

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: July 19
September 22
October 23
November 9
December 1, 7, 18
2007: May 4

JUDGMENT

- [1] **THOM, J:** This is an application for adoption of the child Curtis Jr. and for an order to dispense 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 dispense 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, and 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 living 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. When the application was withdrawn he left \$300.00 for the child at 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. Since 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 Preparatory 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 since 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 dispense 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 (Minors) (Adoption by Parent)** [1973] Fam 209, **Re R (Adoption)** 1 WLR 1967 p. 34.

[19] Having seen and heard the witnesses, I believe the testimony of the Applicants. 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) 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;

- (b) in any case, that the person whose consent is required cannot be found or is incapable of giving his consent, or that his consent is unreasonably withheld or for any other reason such consent should be dispensed with.”

[25] Section 16 reads as follows:

- “(1) The Court, before making an adoption order, shall be satisfied
 - (a) that every person whose consent is necessary under this Act, and whose consent is not dispensed with, has consented to and understands the nature and effect of the adoption order for which application is made, and in particular, in the case of any parent, understands that the effect of the adoption will be permanently to deprive him or her of his or her parental rights;
 - (b) that the order, if made, will be for the welfare of the child, due consideration being for this purpose given to the wishes of the child, having regard to the age and understanding of the child; and
 - (c) that the applicant has not received or agreed to receive, and that no person has made or given or agreed to make or give to the applicant any payment or other reward in consideration of the adoption except such as the Court may sanction.”

[26] I will now deal with the submission of Learned Counsel for the Applicants that the Respondent is not a parent within the meaning of Section 11 (4) (a) of the Act.

[27] In **Re M** referred to by Learned Counsel for the Applicants, the Court of Appeal of the United Kingdom held that the natural father or an illegitimate child is not an “parent” of the child within the meaning of Section 2 (4) (a) of the 1950 UK Adoption Act and his consent to the adoption of the child is therefore not required. Section 2 (4) (a) of the UK Act reads as follows:

“That an adoption order shall not be made except with the consent of every person or body who is a parent or guardian of the infant or who is liable by virtue of any order or agreement to contribute to the maintenance of the infant.”

[28] The reasons for the Court of Appeal decision were “parent” in an Act of Parliament does not include the father of an illegitimate child unless the context otherwise requires. Section 45 of the Act includes the father of an illegitimate child in the definition of relative. Secondly, under the laws of the United Kingdom the father of an illegitimate child had no

rights in relation to the child and therefore the father has no right to be heard before his rights are taken from him.

[29] The provisions of the 1950 UK Adoption Act are not the same as the Adoption Act of Saint Vincent and the Grenadines. In Saint Vincent and the Grenadines the father of an illegitimate child is not defined as a relative. Also the laws in relation to children in Saint Vincent and the Grenadines are different. The father of an illegitimate child has not only obligations but has rights in relation to the child. Under the Laws of Minors Act Cap. 169 a father of an illegitimate child has rights of custody and to the child. An order for adoption would deprive the father of an illegitimate child of such rights. In view of the above I find that the father of an illegitimate child is a parent within the meaning of the Adoption of Children Act Cap. 163.

[30] Should the Court dispense with the consent of the Respondent and make the adoption order? Under the provisions of Section 13 (1) the Court may dispense with the consent of the Respondent if the Court is satisfied that the Respondent has abandoned, neglected or persistently ill-treated the child; or if his consent is unreasonably withheld or for any other reason such consent should be dispensed with. The provision that he cannot be found or is incapable of giving his consent are not applicable to this case. Section 13 gives the Court a discretion to dispense with consent of a parent. While Section 16 provides that before the Court makes an adoption order the Court must be satisfied inter alia that the order will be for the welfare of the child.

[31] Learned Counsel for the Respondent in urging the court not to dispense with the consent of the Respondent referred the Court to the cases of **Re D Minors** and **Re R. (Adoption)**. In **Re D Minors**, in September 1969 the parents of two young girls separated when the father went to live with another woman. The girls saw their father on several occasions until September 1970 when the parents divorced. The mother got custody of the girls. The father did not support the girls financially during the period of separation. In 1971 he sent them presents at Easter and on their birthdays. In September 1971 the mother remarried and moved from London. In October 1971 the father traced them to their new

home but the mother refused to allow him to see the children. The father objected to adoption of the children by their mother and her husband. The Court of Appeal in allowing his appeal held that whether a parent had persistently failed without reasonable cause to discharge the obligations of a parent within the meaning of Section 5(2) of the UK Adoption Act 1958 was a question of fact and degree and where a father had temporarily withdrawn from the family during the period of the breakdown of the marriage and the subsequent divorce and ancillary proceedings, there was not such a degree of permanence as would deprive a father of his parental rights; that the father who had never abrogated his duty to the children completely, had not persistently failed to discharge his obligations and accordingly there was no ground for dispensing with his consent to the adoption.

[32] Sir George Baker at p. 214 stated:

“Whether a father has persistently failed to discharge the obligations is of course, a question of fact and degree, but any court which has the task of deciding this issue must keep firmly in mind that “an adoption order is an order of the most serious description – per Goddard CJ in Hitchcock v W.B., and F.E.B. [1952] 2 QB 561, at 568 and that the failure envisaged by the subsection must be of such gravity so complete, so convincingly proved, that there can be no advantage to the child in keeping continuous contact with the natural parent who has so abrogated his duties that he for his part should be deprived of his own child against his wishes.”

[33] In Re R (Adoption) the Court of Appeal of England held that R’s parents had not abandoned him in circumstances where R who was age 20 when he left a totalitarian country and escaped to England. When R told his parents that he was leaving they evinced no curiosity as to the destination and seemed passive and indifferent as to the whole subject. The Court took into account that R was not a child and the decision to leave seem to have been R’s decision and not his parents.

[34] In my opinion the cases of R D (Minors) (Adoption by Parent) and Re R adoption do not assist the Respondent’s case. Further In Re D (Minors) the provision the Court of Appeal considered was that the parent had persistently failed without reasonable excuse to discharge the obligations of a parent which is different from the relevant provisions in this case. Further in Re D (Minors) the father visited on several occasions with the children

during the period of separation. After the divorce and the mother removed from London he traced them to their new home and he sought to have visiting rights. While he did not support them financially during the period of separation he bought gifts for them. In these circumstances the Court of Appeal held that he did not persistently fail without reasonable cause to discharge the obligations of a parent. In the present case the Respondent only made financial contributions towards the child when the First Applicant pleaded with him to do so. He has taken no steps to establish any relationship with the child. The child who is now seven (7) years does not know him. In his affidavit dated October 2, 2006 the Respondent stated in paragraph 10:

“The contents of the Applicants’ affidavits are misleading. I have always given what I can to support Curtis Jr. I have another daughter and lots of bills and commitments at the end of the month. I also spend most of my time in the Grenadines where I am usually stationed.”

[35] The fact that the Respondent worked in the Grenadines is no excuse for his failure to establish a relationship with the child. He has simply paid no attention to the child. He has shown no interest in the child’s development. The Respondent repeatedly stated that he was not given the opportunity to establish a relationship with the child. The evidence shows that he took no initiative to establish a relationship with the child. Attempts by the First Applicant to forge a relationship between the child and the Respondent were met with indifference by the Respondent.

[36] In view of the above I find that the Respondent has neglected the child within the meaning of Section 13 of the Adoption of Children Act Cap. 163.

[37] As stated earlier Section 13 gives the Court a discretion whether to dispense with the consent of a parent. While Section 16 provides in effect that before the Court makes an adoption order the Court must be satisfied inter alia that the order if made will be for the welfare of the child. In determining whether the order will be for the welfare of the child, the Court is required to consider the wishes of the child having regard to the age and understanding of the child. In this case the child was not examined. The child is now seven (7) years old. As stated earlier, the testimony of the First Applicant that the child does not know the Respondent was not contradicted. The second Applicant took on the

responsibility of father for the child since the child was two years old. The child regards the Second Applicant as his father and calls him daddy. This testimony of the Second Applicant was not challenged nor contradicted.

[38] Having reviewed the evidence in this matter I am of the opinion that the Applicants would be able to provide adequately financially for the child. The First Applicant is employed as a secretary and the Second Applicant is a Police Officer. I am also satisfied that they would be able to provide for his social and religious needs. They would be able to provide the child with a stable environment for his development. I balance this against the Respondent's rights as a parent bearing in mind the consequences of an Adoption Order and the words of Wilberforce J in Re Adoption Application 41/61 (No. 2) [1964] Ch. p. 48 at p. 53:

"It would seem to me that the Court must take into account all the merits and demerits of the alternative proposals as they seem likely to bear upon the child's welfare, not limiting itself to purely material factors, but considering, as they may bear upon the welfare of the infant, such matters as the natural ties of blood and family relationship. The tie (if such is shown to exist) between the child and his natural father (or any other relative) may properly be regarded in this connection not on the basis that the person concerned has a claim which he has a right to have satisfied, but, if at all, and to the extent that the conclusion can be drawn that the child will benefit from the recognition of this tie."

[39] The Respondent has shown no interest in the child, there is no tie between them. Having considered all of the above, I am of the opinion that this is a case where the Court should exercise into discretion and dispense with the consent of the Respondent. I am satisfied that it is in the best interest of the welfare and development of the child that an order for his adoption should be made. I am satisfied that all of the requirements of section 16 have been met.

[40] It is hereby ordered that the consent of the Respondent is dispensed with and it is ordered that the Applicants be authorized to adopt the child.

[41] It is further ordered that the Respondent shall pay the Applicants' costs in the sum of \$1,500.00.

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Gertel Thom
HIGH COURT JUDGE