

BARBADOS
[Unreported]

IN THE SUPREME COURT OF JUDICATURE
HIGH COURT
FAMILY DIVISION

No. 533 of 2013

IN THE MATTER of the Paternity of
Mark St. Clair Corbin by Sheila Eileen
Haddock the Claimant

IN THE MATTER of the Status of
Children Act, Chapter 220 of the Laws of
Barbados

AND IN THE MATTER of the Vital
Statistics Registration Act, Cap. 192A of the
Laws of Barbados

Before the Honourable Madam Justice Margaret A. Reifer, Judge of the High Court

2014: August 28th

**Appearances: Ms. Ochoa Clarke of Clarke Gittens Farmer, Attorneys-at-Law for the
Claimant**

DECISION

Nature of the Application

- [1] This is an application begun by Fixed Date Claim Form in March 2013, seeking a declaration that St. Clair Winfield Boyce is the father of Mark St. Clair Corbin born on the 3rd April 1954, and for a consequential amendment of the Register of Births should the Court so find.
- [2] It is clear from the affidavit evidence presented that St. Clair Winfield Boyce was one of three children born to Elmira Boyce, deceased, the other two persons being Ernesta Boyce now deceased (the mother of the Claimant) and Oscar Boyce one of the deponents of the supporting affidavits (and uncle of the Claimant).
- [3] This Application is made against a background of four [4] very critical and significant facts as follows:

- (1) The alleged father is deceased (the norm in an application made pursuant to **section 9 of the Status of Children Reform Act**);
- (2) The “child” within the meaning of the Act, namely Mark St. Clair Corbin is also deceased (he died on the 7th February 2012 as shown by Exhibit SEH8 to the Affidavit of Sheila Eileen Haddock filed on 7th June 2013. This also is not of itself fatal to the claim.
- (3) There is no affidavit evidence by Vernese Corbin, the person shown in Exhibit SEH6 to the 7th June Affidavit of Sheila Eileen Haddock to be the mother of Mark St. Clair Corbin; or by anyone related to her or who knew her intimately; and
- (4) The Claimant Sheila Eileen Haddock née Bishop, is the cousin of Mark St. Clair Corbin, the niece of his putative father, and daughter of his (the putative father’s) sister (she does not purport to be the Executrix of his will or the administratrix or proposed administratrix of his estate or his next of kin).

The Law

- [4] This application is made pursuant to the provisions of the **Status of Children Reform Act** enacted in **1979**. This was a significant and revolutionary piece of social legislation in the **Laws of Barbados**, which sought to “reform the law relating to children by providing for their equal status.”
- [5] Thus, **section 3** (the equality provision) of the Act (in 1979 a bold and revolutionary step) abolishes the common law status of illegitimacy making all children of equal status and thereby giving legislative and jurisprudential recognition to the social reality of children born out of common law and visiting relationships. It enabled children born out of wedlock not only to claim maintenance (among other things), but to claim family property on the death of a parent from the estate of the deceased parent. This Act came into effect from 1st January 1980; it applies to persons born before and after the Act, but only to dispositions and instruments made **after** such commencement (see **section 6**).
- [6] **Section 7** is a key provision in that it establishes ten (10) circumstances giving rise to a presumption of paternity. In all the instances outlined in section 7, there is a presumption of paternity.
- [7] Under **section 9** applications to the Court for a declaration that a person be recognized in law to be a father or mother can be made by “any person having an interest in a child...”

Balance of Probabilities Test

[8] Such person must meet the evidentiary burden of satisfying the Court that circumstances exist **(7(a) to (j) of the Act)** to create a presumption of paternity. The standard of proof of paternity is the civil standard of ‘on the balance of probabilities’. This differs from the old common law standard of proof beyond a reasonable doubt in seeking to establish paternity.

[9] **The Status of Children Reform Act** does not expressly require corroboration, but the standard is a high one. In Trinidad and Tobago which enacted a *Status of Children Act in 1982*, judicial interpretation of this standard has been that it is a high standard. In the Trinidadian case of **Application of Span nee Philip (unreported) 24th June 1993, HC, T&T No. 2697 of 1987, Sealey J** had this to say:

“It seems, therefore, that one should have the evidence of the Claimant corroborated, and that the need for it has not been abolished by the absence of the word ‘corroboration’ from the Status of Children Act. This is more so when one considers that in many cases, as in this, the other person who can answer the questions of the Claimant or who might counter any allegation, which she might make is dead. The onus placed upon the Claimant to satisfy this court is quite high indeed.”

[10] More recently **Gobin J** in 2004 in the case of **Re Quashie, Nello (Unreported) HC, T&T No. S 1604 of 2003**, had this to say on the standard of proof in matters of this nature:

“[54] The Statute requires the Claimant in these matters to prove the existence of the relationship to the satisfaction of the Court. The standard which must satisfy the Court, is well settled. It is the civil standard but the Court must exercise caution in assessing the evidence. See Civil Appeal No.1699/2000 - Lennox Adrian Moonan v Wilma Moonan–Peccio ... Where an application is made following the death of the alleged father, greater caution must be exercised.”

[11] The Barbadian approach does not differ from the above stated position; the standard of proof is a high one. See **Shirley Eileen Cadogan nee Broomes v Beulah Banfield Civil Appeal No. 18 of 2009 (Unreported) decision of 4th December 2013**, where our Court of Appeal in explaining what is meant by “on a balance of probability” adopted the words of Lord Hoffman in **In re B (Children) [2008] UKHL 35 at para [15]** where he stated:

“There is only one rule of law, namely that the occurrence of the fact in issue must be proved to have been more probable than not.”

And later the Court of Appeal stated at para [55]:

“... she also had regard to the principle espoused by the cases of Garnett (1885) Ch D1; Hodgson (1885) 31 Ch D 177 and Cummins (1971) 3 WLR 580 that, although there is no rule of law which precludes a claimant from recovering against the estate of a deceased without corroboration, the court will generally require such corroboration and regard uncorroborated evidence with jealous suspicion”.

- [12] In determining whether a Claimant has proven her case to the satisfaction of the Court, the Court must look at the evidence as a whole. In a best case scenario this evidence is provided by the mother of the child (who is often the Claimant in these circumstances where the child is a minor) with respect to the relationship between herself and the deceased father (the fact that he and the mother were intimately associated) around the time of conception and after, (for example, the payment of maintenance) if relevant. The Claimant in these matters is usually the “child” who can usually depose to the fact, and provide particulars thereof, as to how the ‘father’ by his conduct implicitly and consistently acknowledged that he was the ‘father’. “Corroboratory” evidence is usually provided from an independent source buttressing the evidence of the mother and child, making it more likely than not (on the balance of probability) that their evidence is true. It has become the practice in Barbados for the Court to order that these claims be advertised to give notice to any person(s) interested in objecting to the application so that they may enter an appearance to the action.
- [13] These applications are most often heard and disposed of summarily by Affidavit evidence. In addition to this, and where necessary, (especially in those cases where there are objectors to the application) a Court may proceed by way of oral evidence and cross-examination of the deponents and/or oral witnesses in addition to the affidavit evidence.
- [14] Once the factual basis for the presumption arises the burden shifts to any person wishing to prove the contrary (see section 7 “Unless the contrary is proven on the balance of probabilities ...”). In other words, it then becomes a rebuttable presumption of law.
- [15] Similar legislative changes were made in the 1970s and 1980s in the Commonwealth Caribbean. Jamaica, *Status of Children Act 1976*; Trinidad, *Status of Children Act 1981*; Grenada, *Status of Children Act 1991*; Guyana, *Children Born Out of Wedlock (Removal of Discrimination) Act 1983*, to name a few.
- [16] While different, this legislation all shows a common thread: the equality provision, presumptions of paternity or parenthood; jurisdiction of the various High Courts to make declarations of paternity, and to make orders for blood tests to be carried out in the hope of establishing paternity.

The Issues To Be Determined

- [17] Arising from the above law, and the facts of this case are two main issues as follows:
- (i) Does the evidence in this matter give rise to a presumption of paternity under **section 7 of the Status of Children Reform Act?** and
 - (ii) Is the Claimant herein in the words of **section 9** of the Act “a person having an interest in a child”?

The Presumption of Paternity

[18] Counsel for the Claimant in her written submissions filed 11th July 2014 submits that there is a presumption of paternity under **section 7 (1) of the Status of Children Reform Act, Cap 220 of the Laws of Barbados** between St. Clair Winfield Boyce and Mark St. Clair Corbin.

[19] **Section 7 (1)** sets out ten (10) circumstances giving rise to a presumption of paternity. In her written submissions counsel grounds her claim in **sections 7 (1) (d) and (j)**. These two provisions state as follows:

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

...

(d) The person was cohabiting with the mother of the child in a relationship of some permanence at the time of the birth of the child, or the child is born within 280 days after they cease to cohabit;

...

(j) A person who alleges to be the father of the child has by his conduct implicitly and consistently acknowledged that he is the father of the child.”

[20] Applications are made pursuant to section 9 where applicants are relying on the presumptions set out in section 7; but under section 10 where there are no presumptions and both father and child are alive.

[21] This Court finds that there is no evidence that the mother and the alleged father of Mark Corbin ever cohabited before or after his birth. In fact, the Claimant Sheila

Eileen Haddock in her Affidavit filed 7th June 2013 specifically stated at paragraph 8 thereof as follows:

“8. I know that St. Clair Boyce had an intimate relationship with Vernese Corbin although they did not reside in the same household and that the intimate relationship between St. Clair Boyce and the said Vernese Corbin resulted in the birth of a son, the said Mark Corbin, deceased...”

- [22] See also paras 5 and 10 respectively, of the Affidavits of Oscar Leroy Boyce filed 7th June 2013 and Marian Gwendolyn Estwick filed 28th March 2013.
- [23] Consequently, there is no evidentiary basis for this Court to make a finding of a presumption under **section 7(1)(d)**.
- [24] The Affidavit evidence can however be analyzed to determine whether it satisfies the requirements of **section 7(1)(j)**, that is, whether it satisfies this Court on a balance of probabilities that St. Clair Boyce by his conduct implicitly and consistently acknowledged that he was the father of Mark St. Clair Corbin.
- [25] It is here that the factual matrix referenced at paragraph 3 above becomes most significant. How best can this standard be met in a context where the alleged father is deceased, the “child” is deceased, the mother of the “child” provides no affidavit evidence and it is being alleged by the Claimant that she believes that “Vernese Corbin (the mother) died in England many years ago”?

THE AFFIDAVIT EVIDENCE

- [26] The relevant affidavit evidence in this matter is provided by the Claimant and her sister Marian Gwendolyn Estwick, who were the nieces of St. Clair Winfield Boyce, and by his brother Oscar Leroy Boyce.
- [27] These affidavits show quite clearly that these family members believe Mark Corbin to be the son of their relative St Clair Winfield Boyce.
- [28] The Claimant who was 80 years of age at the time of the swearing of her Affidavit filed 7th June 2013 deposes to the fact that Mark Corbin was raised by her (the Claimant's) mother, in the belief that he was her brother's son. At eighteen (18) months of age Mark Corbin was left in the care of the Claimant's mother (Ernesta Bernice Vincenta Bishop née Boyce) by Vernese Corbin, his mother. Vernese Corbin migrated to the United Kingdom and, according to the affidavit evidence, was never heard from again.
- [29] Shortly after Vernese Corbin migrated to the United Kingdom (presumably on or around 1955/1956), St. Clair Boyce migrated to Guyana where he resided until his death in September 2000 (approximately 44 years later). A Death Certificate exhibited as SEH7 to the Claimant's 7th June Affidavit carries the name St. Clair Winfield Springer, but the Claimant deposes at paragraph 12 of the said Affidavit that St. Clair Winfield Springer referred to in the Death Certificate is St. Clair Winfield Boyce. The

Affidavit evidence brings no clarity to whether he ever returned to Barbados and what contact he had thereafter with his family. It certainly begs the question as to how he ‘implicitly and consistently’ recognised Mark Corbin as his son from circa 1955/1956 to the date of his death.

[30] Paragraph 9 of the Claimant’s Affidavit speaks to the source of her information and belief as follows:

“9. When Mark Corbin was a baby my uncle St. Clair Boyce brought him to my parents’ house at 2nd Avenue Bank Hall in the parish of Saint Michael in Barbados and introduced him as his son to my mother, my sister Marian Gwendolyn Estwick, my uncle Oscar Leroy Boyce and me the deponent.”

[31] Paragraph 14 interestingly states that St. Clair Boyce never financially maintained Mark Corbin. According to the Affidavit evidence he was maintained all the days of his life by the Claimant’s mother and after her death in 2010, by the Claimant.

[32] Mark Corbin died at age 57, a patient of the Psychiatric Hospital.

[33] The Claimant’s sister and cousin of Mark Corbin, Marian Gwendolyn Estwick née Bishop age 77, in her Affidavit filed 28th March 2013 gave support to her sister’s application to have her uncle declared the father of Mark St. Clair Corbin and states as follows:

“ 10. I was informed and verily believe that my uncle the said St. Clair Winfield Boyce had an intimate relationship with one Vernese Corbin and although they did not reside in the same household, they had a son the late Mark St. Clair Corbin.”

[34] This deponent does not state the source of her information and belief.

[35] At paragraph 13 this deponent alleges that her uncle implicitly and consistently acknowledged himself to be the father of Mark Corbin, (a mere repetition of the statutory language) but noticeably provides no particulars of how he did so ‘implicitly and consistently’. She states as follows:

“13. That at all material times and from the date of the birth of my cousin the said Mark St. Clair Corbin my uncle the said St. Clair Winfield Boyce acknowledged the said Mark St. Clair Corbin to be his son and did by his conduct implicitly and consistently acknowledge himself to be the his father. My uncle the said St. Clair Winfield Boyce at no time disputed that the said Mark St. Clair Corbin was his son.”

[36] The Claimant’s uncle and brother of St. Clair Winfield Boyce, Oscar Leroy Boyce age 87, filed an Affidavit on 7th June 2013 in support of this Application. He deposes therein at paragraph 6 in the same terms as his niece the Claimant as follows:

“ 6. When Mark Corbin was a baby my brother St. Clair Boyce introduced him as his son to my sister Ernesta Bishop, my nieces Marian Gwendolyn Estwick and Sheila Eileen Haddock and me the deponent.”

- [37] Interestingly, he also deposes that his brother St. Clair Boyce never maintained Mark Corbin.
- [38] Another Affidavit of note is that filed by the Claimant on 11th June 2014. This Affidavit was in response to this Court’s request for the Affidavit of Vernese Corbin the mother of Mark Corbin. This speaks to the Claimant’s belief that Vernese Corbin died in England many years ago, but to her inability to produce a death certificate to this effect because she has been informed that she needs to know the name of the borough or county in which the said Vernese Corbin resided at the date of her death so that an inquiry could be made to the relevant borough or county.
- [39] She also deposes that her inquiries have revealed that all of the relatives of the said Vernese Corbin who knew of her intimate relationship with her uncle are now deceased. She deposes that there is no one alive who can provide her with the last known address of Vernese Corbin or the date of her death. All of her relatives and Vernese Corbin’s relatives who would be able to inform the Claimant of Vernese Corbin’s date of death or last known address are all dead.
- [40] This Court was not satisfied that Vernese Corbin is deceased and formed the view that insufficient effort was expended to establish this fact and/or to locate any of her relatives in England/or Barbados who could establish this fact.

Who May Apply for a Declaration of Paternity?

- [41] The Claimant’s counsel argues in her written submissions that the Claimant, being the niece of St. Clair Winfield Corbin and the cousin of Mark St. Clair Corbin, has ‘locus’ to apply for a declaration on Mark St. Clair Corbin’s behalf. Counsel submits that the Claimant has an interest in Mark Corbin pursuant to **section 9(1) of the Status of Children Reform Act, Cap 220 of the Laws of Barbados**.
- [42] **Section 9(1)** without defining a person interested provides as follows:
“ 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 recognized in law to be the father or mother, as the case may be, of that child.”
- [43] In the Commonwealth Caribbean this provision appears to be unique and my research reveals no decisions of the High Court of Barbados interpreting this provision.
- [44] *Section 10 of the 1976 Status of Children Act of Jamaica* provides that any person who, being a woman, alleges that any named person is the father of her child, or, any person who alleges that the relationship of father and child exists between himself and any other person; or any person who has a **proper interest** in the result and who

wishes to have it determined whether the relationship of father and child exists between named persons, may apply to the court for a declaration of paternity. Such a declaration can be made even if the father or the child, or both of them are dead.

- [45] Section 10 of the Trinidad Act contains a similar provision. More specifically, it provides that any person “being a person having a **proper interest** in the result” may apply to a High Court for a declaration as to whether the relationship of father and child exists between two named persons, in other words, a declaration of paternity.
- [46] While this legislation is not a replica of our Barbadian legislation, section 10 in both Jamaica and Trinidad introduces the concept of an interested party, the difference with the Barbadian legislation being that in these two jurisdictions the word “proper” precedes “interest”.
- [47] A review of the case reports in the Commonwealth Caribbean, indicates that, as is the case in Barbados, these applications are usually made by the mother of a minor child or adult children seeking to establish paternity for succession purposes. No case report was found of an application made outside this group.
- [48] This is the first occasion in my experience that an application has been made by a cousin, and as stated above, who does not purport to be an administrator or proposed administrator, creditor or next of kin.
- [49] The legal effect and purpose of a declaration of paternity is mainly two-fold.
- [50] Firstly, to establish the putative father’s legal responsibility/obligation to support the child or to claim parental (succession) rights; and secondly, to enable that child to claim an interest in the man’s estate upon his death (rights entrenched) to family provision and succession to property on the death of a parent or vice versa.
- [51] Notably, it is this second purpose for which most applications are made under the **Status of Children Act**. Declarations of paternity as an adjunct to a maintenance order are usually made under the **Minors Act, Maintenance Act** and even the **Family Law Act**.
- [52] In the opinion of this Court, section 9 (1) should be read in this context, that is, a person having an **interest** should be a person having an interest either in the maintenance of a minor child or on behalf of the child in the putative father’s estate. This also takes into account our social and cultural reality where children are often raised by aunts, uncles, grandparents, cousins, godparents or even benevolent neighbours and friends, who may in the best interest of such child or children need to pursue legal recourse against a putative father to obtain maintenance or against his estate for that same purpose.
- [53] Since Mark Corbin is already deceased, then the only relevant “interest” can be in the putative father’s estate.
- [54] Can this Claimant be deemed in that context to be “a person having an interest in a child”?

- [55] As stated above, and bears repetition at this point, the Claimant has neither deposed that she is the administratrix of his estate, the proposed administratrix, the executor of his will or his next of kin.
- [56] The nearest this Claimant comes in the opinion of this Court to expressing an “interest” within the meaning of the Act is at paragraph 18 of her Affidavit of 7th June 2013 where she states as follows:
- “18. When my cousin Mark Corbin died, the Psychiatric hospital informed me of his death. I came to Barbados made all of his funeral arrangements and paid for all of his funeral expenses.”
- [57] In spite of this, the Claimant at no point states that she is a creditor of Mark Corbin’s estate and/or that this is her “interest” in the filing of this application. When pressed by the Court, her counsel merely submitted that as cousin of Mark Corbin and niece of his putative father, she has the locus necessary for this Application.
- [58] In the opinion of this Court a degree of kinship outside of the immediate family of the “child” does not automatically or without more constitute an ‘interest’ within the meaning of section 9 of the Act.

Disposal

- [59] In view of the foregoing, this Application is refused on two grounds as follows:
- (1) The Claimant has failed to satisfy this Court on the balance of probabilities that St. Clair Boyce “by his conduct implicitly and consistently” acknowledged that he was the father of Mark Corbin. The Affidavits are indeed proof of the fact that when Mark Corbin was born St. Clair Boyce did in fact tell his family that Mark Corbin was his child. Relatively soon after Mark Corbin’s birth, both Vernese Corbin (his mother) and St. Clair Boyce left Barbados permanently and neither of them apparently ever maintained him. The weight to be given to the “corroboratory” evidence is questionable as it could not be deemed ‘independent’. This affidavit evidence does not meet the standard required by the Act. The Affidavit evidence of Vernese Corbin and/or her relatives or next of kin was needed.
 - (2) The Claimant has not satisfied this Court that she is a person having ‘an interest’ in a child within the meaning of **section 9** of the **Status of Children Act 1979**.

MARGARET A. REIFER

Judge of the High Court