

EASTERN CARIBBEAN SUPREME COURT
SAINT CHRISTOPHER AND NEVIS
NEVIS CIRCUIT

IN THE HIGH COURT OF JUSTICE
(CIVIL)

SKBHCV2019/0183

BETWEEN

Ashton Amory

Claimant

-AND-

Ernest Amory
(Administrator in the Estate of Edward Ashton Amory)

Defendant

Before: His Lordship Justice Ermin Moise

Appearances:

Mr. John Cato of counsel for the claimant
Mr. Brian Barnes of counsel for the defendant

2021: July, 23rd
December, 20th

JUDGMENT

- [1] **Moise, J:** This is an application for a declaration of paternity pursuant to the **Status of Children Act**¹. The claimant, Mr. Ashton Amory, filed this application on 10th July, 2019 seeking two orders from the court. The first was an order declaring that the relationship of father and child existed between Edward Ashton Amory and the claimant and secondly that paternity was admitted by, or established during Mr. Edward Amory's lifetime. Having reviewed the application and the evidence heard during the course of the trial, I have concluded that the application should be dismissed with costs to the defendant. These are my reasons for doing so.

¹ CAP 12.14 of the laws of Saint Christopher and Nevis.

The Status of Children Act

[2] Before examining the facts of this case, it is important to briefly outline the legal requirements which must be fulfilled before a declaration of paternity can be made.

[3] Section 2 of the Act states that ***“a person is the child of his or her natural parents and his or her status as their child is independent of whether the child is born out of wedlock.”***

However, this section is said to be subject to the provisions of sections 4, 5 and 14 of the Act, in that whilst there is an equality of status of children born in or out of wedlock, proof of paternity is still required in order for a child to be legally recognized as that of a man, if that child was born outside of marriage. Section 5 states as follows:

5. Recognition of paternity required.

(1) The relationship of father and child, and any other relationship traced in any degree through that relationship shall, for any purpose related to succession to property or to the construction of a will or other testamentary disposition or of an instrument creating a trust, be recognized only if

(a) the father and the mother of the child were married to each other at the time of its conception or at some subsequent time; or

(b) paternity has been admitted by or established during the lifetime of the father (whether by one or more of the types of evidence specified by section 6 or otherwise):

Provided that, if such purpose is for the benefit of the father, there shall be the additional requirement that paternity has been so admitted or established during the lifetime of the child or prior to its birth.

(2) In any case where by reason of subsection (1) the relationship of father and child is not recognized for certain purposes at the time the child is born, the occurrence of any act, event or conduct which enables that relationship, and any other relationship

traced in any degree through it, to be recognized shall not affect any estate, right or interest in any real or personal property to which any person has become absolutely entitled, whether beneficially or otherwise, before the act, event, or conduct occurred.

- [4] In accordance with this section, in order for a person to be recognized as a child of a man, he must either have been born into a marriage, of which the man is a party or the paternity must have been admitted or established during the lifetime of the father. In the circumstances of this case, Mr. Edward Amory was not married to the claimant's mother. Therefore, in order for him to succeed in his case, he would have to show that Mr. Amory had recognized him as a child during his lifetime. Insofar as that is the case the court may also consider the provisions of section 6 of the Act, which speaks to evidence and proof of paternity. However, it is unnecessary to repeat the content of that section in full as none of the provisions therein have been satisfied by the evidence presented in this case. Mr. Amory's name does not appear on the claimant's birth record and there are no other documents or deeds presented in evidence to show that there was any documentary acknowledgement or order declaring paternity. I therefore turn to section 11 of the Act which states as follows:

Declaration of paternity

(1) Any person who

- (a) being a woman, alleges that any named person is the father of her child;***
- (b) alleges that the relationship of father and child exists between himself or herself and any other person; or***
- (c) being a person having a proper interest in the result, wishes to have it determined whether the relationship of father and child exists between two named persons;***

may apply to the High Court in the prescribed manner for a declaration of paternity, and if it is proved to the satisfaction of the Court that the relationship exists the Court may make a declaration of paternity whether or not the father or the child or both of them are living or dead.

- (2) *An application for a declaration under this section may be made to the Magistrate's Court and if the Magistrate is satisfied there are no issues which are in dispute, the Magistrate may make a declaration and such a declaration shall be in effect the same as if it had been made by the High Court.*
- (3) *Where a declaration of paternity under subsection (1) or (2) is made after the death of the father or of the child, the Court may at the same or any subsequent time make a declaration determining, for the purposes of paragraph (b) of subsection (1) of section 5, whether any of the requirements of that paragraph have been satisfied.*

[5] As it relates to the court's powers under the Act, the case law has recognized a distinction between a declaration made for the purpose of maintenance and one made for the purpose of succession. Indeed in section 6 as referred to above, the requirement speaks to an acknowledgement of paternity during the lifetime of the deceased. As was noted by Mitchel J in the case of **Wendy Hilda Carter v. Michelle McCree**² *"the legislature has provided that the court must look for a higher level of evidence that is acceptable in the Magistrate's Court in affiliation proceedings. Mere corroboration is not sufficient in applications under the act."* In the case of **David Sampson v. David Mc. Kenzie**³ Rawlins JA stated that *"a declaration of paternity for the purpose of succession to property must not only be cogent and credible, it must also be of the quality that would satisfy the requirement under section 7(1)(b) of the Act."* Rawlins JA went on to point out that the issue was not merely a question of fact, but of sufficiency of the evidence in enabling the court to exercise the discretion provided by the legislation. He went on to state that:

what section 7(1)(b) of the Act requires is some evidence that is other than the types of evidence specified in section 8 of the Act, though not less convincing, which shows that the deceased admitted paternity of Mr. McKenzie, or that paternity was established, during the lifetime of the deceased. Unfortunately, it is a particularly onerous requirement given the oral tradition that there is in the Caribbean. So that although there are members of the family who are of the view that the relationship between the

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³ SVGCVAP2005/0006

deceased and Mr. McKenzie was similar to the relationship of a father and son, this was not sufficient for the purposes of section 7(1)(b) of the Act.

[6] These authorities appear to draw a distinction between a declaration of paternity simpliciter and one made in the context of succession. On the one hand, in maintenance cases, the putative father may be alive to answer any questions in relation to paternity. The legislation makes provision for even blood samples to be taken from him in that regard. On the other hand, in succession cases the alleged father is deceased and unable to personally verify or deny any of the evidence outlined by the applicant. What is at stake here is the distribution of property belonging to his estate. As was acknowledged by the English Court of Appeal in the case of *R JS (a minor)*⁴ the claimant must satisfy the court ***“that it is reasonably safe in all the circumstances to act on the evidence before the court, bearing in mind the consequences which follow.”***

[7] The question to be asked here is what evidence has been presented to the court in this case to ensure that it is reasonably safe to grant the declarations sought by the claimant? I turn now to outline the facts as the claimant has presented them.

The Claimant's Evidence

[8] The first observation to be made about the claimant's evidence is that it is not corroborated by anyone. During the case management phase of this case, Mr. Cato, who acts for the claimant, was rather persistent in pointing out that there were a number of people willing to testify on the claimant's behalf. One such person was an uncle and relative of Mr. Edward Amory who resided in St. Croix. However, despite numerous adjournments for the express purpose of Mr. Cato filing these affidavits, he failed to do so. Mr. Cato was insistent in seeking to move the court to invoking the Hague Convention insofar as it relates to his uncle in St. Croix and the giving of evidence at an embassy. However, the court pointed out to him that this was not necessary. The court is sitting via zoom and the witness is more than capable of giving viva voce evidence, provided that adequate arrangements are made beforehand. What that would require however, is that some affidavit, or even a witness summary should be filed and served on the other side beforehand. This was never done and in the end, the claimant was the sole witness called on his own behalf.

⁴ [1981] Fam. 22

[9] The claimant states that he is the biological son of Edward Amory. He states that he was born on 27th December, 1951 to a woman named Mary James. As a baby, he was taken from his mother and placed in the care of Inez O'Farrell, who is the mother of Edward Amory. From there he was raised and sent to school. He states that he lived with Ms. O'Farrel and Christopher O'Farrel, who was the brother of Edward Amory. Mr. O'Farrel now lives in St. Croix and it was his intention to summon him to give evidence in this case. This however did not materialize. The claimant states that Edward Amory carried out an affair with his mother for many years and would visit his grandmother's home where he provided financially and materially for all of them.

[10] On 17th March, 1992, Edward Amory died. In that same year he was buried at the Springfield cemetery. The claimant states that sometime after the burial he attended a meeting with Mr. Ernest Amory and other members of the family. At that meeting, according to the claimant, a last will and testament was read out by an attorney at law. After this meeting Mr. Ernest Amory informed him that he would be contacted regarding any interest he had in his father's estate. However, he was never contacted and he was always unable to communicate with Ernest Amory or his brother Reginald regarding his interest in the estate.

[11] The claimant states that he recently visited the court house and was surprised that there was considerable legal activity surrounding his father's estate and that the last will and testament could not be located. He states that he observed a copy of the application for the grant of letters of administration and noted that false declarations were made therein as the total number of children of Edward Amory was not mentioned.

[12] In response to the application, Mr. Ernest Amory states that the claimant is only seeking to extract money from his father's estate. He states that in fact, the claimant's name is Austin Emmanuel James and that he had never carried the name Ashton Amory until he legally changed his name via deed poll on 6th April, 1992. That was less than a month after Edward Amory died. The deed poll was exhibited during the proceedings, as well as the claimant's birth record, which corroborates what Mr. Ernest Amory had to say.

[13] Mr. Ernest Amory states that his father never recognized the claimant as a child of his during his lifetime. He states that he was granted letters of administration in his father's estate with a will

annexed and as such, it was his father who decided who he wanted to benefit from his estate. There were 4 children from his father's marriage and 2 "outside" children which he acknowledged. He in fact made two wills and never mentioned the claimant's name in any of them. It is important to point out that although Mr. Edward Amory had made a will, some of his property had in fact fallen into intestacy. It is on this basis the claimant seeks to claim an interest in the estate, despite his name not being mentioned in the will.

[14] Mr. Ernest Amory denies the claimant's allegations that his father maintained him during his lifetime and that he was placed in the care of his grandmother. As it relates to Mr. O'Farrel, Mr. Amory acknowledged that he was his uncle but states that his father did not have a good relationship with him; although it appears that some provision was made for him in the will. He states that he would have wished to cross examine Mr. O'Farrel on any evidence substantiating the claimant's assertions. However, Mr. O'Farrel did not appear to give evidence in this case.

[15] In cross examination Mr. Amory accepted that the claimant was a Paul Bearer in father's funeral but denied that this was proof that he was his father's child. He stated that he did not know the claimant to be living with his grandmother when he was a child. He recounted that he had applied for the grant of letters of administration and simply followed the procedure. However, it was not until 27 years after his father's death did the claimant seek to file this application for a declaration of paternity.

[16] I note also that during the management phase of this case, the claimant made an application for an order that the defendant give a sample of his DNA to assist in determining whether they were in fact brothers. The defendant did not consent to this and the court, by order of Ventose J, denied the application. The court is unaware of any law which empowers it to demand that a person gives up their DNA in cases such as these. Although the Act, in section 8, makes provision for an order for blood samples to be taken, that appears to be related directly to the alleged father and even in that case, the court cannot compel that this be done without the person's consent. If consent is not granted the court may draw whatever inferences it can from the refusal to provide consent. However, as it relates to DNA from the children of the marriage after the father has died, I can find nothing in the law which empowers the court to demand this from them.

Conclusion

[17] In applying the facts of this case to the law I referred to earlier, I am not of the view that the claimant has met the threshold for a declaration of paternity to be granted. It is not reasonably safe in all the circumstances for the court to act on this evidence. It is uncorroborated evidence with very little to no facts showing that Mr. Edward Amory had in fact acknowledged the claimant as his son during his lifetime. When one examines the consequences of such a declaration balanced against the evidence, it becomes even more apparent that such a declaration ought not to be made. This is an application being made some 27 years after Mr. Edward Amory's death. The estate is now partially administered according to the provisions of his will as well as the laws of intestacy. It was only after his death did the claimant seek to formally change his name to that which he now carries. I am just not satisfied that he is entitled to the order which he seeks. The application is therefore denied with costs to the defendant to be prescribed in accordance with the CPR. Given that there is no value placed on the claim, the court would therefore declare the value to be \$50,000.00 as is prescribed by the CPR and award costs in the sum of \$7,500.00.

**Ermin Moise
High Court Judge**

By the Court

Registrar