

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 19 OF 2005

BETWEEN:

MONIQUE MONETTE LAYNE-JAMES
LIONEL ELVIS JAMES

Applicants

v

CURTIS CHANCE

Respondent

Appearances: Mrs. Agnes Cato for the Applicants
Mr. Ronald Marks for the Respondent

2006:
2007: April 27

JUDGMENT

- [1] **THOM, J:** This is an application for adoption of the child Curtis Jr. and for an order to dispose with the consent of the biological father of the said child.
- [2] The First Applicant Monique Layne-James is the biological mother of the child Curtis Jr. who was born on the 2nd September 1999. The Second Applicant, Lionel Elvis James, is the husband of the First Applicant.
- [3] It is not disputed that the Respondent Curtis Chance is the biological father of the child.
- [4] The First and Second Applicants made application to the Adoption Board to adopt the child Curtis Jr. The Respondent refused to consent to the adoption.

- [5] On the 24th day of February 2006 the Applicants made an Application to the Court for an order to adopt the child and for an order to dispose with the consent of the Respondent.
- [6] The Applicants relied on three affidavits sworn by the First Applicant and dated 28th July 2006, 13th July 2006, 21st November 2006 and an affidavit sworn by the Second Applicant dated 31st July 2006.
- [7] The Respondent relied on two affidavits to which he swore on 4th May 2006 and 2nd October 2006.
- [8] At the hearing the Applicants and Respondents were cross-examined.
- [9] In their affidavits the Applicants alleged that since the birth of the child Curtis Jr, the Respondent has failed to maintain the child or to take any interest in the welfare of the child. The Respondent has never made any effort to see or spend time with the child since his birth. The only time the Respondent visited the child was in 2002 when his mother who was outside of Saint Vincent and the Grenadines was visiting St. Vincent and the Grenadines and wanted to see the child. The Respondent visited the child with his mother at the Kingstown Day Care Nursery. The First Applicant also stated that she framed a photograph of the child and gave same to the Respondent but the Respondent did not even open the envelope with the photograph. The child who is now seven (7) years old does not know the Respondent.
- [10] The First Applicant further testified that the Respondent only made financial contributions for the child when she telephoned him frequently and begged him. On those occasions he would give one hundred dollars (\$100.00). The Respondent has never bought a birthday gift or a Christmas gift for the child.
- [11] The First Applicant further testified that on or about four (4) or five (5) occasions she took the child to the Respondent's home to visit with him but on each occasion the Respondent did not go to his home.

- [12] The Applicants testified that they have provided a very stable environment for the child. They attend the Seventh Day Adventist Church and the child accompanies them to church. The child attends school regularly. He is the only child of the family. They love him very much and take good care of him. They are both employed. The First Applicant is a secretary and the Second Applicant is a Police Officer.
- [13] Under cross-examination the First Applicant stated that she would call and beg the Respondent for financial support for the child and he would give \$100.00 every four months. She denied that after her marriage she refused financial support for the child from the Respondent. She agreed that she sought a maintenance order against the Respondent but she withdrew the matter after the Respondent agreed to provide financial support for the child. On one occasion he left \$300.00 for the child out of her mother's home.
- [14] The Respondent in his testimony stated that he is employed by Cable and Wireless as a technician and he spends a great deal of time in the Grenadines. He supported the child until the marriage of the Applicants. The child has been kept from visiting him and the Applicants have refused his financial support for the child. He is being denied the opportunity to provide guidance and support to the child. He loves his son and wants to be a part of his child's life. He told the First Applicant about his financial difficulties and she agreed he should give what he could afford. He sometimes gave her one hundred dollars (\$100.00) or two hundred dollars (\$200.00). He works very long hours and he has a daughter who is nine (9) years old. He did not deny that he did not open the envelope with photograph but explained that he was in a relationship with another young lady. He offered to take the child to school but the First Applicant refused. On occasions he visited the child at the pre-school.
- [15] Under cross-examination the Respondent testified that he could not remember the name of the pre-school. He could not recall the year he visited the child at the pre-school. He worked mainly in the Grenadines. He visited when he worked in St. Vincent. On some

occasions he gave the First Applicant four hundred dollars (\$400.00) and on some occasions three hundred dollars (\$300.00) for the child's school fees. The Respondent agreed that he never visited the child at the Preparatory School. He does not know when the child went to Prep School. In May 2002 he offered the First Applicant nine hundred dollars (\$900.00). The Respondent testified that he always wanted access to the child but was denied the opportunity.

[16] Learned Counsel for the Applicants submitted that the evidence is overwhelming that the Respondent has showed no interest in the upbringing of the child. He was requested to sign the consent form for the adoption of the child since May 2002 at which time the child was two (2) years old and he has taken no steps to show that he has any interest in the child. The Applicants have shown that they are dedicated to the child's welfare, education and health and they love him dearly. Further, the Respondent is not a parent within the meaning of Section 11(4) of the Adoption of Children Act Cap. 163. Learned Counsel referred the court to the case of **Re M (an infant)** [1955] 2 AER p. 911.

[17] Learned Counsel for the Respondent submitted that the Applicants must satisfy the Court that they fall within the exceptions set out in Section 13 of the Adoption Act. The Applicants have failed to do so. The Court can only dispose with the consent of a parent if it is satisfied that the parent has abandoned, neglected or persistently ill-treated the child. The Court does not make this finding lightly and requires that the parent's action must not just be culpable but must be culpable to a high degree.

[18] Learned Counsel for the Respondent further submitted that the Applicants' complaints can be addressed by an order for maintenance. Learned Counsel referred the Court to the cases of Re **D C (Minors) (Adoption by Parent)** [1973] Fam 209, **Re R (Adoption)** 1 WLR 1967 p. 34.

[19] Having seen and heard the witnesses, I find that from the birth of the child the Respondent has made sporadic financial contributions to the child. These financial contributions have been made after several requests were made by the First Applicant to the Respondent.

[20] I do not believe the testimony of the Respondent that he offered the First Applicant nine hundred dollars (\$900.00) in May 2002 and she refused. This was at the same time when the First Applicant requested him to give consent for the adoption of the said child. I believe the testimony of the First Applicant that the Respondent made no such offer to her.

[21] I also find that the Respondent has not provided any social care for the child. He has not played any role in the development of the child since the birth of the child. I believe that he sought to see the child when his mother who was visiting Saint Vincent requested to see the child and the Applicants readily agreed. I also believe that the child does not know the Respondent. This evidence was not challenged or contradicted. There is no evidence that the Respondent was prevented at any time from seeing the child. I also believe the testimony of the First Applicant that when she gave the Respondent a photograph of the child he did not even open it. This testimony was not challenged or contradicted.

[22] Adoption of children in Saint Vincent and the Grenadines is governed by the Adoption of Children Act Chapter 163 of the Laws of Saint Vincent and the Grenadines. The provisions relevant to this case are sections 11 (4) (a), 13 (1) (a) and 16.

[23] Section 11 (4) (a) reads as follows:

“Subject to the provisions of section 13, an adoption order shall not be made –
(a) in any case, except with the consent of every person who is a parent or guardian of the child;”

[24] Section 13 (1) (a) reads as follows:

“(1) The Court may dispense with any consent required by Section 11(4) (a) if it is satisfied –
(a) in the case of a parent or guardian of the child, that he has abandoned, neglected or persistently ill-treated the child;”

[25] Section 16 reads as follows:

“(1) The C

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Gertel Thom
HIGH COURT JUDGE