

SAINT LUCIA

IN THE HIGH COURT OF JUSTICE

CLAIM NO SLUHCV 2011/1118

BETWEEN:

ALEXANDROS EVANGELIDIS

Claimant

and

BERNADETTE AUGUSTE

Defendant

Appearances:

Mr. Peter Foster and Ms Renee St. Rose for the Claimant

Mr. Alberton Richelieu, Ms. Lydia Faisal and Ms Cynthia Combie Matyr for the Defendant

2012: 29th February

2012: 8th March

JUDGEMENT

[1] **BELLE J:** On 25th October, 2011, Alexandros Evangelidis filed a Fixed Date Claim claiming against Bernadette Auguste:

(1) An order granting the Claimant and Defendant jointly custody of the minor child, Astrid Daniel Auguste.

(2) An order granting the Claimant reasonable access to the minor child, Astrid Daniel Auguste inter alia...

[2] It appears that some time in about 2004 the Claimant and the Defendant entered into an arrangement to have a child. The parties had met while pursuing courses of study in Brussels where the Defendant was posted as an Officer of the OECS Brussels Mission and Embassy of Saint Lucia in Belgium.

- [3] The Claimant and the Defendant resided in the same apartment for a period of time before and after the birth of the child. However at this time the nature of the relationship remains unclear.
- [4] After the friendship between the parties soured in about 2007 the Defendant brought Astrid to Saint Lucia. On returning to Brussels the child was diagnosed with acute Lymphoblastic Leukaemia. The parties cooperated to some extent on the issue of providing medical care for Astrid.
- [5] In 2009, the Defendant was reassigned and returned to Saint Lucia where she now resides and works at the OECS Headquarters in Castries.
- [6] After making enquires and pursuing avenues to obtain access to the child the Claimant filed the Fixed Date Claim. The Court fixed 27th February, 2011 as the hearing date for the Fixed Date Claim. On that date, the Defendants enquired as to the statutory or other basis for filing the Claim. Mr. Foster for the Claimant cited the Affiliation Act and the Court's inherent jurisdiction.
- [7] The Defendant filed an application seeking to strike out the Claimant's Claim and the application was heard on 29th February, 2012. The Claimant challenged the Defendant's right to make such an application at this stage of the proceedings.
- [8] The CPR 2000 Part 2.2 (3) states that these rules do not apply to proceedings of the following kinds:-
- (a) family proceedings.
- [9] Under the CPR 2000 the First Hearing can be treated as Case Management Hearing, and the issue of an abuse of process can be raised at that time in the proceedings. See: **Texan Management Enterprises Limited et al v Pacific Electric Wire & Cable Company Limited [2009] UKPC 46 or PC Appeal No 0018 of 2009.**

[10] It is also known that the time for making a submission to jurisdiction can be extended by the Court in certain circumstances, See **Sawyer v Atari Interactive Inc. [2005] EWHC 2351.**

[11] I therefore conclude that there is nothing preventing the Respondent or Applicant from applying to strike out the Claim on the ground of lack of jurisdiction or abuse of process.

[12] Pursuant to the submissions made by both sides the Court came to the following conclusions about the relevant legal provisions.

[13] Section 7 of the Eastern Caribbean Supreme Court Act Cap 2.01 of the Laws of Saint Lucia states:

"The High Court has and exercises an original jurisdiction in all civil causes and matters whatsoever within the State, save and except such matters as are exclusively assigned to the District Courts."

The District Court Act provides for civil matters to be heard in the District Court.

[14] Articles 201 to 209 of the Civil Code deal with the rights of illegitimate children, under a special rubric. This tends to suggest that this is a special category under the Code. The rule of interpretation is that the general does not derogate from the special. It is apparent that Articles 201 to 209 deal with a special category which does not apply to the articles which follow.

[15] Article 210A tends to suggest that the High Court may deal with matters pertaining to the custody or welfare of a minor. Indeed this is not surprising because matters relating to custody are dealt with in the High Court when they are brought pursuant to the Divorce Act. It is also conceivable that the rights of a child could arise pursuant to Administration Proceedings, Adoption Proceedings or proceedings under the

provisions of the Code relating to trusts. These rights could be protected or enforced in the High Court.

- [16] The Articles of the Code 210A to 210K appear to cover the entire gamut of family law and establish that the rights of the mother and father are equal before the law with the right in both of them to seek custody and maintenance of the child.
- [17] There is no doubt then that these provisions envision many matters relating to children being dealt with in the High Court since the definition of Court under Section 9 of the Interpretation Section of the Code is that the word Court when used refers to the High Court or a Judge of the Court.
- [18] However I do accept the submission that the Civil Code's provisions apply to an arcane legal framework. We now have the Family Court Cap 2.03 which itself is confined to matters under the Affiliation Act, The Separation and Maintenance Act and The Children and Young Persons Act.
- [19] Counsel for the Defendant argues that the matter should have been filed in the Family Court which has the jurisdiction to deal with matters under the Affiliation Act. This submission makes sense, since the Family Court seems much better suited to consider and make orders in these kinds of matters including a staff of Social Workers.
- [20] Under Section 8 (5) of the Affiliation Act there is a provision which permits a man to apply for custody of a child. I have heard the submissions that the Magistrate Court is likely to interpret this legislation to mean that the man can only apply if there is a maintenance order being heard.
- [21] The recent Court of Appeal decision between **Keith Auguste v Genova Marcellin, Magisterial Civil Appeal No 1 of 2011**, in my view does not preclude the right of a

man to apply for custody under this section of the Affiliation Act in the circumstances which exist in this case.

[22] Article 37 of the Code of Civil Procedure states:

"The Supreme Court or Judge may, from time to time, make any rules of practice that may be necessary for regulating proceedings, in or out of term, in causes or matters, whether in the Supreme Court or in the District Court, and on all matters of procedure."

[23] In the 5th Paragraph of the same Article the Legislation states:

"The Chief Justice may also make, add to, or annul any rules of Court for the more effectual carrying out of any of the provisions of the Civil Code or any other statute, and any such rules may repeal any provision of the Civil Code or of any statute and substitute other provisions in lieu thereof."

[24] I have come to the conclusion that the matter should not continue as presently presented, purportedly, pursuant to the Civil Code or Affiliation Act as a Fixed Date Claim in the High Court. These proceedings should be brought in the District Court constituted as a Family Court.

[25] I note that the Family Court when properly constituted has a compliment of staff which includes two (2) Social Workers. I am of the view that the issues which arise in this matter should be ventilated in such an atmosphere.

[26] This administrative framework and the rules provided pursuant to the Family Court Act work in harmony with the procedural and jurisprudential framework set out in the Civil Code and the Code of Civil Procedure, and the Eastern Caribbean Supreme Court Saint Lucia Act.

[27] In my view it is the intention of the legislature that matters of this nature should be heard in the Family Court.

[28] I also note that Counsel would be aware that any legislation which may appear to be applied in a discriminatory fashion can be modified by relevant provisions of the Constitution which address discrimination of any form.

[29] I will therefore strike out the Fixed Date Claim as an abuse of the process of the Court in light of the modern legislative framework which has been provided. I further decline to invoke any inherent jurisdiction in the circumstances.

[30] There is no order as to costs.



Francis H V Belle
High Court Judge