

IN THE COURT OF APPEAL

SAINT LUCIA

Miscellaneous Appeal No.1 of 1970

BETWEEN:

ALBERT ST.CROIX Appellant

v.

MAY SOLOMON Respondent

Before: The Honourable the Chief Justice
The Honourable Mr. Justice Cecil Lewis
The Honourable Mr. Justice St. Bernard (Ag.)

V.A. Cooper for appellant
Respondent in person

April 10,11, 1970

The Judgment of the Court was delivered by -
CECIL LEWIS, J.A.

This is an appeal against an order of the magistrate of the First District in St. Lucia dated January 10th, 1970, adjudging the appellant to be the putative father of a child named Brenda born to the respondent on February 28th 1967. By this order the appellant was also directed to pay the respondent two dollars a week for Brenda's maintenance until she attained the age of sixteen years. The appellant was dissatisfied with the magistrate's adjudication and has appealed therefrom on the following grounds:

"(1) That no sufficient evidence of maintenance was given of the particular child, and the evidence showed that the appellant maintained other children with the respondent and used to go there to see them.

/(2).....

- (2) That the verdict is entirely against the weight of the evidence."

The substantial argument put forward on the appellant's behalf however, was that there was no corroboration of the respondent's story in a material particular as required by law.

The evidence disclosed that the parties lived together as man and wife for a period of about eighteen years, during which time four children were born to the respondent, of whom the appellant is admittedly the father. At some date, not precisely stated in the evidence, the parties ceased to live together in the same house.

When the complaint was heard on January 10th 1970, the respondent stated that the separation took place in the "year before last". She would thus appear to be referring to the year 1968. On the other hand, the appellant said in his evidence that he had no connection with the respondent after Bryan, one of the children was born, but as the date of Bryan's birth was nowhere stated in the evidence, this statement does not assist in any way in ascertaining when the parties ceased to live together. However, there is a statement in the cross-examination of the respondent, from which it can be inferred that the appellant was saying that at the date of the trial he and the respondent had ceased to live in the same house for a period of four years. This statement consists of the following answer given by the respondent to the appellant:

"You and I did not stop seeing each other four years ago."

This reply was obviously in answer to a question put to the respondent by the appellant, to the effect that he had ceased to associate with her for a period of four years at that time, that time being 10th January, 1970. This would mean

/that.....

that the association had ceased sometime in 1966. Since Brenda was born on February 28th 1967 it means that she was conceived either in May or June 1966.

The appellant's suggestion to the respondent on January 10th 1970, that they had ceased to see each other four years ago necessarily involves the conclusion that they were still seeing each other in some part of 1966, and as he has given no positive evidence as to the exact date when the relationship between them came to an end as he alleged, there is a strong probability that Brenda may have been conceived before the breach took place. Further, there is no evidence whatever of any association by the respondent with any other man than the appellant at any time before Brenda's birth.

The position consequently is, that there has been a long and continuous association between the parties as man and wife, during which time several children were born to them, and this period of association included, on the appellant's own showing, the time when Brenda could have been conceived.

In Moore v. Hewitt, (1947) 2 All E.R. 270 the head-note reads as follows:

"In bastardy proceedings where there is evidence that over a long period, including the time of conception, the alleged father has associated with the mother on terms of close affection, and there is no evidence that the mother was associating with any other man, there is material which the justices are entitled to treat as corroboration of the mother's statement".

This principle exactly fits the circumstances of this case. Although the appellant has impliedly stated that he stopped seeing the respondent four years ago, he nevertheless continued to visit her home. He says, he did so to look after his children's needs because the respondent was never at home.

/The.....

The witness Philomen Morris, a neighbour, testified as to the frequency of these visits, which he said took place daily.

Counsel for the appellant contended that no adverse inference ought to be drawn against the appellant because of these visits, as they were prompted solely by a father's natural interest in the welfare of his children. This indeed was the appellant's explanation, but it did not find favour with the magistrate, who held that the appellant's frequent visits to the respondent's home constituted corroboration of her story that he was Brenda's father; and in the light of the previous history of the relationship existing between the parties it was not surprising that the magistrate came to this conclusion. It certainly cannot be regarded as an unreasonable one and it ought not to be disturbed.

The appeal is accordingly dismissed.

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(Cecil Lewis)
Justice of Appeal