

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2018/0149

IN THE MATTER OF AN APPLICATION UNDER THE STATIUS OF CHILDREN ACT NO 21 OF 2011 OF
THE LAWS OF SAINT VINCENT AND THE GRENADINES

AND

IN THE MATTER OF AN APPLICATION BY GERTRUDE MORE AND YVONNE POMPEY FOR THE
INSERTION OF FATHER'S NAME OF RODNEY SAYERS ON THE BIRTH CERTIFICATES OF
CAMERON RONNIE ANTHONIO RICHARDS

BETWEEN

GERTRUDE MORE
YVONNE POMPEY (Attorney on record for Andrea Richards)

CLAIMANTS

AND

REPRESENTATIVE IN THE ESTATE OF RODNEY SAYERS SHERIESE SAYERS BY HER MOTHER
AND TRUSTEE SHERIDAN JAMES

DEFENDANT

Appearances:

Mrs. Kay Bacchus-Baptiste for the claimants.

Mrs. Mandella Campbell and Mrs. Cheryl Bailey for the defendant.

2020: Jan. 15 & 22

DECISION

BACKGROUND

- [1] **Henry, J.:** This case involves a claim by Gertrude More and Yvonne Pompey for a posthumous declaration that Rodney Sayers deceased is the father of Cameron Ronnie Anthonio Richards. They also seek an order for rectification of Cameron Richards' birth record to this effect. Ms.

Pompey is described in the heading as the lawful attorney on record for Andrea Richards. No power of attorney to this effect has been filed or exhibited. Ms. More and Ms. Pompey initiated the claim¹ against 'Representative in the Estate of Rodney Sayers Sheriese Sayers by her mother and trustee Sheridan James' as defendant. It purports to constitute Sheridan James as defendant for and on behalf of Sheriese Sayers in the dual capacities of her 'mother and trustee' and as 'representative of Rodney Sayers' estate'. No order had been made appointing Ms. Sayers or Ms. James as representative of Rodney Sayers' estate.

- [2] Ms. More and Ms. Pompey have since applied² for an order appointing Sheriese's mother, Sheridan James, to represent the estate of Rodney Sayers as mother and next friend for the infant Sheriese Sayers. Gertrude More averred that she is Rodney Sayers' mother. Yvonne Pompey asserted that Cameron Richards is her grandson having been born to her daughter Andrea Richards. Gertrude More and Yvonne Pompey claimed that Rodney Sayers is the father of Sheriese Sayers, a minor. They submitted that as the deceased's daughter that Ms. Sayers is connected to his estate as beneficiary and therefore has an interest in the proceedings.
- [3] Misses More and Pompey contended that rule 21.4 of the Civil Procedure Rules 2000 ('CPR') empowers the court to appoint a person 'to represent any person, if expedient regarding the estate of a deceased person'. They submitted that Ms. Sayers is also the deceased's personal representative and is therefore competent and can fairly represent his estate. Sheridan James and Sheriese Sayers did not oppose the application. The application is granted in part for the appointment of Sheridan James as Sheriese Sayers' next friend, but not as representative of Rodney Sayers' estate.

ISSUE

- [4] The sole issue is whether Sheridan James should be appointed to represent the estate of Rodney Sayers as mother and next friend for Sheriese Sayers.

¹ On 11th October 2018 by Fixed Date Claim Form.

² By Notice of Application filed on 7th January 2019. The Application in its original formulation sought an order appointing Sheridan James as Sheriese Sayers' mother and trustee. It was amended twice, resulting in the current formulation.

ANALYSIS

Issue – Should Sheridan James be appointed to represent the estate of Rodney Sayers as mother and next friend for Sheriese Sayers?

- [5] The instant application is two-pronged in that it seeks appointment of Ms. James a) as representative of Rodney Sayers' estate and b) as her daughter's next friend. Different considerations apply with respect to each part of the application. It is supported by affidavit sworn to by Sue-Ann Belgraves, Secretary in the law chambers of Mrs. Kay Bacchus-Baptiste, legal practitioner for Ms. More and Ms. Pompey. Ms. Belgraves rehearsed the fact that the Fixed Date claim was filed seeking the above-referenced orders. She concluded by requesting that Ms. James be appointed to represent Ms. Sayers. Ms. James filed an affidavit in response in which she averred that Rodney Sayers was a bachelor and she was his 'common law wife'; and that they shared a home and life together.
- [6] Ms. James attested further that her daughter Sheriese is one of Mr. Sayers' two children and that Cameron Richards is the other. She deposed that Mr. Sayers' name was entered on Sheriese's birth record as father but not on Cameron's. She averred further that she was informed and believes that Mr. Sayers made no Will. She attested that her lawyers have advised her that in those circumstances her daughter is the only person recognized by law to be entitled to Rodney Sayers' estate; and that she is unable to extract Letters of Administration because she is a minor. She reasoned that it has therefore become necessary for her to act as one of the trustees on her daughter's behalf for the purpose of obtaining a grant of probate. She did not indicate who informed her that Mr. Sayers made no Will. Ms. More and Ms. Pompey and no one else made any averments on that issue.
- [7] Ms. James averred further that she can competently and fairly conduct these proceedings on behalf of the deceased Rodney Sayers' estate and has no interest adverse to the estate's. She submitted that although she is described in the application as mother and trustee, the correct designation should be 'mother and next friend'. She supported the application to be appointed as representative of Rodney Sayers' estate.
- [8] She submitted that the instant proceedings do not arise under the provisions of the Administration of Estates Act. It should be noted that while the provisions of that Act has not been invoked by any

of the parties, the legal principles which flow from that or any other legislation must be considered and applied if relevant. Ms. James argued that her daughter is connected to the deceased Rodney Sayers' estate as a beneficiary and her interest in the estate may be affected if the court grants the substantive declarations claimed by Ms. More and Ms. Pompey. She reasoned that it is prudent, appropriate, necessary and just to join Ms. Sayers as a defendant to the proceedings to make representations in relation to the allegations of paternity. Ms. More and Ms. Pompey adopted the testimony and submissions made on Ms. Sayers' behalf.

[9] The pleadings, in particular the heading, purport to join Ms. James as the defendant. During the course of the hearing, it appeared that the parties had some ambivalence or reservation about the seeming irregularity in the description of the defendant. They all acknowledge that Sheriese Sayers is still a minor and cannot appear as a party to the claim except by next friend or order of court. In the premises, I will treat the parties' respective representations as having been made on the understanding that 'Sheridan James' is intended to be the defendant for and on behalf of Sheriese Sayers. References to Ms. James are to be interpreted in this light.

[10] Misses More and Pompey made their application pursuant to CPR 21³. They submitted that CPR 23 has no bearing on their application. Ms. James countered that she should be appointed as Ms. Sayers' next friend pursuant to CPR 23.6. Misses More and Pompey accepted this subsequently.

Appointment as next friend - CPR 23

[11] The law provides that a person who is a minor must have a next friend (a competent adult) to conduct legal proceedings on her behalf⁴, unless the court makes an order enabling her to do so without a next friend⁵. A next friend is someone who can 'fairly and competently conduct proceedings on behalf' of the minor and 'who has no interest adverse to the minor's'⁶. Such appointee may obtain a court order to act as next friend or seek an order from the court to so act⁶.

³ See paragraph 1 of the instant Notice of Application.

⁴ CPR 23.2.

⁵ Pursuant to CPR 23.2 (2).

⁶ CPR 23.6.

[12] It is established that a litigant should include in her pleadings and state the applicable statutory provision under which the relief is being sought, ‘... because failure to do so may lead to the sort of ambush that the Civil Procedure Rules 2000 and other modern rules of practice and procedure aim to avoid.’⁷ However, such failure will not be fatal to the application, especially if raised at the conclusion of the hearing. Ms. More and Ms. Pompey initially submitted that CPR 23 was not applicable to their application. They changed course when their legal practitioner made her final submissions and when the second application was made to amend the present application. It is self-evident that CPR 23 is relevant. The court must consider it.

[13] Sheridan James exhibited her daughter’s birth certificate which reflected that she was born on September 19th 2002. She will be 18 and legally an adult in September 2020. No order has been made by the court authorizing Ms. Sayers to represent herself. I am satisfied that Ms. James may fairly and competently represent her and has no interest adverse to hers. The application for an order appointing her as Ms. Sayers’ next friend is in order and is granted.

Appointment as representative of Rodney Sayers’ estate - CPR 21

[14] CPR 21 contains 9 separate rules. Ms. James identified rule 7 as the applicable provision. Ms. More and Ms. Pompey agreed. CPR 21.7 empowers the court to appoint someone to represent a deceased’s estate, in proceedings where it appears that the deceased person was interested. The deceased Rodney Sayers would have had a direct interest in the present proceedings as it amounts to allegations that he fathered a son.

[15] In deciding who to appoint to represent the deceased’s estate, the court must be satisfied that the proposed appointee can fairly and competently conduct the proceedings on behalf of the estate and has no interest adverse to the estate’s⁸. Ms. James averred that she meets those requirements. She was not cross-examined.

[16] She did not say who informed her that Mr. Sayers left no Will. She had a duty to do so, in accordance with the CPR⁹. If the deceased made no Will and was unmarried as averred by Ms.

⁷ Jonathan David Lesfloris v Glenda Dale Lesfloris née Henry SLUHCVP2015/0018, at para. 33 et seq.; (unreported).

⁸ CPR 21.7.

⁹ CPR 30.3(2) (b) (ii).

James, the beneficiaries of his estate would be his children¹⁰. One of those persons is Sheriese Sayers who is supportive of the application for Mr. Sayers' name to be inserted on Cameron's birth record.

- [17] If contrary to Ms. James' assertions, Rodney Sayers left a Will, there might be other persons who could potentially have an interest in his estate. Such person(s) would need to be represented competently before the court by someone who has no interest adverse to theirs. None of the parties have claimed that such beneficiaries exist. There is nothing before the court which suggests that this is probable. However, the lack of specificity in Ms. James' averment about the absence of a Will introduces enough doubt to make it unreliable for the court to act on for present purposes. That account is inadequate to establish that Mr. Sayers deceased died intestate. Something more is required.
- [18] Ms. James' failure to conduct a fuller investigation or to supply the court with comprehensive details arising from such full investigation highlights concerns about her ability to competently and fairly represent Rodney Sayers' estate. The parties have not established that she is able to do so. I therefore make no order appointing her as representative of Rodney Sayers' estate.
- [19] The court remains mindful that it is desirable that Mr. Sayers' estate be represented in these proceedings. It might be that the Honourable Attorney General or another senior legal practitioner can assist in this regard as *amicus curiae*. Alternatively the appointment of an added defendant¹¹ would be in order. Counsel will be invited to make representations on the way forward.

Costs

- [20] The outcome in this matter has been arrived at by close collaboration between the parties. It was

¹⁰ Section 62 (c) of the Administration of Estates Act, Cap. 486 of the Laws of Saint Vincent and the Grenadines, Revised Edition, 2009.

¹¹ Pursuant to CPR Part 19.

determined as part of the court's case management function, during a case management conference. The issue of costs does not arise¹².

ORDER

[21] It is accordingly ordered:

1. Sheridan James is appointed as next friend of Sheriese Sayers.
2. Sheriese Sayers' designation in the heading as defendant is amended to read 'Sheriese Sayers by her next friend Sheridan James'.
3. The application to appoint Sheridan James as representative of Rodney Sayers' estate is denied.
4. No order as to costs.

[22] The court wishes to thank counsel for their submissions.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar

¹² CPR 65.11