

BARBADOS

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

Civil Suit No: 333 of 2019

BETWEEN:

**KIM S. MEDFORD
(Friend and interested person)
DENNIS EVELYN**

**FIRST CLAIMANT
SECOND CLAIMANT**

**AND
CHRISTIANNE EVELYN
PHILIP EVELYN
SADNA (Mr. Evelyn's ex-wife)**

**FIRST DEFENDANT
SECOND DEFENDANT
THIRD DEFENDANT**

Before: The Hon. Madam Justice Shona O. Griffith, Judge of the High Court

**Dates of Hearing: 2020: January 23rd, 27th
 February 13th, 25th
 March 20th
 June 26th**

Appearances:

Ms. Kim Medford, 1st Claimant in person.

Mr. Stephen Lashley for the Defendant

REASONS FOR DECISION

[1] This is an appeal from an Order of the Court made on the 26th June, 2020 whereby the proceedings filed by the Claimant were dismissed and the amount

of \$1,000.00 costs awarded to the Defendants. This matter was summarily disposed of without progressing to the stage of case management. The Claimant has appealed the Court's Order and the Court has been requested to provide reasons which are likewise issued in summary form as hereinafter provided.

Procedural History

[2] The Claimant commenced her proceedings by way of 'Urgent Ex Parte Application' supported by Affidavit, on 6th March, 2019. The matter was intitled as follows:-

*“Kim Medford (Friend and Interested Person) – First Claimant
Dennis Evelyn – Second Claimant
And
Christienne Evelyn – First Defendant
Phillip Evelyn – Second Defendant
Sadna (Mr. Evelyn's ex-wife) – Third Defendant”*

[3] The Notice of Application sought a number of orders from the Court which are usefully extracted verbatim in order for the context of the proceedings to be illustrated:-

- (i) *That the National Assistance Board investigate and report on Mr. Evelyn's welfare/situation;*
- (ii) *That Mr. Evelyn be offered temporary protective custody;*

- (iii) *For a peace bond to be placed on Ms. Christienne, her agents and or servants, barring them from threatening, intimidating, isolating and humiliating Mr. Evelyn;*
- (iv) *A limited restraining order on Sadna, Mr. Evelyn's ex-wife, until further determined;*
- (v) *An injunction on Ms. Christienne and her agents or servants barring them from using monies from Mr. Evelyn's bank account at CIBC/First Caribbean International Bank or his rental incomes or his pension for purposes other than his maintenance and welfare until it is further determined;*
- (vi) *For limited custodianship/attorney ad litem for Mr. Evelyn*
- (vii) *On Ms Christienne to hand over to Mr. Evelyn the mobile phone #2568671, bank cards – debit and credit – and safety deposit box keys which are held at CIBC/First Caribbean International Bank in his name until further determined;*
- (viii) *An audit of all Mr. Evelyn's current and fixed assets;*
- (ix) *Have Mr. Desmond Sands of Regis Chambers and appear and be orally examined regarding Mr. Evelyn's legal matters;*
- (x) *That Ms. Christienne submits to counselling and given a period of probation at the Geriatric Hospital, Beckles Road, St. Michael.*

- [4] The affidavit in support of that Application revealed that the Claimant became acquainted with Mr. Dennis Evelyn somewhere around 2001/2002 via their respective roles as parents of children attending the same primary school. The Affidavit appears to allege that the Claimant and Mr. Evelyn were friends, exchanged confidences regarding some aspects of their lives, particularly Mr. Evelyn's relationship with his children; and discussed matters of finance and property. Mr. Evelyn relocated to the United States sometime in 2006 but after his return, the Claimant details a resumption albeit infrequent, of the interaction between them. The Claimant alleges to have become concerned about Mr. Evelyn's health after August 2017 when she saw him in person, whereby he appeared unlike himself and in poor health. During 2018 she was unable to reach him and at the end of the year paid him a visit unannounced, and was dismayed at what she saw at his home.
- [5] At that visit, the Claimant details allegations made to her by Mr. Evelyn to the effect that he had been deprived of control over his affairs, particularly his financial affairs and that his every move was policed by his daughter and ex-wife. The Claimant indicates that Mr. Evelyn expressed to her a wish to reverse legal decisions he'd made concerning his property. The Claimant tried to assist Mr. Evelyn in getting word to his attorney and his doctor without alerting Mr. Evelyn's family, given what Mr. Evelyn had indicated to her, but

she was unsuccessful. The Claimant remained gravely concerned about Mr. Evelyn's situation, especially given unsatisfactory answers and suspicion towards her by Mr. Evelyn's daughter, when she attempted to make inquiries of them of Mr. Evelyn's situation. The Claimant made attempts to contact an attorney on Mr. Evelyn's behalf, but soon recognized that she'd been unable to have any private conversations with Mr. Evelyn and the family continued to treat her with suspicion and monitor her interaction with Mr. Evelyn. The Claimant tried several other means to assist Mr. Evelyn, but was unable to officially obtain assistance without his express consent. The Claimant's last resort was to bring the matter to Court on Mr. Evelyn's behalf, on the basis of his wish and agreement for her to do so.

- [6] For reasons not apparent, the Claimant's Application was not afforded any hearing date during 2019, and in January, 2020, the Claimant filed a claim form and statement of claim containing allegations elderly abuse of Mr. Evelyn by the Defendants. The Claim prayed a truncated but similar in scope and tenor, version of the relief initially sought in the Application. The matter first came before this Court on the 27th January, 2020. Albeit entirely lacking in identifiable legal foundation, the matter was entertained on the basis of the allegations of elderly abuse which necessitated some form of inquiry by the Court.

[7] The notes of evidence for the 27th January, 2020 reveal that the Court undertook to seek to engage a relevant officer from the National Assistance Board to ascertain what steps might be appropriate to facilitate some form of enquiry into the allegations. The Claimant was however informed that the Defendants named would have to be served with notice of the proceedings before any substantive action was undertaken. The matter was adjourned to the 13th February, 2020, at that time, for the Court to make inquiries in relation to the National Assistance Board. Upon review of the National Assistance Board Act, it was the Court's position that the provisions of this Act were ill-suited to facilitating an inquiry into the matter. Instead, the Court's inquiry would be best facilitated under the provisions of the **Mental Health Act, Cap. 45** of the Laws of Barbados.

[8] From the notes of evidence, on the 13th February, 2020, the Claimant was directed to personally serve the proceedings on the named parties on or before the 17th February, 2020. The matter was adjourned for the 25th February, 2020. At the adjourned date 25th February, 2020 the Defendants appeared, represented by Counsel having a few days earlier, filed a defence denying all allegations of abuse. The defence was filed along with a counterclaim seeking to strike out the Claim, as well as seeking orders under the Mental Health Act in relation to Mr. Evelyn.

The Defendants pleaded that Mr. Evelyn had been diagnosed with dementia in 2018 after his daughter Christienne started to notice a decline in his mental capacity and speech, but the family was unaware that any action ought to have been taken in law for them to deal with his affairs.

[9] As a matter of law, Counsel for the Defendants submitted that the Claimant had no permission from the Court to act as Mr. Evelyn's guardian *ad litem* or next friend; the proceedings had been filed in breach of Rule 15 of the Mental Health Rules; the Claimant had no interest in Mr. Evelyn's affairs; and as such, the Claim ought to be dismissed as an abuse of the Court's process. The Defendants by their response to the allegations in the Claim, evinced an intention to move the Court under the provisions of the **Mental Health Act, Cap. 44**, for an order for appointment of a receiver in respect of Mr. Evelyn's affairs. The matter was adjourned for report on the 20th March, 2020.

[10] The Claimant of her own volition proceeded to file submissions and authorities on the 13th March, 2020 notwithstanding that submissions were not requested by the Court, nor was there any direction for hearing of any issues arising from the proceedings. There are no notes of evidence from the 13th March, 2020 however on that day, the matter was further adjourned for the 3rd April, 2020. On the 3rd April, 2020 and a subsequent adjournment of 16th April, 2020, there were no hearings conducted due to the disruption

of Court sittings on account of the COVID-19 pandemic. The matter was re-listed for the 26th June, 2020 at which time it was dismissed by the Court, on the basis of the Claimant's lack of legal standing to have instituted the proceedings and the absence of proper legal grounding of the proceedings. Counsel for the Defendants requested legal costs on the basis of the appearances necessitated by the proceedings, as well as the engagement of Counsel's time as a result of the submissions and authorities filed by the Claimant. The Court awarded \$1000 costs to the Defendants.

Reason for Dismissal

[11] The Claimant's pleadings revealed her to be a personal acquaintance of Mr. Evelyn and in that capacity, concerned as to his welfare. Mr. Evelyn was named as a second Claimant and the proceedings were seeking relief solely on behalf of Mr. Evelyn, none on behalf of the Claimant. As such the proceedings were ostensibly filed by the Claimant in a representative capacity for the benefit of Mr. Evelyn. As pertains to the representative capacity of the Claimant to bring the proceedings on Mr. Evelyn's behalf, neither the relationship of personal acquaintance nor the Claimant's concern as to Mr. Evelyn's welfare with nothing more, gave rise to any legal standing for the Claimant to have filed the proceedings. At the time of institution of the proceedings, Mr. Evelyn was not a patient within the terms of the

Mental Health Act, thus the Mental Health Act and its Rules did not apply. Notwithstanding that Act not being applicable, as a matter of law, the proceedings were not supported by any form of legal authorization which entitled the Claimant to initiate them on behalf of Mr. Evelyn. Particularly –

- (i) None of the documents filed (Application, Claim Form of Statement of Claim) were signed by Mr. Evelyn;
- (ii) The documents filed did not attach any authority for example, power of attorney, or even a letter of consent.

[12] Insofar as the Claimant's allegations could lead to an assumption that Mr. Evelyn was not capable of issuing or by virtue of the circumstances alleged, would not be permitted to issue any written authority to act, the proceedings would have had to have been moved on the basis of Mr. Evelyn being an intended patient under the Act. In such case, the Claimant would at the very least have been required to comply with the provisions of **CPR Part 23**, in order to have properly moved the proceedings on behalf of Mr. Evelyn. Particularly, **Rules 23.2(1), 23.2(6) and 23.7** would have governed the proceedings or otherwise have to be complied with.

[13] The Court entertained the matter in the first instance on the sole basis that there were serious allegations made concerning the welfare of an elderly person, which behoved the Court at the very least to make inquiries into the

matter. However, having been served with the proceedings as directed by the Court, the Defendants immediately came forward as of the 25th February, 2020 and via their Counsel and pleadings filed, evinced an intention to invoke the Court's jurisdiction under the **Mental Health Act**.

- [14] The matter was thereafter set for report, as means to ensure that the Court remained seized of the matter whilst the Defendants took necessary steps to institute their proceedings under the Act. In the absence of proper legal authorization or standing on the part of the Claimant to institute proceedings on behalf of Mr. Evelyn, as well as a lack of legal foundation of the composition of the Claim, there was no further action to have been taken in respect of the proceedings. The Claimant, without being requested or directed to, on the 13th March, 2020 filed submissions which were irrelevant and unnecessary, having regard to the circumstances before the Court.
- [15] The Claimant was afforded the opportunity to withdraw the matter, which was not done. At the final date of hearing on the 26th June, 2020, the Claimant had still not discontinued the claim, whilst the Defendants' proceedings pursuant to the Mental Health Act had been filed. As a result, the Court dismissed the proceedings filed by the Claimant. Counsel for the Defendants requested costs on behalf of the Defendant.

Given that the Claimant had been afforded the opportunity to discontinue her Claim, the Court awarded costs to the Defendant in a nominal sum of \$1,000.00.

SHONA O. GRIFFITH
Judge of the High Court