

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

SVGHCV2020/0067

IN THE MATTER OF AN APPLICATION UNDER SECTION 8 OF THE STATUS OF CHILDREN ACT
NO. 21 OF 2011

AND

IN THE MATTER OF THE REGISTRATION OF BIRTHS AND DEATHS ACT CAP 242 OF THE REVISED
EDITION OF THE LAWS OF SAINT VINCENT AND THE GRENADINES 2009

AND

IN THE MATTER OF A POSTHUMOUS APPLICATION FOR A DECLARATION OF PATERNITY BY
DAINE DEXTON DAMIAN WALTERS TO HAVE THE NAME DANIEL HALL INSERTED ON HIS BIRTH
CERTIFICATE

BETWEEN

DAINE DEXTON DAMIAN WALTERS

CLAIMANT

AND

REGISTRAR OF HIGH COURT OFFICE

1ST DEFENDANT

AND

DANIELLE HALL
(Court Appointed Personal Representative
of the Estate of Daniel Hall, deceased, by
Order of Court dated 16 July 2020)

2ND DEFENDANT

Appearances:

Mr. Ronald Marks and Mrs. Patricia Marks-Minors for the Claimant

Ms. Maffica Lewis for the First Defendant

Mr. Sten Sergeant for the Second Defendant

Ms. Charlene Douglas, Deputy Registrar, representative for the First Defendant

Claimant present

Second Defendant present

2021: 26th January

27th January

2021: 18th March

JUDGMENT

Byer, J.:

- [1] Within our Caribbean culture, the creations of families are hardly recognizable within the confines of the definition that sociologists in the more developed world may utilize. However, children are born to unmarried parents and as a result a family is established. Where those family relationships end on death, children of those unions remain at a dire disadvantage to reap the benefits of the hard work of the patriarch of a family, who for whatever reason, never saw the utility or need to place his name on the birth certificate of a child born into that family. It was in those circumstances that the legislature recognized the need to protect those children as any other child and passed into law the Status of Children's Act 2011 (hereinafter referred to as "the Act") to ensure the abolishment of the common law rule of construction against children born out of wedlock for succession purposes¹.
- [2] So is it, with this applicant in the case at bar.

Background

- [3] This is an application brought under the Act by Fixed Date Claim Form² for an order declaring that Daniel Ezekiel Hall, deceased (hereinafter referred to as "the deceased") was the natural father of the claimant. The application was supported on filing by evidence on affidavit by the claimant, family friends Austin Edwards and Alston Williams, Corporal of Police Rolston Haddaway, one of the deceased's female companions Maureen Robinson, and a brother of the deceased Joel Hall.
- [4] The Registrar in her capacity as the Registrar of Births and Deaths (hereinafter referred to as "the Registrar") is named as the first defendant in the event that the Court directed that the name "Daniel Ezekiel Hall" be inserted on the claimant's birth certificate.
- [5] The second defendant is the natural child of the deceased. The claimant prayed for an order that she be appointed Representative of the deceased. The second defendant in her acknowledgement of service admitted the claim, but only generally. At the first case management conference on 16th July 2020, the second defendant willingly consented to be court appointed representative. In response to the application the second defendant filed an affidavit and filed affidavits by her aunt Doris Hall, her Uncles Gregory and Kymon Hall, her mother Paulina Lewis, a former teacher Laura Richards and another female companion of the deceased Velma Maloney.
- [6] However Kymon Hall, Laura Richards and Paulina Lewis did not attend at the trial of the matter, thus their evidence remains untested by cross examination. This court therefore did not consider their evidence in its determination.

¹ Excerpt from Hansard dated 5th April 2011 from speech of the Hon Frederick Stephenson

² Amended Fixed date claim form filed 7/8/2020

- [7] Upon consideration of the evidence at trial and the legal submissions presented, it became clear to the court that the sole issue for determination must be whether the claimant has established that the relationship of father and child existed between himself and the deceased taking into consideration the parameters of the Act.

Court's Analysis and Considerations

- [8] In looking at this matter it was clear to the court that the starting point had to be an assessment of the provisions of the Act upon which the claimant sought to rely in support of this application.

- [9] Section 8(1) of the Act 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.” (*My emphasis added*)

- [10] In considering whether such a relationship exists, the court is mandated to consider the evidence that is relied upon by the applicant and to consider whether any of the presumptions that the Act provides for, exist. Those presumptions are contained in section 5 of the Act. Section 5 states as follows:

“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) the person was married to the mother of the child at the birth of the child;

(b) the person was married to the mother of the child and that marriage was terminated by:

a. death;

b. judgment of nullity; or

c. divorce where the *decree nisi* was granted, within ten months before the birth of the child;

- (c) the person marries the mother of the child after the birth of the child and acknowledges by word or conduct that he is the natural father of the child;
- (d) the person was a cohabitant with the mother of the child at the time of the birth of the child, or the child was born within ten months after they ceased to be cohabitants;
- (e) the person has been adjudged or recognised in his lifetime or after his death by a court of competent jurisdiction to be the father of the child;
- (f) the person has signed an instrument with the mother of the child acknowledging that he is the father and that instrument was executed as a deed or by each of them in the presence of an attorney-at-law or a Justice of the Peace or a registered medical practitioner or a minister of religion or a marriage officer or a midwife, but such an instrument shall be of no effect unless it has been recorded in the Registry;
- (g) the mother of the child or the person acknowledging that he is the natural father of the child, or both have signed and executed an instrument to this effect in the presence of an attorney-at-law, but that instrument shall be of no effect unless it is notarized and recorded in the Registry during the lifetime of the person acknowledging himself to be the father;
- (h) the person has acknowledged in the process of the registration of the child, in accordance with the law relating to the registration of births, that he is the father of the child;
- (i) the person who is alleged to be the father of the child has given written consent to that child adopting his name in accordance with the law relating to change of name; 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.** (My emphasis added)

[11] In perusing the same, it is clear to the court that the only presumption that the claimant may rely on in the present circumstances would be section 5 (1) (j). The claimant's case was clearly that the deceased having consistently and implicitly acknowledged him as his son, he is entitled to the declaration of paternity, the relationship of father and son having been established.

[12] The question however must be, how does the claimant establish this relationship? How does he prove this to the court?

- [13] In answer to these two questions, it is clear, that the courts have considered that even though the court has to be satisfied, on a balance of probabilities³ the definition of what that actually means has been minutely considered. In the case of **Re “J.S” (a minor)**⁴ the oft quoted definition of what this means in the context of family matters is as follows:

“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 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 Queen’s Bench 247 and Bater v. Bater (1951) Probate 35, both of which were referred to by Mrs. Justice Heilbron, 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 recognize 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 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”.

- [14] Therefore the standard of proof is seen as a “heavy one”⁵ with the proof that is required being “very cogent”⁶.
- [15] There is therefore no doubt that the court must be satisfied on a balance of probabilities, but this court must be cognizant that in considering the factual matrix, that as this court is not being asked to simply declare that the deceased is the father of the claimant but going further to allow the claimant to share in the estate of the deceased, the court must have clear evidence⁷ and exercise great caution in that determination⁸.
- [16] It is therefore clear 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.”⁹

³ Also recognized in the Legislation itself at Section 5 (1)

⁴ [1981] Fam 22

⁵ **W v K (Proof of Paternity)** [1988] 1 FLR 86

⁶ **David Sampson v David McKenzie** Civ App 6/2005 (SVG) at para 12 per Rawlins JA

⁷ **Sharell Phillips v Patricia Hill** [2017] CA (Bda) 7 Civ at para 3 per Bell JA

⁸ **Hulda Stanley v Lanval E Phillips** AXAHCV0054/2009 at para 64 per Blenman J (as she then was)

⁹ **Re Etty Clarke nee Phillips** BB 2014 HC 21 at para 122 per Kentish J

The Evidence

[17] The evidence of the witnesses on both sides of the divide therefore must be carefully considered and assessed. Having seen and heard all the witnesses this court accepts the following on a balance of probability:

- i) That the deceased at the time of the birth of the claimant was very young, 18 years of age.
- ii) That the claimant lived with the parents of the deceased which continued even after the death of the mother of the deceased in 1987. A fact which this court accepts belies the contention of the witnesses of the second respondent that it was only on the insistence on the part of the mother of the deceased that the claimant came to live in the ancestral home of the deceased.
- iii) That the claimant after the death of the deceased's mother lived with the father of the deceased and his aunt Mobeth the sister of the deceased.
- iv) That the deceased at the time of the birth of the claimant was already living in Kingstown and visited his home periodically but that he always acknowledged that the claimant was his son and provided for him.
- v) That the deceased took the claimant to live with him when he moved to live at Campden Park at which time the deceased had commenced a relationship with the mother of the second defendant. That the mother of the second defendant started living in the house with the deceased and the claimant and as the lone female in the house, this court accepts that she would have contributed to the upkeep of the home and thus the claimant. This court does not accept that it was Ms Lewis who provided for the claimant during the period of the relationship with the deceased but rather that she did her part as a resident in the house.
- vi) That the deceased, Ms Lewis and the claimant lived as a family unit for a period of time in which the deceased had a relationship with the claimant as his son and provided all that he needed financially if not emotionally until he left that home when he was in or about Form 3 at Secondary school.
- vii) That the claimant had extensive interaction with the family of the deceased during his childhood. It was clear from the evidence of the claimant and those persons who knew the family in the village of Chateaubelair that the claimant was an integral part of the family of the deceased for many years. This court having seen and heard the evidence of the witness Doris Hall was struck by her glaring animosity and dislike towards the claimant and this court was left with the clear impression that her evidence was tailored to colour the court's view of the relationship. This court therefore disregards that evidence and the attempt to diminish the relationship that the claimant had with her family. This court accepts that the claimant was raised in the ancestral home of the deceased and was treated as a child of the deceased by the entire family who all bore responsibility for his needs while the deceased established himself in the Police Force.

viii) That the deceased involved the claimant in his life and even made time in the lives of the claimant's twin daughters. The deceased's brother John Gregory himself made mention of the fact that the deceased would provide financially for the children of the claimant and take them for drives and this court accepts that was as he recognized them as his grandchildren and not simply because he was "that type of person."¹⁰

ix) This court also accepts that no one person in the life of the deceased knew everything there was to know about the deceased. This court accepts that the deceased had different friendships and familial relationships as would any person and the fact that one witness may not have known what another witness knew, in this court's mind did not amount to that evidence or witness being discredited. Thus, this court accepts that the evidence from the women in his life Maureen Robinson and Velma Maloney was just such an instance. In this court's mind the deceased shared what he wanted with whom he wanted which is substantiated by the evidence of Ms Robinson who told this court and was not challenged on cross examination that the deceased made no introductions to the claimant but acknowledged him to her and discussed his relationship with the claimant with her. Ms Maloney on the other hand did not even know about Ms Robinson from the deceased, she had to do her own investigations. In this court's mind Ms Maloney sought to paint a picture of closeness with the deceased that did not exist and again this court finds that her evidence was of little assistance.

x) It was clear in this court's mind that the evidence elicited at trial showed clearly that the deceased certainly for a substantive period of the life of the claimant had a relationship with him. There is no evidence to explain why this was not the situation closer to the death of the deceased and this court is of course not permitted to speculate. However, what is clear is that the relationship between the deceased and the claimant became distant but in this court's mind there was no evidence to suggest that this distance was anything more than a flow in the ebb and flow of human and parental relationships.

[19] The question therefore now must be that if this court accepts that there was a relationship was this implicitly and consistently manifested by the conduct of the deceased?

[20] In that regard counsel for the second defendant submitted that the nature of the evidence that was placed before the court cannot amount to the evidentiary burden that is required under the Act to amount to implicit and consistent conduct on the part of the deceased. Indeed, counsel for the second defendant provided the court with a comprehensive analysis as to the kind of evidence required and concluded, that although the Act made significant changes to the previous piece of legislation that provided the legal framework for the recognition of a child as child¹¹ that the evidence under the Act which was acceptable to establish any implicit and consistent conduct could only be "documentary evidence and the like." Indeed, in coming to this conclusion the eloquent submissions of counsel for the second defendant relied on the learning of the Court at

¹⁰ Paragraph 7 of the WS of the John Gregory Hall filed 31/7/2020

¹¹The Status of Children 1980 Act (the 1980 Act)

first instance¹² and the Court of Appeal¹³ in several decisions from this very jurisdiction as they considered the similar wording in the 1980 Act similar to that as contained in section 5 of the Act. It was held in those cases that the nature of the evidence that was required for implicit and consistent conduct, must be of the nature of the type of documentary evidence as set out in section 8 as it then was and that parties could not rely simply on “the oral tradition.... in the Caribbean.”¹⁴ Having therefore not produced any of the items of evidence itemized in section 5, counsel's submission was that the claimant had not reached the threshold and that the court could not simply rely on the oral information that was produced before the court.

- [21] Under the Act, Section 5 provides for the following evidence to raise the presumptions: i) marriage to the mother of the child; ii) there was a marriage that came to an end within 10 months of the birth; iii) marriage after the birth and there was an acknowledgement by **words or conduct**; iv) the parents were cohabiting; v) the person was adjudged either during life or after death as the father; vi) persons signed an instrument acknowledging that they are the father; vii) there has been a filed notarized document stating that they are the father; viii) person acknowledged during registration that they are the father; ix) person has given written consent to the child adopting his name and the x) by **conduct** implicitly and consistently acknowledging that he is the father of the child.
- [22] From the definitions helpfully provided by counsel for the second defendant, consistent is defined as steady continuity¹⁵ while implicit is unexpressed¹⁶. In this court's mind therefore, this court must be cognizant that the case law that spoke to the nature of the evidence as relied upon by the second defendant were all determined in the context of the 1980 Act in which the differentiation was apparent between a declaration of paternity simpliciter and a declaration of paternity for succession purposes. There is no such differentiation in the Act. Additionally, this court is satisfied that an unexpressed steady continuous indication by way of conduct does not have to equate to the production of documentary evidence as suggested by counsel for the second defendant. What must be produced must be cogent and it must show that by **conduct (things done)** that the relationship existed that amounted to father and child.
- [23] The court is indeed hard pressed to accept that in every situation where a claimant brings evidence of conduct without a document signed or executed by the putative father, the claimant would find himself unable to have the court make the appropriate order under the Act.
- [24] Bearing that in mind, and from the finding on the evidence that was presented to this court, this court is satisfied that the deceased did have that relationship with the claimant as required by the Act. The biological nexus was translated into a relationship as between those parties and throughout the life of the claimant, until what may be considered the inevitable pause, the deceased treated, acknowledged him and dealt with the claimant as his son.

¹² **Re Cato** SVGHCV2000/043; **Tredon Connell v Claribelle Connell** SVGHCV 2010/0041

¹³ **David Adolphus McKenzie v David Sampson** Civ App 12/2003

¹⁴ Rawlins JA in **David Sampson v David Adolphus McKenzie** Civ App 6/2005

¹⁵ Tab 3 of the submissions of the second defendant filed 8/2/2021

¹⁶ Tab 3 of the submissions of the second defendant filed 8/2/2021

- [25] I therefore find that the claimant has satisfied this court on a balance of probabilities that he has established the relationship of father and son under the Act. The relief as prayed in the claim is granted and the deceased Daniel Hall is declared the father of the claimant. The first named defendant is directed to insert the name of Daniel Hall on the birth certificate of the claimant as "father".
- [26] As it relates to the issue of costs, counsel for the claimant had submitted that if the claimant had been successful that the costs due to the claimant should have been paid by the second named defendant personally however, he did not provide the court with any information upon which to make such a finding nor did he provide the court with any authority for that proposition. In this regard therefore, the court is satisfied that the claimant is entitled to his costs and as the matter is one that involves the estate this court is satisfied that the said costs should be paid by the estate. In the court's discretion however I do not find that the claimant is entitled to the entire sum due on an unvalued claim as prescribed costs but rather given the nature of the matter and that in the end this claimant would be entitled to a share of his father's estate that he should not benefit twice, I therefore order the sum of \$2,000.00 be paid as costs to the claimant on his claim.

Order of the court is therefore as follows:

1. The claim is granted in terms of
 - a) Daniel Ezekiel Hall is declared the father of the claimant Dain Dexton Damian Walters.
 - b) The first defendant is directed to insert the name of Daniel Ezekiel Hall on the birth certificate of the claimant under the heading "Father".
2. Costs to the claimant in the sum of \$2,000.00 to be paid by the Estate of Daniel Ezekiel Hall.

**Nicola Byer
HIGH COURT JUDGE**

By the Court

Registrar