

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

SVGHCV2020/0063

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
MYRON KEVON CRUICKSHANK TO HAVE THE NAME DANIEL HALL INSERTED ON HIS BIRTH
CERTIFICATE

BETWEEN

MYRON KEVON CRUICKSHANK

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

Second Defendant present

2020: 8th December

2021: 11th February

JUDGMENT

Byer, J.:

- [1] The death of a parent is never easy, and that passing is further complicated where there are properties or assets existing and there is no clear disposition of the same. It is then that family members close rank and those whose names are not the same as theirs see and feel the block of the wall keeping them outside. It is that very circumstance that was to be dealt with by the passing into law of the Status of Children's Act 2011 (hereinafter referred to as "the Act") and for the abolishment of the common law rule of construction against children born out of wedlock for succession purposes¹.
- [2] So it therefore was, with 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, his mother Debrah Cruickshank-Duke, the claimant's purported half-brother Dain Walters, and retired Inspector of Police Bernard Haynes who was a colleague of the deceased.
- [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. By affidavit of Andrea Young dated and filed on 9th July 2020, the Registrar deposed that she was not admitting nor denying the evidence of the claimant but in the interest of fairness to both sides, she preferred to be a neutral party to the proceedings ready to assist on matters of the law.
- [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. The Court granted an extension of time for the claimant to put in an affidavit to speak to certain matters set out in the claimant's first affidavit of 4th June 2020.
- [6] The Court made a further case management order for the parties to file affidavits in reply by 16th October 2020. The claimant and his mother filed further affidavits in response, as well as one more from the claimant's cousin Tamar Cruickshank. The second defendant I also filed further affidavits. Her defence was supported by affidavits from three of the deceased siblings namely,

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

² Originally filed on 4th June 2020 but amended on 6th August 2020 to reflect the 2011 Act

John Gregory Hall, Doris Debra Hall, and Kymon Taccette Hall. There was also an affidavit from the second defendant's past teacher, Ms Laura Richards. However, both Kymon Hall and Laura Richards did not attend at the trial of the matter, thus their evidence remains untested by cross examination. This court therefore did not consider the same.

- [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".

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 questions 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, the court is not being asked to simply declare that the 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 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 claimant relied on four witnesses. The claimant himself, his mother, his cousin, and the individual he calls his brother¹⁰, and one of the friends of the deceased. The second defendant relied on her own evidence and that of her aunt and uncle, her father's siblings.

[18] Having seen and heard these witnesses and the witnesses for the second defendant this court accepts the following on a balance of probability:

i) That the deceased had an intimate relationship with the mother of the claimant.

ii) That the deceased acknowledged during his lifetime that the claimant was his son.

iii) That the claimant had a close relationship with the brother of the deceased Amos O'Garro, for the following reasons; 1) the mother of the claimant worked with the said Amos O'Garro and she knew him and his wife before she met the deceased; 2) It was Amos who introduced her to the deceased and 3) that there was a strong friendship between the mother of the claimant and Amos that then transmitted to the claimant.

iv) That the deceased at the time of the intimate relationship with the mother of the claimant was also in a relationship with the mother of the second defendant. This court accepts that this therefore limited his ability to interact with the claimant and was the genesis of his reluctance, as noted by the mother of the claimant, to place his name on the birth certificate of the claimant. In fact, the court is fortified in this view by the very statements of the mother of the claimant that she never brought up the topic with the deceased or pressured him to put his name on her son's birth certificate¹¹.

In this court's mind this evidence stands as clear acceptance by the claimant's mother that she was aware that the deceased was uncommitted to her and ultimately to her child.

v) That the claimant had a closer relationship with the brother of the deceased who embraced him as a child of his family and was part of his family¹².

vi) That the deceased's involvement with the claimant was sporadic and only took place at particular stages in the life of the claimant. For example the court accepts that the deceased obtained the scholarship from the police for the claimant, that the deceased assisted in enrolling him in secondary school and that the deceased loaned him funds to travel to the Turks and Caicos to join the police force where Amos already was stationed which was repaid by the provision of a laptop computer. It was telling in this court's mind, that even the claimant's own cousin who lived with him was unable to give the court any concrete evidence as to the extent of the relationship between the deceased and the claimant. To this court this was a clear indication that any such relationship was minimal as indeed so was their contact.

¹⁰ Dain Walters who also has his own application seeking a similar declaration

¹¹ Evidence elicited on cross examination of the mother of the claimant at trial

¹² The evidence of the claimant that he spent family vacations with the said Amos O'Garro and his family

vii) That the claimant had limited interaction with the family of the deceased during his childhood. It was in fact from the evidence of the claimant and his putative brother that it was clear that the claimant only had one overnight stay at the home of his paternal grandparents. Indeed, it was also telling that although family members remembered Dain being at his grandfather's wedding no one remembered the claimant. This was the same claimant who did not even know his grandfather's name when he was first questioned in cross examination.

viii) That the deceased made a concerted effort to keep the claimant away from his family to the extent that the claimant was unaware as to the location of the home of the deceased in Campden Park. Indeed, the claimant admitted that it was not until well into his adult life and certainly after the deceased and the mother of the second defendant had separated that he became aware of its location.

ix) That although the evidence of retired Inspector Bernard Haynes sought to convince the court that he and the deceased were close, he also readily admitted that the deceased was a secretive man and that the only time this witness was able to say that he knew of the claimant was when the deceased informed him of his existence. There were no specifics as to when this may have taken place in terms of the claimant's age at that time. This witness stated clearly that the mother of the claimant would visit the deceased at their workplace, a fact that this court accepts substantiates that the deceased and the mother of the claimant were in fact involved in a clandestine relationship.

- [19] From this evidence this court finds that if the court was still empowered to make a declaration of paternity simpliciter¹³, this claimant on this evidence would have undoubtedly been entitled to the same.
- [20] Indeed even the second defendant herself admitted that the claimant was her brother and that she had acknowledged that fact prior to the illness of the deceased, during the illness of the deceased and after his death.
- [21] However the present Act does not make provision for the nature of such a declaration but rather now the claimant must not only prove the existence of an acknowledgement, but also show the existence of a relationship that must be based on one of the presumptions provided for by the Act.
- [22] 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.
- [23] In the impartial and helpful submissions of the first defendant, the first defendant offered an approach to be adopted at how the word "relationship" as it appears in the Act should be interpreted.

¹³ Status of Children's Act CAP 243 (the 1980 Act)

- [24] In their submission to the court, the first defendant applied three rules of interpretation to the word, the literal rule, the purposive approach, and the contextual approach. In considering these approaches it is clear to the court that in looking at the word “relationship”, the most relevant approaches are the purposive and the contextual approach.
- [25] Indeed in coming to this determination, it was useful to consider the history of the proclamation of the Act. From a consideration of the factual matrix that led to the Act, it is clear to this court that the inclusion of the requirement to prove a relationship in the manner provided for by the Act, stemmed from the concern that once the Act removed the dichotomy that existed in the 1980 Act of obtaining a declaration of paternity simpliciter versus a declaration of paternity to participate in the estate of a deceased, that it must be patently obvious that that process should not be an overly easy one, given the nature of the consequences.
- [26] However, even with that being said, the word “relationship” is still capable of several meanings, but this court accepts that the legislature having included that specifically, that the intention of the enactment was to effect more than just an acknowledgment on the part of the deceased, but rather a course of conduct that definitely showed that this deceased treated this applicant as their child in every sense save for the formal provision of their name.
- [27] Thus as the Court of Appeal in the case of **Fraser v Greenaway**¹⁴ stated “the interpretation of a statutory word or phrase is the ascertainment of the meaning which the legislature intended that the word or phrase should bear. That legislative intention is an inference drawn from the primary meaning of the word or phrase with such modifications to that meaning as may be necessary to make it consistent with the statutory context. The statutory context comprises every other word or phrase used in the statute and all relevant surrounding circumstances which may properly be regarded as indications of the legislative intention. Those surrounding circumstances include the evident object of the statute or section in which the word or phrase under construction appears and the fact that the interpretation of the word or phrase in its primary sense would result in manifest absurdity.”
- [28] Therefore this court is in agreement with the submissions of the first defendant¹⁵ that the definition of relationship must go beyond the biological connection between two persons and in so considering that the behaviour relied on was undertaken implicitly and consistently.
- [29] 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 not have that relationship with the claimant as required by the Act. The biological nexus was not translated into a relationship as between those parties. In fact, there was more of a relationship between the claimant and the said Amos O’Garro, although this court will not go so far as to come to any conclusion on that evidence as suggested to it by counsel for the second defendant in that regard.

¹⁴ (1992) 41 WIR 136 at 138

¹⁵ Paragraph 7.2 submissions filed 21/12/2020

[30] I therefore find that the claimant has not satisfied this court on a balance of probabilities that he has established the relationship of father and son under the Act. The claim is therefore dismissed in its entirety with no order as to costs this court finding that the claimant was entitled to make the claim as against the estate in all the circumstances.

Order of the court is therefore as follows:

1. The claim is dismissed.
2. No order as to costs.

**Nicola Byer
HIGH COURT JUDGE**

By the Court

Registrar