

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2016/0143

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

AND

IN THE MATTER OF A POSTHUMOUS APPLICATION FOR A DECLARATION OF PATERNITY BY
CLAUDINE ISOLA JOHNSON NÉE TONEY TO HAVE THE NAME OF NEWSAM BROWNE INSERTED
ON HER BIRTH CERTIFICATE

BETWEEN

CLAUDINE ISOLA JOHNSON née TONEY

CLAIMANT

and

REGISTRAR OF BIRTHS AND DEATHS

and

ATTORNEY GENERAL

DEFENDANTS

Appearances:

Mr. Jonathan Lewis for the claimant.

Mr. J'Lany Williams for the defendants.

Ms. Mandela Campbell for the 'interested party' Ingrid Fitz Patrick.

2017: Mar. 20⁶

Decision

INTRODUCTION

- [1] **Henry, J.:** Mrs. Claudine Isola Johnson née Toney ('Mrs. Johnson') alleged that her biological father was Newsam Browne deceased. He died in 1962 without leaving a will. Mrs. Johnson claimed that Newsam Browne was survived by his wife Annie Albertina Browne ('Annie Browne') who administered his estate and distributed his assets. Mrs. Johnson alleged that she did not benefit from such administration.
- [2] She contended that she was omitted from consideration because Newsam Browne's name was not recorded in her birth record as father. She applied for an order of paternity, naming the Registrar of Births and Death (the Registrar') and the Attorney General as defendants. She was ordered to identify and serve her claim on Newsam Browne's legal personal representative.
- [3] Mrs. Johnson contended that no one has been constituted as legal representative of Newsam Browne's estate. She has applied for Ingrid Fitz Patrick to be appointed to represent the interests of Newsam Browne's estate. She alleged that Mrs. Fitz Patrick was named as the informant on the death records of Harold and Annie Browne and supervises property which formed part of Mr. Browne's estate.
- [4] Mrs. Fitz Patrick resisted the application. She alleged that she was appointed administratrix of the estate of Harold Browne deceased, who was Annie Browne's son. She averred that if she is appointed to represent Newsam Browne's estate, such appointment might present a conflict. I have concluded that Ingrid Fitz Patrick is well placed to be appointed to represent Newsam Browne's estate.

ISSUE

- [5] The issue is whether Ingrid Fitz Patrick should be appointed to represent Newsam Browne's estate.

ANALYSIS

Issue – Should Ingrid Fitz Patrick be appointed to represent Newsam Browne's estate?

- [6] If a deceased person has no personal representative¹ and it becomes necessary to appoint someone to represent his estate in court proceedings and it is not possible to readily ascertain the persons who might be affected by the proceedings, the court may appoint one or more persons to do so². The court may also make such an appointment in other situations where it is expedient to do so.² The appointee must be able to fairly and competently conduct proceedings on behalf of the estate and have no interest adverse to the estate.¹ In exercising its discretion, the court must seek to act justly and thereby give effect to the overriding objective of the CPR.
- [7] Mrs. Johnson outlined 15 grounds in her application³. They consist largely of factual allegations which were repeated in her affidavit³ in support. She deposed that Newsam Browne's name was omitted from her birth record through inadvertence. She claimed that Annie Browne and she were the only persons entitled to share in her 'father's' estate.
- [8] She alleged that Annie Browne dealt with and sought to dispose of Newsam Browne's estate and transferred all of his real estate to herself and her son Harold Thomas (also known as Harold Browne) by Deed of Assent. She averred that Annie Browne and Harold Thomas have died and no further grant of administration has since been issued in respect of Newsam Browne's estate. She deposed that no person alive is entitled to apply for such grant. She alleged that Mrs. Fitz Patrick now exercises care and supervision over the subject property, presumably for the benefit of either Annie Browne's or Harold Browne's estate.
- [9] Mrs. Johnson reasoned that the entry of Ingrid Fitz Patrick's name as informant in the death records of Newsam and Annie Browne suggests the existence of some close nexus, relationship and/or authority between her and both decedents. She concluded that Mrs. Fitz Patrick is therefore capable of representing Newsam Browne's, Annie Browne's and/or Harold Thomas's estates. She added that

¹ Ibid. at rule 21.7 of the CPR.

² Civil Procedure Rules 2000 ('CPR'), rule 21.4.

³ Filed on 14th December, 2016.

there is no one else alive who could capably represent the interest of Newsam Browne's estate. She submitted that it is expedient that the court's decision should bind all persons who have or may have an interest in Newsam Browne's estate.

[10] Mrs. Johnson said that although Newsam Browne had brothers and sisters they are all deceased. She admitted that his siblings have many children who survived, some of whom live in Saint Vincent and the Grenadines and she knows where they are living. She said that she asked none of them to represent Newsam Browne's estate because she did not think it was relevant as they are not her siblings and the property belongs to her father. She indicated too that she did not ask Mrs. Fitzpatrick to agree to represent Newsam Browne's estate.

[11] Mrs. Fitz Patrick deposed⁴ that she does not wish to be appointed as administratrix of Charles Newsam Browne's estate and has not consented to this. She attested that Cassian Browne a.k.a. Harold Browne was her cousin and she is executrix of his will. She expressed the belief that if she is appointed to represent Newsam Browne's estate, it could present a future conflict. She said that she does not believe that Harold Browne's estate has any interest in the claim brought by Mrs. Johnson. She opined that the only interest she has in the matter relates to Mrs. Johnson's attempt to get a portion of Harold and Annie Browne's estate.

[12] The parties were ordered to file submissions by 31st January, 2017. Mrs. Johnson, the Registrar and Honourable Attorney General complied. Mrs. Fitz Patrick did not file any submissions. She contended that she is not a party and was therefore not required to file submissions. In her oral submissions, she contended that if she is appointed to represent Newsam Browne's estate and discovered that Annie Browne had taken a misstep in administering that estate, a conflict may arise between her role as Harold Browne's executrix and Newsam Browne's representative. She reasoned that her principle concern in those circumstances would be to seek Harold Browne's interest.

[13] In such a scenario, while Mrs. Fitz Patrick would have a duty to carry out Harold Browne's wishes as set out in his will, if they are rendered impossible due to faulty administration of Newsam Browne's

⁴ By affidavit filed on 12th January, 2017.

estate, Mrs. Fitz Patrick would be obligated to give effect to the law. Accordingly, resolution of such conflict would necessarily be in accordance with applicable law and where necessary in accordance with directions issued by the court. Mrs. Fitz Patrick's concern on this score appears baseless.

[14] Mrs. Fitz Patrick submitted that Newsam Browne's nieces or nephews residing in Saint Vincent and the Grenadines are better placed to represent his estate's interests. Mrs. Johnson countered that such persons do not fall within the categories of persons who are entitled to succeed to an intestate's estate under section 62 of the Administration of Estates Act ('the Act')⁵. She submitted that they are therefore not qualified to apply for Letters of Administration, implying that they are disqualified from representing the deceased's estate.

[15] Section 62 of the Act prescribes the order of priority of succession to an intestate's estate. The first proviso to paragraph (e) provides that the nieces and nephews of an intestate become entitled to inherit part of his estate, if their parent was a sibling of the intestate and predeceased him. In such cases, the niece or nephew becomes entitled to the prescribed share of the parent's benefit. It follows that Newsam Browne's nieces and nephews are not disqualified from obtaining grant of administration to his estate. Likewise, they may be appointed to represent his estate.

[16] Mrs. Johnson argued that she has taken all reasonable steps to identify other possible legal representatives of Newsam Browne's estate, by publishing notice of her intention to apply for a declaration of parentage. No such notices were produced and there is no proof of such publications. I find therefore that no such publications were made. Mrs. Johnson contended that Mrs. Fitz Patrick has emerged as the only suitable candidate to defend the interests of Newsam Browne's estate. She submitted that Mrs. Fitz Patrick is Annie Browne's relative. No testimony was elicited to support that contention. I make no finding that she was.

[17] Mrs. Johnson concluded that Mrs. Fitz Patrick should be so appointed pursuant to CPR 21.4 and 21.7. She submitted that if her application is not granted that the court of its own volition should

⁵ Cap. 486 of the Revised Laws of Saint Vincent and the Grenadines, 2009.

appoint Mr. Carl Browne who provided affidavit testimony on Mrs. Johnson's behalf in the substantive application, attesting that he is Newsam Browne's cousin.

- [18] The Registrar and Honourable Attorney General submitted that Mrs. Johnson has not indicated whether Mrs. Fitz Patrick is an executor, administratrix or trustee. They did not contend that Mrs. Fitz Patrick could only be appointed as representative if she was so constituted. That is not the law. They argued further that Mrs. Johnson provided no particulars to establish a close nexus or relationship between Mrs. Fitz Patrick and Newsam and Annie Browne's estate. They concluded that in the absence of beneficiaries to the estates of Newsam, Harold and Annie Browne the subject property would devolve to the Crown.
- [19] While that is so, Mrs. Fitz Patrick claimed to be executrix of Harold Browne's estate. Furthermore, she stressed that Newsam Browne's estate was fully administered by Annie Browne and there is no further property available for distribution. She testified that Annie Browne transferred to her son Harold and herself the two properties which Newsam Browne left. She explained that Harold Browne sold one of those properties and bequeathed the other by his will.
- [20] Mrs. Johnson has articulated a desire to succeed to the estate of Newsam Browne whom she claimed to be her father. She established that the sole administratrix of his estate (Annie Browne) is deceased. A fundamental principle of law mandates that an adjudicator hears all parties to a dispute before rendering a decision.
- [21] Mrs. Johnson's claim that Newsam Browne was her father and that she is entitled to share in his estate, could if accepted as factual and made an order of the court, affect Newsam Browne's estate and the entitlement of his beneficiaries. For this reason, it is proper and just that someone be appointed to represent their interests. To make a determination of Mrs. Johnson's claim without such an appointment would be unfair.
- [22] I accept Mrs. Johnson's assertions that she made inquiries about persons who may be related to Newsam Browne and who can competently and fairly represent those interests. While Mrs. Fitz

Patrick is not the only such person, I that she has had and continues to have direct dealings with property which belonged to Newsam Browne which was transferred to Harold and Annie Browne. There is no evidence that any of Newsam Browne's nieces and nephews have such dealings. In addition, the entry of Mrs. Fitz Patrick's name as informant on Harold⁶ and Annie Browne's death records suggests that there was some such connection between them. Usually, such informants are either blood relatives of the deceased or close family acquaintances who are charged with making the necessary reports. Although Mrs. Fitz Patrick did not state that she was Annie Browne's blood relative, her familial relationship to Harold Browne is beyond dispute.

- [23] She did not deny that she had some relationship with the deceased Newsam Browne or Annie Browne. I infer that she did have some close relationship with the family as evidenced by her involvement with all three. I remain mindful that Mrs. Fitz Patrick volunteered the information that she is the executrix of Harold Browne's will. It strikes me that the appearance of Mrs. Fitz Patrick's name on both death records and in the will is more than coincidental. Quite tellingly, she acknowledged that she had responsibility for supervising and caring for the subject property which remains registered in the names of Annie and Harold Browne.
- [24] Although Mrs. Fitz Patrick opined that she would conceivably be placed in a position of conflict if she was appointed to represent Newsam Browne's estate, I must confess that I perceive none. The fact that Harold Browne's estate comprises property which belonged to Newsam Browne, it seems to me that Harold Browne's estate would have an interest in protecting his rights, interest and entitlement to the subject property (if that becomes necessary).
- [25] More significantly, if Mrs. Johnson's claim for a declaration of paternity is not factually or legally based, Harold Browne's estate to my mind would have an interest in countering the claim on at least one identical basis as Newsam Browne's estate – i.e. to remove any lingering cloud of faulty administration of Newsam Browne's estate. From that perspective, their interests would coincide. Furthermore, if Mrs. Fitz Patrick is charged with protecting the interest of Annie Browne's estate, as alleged by Mrs. Johnson the connection between the interests of all three estates is inescapable and such interests are not likely to be and do not appear to be adverse to one another.

⁶ Corrected and re-issued on 29th March, 2017, pursuant to CPR 42.10.

[26] In light of all the surrounding circumstances, Mrs. Fitz Patrick stands out as a very suitable candidate to represent the interests of Newsam Browne's estate. She is the Accountant General and demonstrated a deep understanding of the issues which arise for consideration in this claim. By virtue of her representations, I am satisfied that she is capable of doing so in a fair and competent manner. It is just and prudent to appoint her in light of her relationship to the three decedents and her ongoing connection with the subject property. Her consent is not necessary although it would have been desirable. The court takes into account that lack of consent by persons could be used to forestall proceedings of this nature if consent was codified as a pre-condition to such orders.

[27] Mrs. Johnson's suggestion that Carl Browne be appointed is not acceptable to the court. Mr. Carl Browne fully supported Mrs. Johnson's application for the declaration of paternity thereby demonstrating partiality to her claim. To a fair minded and informed observer it would appear that Mr. Carl Browne could not possibly represent Newsam Browne's estate without being biased towards Mrs. Johnson. It would be unfair to Newsam Browne's estate to appoint such a representative.

ORDERS

[28] It is ordered:

1. Ingrid Fitz Patrick is to be appointed to represent the estate of Newsam Browne deceased for the purpose of these proceedings.
2. Ingrid Fitz Patrick is added as a defendant to these proceedings.
3. Claudine Isola Johnson is directed to serve on Ingrid Fitz Patrick on or before 7th April, 2017 copies of the Fixed Date Claim Form, affidavits in support, the first and second defendants' statements of case and all other documents filed in these proceedings to date.
4. Ingrid Fitz Patrick is to file and serve her acknowledgement of service and defence within the times limited in the CPR.
5. Ingrid Fitz Patrick shall pay costs to Claudine Isola Johnson to be assessed on application to

be filed and served on or before 31st March, 2017, pursuant to CPR 65.11.

6. Adjourned to 15th May, 2017 for further case management.

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Esco L. Henry
HIGH COURT JUDGE