SAINT VINCENT AND THE GRENADINES

IN THE COURT OF APPEAL

CIVIL APPEAL NO.6 OF 2005

BETWEEN:

DAVID SAMPSON
(Intended Administrator of the Estate of
Elisha Sampson, deceased)

Appellant

and

DAVID ADOLPHUS McKENZIE

Respondent

Before:

The Hon. Mr. Brian Alleyne, SC	Chief Justice [Ag.]
The Hon. Mr. Denys Barrow, SC	Justice of Appeal
The Hon. Mr. Hugh A. Rawlins	Justice of Appeal

Appearances:

Mr. Richard Williams for the Appellant
Mr. Stanley John for the Respondent

2005: October 11;
December 5.

JUDGMENT

[1] RAWLINS, J.A.: This is an appeal against a Judgment in which the trial Judge made a paternity Order in favour of the respondent, David McKenzie. In that Order, the learned Judge declared that he was satisfied on a balance of probabilities that McKenzie had made out his case:

> "that the relation of father and child exists between the late Elisha Sampson and the claimant David Adolphus McKenzie pursuant to the provisions of Sections 10(1)(b) and 10(2) respectively of the Status of Children Act, Cap. 180 of the Laws of Saint Vincent and the Grenadines, in that paternity of the said Elisha Sampson had been

> admitted by him and/or established during his lifetime, and that the requirements of section 7(1)(b) of the Status of Children Act, Cap. 180 of the Laws of Saint Vincent and the Grenadines have been satisfied and complied with, and that the claimant's statements of case and affidavits and exhibits in support have met the requirements of Section 8 or otherwise; the defendant's case is hereby dismissed, and the defendant is to pay the claimant's costs in the sum of $8,000.00."

[2] Elisha Sampson ("the deceased") died on 22nd August 1996. The appellant, David Sampson, who was the defendant in the paternity claim, is his Nephew and the Intended Administrator of his estate. His appeal seeks to set aside the foregoing Order, to have McKenzie's case dismissed and to have Judgment entered for the appellant.

[3] The appeal states 4 grounds. The first is that the learned Judge erred in finding that McKenzie made out his case for the declaration of paternity. The second is that the Judge erred in finding that the deceased admitted his paternity of McKenzie or that paternity was established during the lifetime of Sampson. The third is that the Judge erred in holding that McKenzie's statement of case, affidavits and exhibits in support met the requirements of proof of paternity under section 8 of the Status of Children Act, Cap. 180 of the Laws of Saint Vincent and the Grenadines (hereinafter referred to as "the Act"). The fourth is that the Judge erred in awarding $8,000.00 costs against him (David Sampson) personally, rather than against the estate of Elisha Sampson. The merits of the appeal will be considered against a detailed background of the appeal, in order to put it into its proper perspective.

Background

[4] The respondents instituted a Claim against David Sampson in his capacity of Intended Administrator of the estate of the deceased. They claim that they were the children of the deceased and that they are entitled to share in his estate. The deceased owned a liquor and grocery shop, as well as lands and a dwelling

house. The second named respondent, Ms. James, withdrew her claim for religious reasons. McKenzie pursued his case to trial.

[5] When the trial commenced, Counsel for David Sampson made preliminary submissions. The substantial submission was that the affidavits that McKenzie filed did not disclose sufficient evidence to meet the standard of proof by which he had to prove paternity. The learned Judge upheld the submission. He held that McKenzie's statement of case and affidavits fell short of the requirements of section 8 or otherwise that would have enabled him to make the necessary declaration of paternity for the purpose of sharing in the estate of the deceased. The Judge therefore dismissed the claim. He however stated the view that McKenzie could have proceeded with his claim for a declaration of paternity simpliciter, which would not have entitled him to share in the estate. Since Counsel for David Sampson had no difficulty with this, with his concurrence, the Judge made a declaration of paternity simpliciter in favour of McKenzie, who however appealed the Judge's ruling.

[6] The Judgment of this Court in that appeal, David Adolphus McKenzie v David Sampson (Intended Administrator of the Estate of Elisha Sampson), Civil Appeal No. 12 of 2003, was delivered by Saunders JA, as he then was. In effect, he interpreted the relevant sections of the Act that are concerned with paternity Orders. These are sections 10, 7 and 8.

[7] Section 10 of the Act states:

> "(1) Any person who –
> (a) being a woman, alleges that any named person is the father of her child;
> (b) alleges that the relationship of father and child exists between himself and any other person; or
> (c) being a person having a proper interest, wishes to have it determined whether the relationship of father and child exists between the 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."

[8] Section 7 of the Act states:

"(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 recognised only if –

(a) the father and the mother of the child were married to each other at the time of its conception or at any time subsequent thereto; or

(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, if the purpose aforesaid is for the benefit of the father, there shall be the additional requirement that paternity should have been so admitted or established during the lifetime of the child or during the period when the child was conceived."

(2) In any case where by reason of subsection (1) the relationship of father and child is not recognized for certain purposes at the time the child is born, the occurrence of any such event or conduct which enables the 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."

[9] Section 8 of the Act states:

"(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 the 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(1), 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 Saint Vincent and the Grenadines declaring a 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 Saint Vincent and the Grenadines or by any specified court or public authority in any such state."

[10] Saunders JA interpreted these sections. In Paragraph 13 of the Judgment, he stated that section 10 of the Act permits the Court to make declarations of paternity in circumstances where the father or the child or both of them are dead. He stated further, however, that the conjoint effect of sections 10 and 7 is that where a declaration of paternity is made, the applicant cannot succeed to property unless section 7(1)(b) is complied with, and this subsection must be read with section 8 of the Act.

[11] In Paragraph 15, Saunders JA stated that sections 7, 8 and 10, when read together, require 2 different standards of proof. According to his interpretation, where a person who applies for a declaration of paternity is uninterested in succeeding to property, whether the alleged father is alive or dead, a court merely has to be satisfied that the relationship of father and child exists or existed in order to make a declaration of paternity. This, he stated, is what has been referred to as

a declaration of paternity simpliciter. He noted, with approval, the observation of Mitchell, J. in Re Milton Cato, Saint Vincent and the Grenadines High Court Civil Suit No. 43 of 2000, that the standard of proof for a declaration of paternity simpliciter is much lower than would be acceptable in affiliation proceedings.

[12] On the other hand, Saunders JA stated that where the alleged father is dead and the applicant wishes to go further and succeed to property of his/her deceased father, then the applicant can only obtain the further declaration, referred to in section 7(2), if evidence of the kind itemized in section 8 or similar type of evidence is forthcoming. He accepted that while the standard of proof in applications for paternity in such cases is proof on a balance of probabilities, the proof that is required is very cogent proof of paternity. He held, further, that the different requirement for applications for paternity for the purposes of succession to property as against applications for paternity simpliciter is not discriminatory under section 13 of the Constitution of St. Vincent and the Grenadines. (See Paragraphs 17-20 of the Judgment.).

[13] Finally, this Court held, in David Adolphus McKenzie, that the Judge erred when he dismissed McKenzie's claim for the declaration of paternity on the ground that the statement of case and affidavits did not disclose sufficient evidence. In this regard, Saunders JA stated, at Paragraph 22 of the Judgment, that the affidavits of Thomas Sampson, Lester Richards and Charles James fell short of meeting the extraordinary high standard and nature of proof required to satisfy section 8 of the Act. He noted, however, that there were 2 letters, which David Sampson had himself written to his deceased uncle, which contained references to Lynnette and Peter.

[14] In Paragraph 23 of the Judgment, Saunders JA stated that since there were serious disputes on the affidavits, a trial was necessary because oral evidence tested by cross-examination was the best method for the resolution of the disputes. He expressed the view that in considering the "other" evidence referred

to in section 7(1)(b) of the Act, one must take into consideration the prevailing levels of literacy and an oral tradition in Caribbean societies. His view was that because of these, and the little attention that large sections of our societies pay to form, applicants for declarations of paternity might not be in a position to provide the types of evidence specified in section 8.

[15] It was against this background that the Judge, having heard the oral evidence, made the paternity Order in favour of McKenzie, which is the subject of the present appeal.

The present appeal

[16] The foregoing background very neatly puts this appeal into its true perspective. It requires us to consider whether, after the trial, the learned Judge was correct when he found that the evidence adduced was sufficient "other" evidence under section 7(1)(b) of the Act to establish that the deceased either admitted paternity of David McKenzie during his lifetime, or that the paternity was established during the lifetime of the deceased, on a balance of probabilities.

[17] The grounds of appeal do not allege that the learned Judge misapprehended or misapplied the law. During the hearing before this Court, however, learned Counsel for David Sampson submitted that the Judge wrongly interpreted Re Cato. In this regard, he noted that the Judge said that Re Cato held that a sworn affidavit by the widow and personal representative of the deceased, whom the applicant alleged fathered him, is a form of documentary evidence that is admissible under section 8(4) of the Act as conclusive proof of paternity for the purpose of a section 10(2) application.

[18] Counsel contended that in fact Re Cato is a case in which the widow accepted that her husband had admitted paternity during his lifetime. In my view, this is one possible interpretation of Re Cato. Another possible interpretation is that which

Saunders, JA, gave in David Adolphus McKenzie that the affidavit of the widow was evidence, which corroborated the applicant's claim. In my view, such an affidavit could have provided sufficient "other" proof of either of these under sections 7(1)(b) and 8 of the Act. It could show that the father either admitted paternity during his lifetime or that paternity was established during his lifetime. This is however not very relevant to this appeal because there was no affidavit sworn by a widow. Elisha Sampson did not marry during his lifetime. This is an appeal essentially on the Judge's finding of fact that there was sufficient evidence.

[19] In Asot A. Michael v Astra Holdings Limited and Robert Cleveland v Astra Holdings Limited, Antigua and Barbuda Civil Appeals Nos. 17 and 15 of 2004 (16 May 2005), I considered the purview of this Court in appeals against findings of fact. I proceeded on the authority of Francis v Boriel, St. Lucia Civil Appeal No. 13 of 1995 (20 January 1997) and Grenada Electricity Services Ltd. v. Isaac Peters, Grenada Civil Appeal No. 10 of 2002 (28th January 2003).

[20] In Asot A. Michael, I stated that it is trite principle that an appellate court will not impeach findings of facts and inferences of a first instance or trial court that saw and heard witnesses give their evidence, except in certain circumstances. An appellate court may interfere in a case in which the reasons given by a trial Judge are not satisfactory, or where it is clear from the evidence that the trial Judge misdirected himself. Where a trial Judge misdirects him or herself and draws erroneous inferences from the facts, an appeal court is in as good a position as the trial Judge to evaluate the evidence and determine what inference should be drawn from the proved facts. I further stated that even if there are instances in the judgment in which facts were found and inferences drawn on no or no clear evidential bases, little purpose would be served by simple references to those instances, if, in the end, these factual findings and inferences would not adversely affect the central issues around which these appeals revolve.

[21] To the foregoing statements, I should add that an appellate court may also determine issues of sufficiency of evidence. In a case such as the present one, for example, an appellate court may interfere in a case in which it determines that the trial Judge erred in finding that the evidence that was provided was sufficient to meet the requirements laid down by the Act for a declaration of paternity for the purpose of sharing in property.

[22] In the present case, the trial Judge found, among other things, that David Sampson and those who gave evidence on his behalf did not present a credible story. He pointed out material discrepancies in that evidence. He did not believe it. He found that they could not have been believed on very pertinent issues of fact. He found that David Sampson, and at least 1 of his witnesses reneged on some of the contents of their affidavits. This, according to the Judge indicated that what they knew to be the truth was quite different from the contents of their affidavits. It is my view that this observation by the trial Judge is borne out when one considers the evidence that was adduced at the trial. The result of this and similar observations by the trial Judge was that he concluded that David Sampson was groping at anything possible to support his bid to control the estate of his uncle. The question though was whether David McKenzie had, on the evidence, made a case for a paternity Order.

[23] The learned trial Judge, in accordance with the suggestion of Saunders, JA, in David Adolphus McKenzie, considered the 2 letters, which David Sampson wrote from England to Elisha Sampson, in which the former referred to Peter and Lynette. The witnesses, including David Sampson, admitted that the reference to Peter was to David McKenzie. David Sampson wrote the first of the 2 letters on 13th September 1980. In it, he stated in part,

> " … everybody in the family say hello. Give my regards to Mr. Prince Almaida and Mrs. McDowall and Mary and family and say hello to Lynette and Peter …".

He wrote the second letter on 22nd February 1981. In it he stated in part:

> " … what about uncle them. Say hello to them for me also Mr. Prince Almaida, Peter and all the rest of the family …".

[24] It will be recalled that in David Adolphus McKenzie, Saunders JA, asked the trial Court to determine, whether David Sampson regarded Lynnette and Peter as family friends or members. He also said that if David Sampson regarded them as family members, it was open to the trial Court to determine whether, on the evidence, the deceased so recognized them by implication. From the last letter, in particular, and from the affidavits and the evidence adduced at the trial, the Court could have reasonably concluded that David Sampson regarded them as family members. This, however, is not evidence that the deceased acknowledged that Mr. McKenzie was his son, or that the deceased admitted paternity or that paternity was established during the lifetime of the deceased.

[25] The evidence suggests that Mr. McKenzie was very close to the deceased. On the evidence that the Judge accepted, Mr. McKenzie cared for the deceased while he was ill. Mr. McKenzie also operated the deceased's shop for a considerable period of time and cared for the deceased when the latter was ill. Mr. McKenzie's evidence, which the Judge believed, was that the deceased supported and sustained him during the time that he was in school and subsequently. Before the deceased died, the deceased delivered all the deeds for his properties to Mr. McKenzie, who in turn complied with the wishes of the deceased and buried him when he died. The learned trial Judge granted the declaration of paternity because he found that this evidence, and, in addition, the references in the letters, was cogent and more credible than the evidence adduced on behalf of David Sampson.

[26] I do not doubt that the evidence that was adduced on behalf of Mr. McKenzie was cogent and credible. However, a declaration of paternity for the purpose of succession to property must not only be cogent and credible, it must also be of the quality that would satisfy the requirement under section 7(1)(b) of the Act.

Although it is a question of fact, it is also a question of sufficiency of the evidence to meet the statutory requirement, which is within the purview of this Court. On the authority of David Adolphus McKenzie, what section 7(1)(b) of the Act requires is some evidence that is other than the types of evidence specified in section 8 of the Act, though not less convincing, which shows that the deceased admitted paternity of Mr. McKenzie, or that paternity was established, during the lifetime of the deceased. Unfortunately, it is a particularly onerous requirement given the oral tradition that there is in the Caribbean. So that although there are members of the family who are of the view that the relationship between the deceased and Mr. McKenzie was similar to the relationship of a father and son, this was not sufficient for the purposes of section 7(1)(b) of the Act.

[27] In the premises, I shall grant the appeal. In accordance with the suggestion by Mr. Williams, learned Counsel for the appellant, Sampson, I order that the costs of each party, in the sum of $8,000.00, in the High Court, and $5,333.34 in this Court, shall be borne by the estate of Elisha Sampson, deceased.

Hugh A. Rawlins
Justice of Appeal

I concur.

Brian Alleyne, SC
Chief Justice [Ag.]

I concur.

Denys Barrow, SC
Justice of Appeal