

**THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES**

IN THE HIGH COURT OF JUSTICE

SVGHCV2016/0019

**IN THE MATTER OF THE REGISTRATION OF BIRTHS AND DEATHS ACT CHAPTER 179 OF THE
LAWS OF SAINT VINCENT AND THE GRENADINES**

AND

**IN THE MATTER OF AN APPLICATION BY ALSON CONNELL FOR THE INSERTION OF FATHER'S
NAME ON THE BIRTH CERTIFICATE OF TRELDON EVERET CONNELL**

AND

**IN THE MATTER OF THE STATUS OF CHILDREN ACT CHAPTER 180 OF THE LAWS OF SAINT
VINCENT AND THE GRENADINES**

Appearances:

Mrs. Kay Bacchus-Baptiste for the claimant.
Mrs. Patricia Marks-Minors for the defendant.

2016: Jul. 20
Oct. 12

JUDGMENT

BACKGROUND

[1] **Henry, J.:** This is a fixed date claim by Dr. Trelton Connell of Barrouallie for an order declaring Selwyn Connell deceased to be his putative father and requiring the Registrar of Births to amend the register of births to reflect this. Trelton Connell seeks these orders on the basis that the late Selwyn Connell always acknowledged himself to be his father. The headings on his claim form and affidavits in support referenced

the Registration of Births and Deaths Act Chapter 179 and the Status of Children Act Chapter 180 of the Laws of Saint Vincent and the Grenadines. Both Acts have been repealed and were not in force when the claim was lodged or tried. Mr. Alson Connell was named as defendant to the claim. He did not oppose the grant of the orders sought. For the reasons set out in this judgment, I make no order of parentage.

ISSUE

- [2] The issue is whether the court should make a declaration of parentage in respect of Selwyn Connell deceased and Trelton Connell and whether the register of births should be accordingly amended?

ANALYSIS

Issue – Should the court make a declaration of parentage in respect of Selwyn Connell deceased and Trelton Connell and should the register of births be amended to this effect?

Repealed Act

- [3] The legislative framework governing the making of a paternity order is outlined in the Status of Children Act 2011 ('the Act').¹ It was brought into force on 23rd May 2011. Dr. Connell's fixed date claim was filed on 3rd February 2016 and is therefore governed by the terms of the Act. A litigant must in his heading, identify the enactment under which he is bringing proceedings.² Dr. Connell referenced the repealed Status of Children Act in his headings. He did not refer to the extant Act at any time. At no point did he make an application to amend them, nor refer to the correct legislation. In this regard, he has expressly moved the court to make an order under a non-existent Act. The court cannot do this.

- [4] While I am mindful that the court may make an order to correct an error, this is not a proper case in which to do so for three reasons. Firstly, the cited statute is non-existent. Although the 'alpha' portion of the name is identical to the applicable law, making the adjustment could send the undesirable signal to litigants and legal representatives that the court will overlook and correct glaring and substantive errors as a matter of course.

¹ No. 21 of 2011 (which repealed the former Status of Children Act Cap. 180 – s. 19).

² Practice Direction No. 1 of 2008, para. 3.1.

- [5] Secondly, the court's power of rectification in such cases is limited to correction of procedural and compliance breaches, not to matters of substance. Thirdly, as explained later, a potentially interested person was not made a party to the claim. That person's likely interest must be taken into account and in the circumstances, it would not be just to make an order to put things right. I make no such order.

Proof of paternity

- [6] For completeness, I now turn to consider the claim on its merits. The Act empowers the court to make a declaration of parentage³ if it is satisfied that the relationship of father and child exists between two persons, even if one of them is deceased. An application for such an order may be made by the mother, putative father, subject child or by anyone having a proper interest in the result.² The applicant must ensure that he serves all interested persons with the claim form or gives them notice of it.⁴
- [7] The court may make a finding of paternity under the Act, in several instances including where the:
- (1) 'person acknowledging that he is the natural father of the child ... signed and executed an instrument to this effect in the presence of an attorney-at-law' which is notarized and recorded in the Registry during his lifetime; or
 - (2) '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.'
- [8] Dr. Trelton Connell claimed that 'Mr. Selwyn Connell deceased is the putative father of Trelton Everet Connell' and 'has always acknowledged that he is the father of the said Trelton Everet Connell'. He alleged that they had a father and son relationship and that Selwyn Connell acknowledged him as his son from birth. He further alleged that Selwyn Connell maintained him. His affidavit and those of his two witnesses - Kenneth Johnson and Gene Slater - of Barrouallie were admitted as his evidence. They were not cross-examined.

³ Section 8.

⁴ Section 8 (3) of the Act.

[9] Dr. Tredon Connell testified that his mother Imore Caesar and Selwyn Connell had a common law relationship which produced three children, namely Arthur who has since died, the defendant Alison and him. He attested that his parents' relationship ended in a dispute. Selwyn Connell subsequently married Claribelle Connell, now deceased. That union produced one child who tragically passed away soon after birth. Dr. Connell testified further that he lived with his 'father' Selwyn Connell and stepmother for 22 years from 1942 when he was only 4. He averred that Selwyn Connell supported and maintained him during that time and expended considerable sums on providing him with a sound education. According to him, no other children lived with them but his witness Emil Adams lived with them for 3 years at one point.

[10] Dr. Connell recalled participating in the family's domestic and business endeavours by helping out around the house, in the shop, with fishing nets, with whaling boat, as conductor on Selwyn Connell's bus and tending to Selwyn Connell's pigs, donkey, chicken and cattle. He remembered that Emil Adams assisted him during the time that he lived with them.

[11] Dr. Connell produced a copy of a document which he described as a declaration executed by Selwyn Connell. He contended that Selwyn Connell has thereby acknowledged that a father/son relationship existed between them and further declared that all of his properties would pass to him on his death. The document is undated and is addressed to "To whom it may concern". It states:

'I Selwyn Connell J. P. of Barrouallie St. Vincent West Indies do solemnly
and sincerely declare as follows

After the death of my wife Claribelle Connell my three properties at Barrouallie

I give to my son Tredon Connell

Signed by me the 22nd April 1969

Selwyn Connell J.P

In presence of Comsie Reece.'

The attesting witness Comsie Reece did not testify and no one gave evidence regarding the circumstances of execution of the document.

[12] In response to questions from the court, Dr. Connell indicated that Selwyn Connell died in 1976 and

was survived by his widow who administered his estate before her demise in 2003. He also averred that Selwyn Connell had other children including Alson Connell (aka Alison Connell) who happens to be the defendant.

[13] Kenneth Johnson and Gene Slater of Barrouallie deposed that they knew Selwyn Connell, deceased. They indicated that Trelton Connell grew up in Selwyn Connell's and Claribelle Connell's home and helped them in the shop. They both referred to Selwyn Connell as Trelton Connell's father and recounted that the deceased told them that whatever he has is for his son Trelton. Mr. Slater acknowledged that Mr. Connell told him on several occasions that after his wife's death, he was going to pass all his properties and possessions to Trelton Connell. Kenneth Johnson for his part averred that Selwyn Connell acknowledged that he was Trelton Connell's father.

[14] Alson Connell was the only named defendant. He testified that he is Selwyn Connell's son and Trelton Connell's brother. He stated that Selwyn Connell acknowledged Trelton Connell to be his son and always introduced him as his child. Like Trelton Connell, he said that the deceased took Trelton Connell to live with him and spent a lot of money to educate him. He also testified that Trelton Connell was often seen helping his 'dad' in the shop. He was not cross-examined.

[15] Neither Dr. Connell nor Alson Connell produced any documentary proof of their relationship as brothers. Significantly, Mr. Connell did not supply any documentary proof of his alleged relationship with the deceased Selwyn Connell. Without more, their oral testimony does not establish the existence of either relationship. In those circumstances, there is inadequate proof that any or any sufficient nexus exists or existed between Alson Connell and the deceased which qualifies him to be an interested party in these proceedings or to represent the latter's estate. He made no submissions which would assist the court in this regard.

[16] Furthermore, Alson Connell appears before the court as a defendant in his personal capacity. He has not claimed that he was appointed to represent either Selwyn Connell's or Claribelle Connell's estate.

No such application was made in accordance with the applicable rules of court⁵ and no order has been made to that effect. In the absence of more cogent evidence, he has failed to establish that:

- (1) he is the late Selwyn Connell's son or otherwise connected to the latter's estate; and
- (2) thereby has a legal or other sufficient interest in the proceedings, in a personal or representative capacity.

[17] During her closing address, learned counsel Mrs. Kay Bacchus-Baptiste informed the court that the fixed date claim was advertised but was not exhibited. It appears from the court's records that the newspaper publication of the claim form was filed on the morning of the hearing, sometime after the matter had been concluded. They were exhibited to an affidavit sworn to by one Lynette Jameson. She was not called as a witness. The contents of her affidavit and the exhibits are therefore excluded from consideration.

[18] Dr. Connell did not say whether the fixed date claim was served on the legal personal representatives of Selwyn Connell's and Claribelle Connell's estate or why they were not joined as defendants to the claim. He did not indicate what if any attempts were made to so join or notify them, nor the results of such attempts.

[19] Having regard to the nature of the instant proceedings, if the declaration sought is granted, the interests of beneficiaries of Selwyn Connell's and Claribelle Connell's estates would be affected. For this reason, it would have been prudent, appropriate, necessary and just to have joined them as defendants to enable them to make representations regarding the allegations of paternity. As it stands, neither estate is represented.

[20] Making an order in these circumstances would effectively amount to the grant of an *ex parte* order of paternity. This would be contrary to the established statutory procedure, rules of court and principles of natural justice. It would be procedurally improper and unjust to entertain this claim in the absence of those critical parties and solely on the claimant's, his witnesses and self-proclaimed brother's *ipsi dixit*. I

⁵ Civil Procedure Rules 2000 ('CPR') 21.2 and 21.7.

therefore refrain from doing so. I make no declaration of parentage as between Selwyn Connell deceased and Trelton Everet Connell.

The signed 'acknowledgement'

[21] What of the document allegedly signed by Selwyn Connell and produced by Dr. Connell? None of the witnesses testified as to how the document came into being, where, when and how it came to Dr. Connell's attention and where is the original. Even if the court were to have regard to it, the authenticity was not satisfactorily established and it does not meet the statutory requirements. In this regard, it was neither signed and executed in the presence of an attorney at law nor notarized and recorded in the registry during Selwyn Connell's lifetime. I am therefore unable to assess its authenticity or the veracity of the contents. I accordingly attach no weight to it for the purpose of resolving the central issue of Dr. Connell's paternity.

[22] Dr. Trelton Connell has failed to establish that Selwyn Connell was his father. His claim for a declaration of parentage is accordingly dismissed. It follows that no order is made for the learned registrar to amend the register of births.

[23] It is ordered that:-

1. Trelton Connell's fixed date claim is dismissed.
2. Each party shall bear his own costs.

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Esco L. Henry
HIGH COURT JUDGE