

SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

CASE NO. 125 OF 2002

ALICIA BELLA MARY GELLIZEAU - Claimant

VS

**OLIVE CLARKE
(Administratrix of the Estate of Melvin Clarke,
deceased) - Defendant**

Appearances :

Mr. Victor Cuffy for Claimant/Opposant

Mr Emery Robertson for Defendant/Proponent

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2003: January 14th, 30th
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DECISION

[1] **BRUCE-LYLE, J:** This decision arises out of a claim by the Claimant Alicia Bella Mary Gellizeau against the Defendant Olive Clarke as Administratrix of the Estate of Melvin Clarke, deceased for the following reliefs:-

- (a) That she is entitled to her share in the Estate of the late Melvin Clarke of Dorsetshire Hill; the said Melvin Clarke having been declared her father by a Court Order made by Cenac, J on the 31st day of May, 1996;
- (b) The Claimant therefore claims against the Defendant, as Administratrix of her said deceased father's Estate, her proportionate share in the said Estate that being the two third share in the Estate to be divided equally among the children of the said deceased.
- (c) A declaration that the Defendant holds the interest of the Claimant in the Estate in trust for her.
- (d) Any further or other relief and costs.

[2] The matter thereupon proceeded in accordance with the CPR 2000 (Civil Procedure Rules 2000) and at a Case Management hearing before Barrow, J (Acting), the following orders were made -

- (a) that Counsel frame the legal issue(s) arising on the pleadings and that such issue(s) be tried as a preliminary question on Tuesday 14th January, 2003 before all other issues in this Suit.
- (b) the Defendant is to be the Proponent on the trial of the issue(s)
- (c) Skeleton Arguments to be delivered on or before 23rd December 2002 by the Proponent and by the Opponent on or before 7th January 2003.

[3] These orders were complied with by Counsel and the preliminary issues came up for trial on 14th January 2003. The issues which arose from the pleadings to be tried as preliminary issue are as follows -

- (1) When a person dies intestate in accordance with the Administration of Estate Act, Cap. 377 of the Laws of Saint Vincent and the Grenadines 1990, at what point of time are the rights to succession determined?
- (2) If the class closing rules apply, when does it close?
 - (a) At the date of death; or
 - (b) At the date of the application for the Grant of Letters of Administration of the Estate.
- (3) Can a “child” apply for an order for a declaration of paternity in order to claim?
- (4) Does the Status of Children Act, Cap. 180, Section 7(1)(b) empower a child to so claim a share or interest in his fathers intestacy?
- (5) Does the Exparte Order of the Court validate the position of the Claimant, it being an order, which was made after the death of Melvin Clarke, and could the claimant pray in aid the order to contradict the express provisions of Section 7(1) of the Status of Children Act.
- (6) What is the effect of Section 7(2) of the Status of Children Act on Section 62 of the Administration of Estates Act, Cap. 377.
- (7) Assuming the order made by the trial judge was valid does it have retrospective effect to entitle the claimant to a share of interest in the property of the deceased.
- (8) The property having been disposed of in accordance with the Administration of Estates Act Section 62 and being vested in the lawful

beneficiaries under and by virtue of Deed of Assent No. 3582 of 1999, does the occurrence of “any act, event or conduct” which enables the relationship of father and child to be traced or recognized affect any estate, right or interest in real or personal property to which any person has become absolutely entitled whether beneficially otherwise before the act, event or conduct occurred?

These were the issues framed by the Proponents Learned Counsel Mr. Emery Robertson in his Skeleton Arguments, and to which Learned Counsel for the Opposant Mr. Victor Cuffy replied to.

[4] Before I delve into the answers to these issues as put forward and argued by both sides, it would be useful to narrate a brief synopsis of the facts of this case, which are as follows. Melvin Clarke (deceased) died on the 2nd day of December 1995 intestate leaving him surviving, his lawful wife Olive Clarke and his infant children Casmin, Patrick, Vernon, Adella and Jerome Clarke, the only persons entitled to share in his intestacy. On the 31st day of May 1996 in High Court Suit No. 192 of 1996 before Cenac, J entitled “IN THE MATTER OF THE APPLICATION OF LOUVINA ACOSTA NEE GELLIZEAU FOR A DECLARATION THAT MELVILLE CLARKE (now deceased) IS THE FATHER OF ALICIA BELLA MARY; AND IN THE MATTER OF THE STATUS OF CHILDREN ACT CAP. 180 OF THE REVISED EDITION OF THE LAWS OF SAINT VINCENT AND THE GRENADINES, 1990” the Applicant/Claimant applied for an Order of Declaration of Paternity and for an order that paternity was established during the life time of the said Melville Clarke.

[5] The said application was heard Exparte and without notice to the Respondent and the following order was made – “IT IS ORDERED as follows -

(1) That Melville Clarke now deceased of Dorsetshire Hill, Saint Vincent was the father of the said Alicia Bella Mary Gellizeau, a female person; and

(2) That paternity of the said Alicia Bella Mary Gellizeau was established during the lifetime of the said Melville Clarke.”

[6] The Claimant sent a letter dated 21st September 1996 to the Respondent accompanied by a copy of the order, notifying the Respondent of the Order of the Court and advising that her Counsel Mr. Emery Robertson would be able to “explain the full meaning of the order” to her. Letters of Administration to the Estate of Melvin Clarke deceased was applied for on 20th April 1998 and granted on the 7th day of May 1998 bearing Grant No. 83 of 1998 to Olive Clarke Widow and Administratrix of the Estate of the said deceased.

[7] On the 25th day of October 1999 the Administratrix vested in herself and the other named beneficiaries namely Casmin Clarke, Patrick Clarke, Vernon Clarke, Adella Clarke, and Jerome Clarke a Deed of Assent of the real property of the deceased Melvin Clarke which comprised 2 acres, 1 rod and 33 poles of land situate at Sion Hill in the State of Saint Vincent and the Grenadines by virtue of Deed of Assent No. 3582 of 1999.

[8] Pursuant to the order of Declaration of Paternity the Claimant claims to be entitled to a share in the Estate of the deceased Melvin Clarke and is claiming a 1/9 share. From these brief facts of the case, it can be gleaned that before Letters of Administration were applied for to administer the Estate of the deceased Melvin Clarke, both the defendant Olive Clarke and her Counsel Mr. Emery Robertson were aware of the existence of the claimant as a child of the deceased pursuant to the Court Order of paternity made by Cenac, J on 31st May 1996 and had been so notified by letter and copy of the said order on the 21st September 1996. The application for Letters of Administration of the deceased Estate was applied for on the 20th April 1998 and granted on the 7th May 1998; almost two years after receipt of the letter of 21st September 1996 accompanied by the order of Paternity.

[9] This Court Order by Cenac, J which declared the deceased to be the father of the claimant and also declared that paternity of the said claimant was established during the lifetime of the deceased, has not been challenged in any way as to its validity and efficacy. There was no counter application by the Defendant nor her Counsel to have it set aside for

whatever reason as permitted by law in such instances. To date there has been none such challenge except for Counsel for the Defendant now asking this court to question its validity. It is my view, and I so hold that Cenac, J carefully considered the evidence put before him in support of the application for an Order of Declaration of Paternity, and having satisfied himself, from no doubt, affidavit evidence supplied in such matters, made the orders that he made. I cannot, and will not declare or hold at this stage that those orders are not valid. As I stated before, the Defendant had ample opportunity to have challenged the order of paternity. This was not done.

[10] Having held that the paternity order made by Cenac, J is one without question, and is valid, it is also clear, that the defendant had full notice of the Claimants claim in the Estate of the deceased Melville Clarke, by the letter to her and her Lawyer dated September 21st 1996, even though that was not explicitly stated in the said letter. I cannot accept the assertion by Learned Counsel for the Defendant/Proponent that because the said letter did not explicitly refer to a claim on the deceased estate, it cannot be given that import or interpretation. Counsel should have been aware or put on his guard that in this kind of situation and with the application made for the order of paternity, certain consequential processes were bound to follow, leading to a claim on the estate of the deceased. Quoting Mitchell, J in Civil Suit 43 of 2000 headed “In the Matter of the Status of Children Act, Chapter 180 of the 1990 Revised Laws of Saint Vincent and the Grenadines and in the Matter of Applications on behalf of Wendy Hilda Carter nee Marsden and Michelle Amanda Mc Cree for Declaration of Status” and which I adopt fully, he had this to say “Applications of this sort, though not necessarily these two particular applications, are not always made only for the sentimental reason of knowing who one’s father is, they are sometimes made for the cold hard reason of allowing one to participate in the estate of a deceased person”. That is the exact position of the claimant in this instant case.

[11] It is interesting to note that the claimants name was however omitted in the affidavit executed by the Defendant in the application for Letters of Administration on 2nd December 1996 and stamped with the Eastern Caribbean Supreme Court Stamp much later on April 4th 1998.

- [12] Flowing from these premises as stated above I also agree with Learned Counsel for the Claimant that when one dies intestate as in the instant case of Melville Clarke, the right to share in the deceased property should not be closed before satisfaction is given to all known beneficiaries of whom the Administratrix has had previous knowledge regarding their claims. As I have already held earlier in this decision, the Administratrix and her lawyers were notified by letter and Court Order attached, to the effect that the deceased Melville Clarke was adjudged father of the Claimant and that paternity was established during the deceaseds life time. The application to the Court for Letters of Administration was not filed by the Defendant until 20th April 1998 although Affidavits were signed as early as 2nd December 1996 for that purpose. This has not been disputed at any time by the Defendant. Accordingly, I agree with Learned Counsel for the Claimant that class closing rules cannot have effect in these circumstances, for the reasons stated above, and I so hold.
- [13] It is interesting to note also that the application for an Order for a Declaration of Paternity was made by Louvina Acosta nee Gellizeau, the mother of the Claimant in these proceedings and not by the Claimant herself. This gives the Claimant the right on the basis of that paternity order, to file these proceedings. On this score also I agree with Learned Counsel for the Claimant.
- [14] The Status of Children Act, Cap. 180, of the Laws of Saint Vincent and the Grenadines has as its title the following “an Act to remove the legal disabilities of children born out of wedlock and to provide for matters connected there with or incidental thereto”. This as stated is the fundamental purpose of the Act and has a direct bearing on these proceedings at hand, especially with regard to the Interpretation of the issues that arise in this case.
- [15] Section 7 of the Act, where relevant, under the heading “Recognition of Paternity required in cases of Succession etc”. provides as follows:

(1) The relationship of father and child, and any other relationship traced in any degree through that relationship, shall, for any purpose related to Succession to Property which devolves after the Commencement of this Act or to the construction of any will or other testamentary disposition or of any instrument creating a trust operating after such commencement, be recognized only if:

(a)

(b) the paternity has been admitted by, or established during the lifetime of, the father (whether by one or more of the types of evidence specified by Section 8 or otherwise):

Provided that,

(2) In any case where by reason of subsection (1) the relationship of the father and the child is not recognized for certain purposes at the time the child is born, the occurrence of any act, event or conduct which enables that relationship, and any other relationship traced in any degree through it, to be recognized shall not affect any estate, right or interest in any real or personal property to which any person has become absolutely entitled, whether beneficially or otherwise, before the act, event or conduct occurred.

[16] Section 8 of the Act under the heading "Evidence of Proof of Paternity" also provides:

(1) if pursuant to the provisions contained in the Registration of Births and Deaths Act, or under any other law, the name of the father of the child to whom the entry relates has been entered in the register of births (whether before or after the commencement of this Act) a Certified Copy of the entry made or given in accordance with any provision made by or under that act shall be prima facie evidence that the person named as the father is the father of the child.

- (2) The entry in the register kept by any Minister of the Christian religion before 29th June 1867, and all copies and extracts therefrom duly certified as provided in the Registration of Births and Deaths Act, Showing the name of the father of the child to whom the entry relates, shall be prima facie evidence that the person named as the father is the father of the child.
- (3) Any instrument signed by the mother of a child and by any person acknowledging that he is the father of the child shall, if executed as a deed by each of those persons in the presence of a notary public, commissioner for oaths, justice of the peace, registrar of the courts, registered medical practitioner, marriage officer, midwife or the head of a public educational establishment, be prima facie evidence that the person named as the father is the father of the child.
- (4) An affiliation order, within the meaning of any written law, made in any proceedings between the parties, shall be prima facie evidence whether or not between the same parties.
- (5) Subject to Section 7(i), a declaration made under section 10 shall, for all purposes, be conclusive proof of the matters contained in it.
- (6) An order made in any State outside St. Vincent and the Grenadines declaring any person to be the father or putative father of a child, being an order to which this subsection applies pursuant to Subsection (7) shall be prima facie evidence that such person is the father of the child.
- (7) The Minister may by order, declare that subsection (6) shall apply with respect to an order made by any Court or public authority of a State outside St. Vincent and the Grenadines or by any specified Court or public authority in any such State.

[17] And for completeness, Section 10 of the Act under the heading Declaration of Paternity provides -:

- (1) Any person who
 - (1) being a woman, alleges that any named person is the father of her child;
 - (2) alleges that the relationship of father and child exists between himself and any other person; or
 - (3) being a person having a proper interest, wishes to have it determined whether the relationship of father and child exists between two named persons,
May apply, in such manner as may be prescribed by rules of court, to the High Court for a declaration of paternity, and, if it is proved to the satisfaction of the Court that the relationship exists, the Court may make a declaration of paternity whether or not the father or the child or both of them are living or dead.
- (2) where a declaration of paternity under subsection (1) is made after the death of the father or of the child, the court may, at the same or any subsequent time, make a declaration determining for the purposes of section 7(1)(b), whether any of the requirements of that paragraph have been satisfied.

[18] As it appears, the claimant has availed herself of these relevant sections of the Status of Children Act, Cap. 180 as referred to above. With particular reference to Section 7(1)(b) of the Act, the claimant contends that the deceased Melvin Clarke, during his lifetime admitted that the Claimant was his daughter. This was accepted by Cenac, J in making his order of paternity of 31st May 1996. That order is found to be a valid order, and I have no reason to question its validity, as already stated. In this wise I hold that Section 7(2) of the Act does in no way affect the Claimants claim. By extension too, it cannot be said that the Claimant was not a person entitled at the date of death of the deceased on 2nd December 1995. This is because as already stated and held, paternity was established

during the life time of the deceased Melvin Clarke, and not from the date of the order of paternity 31st May 1996.

- [19] The effect of the order of paternity with specific regard to its second limb establishing paternity of the said claimant during the lifetime of the deceased, is that it clothes the claimants claim with retrospectivity and I am entitled to and do hold that she is entitled to a share or interest in the property of her deceased father.
- [20] It is therefore baffling to say the least, that the defendant proceeded to distribute the Estate and completely ignored the claimant and her legal representative, when the defendant and her legal representative by the letter of 21st September 1996 had been put on notice of the claimants claim long before an application for the Grant of Letters of Administration was filed in the Estate on 20th April, 1998. I agree with Counsel for the Claimant that “it is naïve to assert as the defendant did that the order of paternity was made purely for the purpose of the declaration of paternity only and not for the purpose of Succession to Property”.
- [21] Having thus said I rule in favour of the Claimant with respect to the preliminary issues raised from the pleadings for determination.

Frederick V. Bruce-Lyle
High Court Judge