

IN THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ON MONTSERRAT

CASE MNIHPB 2020/0022

IN THE MATTER OF THE ESTATE OF THE LATE
JOHN TUITT, on application by Rosanna Tuitt nee
Galloway for a grant of letters of administration of
the deceased's estate and a caveat filed by the
respondent of Denise Tuitt nee Greenaway
opposing the application.

APPEARANCES

Mr Hogarth Sergeant for the Applicant Rosanna Tuitt.

Mr Jean Kelsick for the Objector Denise Tuitt.

2020: DECEMBER 09
DECEMBER 15

RULING

On who is the lawful wife

- 1 **Morley J:** By application on 11.08.20 I am asked to grant letters of administration to Rosanna Tuitt nee Galloway over the estate of the late John Tuitt (dob 26.11.42), who died at 74 intestate on 22.03.17, and who she married on 15.11.75 when she was 25 and he was 33. There is

- objection, by caveat, to the grant by Denise Tuitt nee Greenaway, who when 23 also married John Tuitt, then 52, on 30.11.94 and on whose marriage certificate it has been recorded John was 'divorce'. Each claims to be his lawful wife.
- 2 Though John died in Birmingham UK, where he went for medical treatment, it appears he lived mostly on Montserrat, here left a motor vehicle valued at about \$15000ec and a property at parcel 14/11/180 valued at about \$200000ec. By John, Rosanna has a daughter Grenette and son Kevin, and lives at 18 Juliet Road, London E13 0DL, though is currently on Montserrat, while Denise has a son and lives at 20 Betchworth House, Hilldrop Estate, Carlton Road, London N7 0QL. John's funeral in Walsall, England was paid for by Grenette on 30.03.17, attended by Rosanna, though not by Denise, and he was buried at plot 18534 in Handsworth cemetery, Birmingham.
 - 3 There was argument on 09.12.20. I have considered various types of evidence, in particular:
 - a. Affidavits from Rosanna and Denise, with exhibits;
 - b. Their marriage certificates;
 - c. A purported certificate of 'no divorce' under the hand of Registrar Meade dated 20.03.19; and
 - d. An affidavit from Hogarth Sergeant dated 08.12.20 in which he purports to give evidence in support of his client Rosanna.
 - 4 In addition there have been helpful written submissions by both counsel.
 - 5 I ignore the affidavit of Counsel Sergeant who, though well-intentioned, should not be offering evidence as instructed counsel, and in any event what he said about how John in terminal illness returned to seek help from Rosanna is not decisive.
 - 6 The issue in this case is, was there a divorce of John and Rosanna? On the one hand, Rosanna says not, and there is no record on Montserrat of a divorce, while neither party, in particular Counsel Kelsick for Denise, has asked for an adjournment to examine if there may be a divorce record in the UK as prior to 1994 the parties had lived on Montserrat. On the other hand, Denise's

marriage certificate records that John was 'divorce', which it is suggested presumes he presented evidence of divorce to obtain a marriage licence.

- 7 To analyze matters, Rosanna has presented herself for letters of administration. There is an evidential burden on her to show her application is justified. She has done this by producing her marriage certificate and by affidavit swearing she is John's wife. In challenging Rosanna, it is for Denise to show Rosanna is no longer John's wife.
- 8 But Denise can show no record of a divorce. While the Registrar's inventive certificate cannot prove there was no divorce, for philosophically it is well known usually nothing can positively prove a negative, nevertheless it can act as evidence there is no record, being essentially little different, though odd in form, from an affidavit reporting a failed search.
- 9 The question is, on whom is the burden concerning divorce: is it on Rosanna to show there was none, or on Denise to show there was one.
- 10 In my judgement, as above, the burden is on Denise, as she is objecting, and in theory can prove something positive, as distinct from Rosanna who can generally never prove something negative. To show there was a divorce, Denise offers the reference to 'divorce' in her marriage certificate. However, without more, this is insufficient to rebut the combination of Rosanna swearing there was no divorce and there being an absence of record of one, noting in addition Denise does not say she ever saw a certificate of divorce.
- 11 Moreover, if I am wrong, so that the burden is on Rosanna to show there was no divorce, to my mind she has on balance met it, as she swears by affidavit there was no divorce, and there is no record of one, strongly showing there was no divorce.
- 12 Overall, irrespective of on whom the burden falls, the preponderance of evidence shows it is more probable than not there was no divorce, to an extent obliquely supported, though not decisively, by the absence by Denise from the funeral and the fact it is Rosanna who has sought letters by advertising, and by application on 11.08.20 3.5 years after John's death, and not Denise.

- 13 Counsel Kelsick in elegant submissions drew the court's attention to **Rayden & Jackson on Divorce, 18th ed, at para 7.12**, relying on **Assad v Karter 2013 EWHC 38**, in which the text states '*where there is evidence of a ceremony of marriage having been gone through, followed by cohabitation of the parties, everything necessary for the validity of the marriage will be presumed in the absence of decisive evidence to the contrary*'. He suggests this quote means the burden is on Rosanna, as there is no doubt Denise married John under licence, obtaining a marriage certificate. However, as above, even if right, Rosanna has met the burden. Moreover, '*decisive evidence to the contrary*' is precisely Rosanna claiming on affidavit to be married to John, producing her marriage certificate, and stating under oath there was no divorce. To succeed, in the face of Rosanna's evidence, Denise needs to produce a divorce record.
- 14 This is a most unhappy case, turning on its facts, not the law, the court recognizing the import of this ruling is it may be probable Denise's marriage was bigamous, and void, but equally noting the preponderance of the current evidence shows Denise believed John divorced, and so, if misled, it appears was not herself acting dishonestly or improperly when marrying under licence, not banns, in 1994.
- 15 The court expresses condolences to both 'wives' for the loss of John Tuitt, though finds Rosanna's application is satisfactory, as she is on balance John's lawful wife to settle his intestacy, and so will grant to her the letters sought.
- 16 There shall be no order as to costs as both have long known of each other and on the material presented neither party seems to have done legal wrong.

The Hon. Mr. Justice Iain Morley QC

High Court Judge

15 December 2020