build a family in the future, because of this it does not generate patrimonial effects.

The second case analyzed is an appeal, judged on June 2, 2021, by the 1st Civil Chamber of the TJ/MS, which addresses the criteria for recognition of stable union, according to the STJ:

> CIVIL APPEAL - ACTION FOR RECOGNITION OF STABLE UNION - PUBLIC AND NOTORIOUS RELATIONSHIP - PERIOD OF COHABITATION - FACTUAL AND EVIDENTIARY COLLECTION - RECOGNITION OF STABLE UNION - COHABITATION - DISPENSABLE REQUIREMENT - APPEAL DISMISSED. The stable union remains configured once the presence of the **subjective requirements (animus to form a family and the couple's affective relationship) and objective requirements (cohabitation spread over time and on a continuous basis)** are proven. The Law **does not require cohabitation as an essential requirement to characterize a stable union**. In reality, living under the same roof may be one of the elements to demonstrate the common relationship, but its absence does not, by itself, rule out the recognition of a stable union.
>
> (TJ-MS - AC: 08011191720148120016 MS 0801119-17.2014.8.12 .0016, Rapporteur: Des. Marcelo Câmara Rasslan, Judgment Date: 06/02/2021, 1st Civil Chamber, Publication Date: 06/11/2021).

The case deals with the recognition of stable union between the parties, where the appellant argues that the absence of cohabitation between the deceased and the appellant makes such recognition unfeasible. The appellant, in turn, maintains that public and notorious coexistence, in addition to the *animus* of forming a family, are sufficient for the configuration of a stable union, regardless of the common home.

According to Normative Instruction No. 126 of August 2011 of the Federal Supreme Court, in its article 2, it states that "the continuous, public and lasting coexistence between heteroaffective and homoaffective couples is considered a family entity for the purposes of this rule, requiring only proof of the requirements set forth in article 3 of the aforementioned Normative Instruction". (BRAZIL, 2011)

Thus, for the stable union to be recognized, it needs evidence that demonstrates the seriousness and stability of the relationship, documents such as declarations and proof of cohabitation are essential to show the intention to form a family, in order to guarantee legal protection for both the people involved and the State.

STABLE UNIONS AND QUALIFIED DATING: DIFFERENT LEGAL EFFECTS

Stable union

The stable union was consolidated as a family entity and since then it has been protected by Family Law, generating not only personal effects, but also legal effects. The legal repercussions provided by the stable union are equivalent to those of marriage, since it has effects in several areas that encompass the patrimonial and economic sphere, as well as the personal sphere of the couple's life, entailing reciprocal rights and duties.

Rights and Duties of Partners

In article 1,724 of the Civil Code, the rights and duties of partners are outlined. This legal provision establishes that both parties must fulfill obligations of loyalty, respect, assistance, custody, sustenance and education of the children. Loyalty and fidelity are essential in the relationship, sustained by the care and dignity of the family. Extramarital relations are prohibited, as the coexistence between partners must be monogamous, guided by principles of loyalty, affection, respect and mutual support (MALUF; MALUF, 2017, p. 388-390).

As far as children are concerned, the rule is unequivocal: both parents have the responsibility to supervise them. Thus, in a stable union, the responsibility for the exercise of family power is shared. In the absence of this union, custody will be joint, and expenses related to the children must be apportioned proportionally.

In this sense, the couple must also provide assistance, both materially, through reciprocal economic aid with the contribution to the burdens of those involved in the union, and morally and spiritually, through support and solidarity among the partners. And according to article 7, IV, of the Maria da Penha Law (Law No. 11,340/2006), failure to comply with a woman's duty to support, during the relationship or after legal separation in

which there is an obligation to provide maintenance, may constitute domestic violence in the form of property violence.

Thus, the rights of the partners exist and are inalienable, such as the right to support, inheritance and division of assets, article 1,694 of the Civil Code, guarantees the reciprocal right to the help of the partners, but requires proof of the need for the request and the partner's capacity. It is non-waivable because, according to article 1,707 of the Civil Code, it can be claimed by any of the partners, and this applies not only to the innocent partner, but also to the spouse guilty of destroying the relationship, the spouse who destroys the relationship and is not able to support himself through work, nor does he have relatives who can help him, receives only what is necessary for life. The right to support ceases when the creditor marries, enters into a common-law union or cohabitation, or when the creditor acts in an undignified manner towards the debtor.

Qualified Dating

For a qualified dating to be recognized, the relationship presents certain criteria typical of stable union, such as notorious, continuous and long-term coexistence, without the intention of forming a family. According to Gagliano and Pamplona Filho (2012), dating goes beyond the sexual aspect, as it implies an emotional commitment between the partners, however, this does not configure dating as a family entity, and even if the separation causes pain, the jurisprudence is clear in stating that there are no legal consequences associated with the end of the relationship.

However, Maria Helena (2012) states that, if after the separation the existence of assets acquired through the joint effort of the parties is proven, or if the end of the relationship has been harmful to one of the parties involved, resulting in material or psychological damage due to an unfair or humiliating breakup, it is feasible to request in court the division of these assets, taking into account the investments made by each one, as de facto partners. And in cases where the assets cannot be shared, financial compensation equivalent to the loss suffered is made, to prevent one of the parties from being at a disadvantage, thus preventing the unjust enrichment of either party.

In this context, Farias and Rosenvald (2019, p. 468) state that boyfriends do not have legal rights, since there is no bond that would generate legal consequences in the family environment, such as alimony, inheritance, division of assets, and housing. Thus, the end of a relationship is a legitimate exercise of rights that any individual can exercise, since there is no obligation to remain in a relationship when the interest is exhausted.

In light of the above, it can be concluded that in qualified dating the same patrimonial effects that result from a stable union are not obtained, as a family entity is not established. In reality, what can be claimed as a consequence of the termination, according to the situations described, are the legal effects in the moral and material spheres, which arise from possible damages, thus allowing their compensation. Thus, the simple end of a qualified relationship does not generate, by itself, any legal effect.

FINAL CONSIDERATIONS

Stable union, one of the objects of this research, was included in our legal system and, as it has several characteristics that bring it closer to marriage, it began to receive constitutional guarantees that protect partners. This institution has, in practice, several interpretations and meanings of its own, but they need to rely on the activity of the magistrate in each case. In this context, decisions of the Superior Court of Justice (STJ) and the Federal Supreme Court (STF) were addressed, analyzing the criteria used to distinguish this family entity, since, with social evolution and also in love relationships, it has become increasingly tenuous to distinguish it, since some relationships have many of the traits of a de facto union (public union, continuous and lasting), as in qualified dating.

Common-law marriage and qualified dating are very close, but differ in whether or not they contain the subjective element of *affectio maritalis* (the intention to form a family). This subjective element essentially differentiates those two institutes and contributes to the resolution of divergences presented to the Judiciary to process each case and distinguish the type of relationship that the people involved have.

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