

BARBADOS

[Unreported]

**IN THE SUPREME COURT OF JUDICATURE
HIGH COURT
FAMILY DIVISION**

No. 658 of 2010

**IN THE MATTER of the Status of
Children Reform Act, Cap. 220**

**AND IN THE MATTER of
establishing the paternity of ETTY
CLARKE née PHILLIPS**

**AND IN THE MATTER of
establishing that NATHANIEL
SPRINGER was the father of ETTY
CLARKE née PHILLIPS**

**Before the Honourable Madam Justice Elneth O. Kentish, Judge of the
High Court**

**2013: January 16
February 20, 28
2014: April 10**

Appearances:

**Mr. Emmerson Graham for the Applicant
Mr. Ernest Jackman for the Objectors**

DECISION

The Parties

[1] The Applicant, Clarence Ashbourne Clarke, is the wife of ETTY Clarke née Phillips who is seeking to establish that she is the daughter of Nathaniel Springer (“the deceased”).

[2] The deceased was the son of the late Lilian Clarke. He had a brother, Oscar Springer, who is also deceased.

The Application

[3] By way of an ex-parte summons filed on 17 December 2010 the Applicant sought the following remedies:

1. A declaration under **s. 9(2) of the Status of Children Reform Act, Cap. 220** that Etty Clarke née Phillips is the child of Nathaniel Springer, deceased; and
2. An order pursuant to **s. 18 of the Status of Children Reform Act, Cap. 220** that Nathaniel Springer, deceased be registered as the father of Etty Clarke née Phillips.

[4] The application was supported by affidavits of the Applicant, Wilfred Barrow and Keith Clarke all filed on 17 December 2010 and by an affidavit of Etty Clarke filed on 29 January 2013 with leave of the court.

[5] In opposition to the application, Caroline Depeiza and Patricia Broome (“the Objectors”), nieces of the deceased, filed a joint affidavit on 30 December 2010. A further affidavit in opposition was filed by David Foster on 6 February 2013.

[6] At the hearing, all witnesses with the exception of the Applicant were cross-examined on their respective affidavits.

The Evidence on behalf of the Applicants

Clarence Clarke

[7] The Applicant deposed that he is the husband of Etty Clarke and that his wife is the daughter of Una Phillips, deceased. The name ‘Nathaniel

Springer' was never inserted on his wife's birth certificate at the time her birth was registered. Nor was any other name entered on her birth certificate as her father.

Wilfred Barrow

- [8] In his affidavit he stated that he was born on 15 August 1934 and resided in Glendalough, St. Lucy. However, he grew up in Josey Hill, St. Lucy which is a short distance away from Glendalough.
- [9] He knew Una Phillips to be the girlfriend of the deceased and, from time to time, saw them at each other's homes.
- [10] He knew when Una Phillips became pregnant and that she later gave birth to a female child named Etty Clarke. He stated that he had no doubt in his mind whatsoever that the deceased was Etty Clarke's father because he "saw him with the child in his arms and because Nathaniel Springer held himself out to be the father."
- [11] Moreover, he never heard anyone in Mount View, Josey Hill, Glendalough or any other place express any doubt as to whether the deceased was Etty Clarke's father.
- [12] Under cross-examination he stated that he knew that the deceased lived in Glendalough with his mother. He could not remember the name of the deceased's mother, but he believes it was 'Lilian Clarke'.
- [13] He stated that he knew the deceased "as a man" and that there was no one else living with the deceased and his mother. He did not know of a lady

by the name of Patricia Broome. Nor did he recall that a young woman lived with Lilian Clarke. He conceded that he never went into Lilian Clarke's home, but stated that he used to pass there.

[14] Referred to para 4 of his affidavit that "...[he] would see Una by Nathaniel's home and Nathaniel by Una's home from time to time", and asked what he meant, he responded:

"...When I walked through Lambert's cart road ... [I] would have pass on the public road by the deceased's and Una Phillips' houses. When I passed the deceased's house I would see Una Phillips there."

[15] In his opinion, the deceased was a simple person but he would say that "he had sense because [they] worked together".

[16] And when referred to para 5 of his affidavit where he said that he had "no doubt in his mind whatsoever" that the deceased was Etty Clarke's father because he "saw him with the child in his arms and because Nathaniel Springer held himself out to be the father", he conceded that not every man who holds a child in his arms is that child's father. But he maintained that the deceased held himself out to be Etty Clarke's father. He said that the child would be seen on the deceased's shoulder or around his neck when he was going to a political meeting or his Salvation Army meeting. Pressed further he insisted that it is true that the deceased took Etty to meetings as he described.

- [17] He worked with the deceased at Pickering Plantation and, on days when the other workers did not want to work if it was raining, the deceased would say “that he would have to work for money for Etty and his mother.”
- [18] He stated that the deceased used to collect his money from the plantation himself. Later he stated that the deceased had a brother named Oscar Springer who “sometimes collected Nathaniel’s money” since they both worked at the same plantation.
- [19] He rejected the suggestion of Counsel for the Objectors that it was possible that the child could have been adopted and he reiterated that he had seen “Lilian Clarke with the child...by her house.”
- [20] Still under cross-examination, he stated that he knows David Foster who lived next door to the deceased, on the right hand side. He never saw David Foster and the deceased together but believes that they would have known each other.
- [21] The deceased used to talk to people sometimes. He would stop and talk and then “go long home”.
- [22] Men in his district would talk with each other and it “would be known in the district, and talked about, that Nathaniel Springer was the father of Etty Clarke.”
- [23] He did not know when the deceased died, he died long time ago and Lilian Clarke died a long time before him.

- [24] When asked about the circumstances in which he came to give evidence he said that Etty Clarke asked him to give evidence and told him that she was making the application because “she got to understand that her uncle was cheating her out of her father’s land.”
- [25] He did know a Gwendolyn Burgess. She was not related to the deceased but he understood that she was the executor of Lilian Clarke’s Will.

Keith Clarke

- [26] In his affidavit filed on 17 December 2010, he deposed that he was born on 1 January 1936 and was raised in Josey Hill, St. Lucy an area which adjoins the village of Mount View. He knew the deceased. He also knew Una Phillips. His first job after leaving school at age 14 was at Pickering Plantation, St. Lucy. There he worked with the deceased and Una Phillips.
- [27] Una Phillips was the deceased’s girlfriend and all of the workers at the plantation knew that since their relationship was common knowledge.
- [28] He knew when Una Phillips became pregnant and when she gave birth to a female child who was later named Etty Phillips. As far as he knew, the deceased was that child’s father. The deceased held himself out as Etty Phillips’ father and, on many occasions, he saw him “with her acting in a way to suggest that he was her father.”
- [29] Under cross-examination he stated that he first met the deceased when the latter was about 30 years old and living in Rock Hall, St. Lucy.

- [30] He also knew Una Phillips. At the time he knew her, she was living in Boscobelle, St. Peter.
- [31] When referred to para 6 of his affidavit where he stated that he knew when Una Phillips became pregnant, he stated that when she became pregnant she was living in Rock Hall, St. Lucy and, at that time, he knew the deceased was living at Lilian Clarke's house.
- [32] He knew David Foster as a gentleman in the district.
- [33] He would not describe the deceased as slow and half-foolish as he knew him as a working man.
- [34] Referred again to para 6 of his affidavit where he stated "As far as I know Nathaniel Springer was the father of that child", he said that he meant the deceased and Una Phillips "were friends".
- [35] Referred to para 7 of his affidavit where he deposed "on many occasions I saw him acting in a way to suggest that he was the father", he explained he would see them (the deceased and Una Phillips) working together, coming to work together and leaving work together.
- [36] When asked whether he ever saw the deceased and the child together he responded "Not at that time." Una Phillips did not bring the child to work.
- [37] Under re-examination he stated that when he saw the deceased and Una Phillips at work, he knew they were friends and he saw them very close

together at other times and he remembered “a time” when he saw the deceased with the child.

[38] Mount View, Glendalough and Rock Hall are close together and that Glendalough and Rock Hall are used interchangeably.

Etty Clarke

[39] In her affidavit of 29 January 2013 she deposed that she was born on 12 December 1953. Her mother was Una Phillips. Her mother had a second daughter, Gwendolyn Phillips, whose father was Carlise Beckles of the Risk, St. Peter.

[40] She was raised by her mother in Mount View and in Josey Hill, St. Lucy and, during that time, the deceased “would come around” and give her money.

[41] The deceased and her mother worked together at Pickering Plantation and the deceased would give her [Etty Clarke] \$1.25 a week. She always “looked up to him” as her father and he treated her as his daughter and, as far as she was aware, he had no other children.

[42] She deposed that when the deceased fell ill she took him to the hospital and visited him whilst he was a patient there. He died on 6 May 1973.

[43] The deceased’s brother took responsibility for burying him, although she knew that the deceased had money. She was young at the time and had no experience in taking on that responsibility.

- [44] In her evidence-in-chief Etty Clarke stated that she now knows David Foster. She never knew that he lived near to her.
- [45] She knew of a relationship between the grandchildren of Caroline Depeiza and David Foster.
- [46] She now knows where David Foster lives and she knows where the deceased had lived. If she were at the house of the deceased, she could not see David Foster's house and would not say that David Foster's house is a stone's throw away from the deceased's house.
- [47] She would not describe the deceased as foolish.
- [48] Under cross-examination, she stated that she knew the deceased and, in the time that she knew him, he lived in Josey Hill, St. Lucy. That was the only place he ever lived. He lived with Lilian Clarke and she is sure that no one else lived with them.
- [49] She knows Patricia Broome. She did not recall ever seeing Patricia Broome at Lilian Clarke's house. Sometimes she went on her own to Lilian Clarke's house and sometimes she went with the deceased. She maintained that on no occasion did she ever see Patricia Broome at that house and Patricia Broome did not live there.
- [50] Her sister Gwendolyn Phillips always lived with her mother Una Phillips and herself. She was not sure that her sister was around at the time the deceased came to her house because she was too young at the time. She

didn't recall any occasion that the deceased visited her home whilst her sister was there.

[51] The deceased was not foolish, but he kept to himself. It is not true to say that he was always at home at Lilian Clarke's house as he went to work and would sometimes come by her house. The deceased treated her as his daughter and was always there for her. He gave her money and when he "worked the ground" he would bring her a yam, a sweet potato or "whatever" for her. Those were the main things he used to do for her.

[52] She went to Lilian Clarke's house numerous times, sometimes twice a week.

[53] When referred to para 6 of her affidavit she stated that when the deceased took ill his relative, Bertina, called her and told her that she (Etty Clarke) had to take him to the doctor. She took him to the doctor and he was hospitalised for about three to four days.

[54] The deceased died in 1973 and she waited until 2008 to apply for a declaration of paternity because her funds were low and with children to raise she tried to put the children first. However, immediately thereafter she said that she had only one child.

[55] Oscar Springer died in 2007. He treated her as his niece and he used to talk with her and she used to go to his house when she was young. His wife, the Objector Caroline Depeiza and the latter's brothers and sisters

lived with him. She saw Caroline Depeiza at his house, she is his daughter.

[56] She knew that there was a parcel of land left in the estate of the deceased, but it was incorrect to say that she was seeking a declaration of paternity in order to own that parcel of land.

[57] She asked Gwendolyn Phillips to give evidence in this matter on her behalf. She did not refuse but “sometimes when we come to court she says her foot is hurting her and I can’t lift her up to bring her.” Gwendolyn Phillips never told her that she was not coming to give evidence. When pressed, the witness said “When I said I can’t lift her up it means that no one likes the court.”

[58] The deceased died when she was 17 years old and she is now 59 years old.

[59] On re-examination she stated that she was born in 1953. The deceased died in 1973 and the difference between 73 and 53 is 20.

The Evidence of the Objectors

Caroline Depeiza and Patricia Broome

[60] In their joint affidavit filed 30 December 2012 the deponents stated that they were the nieces of the deceased. They knew Etty Clarke since she was a child living in Chance Hall, near Mount View, in St. Lucy.

[61] The deceased lived with Lilian Clarke in Chance Hall, St. Lucy and he never married. He was “mentally slow”.

[62] Lilian Clarke left a Will which devised a parcel of land to the deceased. That Will was probated by Gwendolyn Burgess in 1983 and, to the best of their knowledge, she never received a claim from the Applicant.

[63] Before Gwendolyn Burgess died, she maintained that Etty Clarke was not the deceased's daughter.

Patricia Broome

[64] Patricia Broome deposed that she was raised by her grandmother Lilian Clarke and that she lived with her and the deceased in Chance Hall, St. Lucy. She never saw Una Phillips and the deceased together, nor did Una Phillips visit the deceased at his home.

[65] Etty Clarke was never introduced to her as the deceased's daughter. If she was his daughter he would have said so before he died. Moreover, she never saw or heard anyone say that they witnessed the deceased with Etty Clarke.

[66] Under cross-examination she stated that she is now 62 years old. She did not know Etty Clarke as a child, she came to know her when she was about 18 years old. She knew that Etty Clarke grew up in Rock Hall, St. Lucy and that Rock Hall is close to Glendalough and Mount View.

[67] She knew Etty Clarke's mother, Una Phillips, very vaguely and she knew the deceased who was her uncle and she used to live at his house and he never told her that he had a child.

[68] It was only recently that she heard people in the area saying that the deceased was the father of ETTY Clarke. By recently, she meant about five years.

[69] When the deceased fell ill she knew that he was hospitalised but she never went to the hospital to look for him and she did not know whether ETTY Clarke used to go to the hospital.

[70] She remembered when the deceased died and she went to his funeral. She cannot recall if ETTY Clarke was there or not.

Caroline Depeiza

[71] In her evidence-in-chief, she stated that she knew ETTY Clarke from the time the latter was growing up and going to primary school. At that time ETTY Clarke was living in Mount View, not far from where she is now living.

[72] She also knew the deceased who was her father's brother and her uncle. He used to live in Mount View with Lilian Clarke. Only the deceased and his mother Lilian Clarke lived in the house but her sister, Patricia Broome, used to go there sometimes and spend time there.

[73] She is now 63 years of age and as she "came along" she heard people in the district saying that the deceased is ETTY Clarke's father, but her grandmother, Lilian Clarke, never told her that he had a daughter.

[74] She used to go to Lilian Clarke's house but she never saw ETTY Clarke there. Nor did she ever see the deceased and ETTY Clarke together.

- [75] The deceased never talked a lot. He and Lilian Clarke used to work at Pickering Plantation. They used to go to work together and would come home together. He would not be found 'hanging' around the district or congregating with other people.
- [76] Oscar Springer was her father and it is not true that Etty Clarke used to visit Oscar Springer at his house. She never saw her there and her father never told her that Etty Clarke was the deceased's daughter. She never saw Etty Clarke's mother and the deceased together. Nor did she see her father and Etty Clarke's mother together.
- [77] She did not know that the deceased gave Etty Clarke money. Nor could she recall when he became sick.
- [78] Under cross-examination she stated that she never heard that Oscar Springer would bring home the deceased's wages for him. She did not know how the deceased got his wages or whether he gave his money to his mother.
- [79] She grew up in Rock Hall St. Lucy. The deceased lived with Lilian Clarke in Mount View, St. Lucy. Rock Hall is a good way from Mount View and she could walk that distance. She did not go to her grandmother's house in Mount View very often.
- [80] There is only a four year's age difference between Etty Clarke and herself.

[81] As a child, she would not have been familiar with a “boyfriend and girlfriend” relationship. She never saw the deceased and Etty Clarke’s mother together. Nor did she see her father and Patricia Broome’s mother together, but she has accepted Patricia Broome as her sister. Her father said that Patricia Broome is her sister.

[82] Patricia Broome used to go to Lilian Clarke’s house, but she never saw her there. She knew Patricia spent time there because Lilian Clarke told her so.

[83] She never asked the deceased or Lilian Clarke if Etty Clarke is the deceased’s daughter.

[84] When referred to para 10(ii) of her affidavit which stated:

“To the best of my knowledge Nathaniel Springer deceased never held out himself to be the father of the applicant.”

She stated that by that she meant that she never knew that the deceased used to support Etty Clarke.

[85] She heard that Lilian Clarke left a piece of land for the deceased in her Will but she did not know if the Will was probated. However, she admitted having said in her affidavit that the Will of Lilian Clarke was probated in 1983.

[86] The executor of the Will is Gwendolyn Burgess who is now deceased. She recalled that in the joint affidavit she said that Gwendolyn Burgess

maintained that Etty Clarke was not the child of the deceased. However, she then said, and I quote:

“Gwendolyn Burgess did not tell me that. Gwendolyn Burgess and me never had any talk about Etty Clarke. I don’t know whether the statement at para 8 of the affidavit is true or not.”

[87] She knows the piece of land that was left to the deceased. She is in charge because she lives on a piece of the land. The house that her grandmother left for the deceased is still on the land but nobody lives in it.

[88] She stated that the deceased is not Etty Clarke’s father because her father told her so, but she did not put that in her affidavit. No one told her who Etty Clarke’s father is.

[89] The deceased was a simple person, mentally slow and never spoke to anyone in the district.

David Foster

[90] In his affidavit filed 6 February 2013 David Foster, deposed that he knew Etty Clarke from the time she was a baby and that he knew her mother Una Phillips very well. For a time Etty Clarke and Una Phillips lived in a house opposite his house.

[91] He also knew the deceased, who he described as being “slow and half-foolish”. The deceased lived a stone’s throw away from his house and he saw the deceased pass his house every morning and evening.

- [92] The deceased was the kind of person who went straight from home to work and from work to home and he never mixed with other men in the district and never hung around the street.
- [93] He never saw the deceased and ETTY CLARKE together. Nor did he see the deceased and UNA PHILLIPS together at any time and never heard that they were in a relationship. He never saw the deceased in female company in all the time he knew him.
- [94] Under cross-examination he was referred to para 9 of his affidavit and maintained that he never heard any gossip that the deceased was the father of ETTY CLARKE.
- [95] He is now 67 years old and is about 7 years older than ETTY CLARKE. He has lived in the same place all his life. From where he lived he could see the house where the deceased lived, but he would not be able to see any person going to that house.
- [96] He did not know that LILIAN CLARKE also worked at PICKERING PLANTATION but he knew that LILIAN CLARKE and the deceased would leave home in the morning to go to work together. The deceased used to work at PICKERING PLANTATION but he did not know where LILIAN CLARKE used to work.
- [97] From the time he was a boy, he used to see the deceased pass in front his house when he was on his way to and from work. His father and OSCAR SPRINGER were very good friends and his father also worked at PICKERING PLANTATION.

[98] He worked at Rediffusion around Barbados and he saw people who were “slow” that had children. He agreed that a person could be “slow” and still father a child.

The Submissions

The Submissions of the Applicant

[99] Mr. Graham, Counsel for the Applicant, referred to **s. 7(1)(j) of the Act** which states that paternity will be presumed where “a 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.” He submitted that the evidence of Wilfred Barrow, Keith Clarke and ETTY Clarke sufficiently established that the deceased implicitly and consistently held himself out to be the father of ETTY Clarke.

[100] Both Wilfred Barrow and Keith Clarke, Counsel submitted, were able go beyond what was required by “implicitly and consistently” and were able to speak to the conduct of the deceased, because they and the deceased were close in age. In this regard, both witnesses stated that they knew of the relationship between the deceased and Una Phillips. And they both said they were aware of when she became pregnant.

[101] Therefore, Counsel argued, their evidence paints a picture of consistent conduct on the part of the deceased.

[102] In relation the evidence of Etty Clarke, Counsel argued that she was the only person who could attest to whether or not the deceased supported her financially.

The Submissions of the Respondent

[103] Mr. Jackman, Counsel for the Respondent, submitted that the evidence adduced by the Applicant fell short of that required to make out a presumption of paternity in accordance with s. 7 of the Act.

[104] He agreed that the only applicable provision is **s. 7(1)(j) of the Act**.

[105] In this regard, Counsel submitted that the word ‘implicitly’ refers to conduct that amounts to a declaration that the child in question is that of the putative father. And the word ‘consistently’ means conduct which is regular and steadfast.

[106] He argued that the Applicant must provide the court with the necessary evidence to establish the presumption under s. 7(1)(j) of the Act and that the evidence of the Applicant himself has no value in establishing the presumption.

[107] He further contended that the Applicant’s witnesses, Wilfred Barrow, Keith Clarke and Etty Clarke, could not be relied on to establish the presumption.

[108] Counsel placed great reliance on the evidence of Wilfred Barrow that the deceased kept to himself, was always at home and did not really hang about the district and submitted that the witness could not assist the court

with any evidence as to the existence of a relationship between the deceased and Una Phillips.

[109] He argued that, on Wilfred Barrow's evidence, he saw the deceased with Etty Clarke around his neck going to a Salvation Army meeting only once.

[110] Counsel further argued that the witness failed to identify anyone else who the deceased may have told that he is the father of Etty Clarke. This was so, even though they worked together at Pickering Plantation.

[111] Nor did Wilfred Barrow produce evidence that the paternity of Etty Clarke was ever discussed on the plantation.

[112] Furthermore, the witness failed to provide an explanation of what he meant by para 5 of his affidavit, where he deposed that the deceased held himself out as Etty Clarke's father.

[113] Moreover, Counsel contended, the evidence adduced by Wilfred Barrow seems to relate to matters known to him alone and therefore, any alleged conduct on behalf of the deceased, could not be perceived as implicit and consistent conduct for the purposes of s. 7 of the Act.

[114] As regards the evidence of the Applicant, it was Counsel's argument that his affidavit evidence that "as far as he [knew]" the deceased was the father of Etty Clarke was also insufficient for the purposes of s.7 of the Act. So too was his oral testimony, since he could not identify or state

the alleged circumstances in which the deceased held himself out to be the father.

[115] In relation to Etty Clarke herself, Counsel questioned the veracity of her evidence. Under cross-examination, she stated that she did not know David Foster, even though she also stated that she lived a stone's throw away from him. She stated that she visited Oscar Springer's home, which is strongly contested by Caroline Depeiza. In any event, Counsel argued, a mere statement that she regularly visited the home of the deceased was not enough to establish a presumption of paternity.

[116] On the other hand, Counsel argued that the evidence of the Objectors was given in a forthright and candid manner.

[117] He also urged the court to consider that the application for paternity was made some 30 years after the death of the putative father and, seemingly, only upon Etty Clarke's discovery of the existence of the contents of the deceased's estate.

The Law

[118] **Section 7 of the Act** in so far as applicable provides:

7. (1) Unless the contrary is proven on the balance of probabilities, there is a presumption that a male person is, and shall be recognised in law to be, the father of a child in any one of the following circumstances

...

(j) a 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.

[119] **Section 9 of the Act** in so far as applicable provides:

9. (1) Any person having an interest in a child may apply to the court for a declaration that a male or female person is recognised in law to be the father or mother, as the case may be, of that child.
- (2) Where the court finds that a presumption of paternity exists under section 7, and unless it is established, on the balance of probabilities, that the presumed father is not the father of the child, the court shall make a declaratory order confirming that the paternity is recognised in law.

...

[120] It is clear from the combined provisions of **ss. 7(1) and 7(1)(j) of the Act** that there is a presumption that a male person who is alleged to be the father of a child is the father of that child where he has, by his conduct, implicitly and consistently acknowledged that he is the father of the child, unless the contrary is proved on a balance of probabilities.

[121] Properly construed, **s. 7(1) of the Act** creates a rebuttable presumption in favour of the Applicant. What follows from this, is that the burden lies on the Applicant to establish, on a balance of probability, that the deceased did by his conduct implicitly and consistently hold himself out to be the father of ETTY CLARKE. Once the Applicant has adduced evidence of such implicit and consistent conduct, the presumption is raised and the burden then shifts to establish the contrary.

[122] The outcome of the application is intrinsically linked to the nature and quality of the evidence adduced in support of and in opposition thereto.

Discussion

[123] I find that Wilfred Barrow gave his evidence in a candid and straightforward manner.

[124] He asserted that he knew Una Phillips to be the girlfriend of the deceased and that he would see her at the home of the deceased and would see the deceased by her home from time to time. He knew when Una Phillips became pregnant and gave birth to a female child whose name is Etty Phillips.

[125] At para 5 of his affidavit he deposed, and I quote:

“I had no doubt in my mind whatsoever that Nathaniel Springer was the father of the child because I saw him with the child in his arms and he held himself out to be the father.”

[126] Asked in cross-examination what he meant by the words, “he held himself out to be the father” he responded:

“...if you see Nathaniel going to a political meeting or his Salvation Army meeting you would see him with the child on his shoulder or round his neck going to the meetings.”

[127] And pressed further in cross-examination by Counsel, he retorted:

“It is true that Nathaniel Springer took the child Etty to meetings as I described.”

[128] He was not shaken in cross-examination particularly on his evidence that he worked on the same plantation with the deceased and his mother and the deceased would say that he “would have to work for money for Etty

and his mother” when other workers did not want to work if rain was falling.

[129] I accept his evidence as both credible and reliable. And I also accept his evidence that Una Phillips was the girlfriend of the deceased. In this regard it was also the unshaken evidence of Keith Clarke that that relationship was common knowledge amongst the workers on the plantation.

[130] Mr. Jackman submitted that, on the basis of the evidence of Wilfred Barrow, he saw the deceased with Etty around his neck going to a Salvation Army meeting only once. That is not the evidence of Wilfred Barrow as seen from the extracts of his evidence reproduced in the foregoing paragraphs. Counsel has, perhaps, unwittingly misconstrued that portion of the evidence.

[131] The portrait painted of the deceased in this case is of a simple person who kept to himself. He did not mix or hang around with people in the district. He was a ‘home man’ who went from “work to home and home to work”. That is the common thread woven in the testimony of the majority of the witnesses, including the Objectors.

[132] And so, I ask myself, what kind of implicit and consistent conduct ought one to reasonably expect from such a person as portrayed above in acknowledgement that he is the father of a child?

[133] It is unlikely that he would be given to open discussion of his most private and intimate affairs or an obvious display of financial or other support in respect of the child. That, to my mind, would be out of character. Perhaps, more in character would be a quiet assertion to his co-workers that he has to work for money for Etty and his mother.

[134] From that assertion a strong inference may be drawn that he regarded himself as under an obligation to work to provide money for Etty because he considered himself to be Etty's father.

[135] To my mind, that assertion also gives credence to the evidence of Etty Clarke that the deceased gave her \$1.25 per week and treated her as his daughter. Why else, I ask myself, would he consider himself obliged to work for money for Etty?

[136] Then there is Wilfred Barrow's evidence of seeing the deceased taking Etty, on his shoulders or around his neck, to meetings.

[137] Usually, to see a man going to a meeting with a child on his shoulders may not be significant in itself. That child may be a child of a relative or a child of a friend. But, to my mind, in the case of a person so retiring as the deceased, it is significant as it is unlikely that he would so carry a child not his own.

[138] Mr. Jackman pointed out that there is no evidence that the alleged relationship between Etty Clarke and the deceased was talked about at the

plantation and one would expect, as a part of any implicit and consistent conduct, that that would have been known and discussed.

[139] Counsel appears to be limiting this discussion to the plantation. But there is the evidence of Wilfred Barrow that it was known and talked about in the district, that the deceased was the father of Etty Clarke. And in this regard, the evidence of Wilfred Barrow is supported by that of Caroline Depeiza, one of the nieces of the deceased, and an Objector, that, and I quote :

“I am now 63 years old. As I came along I heard people in the district saying that Nathaniel Springer is her father...”

[140] I do not consider that any useful distinction can be drawn between “the talk” at Pickering Plantation situate in St. Lucy, and “the talk” amongst the men in Glendalough, Mountview or Rock Hall, St. Lucy.

[141] It was the evidence of Etty Clarke that Oscar Springer treated her as his niece. She used to go to his house when she was young and his wife, Caroline Depeiza and her brothers and sisters lived at the house with him.

[142] Her testimony in relation to visiting Oscar Springer’s house is in conflict with that of Caroline Depeiza who denied that Etty Clarke ever visited Oscar Springer’s home.

[143] However, in so far as neither Etty Clarke nor Caroline Depeiza is a disinterested party as each stands to benefit depending on the outcome of this matter, I approach their evidence with caution. And in particular I

am cognizant that Caroline Depeiza is living on a portion of land left in the Will of Lilian Clarke for the deceased.

[144] Wilfred Barrow is a disinterested party and, as I have found, I regard him as a witness on whose evidence I can rely.

[145] Thus, taking his evidence that he had no doubt that the deceased was Etty Clarke's father, that he would see the deceased carrying Etty on his shoulders and around his neck, together with his evidence that the deceased would say that he had to work for money for Etty together with the evidence of the talk of the district that the deceased was Etty Clarke's father, I find that the Applicant has, on a balance of probabilities, established the presumption that the deceased, Nathaniel Springer, was the father of Etty Clarke Née Phillips.

[146] In this case, the nieces of the deceased, Patricia Broome and Caroline Depeiza, have objected to the grant by the court of a declaration that the deceased is the father of Etty Clarke. They allege that the deceased never introduced Etty Clarke to any members of his family as his daughter. Nor did he acknowledge her to be his daughter. Further, they deny that he held himself out to be her father.

[147] It is said by Patricia Broome, in her affidavit, that she was raised by Lilian Clarke, the mother of the deceased, and resided at her home with the deceased. However, under cross-examination, she stated that she lived at her grandmother's home from the age of three years to five years.

That certainly does not equate to being raised by her grandmother. Her testimony that she was raised by her grandmother is also contradicted by the evidence of her sister, Caroline Depeiza, who stated that the deceased and Lilian Clarke lived alone and that Patricia Broome “used to go to [her] grandmother’s home sometimes...I knew she spent time there because my grandmother told me so.” Indeed, this evidence of Caroline Depeiza corroborates the testimony of Wilfred Barrow that Lilian Clarke and the deceased lived alone.

[148] It was also the affidavit testimony of Patricia Broome that she never saw Una Phillips, the mother of ETTY Clarke, and the deceased together and the deceased never had Una Phillips visit him at the residence of his mother.

[149] Having admitted under cross-examination that she only lived with her grandmother from the age of three years to five years it is clear that her evidence about not seeing the deceased and Una Phillips together and Una Phillips not visiting her grandmother’s residence, could not possibly relate to the period during which there was a relationship between the deceased and Una Phillips, as stated by Wilfred Barrow and Keith Clarke.

[150] In my judgement, Patricia Broome was not being candid and forthright in her evidence before the court. First, in para 2 of their joint affidavit they stated:

“We both know the applicant and Etty Clarke née Phillips for whom the application is made...and first knew of her as a little girl living in Chance Hall, near Mount View in the parish of St. Lucy.”

[151] However, under cross-examination, Patricia Broome stated that she did not know Etty Clarke as a child and was about 18 years old when she came to know her. That is a clear contradiction of her affidavit evidence.

[152] Secondly, she was hesitant in responding to questions particularly in relation to whether she had heard people in the area saying that the deceased was Etty Clarke’s father. On this, she reluctantly admitted that she only recently heard people in the area saying that the deceased was Etty Clarke’s father and when pressed stated, “that by recently [she] meant about five years.”

[153] Indeed, her evidence is in direct contrast with that of her sister who, in her evidence-in-chief, said and I quote:

“I am now 63 years old. As I came along I heard people in the district saying that [the deceased] is [Etty’s] father, but my grandmother never told me that [the deceased] had a daughter.”

[154] In this regard, it is significant that the Patricia Broome is one year younger than her sister and that they are both four and five years older than Etty Clarke respectively. Caroline Depeiza, Patricia Broome and Etty Clarke were all giving evidence about matters taking place when they were all children, a fact which I also bear in mind in assessing the reliability of their evidence.

[155] I find that Patricia Broome cannot be regarded as a witness on whose evidence I should place any reliance and I reject her testimony in its entirety.

[156] For the most part Caroline Depeiza gave her evidence in a candid manner. However, it disclosed one major inconsistency. At para 8 of the joint affidavit they deposed:

“In fact, Gwendolyn Burgess, deceased before her death maintained that Etty Clarke is not the daughter of Nathaniel Springer, deceased.”

[157] Yet, under cross-examination she stated that Gwendolyn Burgess “did not tell [her] that”, that she and Gwendolyn Burgess “never had any talk about Etty Clarke” and that she “[didn’t] know whether the statement was true or not.”

[158] This conflict not only impugns the credibility of both witnesses, but also suggests that the contents of the joint affidavit may have been entirely contrived for the sole purpose of denying the claim of Etty Clarke as a potential beneficiary to the estate of the deceased.

[159] To my mind, the evidence of David Foster does not assist the Objectors. It is unsubstantiated hearsay. And, in so far as his affidavit described the deceased as “being slow and half foolish”, it falls far short of establishing that the deceased did not implicitly and consistently acknowledge that he was the father of Etty Clarke.

[160] So the question is whether, on the evidence adduced on behalf of the Objectors, they have rebutted the statutory presumption that the deceased is the father of Etty Clarke. I find that they have not.

[161] On the contrary, I accept the evidence of Wilfred Barrow and Keith Clarke as to the relationship between the deceased and Una Phillips. I find on a balance of probability that Etty Clarke is the daughter of the deceased. I am cognizant that it does not necessarily follow from this finding that he held himself out implicitly and consistently to be her father.

[162] Nonetheless, for the reasons set out at para [145] I am satisfied that the deceased did, by his conduct, implicitly and consistently hold himself out to be the father of Etty Clarke née Phillips.

Disposal

[163] I am satisfied and find that the Applicant has established on a balance of probabilities that the deceased, Nathaniel Springer, whom the Applicant alleges to be the father of his wife Etty Clarke née Phillips, had by his conduct implicitly and consistently acknowledged that he was her father during his lifetime.

[164] I further find that the presumption of paternity has not been rebutted by the evidence of the Objectors Caroline Depeiza and Patricia Broome.

[165] Accordingly, I therefore declare that Nathaniel Springer, deceased, is recognised in law as the father of Etty Clarke née Phillips.

[166] The Objectors shall jointly and severally pay the costs of the Applicant to be quantified by the Registrar of the Supreme Court, if not agreed.

Elneth O. Kentish
Judge of the High Court