

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
TERRITORY OF ANGUILLA
(CIVIL)
AD 2006

CLAIM NO. AXAHCV/2004/0063

BETWEEN:

MICHAEL FLEMING (as Administrator of
the Estate of Alfred O. Phillips, deceased)

Claimant

AND

BENJAMIN ALBEAR PHILLIPS (as Administrator
of the Estate of Henry Jovan Phillips
AKA James Henry Phillips, deceased)

Defendant

APPEARANCES:

Hon. Ms. Keesha Webster and Mr. Duane Jean Baptiste instructed by Astaphan's Chambers for
the Claimant

Ms. Paulette Harrigan for the Defendant.

Date: 30th January, 2006
10th February, 2006

JUDGMENT

[1] **GEORGE-CREQUE, J.:** The matter herein calls for an interpretation of a Consent Judgment entered in Suit No. 20 of 1997 on 19th June, 1986 ("the Consent Judgment"). This suit was an appeal from a decision of the Land Adjudication Officer appointed under

the Land Adjudication Ordinance of Anguilla¹. The parties to the action were George Phillips (for the heirs of Ann Rebecca Phillips as the Appellant and Albear Phillips as Respondent. Albear Phillips is the same person as the Defendant in his action but now sued in his capacity as Administrator of the Estate of Henry Jovan Phillips, deceased. The relevant portion of the Consent Judgment is in the following terms:

... "It is ordered by consent that parcels 7, 20, and 39 forming part of Tom Ground, Water Ground and Tegnails in Block 89117B of East Central Section of the Anguilla Land Registry be divided equally between the lawful children of James Jovan(also called Jovan) Phillips, namely:- Alexander, Alfred, Lilian, James Rupert, Benjamin Albear and Campbell Eldridge or their lawful heirs always subject to the area on which the old family house stands on Parcel 7 being allotted to George Phillips, son of Alexander Phillips on division or partition of the said parcels of land."

The lands referred to in the Consent Judgment shall be referred to as "the Estate" of Henry Jovan Phillips.

The Background

- [2] The history and circumstances of this case is a sad one highlighting the harshness of the law of succession prevailing prior to the passing of the Law Reform (Illegitimacy) Act of Anguilla. The matter arises, so far as the facts are not in dispute, in this way:
- (a) The Claimant herein is the son and Attorney Administrator on behalf of his father Hilton Fleming, who is one of the children of Alfred O. Phillips deceased ("Alfred"). The grant of Administration was obtained on 6th January, 2004.
 - (b) The Defendant is one of the lawful children of Henry Jovan Phillips ("Henry Jovan") deceased. Henry Jovan died in 1932. The Defendant was appointed administrator of the Estate of Henry Jovan in December 1993 after Consent Judgment.
 - (c) Henry Jovan had six (6) lawful children as a result of two marriages, namely those persons named in the Consent Judgment who were to divide the Estate equally as amongst them. Alexander, Alfred and Lilian were children of Henry Jovan's first marriage and James Rupert, Benjamin Albear and Campbell Eldridge were children of his second marriage. One Eliza Carty was also a child born to Henry

¹ No. 2 of 1974 – Laws of Anguilla

Jovan and Augusta who became his second wife, but born to them prior to their marriage.

- (d) Alfred, it appears, never married but had eight (8) children including the Claimant's father Hilton Fleming. Alfred died intestate in **1952**, and thus prior to the Consent Judgment.
- (e) Hilton Fleming, though not a party to the proceedings in which the Consent Judgment was made, took part in the discussions leading up to the entering of the Consent Judgment and also took part in discussions regarding the partition and dividing up of the lands of the Estate held at Caribbean Juris Chambers in 1995. Up to that point he was being treated to all intents and purposes as a beneficiary of the Estate, representing his father Alfred's share therein. The costs of the partitioning and funding for the same were discussed. Mr. Cecil Niles, licensed Surveyor, was engaged to carry out the survey and partitioning works. Each beneficiary was required to contribute towards the costs of the survey and partitioning. Hilton Fleming contributed monies towards the subdivision, but the money was later refunded to him. The partitioning process took a considerable length of time as the Estate which consisted of large portions of land was financially strapped. Eventually, portions of the Estate were sold to meet survey, subdivision and associated costs.
- (f) As it turned out, the Defendant, after giving instructions to Mr. Niles to subdivide the Estate into six shares, countermanded those instructions and eventually had the Estate divided up into four (4) shares, which subdivision was approved and registered. The end result was that portions of the Estate (save for portions representing easements such as roads and other common areas) were transferred in the names or the estates of only four of the children named in the Consent Order, as representing their entitlement. No share was transferred or recorded in the Estate of Alfred. Alfred's share had been re-distributed amongst the remaining named children in the Consent Order, on the basis, as stated by the Defendant, that Alfred had died leaving no lawful children and thus no lawful heirs, save for his remaining brothers and sister, namely those named in the Consent Judgment. Strangely, Lillian's share was transferred and recorded in

the name of her Estate. Campbell's share was similarly so recorded. It is after this subdivision and transfers done in this manner that the children of Alfred realized that Albert's share was not being accounted for by vesting same in Alfred's estate that steps were taken for the appointment of a personal representative and the grant of Letters of Administration to the Claimant in respect of Alfred's Estate.

- [3] The Claimant then launched these proceedings in which he seeks, inter alia, the following relief:
- (a) Distribution of the Estate of Henry Jovan Phillips in accordance with the terms of the Consent Judgment; and
 - (b) An inventory and Account of the administration of the Estate of Henry Jovan Phillips.

The Issue

- [4] The issue for determination rests mainly on the purport of the Consent Judgment and whether or not the Defendant can be said to have complied with the terms thereof in the manner in which he eventually effected the division of the Estate. It therefore turns essentially on questions of law rather than fact and centres on the meaning to be given to the phrase "**or their lawful heirs**" used in the Consent Judgment. This calls for a brief discourse into the Law relating to intestacy and other laws affecting inheritance particularly with regard to inheritance rights of 'illegitimate' children.
- [5] Counsel for the Defendant contends that Alfred's children are not his 'lawful heirs' as they were all illegitimate, Alfred never having married. She relies on the following authorities:
- (i) **Halsbury's Laws**²,
 - (ii) **Re Schuler's Estate, Seetaram –v- Powell & Anr.**³
 - (iii) **Re Makein (deceased), Makein –v- Makein & Anr.** ⁴
 - (iv) **The Intestates Estates Act**⁵ and

² 3rd Ed. Vol. 16 para. 763

³ (1989) 37 WIR 371

⁴ [1955] 1 All ER 57

(v) The Law Reform (Illegitimacy) Act ⁶

[6] The Law is well settled that prior to certain legislative reforms coming into force, the words "child" "son" "daughter" "issue" or words of that species were to be taken to mean 'legitimate' child, son or issue, which means a child born in wedlock. Accordingly, a reference in the **Intestates Estates Act** to a person dying and leaving 'issue' was a reference to a surviving 'legitimate child' as distinct from an 'illegitimate child', the **Intestates Estates Act** having been brought into force in 1945. Alfred's children, having been born out of wedlock, would not have been considered his 'issue' at the time of Alfred's death in 1952 and thus would not have been entitled as of 1952 to Alfred's Estate⁷. It is only with the passing of the **Law Reform (Illegitimacy) Act** that this construction of the word "child" "issue" or similar words were deemed to include an illegitimate child but the period as from which this construction takes effect is as of 1st January, 1983. Section 2 of said Act states as follows:

"(1) Where either parent of an illegitimate child dies intestate as respects all or any of his or her real or personal property, the illegitimate child or, if he is dead, his issue, shall be entitled to take any interest therein to which he or such issue would have been entitled if he had been born legitimate.

(2) Where an illegitimate child dies intestate in respect of all or any of his real or personal property, each of his parents, if surviving, shall be entitled to take any interest therein to which that parent would have been entitled if the child had been born legitimate.

(3) For the purpose of subsection (2), the provisions of the Intestates Estates Act as amended by section 10 of this Act, an illegitimate child shall be presumed not to have been survived by his father unless the contrary is shown.

(4) This section does not affect any right under the intestacy of a person dying before 1st January, 1983."

Section 10 of this Act further amends the **Intestates Estates Act**, in essence, by providing for The Intestates Act to be construed in conformity with the Law Reform (Illegitimacy) Act to the intent that a reference to such words as "issue" or "child" are deemed to include an illegitimate child with the point of reference for its operation being 1st January, 1983.

[7] It becomes clear from the above, that the Law Reform (Illegitimacy) Act does not assist the Claimant given the clear meaning of Section 2 (4) which makes its provisions

⁵ RSA Cap. I 30

⁶ RSA Cap. L 30

⁷ See: Re Schuler's Estate (1989) 37 WIR 372.

operative only as from 1st January, 1983 whereas the rights under Alfred's intestacy will have accrued prior thereto, he having died in 1952. On this basis, counsel for the Defendant contends that the Claimant is not a lawful heir as contemplated in the Consent Judgment. In her written submissions she further contends, based on the same grounds, that the Claimant is not the lawful grandson or next of kin of Alfred and as such was not a person entitled to a grant of Letters of Administration in Alfred's Estate on such basis.

[8] Counsel for the Defendant has rightly conceded that Alfred's Estate fell to be administered under the Intestates Estates Act unchanged as it was prior to the coming into force of the provisions of the Law Reform (Illegitimacy) Act. Alfred then, not being survived by any lawful issue or parents, his Estate fell to be administered in accordance with section 4 (e) thereof which in essence provides that if the intestate leaves no issue, parent or spouse then the order of taking under the Estate is firstly, to the brother and sisters of the whole blood; if there are none then secondly, to the brothers and sisters of the half-blood. The Defendant and his counsel accept that the Defendant is a brother of the half-blood only of Alfred and thus him and his brothers of the whole blood namely, James Rupert and Campbell Eldridge, were not entitled to share in Alfred's estate as he was survived by a brother and sister of the whole blood namely, Alexander and Lilian respectively. Counsel has indicated that she has advised the Defendant that this situation must therefore be remedied.

[9] Counsel for the Claimant accepts the legal propositions as being accurate statements of the applicable legal principles. She contends however, that the Consent Judgment was in essence an agreement arrived at between the parties, whereby it was contemplated and accepted by the parties that Hilton Fleming was entitled to represent and was entitled to share in the estate of his father Alfred, notwithstanding the illegitimate status of Hilton and his other siblings, a fact which was known to the Parties to the proceedings at the time of entering into the Consent Judgment. As the Defendant acknowledged, Hilton was treated as a beneficiary at the time of the Consent Judgment and up to and including the discussions relating to the physical partitioning of the lands in 1995. It was only thereafter that his entitlement was questioned and the Defendant decided after that meeting at

Caribbean Juris Chambers that Hilton was not to be considered as a beneficiary on the basis that he was not a lawful child of Alfred. I accordingly now look to the terms of the Consent Judgment.

[10] The Agreement between the parties embodied in the Consent Judgment between the parties is, regrettably, clear. It says in essence that the Estate was to be divided equally between the six (6) lawful children of Henry Jovan which was then specifically named, "*or to their lawful heirs.*" To my mind the language used does not admit of ambiguity and must be taken to mean what it says - that is, that each of the children were to have vested in them, a portion of the lands amounting to a 1/6th share in the Estate either directly by vesting same in that child or his estate, **or alternatively**, to the lawful heirs of such child. No doubt the more appropriate approach, as suggested by counsel for the Claimant, would have been for the Defendant as Administrator of the Estate to make a clean partition by a subdivision into six (6) equal parts and then vesting same in the names of or the estate (if such child was deceased) of the six children so named, rather than him taking it upon himself to make a determination as to whom constituted the lawful heirs of any of his siblings. As has been shown, he has already fallen into error in so doing. I hasten to point out however, that the Defendant was not precluded under the terms of the Consent Judgment from taking the alternative course.

[11] I do not consider that I am permitted to go behind the clear wording of the Consent Judgment and seek to accord to it some extraneous meaning. It does not simply say 'heirs' but speaks of the "lawful children" and their "lawful heirs". It was entered into and drawn up at a time when the status of Alfred's children must be taken to have been known. No steps were taken to amend or vary the terms of the Consent Judgment. The Consent Judgment, having been so agreed, must be taken to mean just what it said and by its clear terms excluded the unlawful or illegitimate children of any of the lawful children named therein from taking any share in the Estate. Had the word 'lawful' not been used, no doubt there may have been room for consideration of a more liberal interpretation.

Conclusion

[12] For the reasons above given, I am constrained to dismiss the Claimant's claim. Counsel on both sides consider that a costs order in the sum of approximately US\$10,000.00 would be appropriate in this case. Accordingly, I award costs to the Defendant in the sum of US\$10,000.00, said costs to be borne by the estate of Alfred O. Phillips, deceased.

.....
Janice M. George-Creque
High Court Judge