

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

SVGHCV2014/0002

BETWEEN:

EVELYN CAMPBELL

(Acting herein by her constituted Attorney on Record
CURCELL CYRUS of Campden Park)

CLAIMANT

-AND-

FLOYD CAMPBELL

DEFENDANT

Appearances: Mr Arthur Williams on record for the Claimant, Mr Sten Sargeant appearing for him, Mr Andreas Coombs for the Defendant.

2015: Jul. 15
Sept. 24

JUDGMENT

BACKGROUND

[1] **Henry, J.:** Evelyn Campbell is Floyd Campbell's stepmother. She and her late husband Mr Wilmoth Fitz-Allan Campbell deceased, are registered as joint owners of land situated at Arnos Vale,¹ which houses a guest house. The Deed effecting the conveyance to Mr and Mrs Campbell was purportedly made by Mr Campbell in 1998 just 5 years before his death.² Mrs Campbell alleges that in April 2013, Floyd Campbell removed the locks from the guest house, entered the building and occupied it without permission. She brought this action³ seeking

¹ Registered by Deed of Gift No.186 of 1998 dated January 15, 1998.

² On May 10, 2004.

³ By Fixed Date Claim Form filed on January 8, 2014.

recovery of possession of the property, special damages of \$66,984.95, general damages and an injunction to restrain Mr Campbell from interfering with her enjoyment of the premises.

[2] Mr Campbell filed a counterclaim⁴ in which he asserts that the Deed of Gift is fraudulent. He avers that the Deed does not bear his father's proper signature and is not in his handwriting. He seeks general damages, an order cancelling the Deed and a declaration that he is entitled to share in the property and remain in occupation. Mrs Campbell denies that the Deed is a forged document. The suit proceeded in accordance with the Civil Procedure Rules 2000 ("CPR"). Case management directions were given⁵ requiring the parties to *inter alia* file and serve witness statements on or before August 29, 2014. Neither party has complied with that order.

[3] Both parties were ordered to provide satisfactory explanations at the adjourned hearing date, for such non-compliance failing which the respective statements of case would be struck out. The matter was adjourned to June 17, 2015. Mr Campbell submitted no explanations for his default and he was absent. Counsel Mr Coombs indicated that Mr Campbell has contacted new counsel to represent him. No notice of change of solicitor has been filed on Mr Campbell's behalf. Mrs Campbell filed⁶ an affidavit sworn by her legal practitioner, Mr Arthur Williams and written submissions setting out explanations for non-compliance with the order.

ISSUE

[4] The issue is whether Evelyn Campbell's or Floyd Campbell's statement of case should be struck out?

⁴ Filed on February 21, 2014.

⁵ On July 9, 2014.

⁶ On June 16, 2015.

ANALYSIS

Issue - Should Evelyn Campbell's or Floyd Campbell's statement of case be struck out?

[5] Mr Arthur Williams is on record for Mrs Campbell having signed the Fixed Date Claim Form and appeared in court on her behalf.⁷ No notice of change of Solicitor has been filed. In the circumstances, Mr Arthur Williams is for all intents and purposes Mrs Campbell's attorney. Counsel on record is not at liberty to provide affidavit evidence on his client's behalf in matter in which he is before the court. Counsel who does so would effectively be giving evidence from the bar table.⁸ In light of this, the court will not take into account the testimony provided by Mr Williams. Instead, consideration will be restricted to the submissions.

[6] Essentially, Mrs Campbell's submissions indicate that the parties decided to ignore the directions for trial because they were in settlement discussions.⁹ This is not a good explanation for failure to comply with a court order. In fact, such an excuse suggests a measure of indifference and even disregard for the significance of a court order. It signifies willful disobedience which cannot be overlooked. To do so could invite similar disdain in other matters before the court potentially leading to an untenable situation. In the premises, I consider this a proper case in which to strike out Mrs Campbell's statement of case.

⁷ On March 12, 2014, along with Mr Richard Williams and Mr Sten Sargeant.

⁸ **Casimir v Shillingford (1967) 10 W. I. R. 269.** See also **Richard Frederick et al v Comptroller of Customs et al SLUHCVP2008/037 at para. 49** where George-Creque, J.A. (as she then was) opined:

"It is well settled and accepted that it is most undesirable for counsel with conduct of a matter or application to swear an affidavit in that matter... it amounts to giving evidence from the bar table – an unacceptable and wholly inappropriate practice."

⁹ See paragraph [7] of the submissions.

[7] It was not immediately ascertainable why Mr Campbell was not at the adjourned hearing. The interests of justice require that he be given an opportunity to make representations to the court. The fate of his statement of case is deferred pending further enquiry.

ORDERS

[8] It is accordingly ordered that:

1. Evelyn Campbell's statement of case is struck out for failure to comply with case management directions to file witness statements within the timelines limited in the case management order dated July 9, 2014.
2. No order as to costs.

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Esco L. Henry
HIGH COURT JUDGE