

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
SAINT VINCENT AND THE GRENADINES

Claim No. SVGHCV2022/0061

IN THE MATTER OF AN APPLICATION UNDER SECTION 8 OF THE STATUS OF CHILDREN ACT,
2011

AND

IN THE MATTER OF THE REGISTRATION OF BIRTHS AND DEATHS CAP. 242 SECTION OF THE
REVISED LAWS OF SAINT VINCENT AND THE GRENADINES, 2009

AND

IN THE MATTER OF A POSTHUMOUS APPLICATION FOR A DECLARATION OF PATERNITY BY
SHERLYN MONICA ROBINSON aka SHELYN MONICA ROBINSON nee GUY FOR THE INSERTION
OF THE NAME OF FREDERICK DA SILVA AS FATHER ON THE BIRTH CERTIFICATE OF
SHERLYN MONICA ROBINSON aka SHELYN MONICA ROBINSON nee GUY.

BETWEEN:

SHERLYN MONICA ROBINSON nee GUY
Aka SHELYN MONICA ROBINSON nee GUY

Claimant

and

[1] MELENA PORTER
[2] THE REGISTRAR OF THE HIGH COURT

BEFORE: Hon. Madame Justice M E Birnie Stephenson

Appearances:

Vynette Frederick of Fredericks Attorneys & Notary Public for the claimant
Ladhail Home Crown Counsel of the Attorney General's Chambers for the second
named defendant

2022: October 20;
November 11;
2023: March 13;

DECISION

- [1] **STEPHENSON J.:** Before the court is an application brought by Sherlyn Monica Robinson aka Shelyn Monica Robinson née Guy by way of fixed date claim pursuant to the Status of Children's Ac't for a posthumous declaratory order that Frederick Da Silva deceased formerly of Hopewell in the state of St. Vincent and the Grenadines is her natural father.
- [2] The applicant also seeks an order that the Registrar of Births and Deaths be authorised to insert the name of Frederick Da Silva in the particulars of the Name and Surname on her birth certificate. Further that the applicant is entitled to benefit in the estate of Frederick Da Silva deceased.
- [3] The claimant has named Melena Porter, the Registrar of the High Court and the Attorney General as the respondents to her application.
- [4] In her fixed date claim form², which contained a certificate of truth the claimant claimed that Frederick DaSilva was her father and that during his lifetime he acknowledged her as his daughter and maintained a father daughter relationship with her. Further, it was pleaded that Frederick DaSilva died on the 11th of March 1981 and a copy of his death certificate was attached to the fixed date claim form filed on behalf of the claimant.
- [5] An affidavit in support was sworn to by the applicant³ wherein she averred as follows:
- a. That her father's name is Frederick DaSilva ("her father").
 - b. That her mother Winith Guy was employed in the home of her father's parents during which her mother had a relationship with her father, and she was conceived and born on the 30th day of August 1950.
 - c. That when she was about 6 years old, she was told who her father was and she was subsequently introduced to her paternal grandparents.
 - d. That her father was an alcoholic and did not seem to be interested in his parental responsibilities and that looking back she feels that this impacted her relationship with her father. Further, that her father's siblings played the role of parent in her life.

¹ Chapter 243 of the Revised Laws of St Vincent & The Grenadines Revised Laws of 2009

² Fixed Date Claim Form with exhibits dated the 21st March 2022 and filed on the 12th May 2022

³ Affidavit in support of Fixed Date Claim sworn to by the claimant on the 1st March 2022 and filed on the 12th May 2022

- e. That her father migrated to the United Kingdom when she was 10 years and likewise, she migrated to the United States of America when she was 18 years old
- f. That over the years she has kept in close contact and developed a close familial relationship with her father's siblings and her paternal grandparents and that she was made to feel and felt that she was part of the DaSilva family.
- g. That during the 1970's and 1980's her father returned to St. Vincent and the Grenadines and was living with his parents at Richland Park and during this period she interacted with him socially.
- h. When her father's health began to fail, she was contacted by her Aunt Molena and before she could arrange to travel to see him, he passed away and further, that she was unable to attend his funeral having recently given birth to a baby daughter.
- i. That her aunt brought the deed to property owned by her father and registered in his name in Richland Park and told her that she should organise to inherit that land as she was her father's child. Further, that she believes she is her father's only living offspring and that she was informed by his siblings that her father had another child, a son whose name was Abdain and who died from poisoning before her father.

[6] A further affidavit in support of the application was sworn to and filed by Molena Porter⁴ the first named respondent, sister of Frederick DaSilva and Aunt of the claimant.

[7] Ms. Molena Porter in her affidavit made the following averments:

- a. That she is the sister of Frederick DaSilva who died on the 11th March 1981 and that the claimant is her niece.
- b. That the claimant has at all material times been recognised as the daughter of Frederick DaSilva and he consistently referred to her as his daughter and that he played an active role in her upbringing.
- c. That from her earliest memories the claimant was known to her as Sheralyn and that she visited the family home in Hopewell where she was always welcomed.
- d. That both of her parents who are the claimant's maternal grandparents who are now of blessed memory acknowledged the claimant to be their grandchild.
- e. That she (the deponent) and her niece (the claimant) have kept in touch after she moved to New York and made a life there.

⁴ Affidavit sworn on the 13th May 2022 and filed on the 17th May 2022

- f. That she does not wish to contest the application being brought by the claimant and she stands in support of her application.

[8] Both the second and third named defendants filed acknowledgments of service of the proceedings on them⁵.

[9] An affidavit in response was filed on behalf of the second and third named respondents and sworn to by Charlene Douglas the Deputy Registrar of the High Court.⁶ Ms. Douglas averred as follows:

- a. That she is a public officer of the Government of St Vincent and the Grenadines and that she is duly authorised to make the affidavit on behalf of the second and third named respondents in accordance with parts 8 and 30 of the Civil Procedure Rules 2000.
- b. That she neither admits nor denies the contents of the claimant's affidavit or the affidavit sworn to by Molena Porter and puts the deponents to strict proof of their averments.
- c. That it is noted that the claimant did not file an application to appoint a representative to represent the estate of Frederick DaSilva deceased as provided for by Part 21.2 of the Civil Procedure Rules 2000 which estate would have to be represented if the court is to make an order with affects and interest held by the estate.
- d. That in the interest of justice she stands as a neutral party in the proceedings and stands ready to assist the court in any way deemed necessary.

[10] An application was subsequently filed by the Attorney General the third named respondent to be removed as a party to the claim pursuant to parts 19.3 and 26.12 of the Civil Procedure Rules 2000.⁷ The grounds as pleaded by the Attorney General is that:

- a. The court has the power to add, substitute or remove a party on or without an application pursuant to part 19.3(1) of CPR 2000.
- b. Part 26.1(2)(w) of CPR 2000 empowers the court to take any other step and give any other directions or order for the purpose of managing the case and furthering the Overriding Objective,

⁵ Acknowledgment of Service filed by second and third named defendants on the 8th June 2022

⁶ Affidavit of Charlene Douglas filed on sworn to on the 21st June 2022 and filed on the 22nd of June 2022

⁷ Application dated the 20th June 2023 and filed on the 24nd June 2022

- c. That the Attorney General has not been joined to these proceedings by virtue of any legal authority, neither has the Attorney General applied to be named as a party herein.
- d. That the second named respondent, the Registrar of Births and Deaths is a proper party on the ground that the said Registrar is empowered to enter the father's name on the record of birth.
- e. That the Attorney General is not a party and has no interest in the matter and that there are no averments against the said respondent.
- f. That the court is clothed with the discretion to grant the orders sought pursuant to parts 19.3 and 26.1(2) of CPR 2000, and the Attorney General prays that the court exercises its discretion in this regard and strike out the Attorney General as a party herein.

[11] The Attorney General's application was supported by an affidavit sworn to by Melicia Gilchrist the vault attendant in the Chambers of the Attorney General⁸. Ms. Gilchrist in her affidavit averred as follows:

- a. That she was duly authorised by the Attorney General to swear to this affidavit and that where otherwise expressly stated or where the course of her information otherwise appears the truth of which she verily believes she deposes to the truth of all matters in the affidavit which are within her own knowledge.
- b. That the claim was filed against the Attorney General on the 12th May 2022 and that she has been advised by counsel and verily believes that the Attorney General has no interest in the claim and was not added by virtue of any legal authority further that no averment has been made by the claimant against the Attorney General.
- c. That she has been advised by counsel and verily believes that pursuant to section 28(3) of the Registration of Births and Death Act (supra) that the Registrar of Births and Deaths is empowered once a declaration is made of paternity in relation to the applicant by the Court to make an entry in the register of the name of the father and such other particulars relating to the father.
- d. That the claimant is seeking to obtain a declaration from the court that Frank DaSilva deceased formerly of Hopewell in the state of St Vincent and The Grenadines who died on the 11th March 1981 is her natural father and that the Registrar of Births and Deaths

⁸ Affidavit sworn to on 23rd June 2022 and filed on the 24th June 2022

be authorised to insert the name of the said Frank DaSilva as father in the particulars of the register of her birth and that she is entitled to benefit from her father's estate.

[12] On 30th June 2022 the matter came up before Byer J and an order was made and leave was granted for the Attorney General to be removed as a party to these proceedings and the matter was adjourned to the 22nd September 2022 for the filing of an application to appoint a representative of the estate of Frederick DaSilva deceased. This order was never perfected nor was there any action taken pursuant to this order.

[13] On 6th October 2022 the matter came up before the court as currently constituted and the parties were ordered to file submissions with authorities for the court to rule.

Issue:

[14] The issue to be decided is whether or not the claimant has established on the balance of probabilities that the relationship of father and daughter existed between herself and the deceased?

Proof:

[15] Based on the authorities cited and discussed later in this ruling the standard of proof is on the claimant and it is a heavy one with the necessity for the claimant to adduce cogent evidence in support of her application. It is noted that in the case at bar there is no opposition to the application in fact the first named respondent the sister of the deceased has sworn to an affidavit supporting the application of the claimant whom she considers to be her niece and her deceased brother's child.

Claimant's case

[16] Counsel Vynette Frederick on behalf of the claimant cited and relied on The Status of Children Act⁹ and The Status of Children Act ¹⁰ and also on the following cases:

- a. **Myron Kevon Cruickshank -v- Danielle Hall et al¹¹ ("Cruickshank")**
- b. **David Sampson -v- David McKenzie¹²**
- c. **Wendy Hilda Carter nee Marsden and Michelle Amanda Mcree (The Cato Case)¹³**

⁹ Act N0: 21 of 2011

¹⁰ Chapter 180, Revised laws of St Vincent and the Grenadines

¹¹ SVGHCV2020/0063

¹² Civil Appeal 6/2005 (SVG)

¹³ Suit 43 of 2000 (SVG)

d. **Hulda Stanley -v- Lanval E Phillips**¹⁴

[17] Counsel Frederick on behalf of the claimant submitted that in **Cruickshank**¹⁵ Buyer J opined that the court was being asked to determine whether there was a relationship of father and daughter in that case. That it was held that the court has to determine on a balance of probabilities whether the evidence adduced is cogent enough to satisfy the court of the existence of that relationship. The court asked the question whether sufficient evidence was adduced to satisfy the court on a balance of probabilities that the person who is alleged to be the father of the child by his conduct implicitly and consistently acknowledged that he is the father of the child.

[18] Counsel submitted that the Learned Judge went on to explore the question as to how this could be achieved, that the judge said that “the outcome of the application is intrinsically linked to the nature and quality of the evidence adduced in support of and in opposition thereto”

[19] Counsel Frederick on behalf of the claimant urged the court to give the same weight to the averments of the first named defendant Molena Peter in the case at bar as was accorded to the widow of deceased in the **Cato Case**¹⁶ in that her averment is that her brother and the entire family accepted the claimant to be the child of the deceased and member of the family. Further, that the claimant enjoyed a great familial relationship with the entire family.

[20] Counsel Frederick drew to the court’s attention the evidence of Ms Peter must also be viewed against the fact that she would be the person entitled to her brother’s property at his death on intestacy in the event that the claimant’s application is not granted.

[21] Counsel Frederick also encouraged the court to consider the entire circumstances of the times that the claimant would have been born and the era of her growing up in the 1950’s where she was accepted by the family and welcomed by her paternal grandparents and also in view of the fact that her mother was the helper in the home. Counsel submitted that this must be given its full corroborative and evidentiary weight given the time that it happened. Counsel made this submission against the background of the dicta Saunders JA in the case of **David McKenzie -**

¹⁴ AXAHCv2009/0054

¹⁵ Op cit

¹⁶ Wendy Hilda Carter nee Marsden and Michelle Amanda Mcree (The Cato Case) op cit

v- David Sampson¹⁷ when he spoke of the social question of literacy and the oral traditions among families historically.

[22] Regarding the question of the intestate estate counsel made reference to the fact that the putative father died in 1981 possessed of lands which has never been claimed or administered by any of surviving siblings or any other third-party claiming interest. Counsel said that in her urging the court to consider that this does not dispute the evidence of the claimant and that she is believed by all to be entitled to the land and that this is well known and accepted by the family of the deceased coupled with the fact that there is no opposition to her claim.¹⁸

[23] Counsel also quite correctly in this court's view submitted that the claimant's application is subject to possible orders from the court for DNA testing to establish the biological familial connection and publication of the claim in the newspapers to ascertain that there are no objections in fact to the application and the claimant's claim in an effort to allow the court to make a cautious consideration and to weigh all the evidence adduced on behalf of the claimant.

Submissions on behalf of the Registrar of the High Court (Registrar of Births and Deaths)

[24] In the submissions made by Crown Counsel Lahdail

Home it was submitted that the court had the jurisdiction to make the application being sought¹⁹.

[25] However, it was submitted that the estate of the deceased has an interest in the proceedings at bar and that in the interest of justice the estate of the deceased ought to be represented in the proceedings if the court is to make an order that would affect any interest that may be held in the estate of the deceased.²⁰

¹⁷ Op Cit

¹⁸ See paragraph 7 of the submissions filed by the claimant on the 20th October 2022

¹⁹ Re: Status of Children's Act No 21 of 2011 section 8(1) (b) "*A person who alleges that a relationship of father and child exists between him and another person may apply to the Court for a declaration of parentage and the Court may, if it is satisfied that the relationship exists, make such declaration whether or not the mother, father or child is or all of them are, living or dead.*"

²⁰ Re: Eastern Caribbean Supreme Court Civil Procedure Rules 2000 '(CPR)' 21.7 which empowers the court to appoint someone to represent a deceased person's estate if it appears that the deceased person has an interest in the proceedings

[26] Counsel also submitted that the onus is on the claimant to prove on the balance of probabilities that the deceased is her natural father and that the court must not only be satisfied on the balance of probabilities but that the court must have clear evidence and exercise great caution that determination. Re: **Dain Dexton et al -v- Registrar of the High Court of et al**²¹

[27] Reference was made to the following cases in support of the second named respondent's submissions:

- a. **In the matter of the Posthumous Application for a Declaration of Paternity by Kenisha Noel**²²
- b. **Olive Clarke -v- Alicia Gellizeau**²³
- c. Section 5 (1)(j) of the Status of Children Act²⁴
- d. **David Sampson -v- David Adolphus McKenzie**²⁵

BY THE COURT

[28] Does the claimant statement of case and affidavits filed meet the requirements of proof of paternity under section 8 of the Status of Children Act 2011?

[29] It is to be noted that the purpose of pursuing the declaration is to allow the claimant to realise her entitlement to inherit her putative father's estate.

[30] What is provided in law regarding such claims as the one as the case at bar? Section 8(1)²⁶ of the Status of Children Act 2011 gives a person as in this case the applicant the authority to make the application for a declaration of paternity.

[31] In the case at bar based on the perusal of section 8(1) of the Status of Children Act, it is necessary for the court to consider the evidence presented to the court in order to ascertain

²¹ SVGHCV2020/0067

²² SVGHCV2918/0195

²³ Civil Appeal No 13 od 12003 (SVG)

²⁴ Act number 21 of 2011 section 5(1)(j) which provides Unless there is proof of the contrary, on the balance of probabilities, there is a presumption that a person is, and shall be recognised in law to be, the natural father of the child has by his conduct implicitly and consistently acknowledged that he is the father of the child."

²⁵ Op cit

²⁶ Section 8(1) states as follows: "(1) A person who:(a) alleges that any named person is a parent of a child.(b) alleges that the relationship of father and child exists between him and another named person(c) alleges that the relationship of mother and child exists between her and another named person or(d) having a proper interest in the result, wishes to have determined the question whether the relationship of parent and child exists between two named persons. may apply to the Court for a declaration of parentage and the Court may, if it is satisfied that the relationship exists, make such declaration whether or not the mother, father or child is, or all of them are, living or dead." (Emphasis mine)

whether the presumption as stated in section 5²⁷ of the Status of Children Act to see if the applicant is captured by the provisions, more particularly whether the claimant in the case at bar can rely on the evidence adduced thus far to satisfy the presumption that she is the daughter of Frank DaSilva.

[32] There is no doubt in this court's mind that based on the evidence adduced by the applicant herself and her paternal that the claimant has shown that the claimant she was acknowledged by the deceased as his daughter this court hastens to note that this evidence as adduced has not been tested in anyway as the respondents have not resisted the application more than an application being brought by the Attorney General to be removed as a party to the matter.

[33] Justice Buyer in her consideration of the application in the case of **Myron Cruickshank Case**²⁸ made reference to the decision in **re: J.S. (A Minor)** ²⁹ where the court's discretion to make a declaration of paternity was considered.

[34] The learned judge in her contemplating her decision in the application before the court in **Cruickshank** considered the meaning of and what can amount to the court being satisfied on the balance of probabilities and quoted the dicta of Ormrod J who delivered the appellate judgment in **Re J.S. (A Minor)** and approved the test used by the first instance judge in the **J.S. (A Minor)**. The Learned Judge said

'The concept of "probability" in the legal sense is certainly different from the mathematical concept; indeed, it is rare to find a situation in which these two usages co-exist although, when they do, the mathematical probability has to be taken into the assessment of probability in the legal sense and given its appropriate weight. Nor is the word "balance" much clearer. Cases like *Hornal v. Neuberger Products Ltd.* [1957] 1 Q.B. 247 and *Bater v. Bater* [1951] P. 35, both of which were referred to by Heilbron J., make it clear that, in deciding the balance of probability, the court must take into account the gravity of the decision and determine "the degree of probability which is proportionate to the subject matter." Perhaps we should recognise that our time-honoured phrase is not a happy one to express a concept which, though we all understand it, is very elusive when it comes to definition. In the criminal law the burden of proof is usually expressed in the formula "the prosecution must satisfy you so that you are sure that the accused is guilty." The civil burden might be formulated on

²⁷ Section 5 states "5. (1) Unless there is proof to the contrary, on a balance of probabilities, there is a presumption that a person is, and shall be recognised in law to be, the natural father of a child in any one of the following circumstances:(a)... or(j)the person who is alleged to be the father of the child has by his conduct implicitly and consistently acknowledged that he is the father of the child."(emphasis added)

²⁸ Myron Kevon Cruickshank -v- Danielle Hall et al SVG2020/0063

²⁹ [1980] 1 ALL E R 1061

analogous lines, "the plaintiff (or the party on whom the burden rests) must satisfy the court that it is reasonably safe in all the circumstances of the case to act on the evidence before the court, bearing in mind the consequences which will follow."³⁰

[35] Buyer J concluded and stated that the standard of proof is seen as a "heavy one" requiring "very cogent proof".³¹ Like the case of **Cruickshank**³² the claimant in the case at bar is not only seeking a declaration of paternity but also a declaration that she is entitled to benefit from her putative father's intestate estate. This court can do nothing else in the circumstances of this case to endorse and follow the reasoning findings of law by Buyer J in the **Cruickshank Case** particularly when she said that

"There is therefore no doubt that the court must be satisfied on the balance of probabilities, but this court must be cognizant that in considering the factual matrix, the court is not being asked to simply declare that he deceased is the father of the claimant but go further to determine that the claimant is entitled to share in the estate of the deceased. There is therefore undisputed that the court must have clear evidence and exercise great caution in that determination³³"

[36] Buyer J said that

"In order to therefore establish this relationship the claimant must therefore prove that there was a connection between him and the deceased that went beyond acceptance and sporadic interaction. There must be some act or rather acts on the part of the deceased that shows that the claimant is his child and they had a relationship.³⁴"

[37] It is this court's considered and respectful view that the claimant was more than likely acknowledged by her deceased father's family as his daughter. However, due the heavy nature of the standard of proof imposed on the claimant all be it on the balance of probabilities and in view of the fact that this application impacts the question of inheritance of the deceased father's intestate estate and that the father died leaving behind siblings one of whom has clearly supported the claimant's application it is this court's order that *ex abundtae cautula* that:

- a. The claimant and the first named defendant submit themselves to DNA testing to ensure that there is the biological relationship between the parties;

³⁰ **J.S. (A Minor) op cit at page 29**

³¹ Re: Re **Myron Kevon Cruickshank -v- Danielle Hall et al** op cit at paragraph 14 having referred to and relied on **W-v-K (Proof of paternity)** [1988] FLR 86 and **David Sampson -v- David McKenzie** Civ App 6/2005 (SVG) at paragraph 12 per Ralwins JA

³² Op cit

³³ Ibid at para 15 The learned Judge cited (**Sharrell Phillips -v- Patricia Hall** [2017] CA (Bds) 7 Civ at para 3 per Bell JA & **Hulda Stanley -v- Lanvel E Phillips** AXAHC0054/2009 at para 64 per Blenman J

³⁴ Ibid at paragraph 22

- b. That the application for the deceased name to be inserted into the birth certificate of the claimant be advertised in two consecutive issues of a newspaper widely circulated in the State of St Vincent & The Grenadines inviting any possible objection to be made within 14 days of the final advertisement. Which opposition is to be made to the Registrar of the High Court and/or to Counsel on record for the claimant.
- c. That an affidavit of service of said advertisement be filed within 21 days of the final advertisement which affidavit shall mention whether or not an opposition has been made to the application as advertised.
- d. This matter is adjourned to the 15th June 2023 for further consideration of final order on the application before the court.
- e. The claimant has conduct of the order.

[38] This court wishes to express its thanks to counsel for their very helpful submissions made in this matter.

M E Birnie Stephenson

High Court Judge

BY THE COURT

REGISTRAR