

ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

(CIVIL)

CLAIM NO ANYHCV 2016/235

BETWEEN:

HUGH ALEX WALTER BAILEY

Claimant

And

[1] CAROLYN ISHANA MORSON

[2] JASON SMITH

Defendants

Appearance

Ms Kema Benjamin for the Claimant

No appearance of or for the Defendants despite service

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2016: July 12: 14
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RULING

[1] Lanns, J: In or about 2009, the Claimant was intimately involved with Carolyn Ishana Morson the 1st Defendant. This relationship ended in 2011, and resumed sometime between 2012 and 2013. The first Defendant at the same time was on intimate terms with the 2nd Defendant Jason Smith. The Claimant had no knowledge of the affair. The first Defendant got pregnant and had a male child. She told the Claimant she was pregnant and he was the father. The Claimant had no reason to disbelieve her. He accepted that he was the father of the child. He assumed responsibility for the child, yet unborn, by taking the first Defendant to her doctor appointments, and settling all bills relating to her pregnancy. After the birth of the child, the Claimant contributed to the child's upkeep, maintenance and support.

[2] As the child grew, the Claimant started getting doubts as to whether the child was his.

- [3.] The Claimant was able to persuade the Defendants to voluntarily submit to a DNA test. The test was carried out on the 9th June 2016. The test results confirmed that the Claimant "HUGH A. BAILEY JR is not the biological father of AQUASEA A.R. BAILEY." The test results confirmed that the second named Defendant "JASON O. SMITH is not excluded as the biological father of AQUASEA A. R. BAILEY". The Paternity Analysis Report states that there is a 99.99 probability of relationship between the Second Defendant JASON SMITH and the minor child AQUASEA A. R. BAILEY.
- [4] The Claimant has, by way of Fixed Date Claim Form filed on 11th May 2016, supported by affidavit, come to this Court for a Declaration that the Second Defendant is the biological father of the child AQUASIA AKEERO RETAHGI BAILEY and an order that the Registrar of the High Court do "delete the entry in the Birth and Death Registry in the section entitled :Name and Surname of Father" on the birth certificate of the child, which lists him as the father of the said minor child, and enter the name of JASON SMITH as the father of the child.
- [5] In answer to a question posed by the court, learned counsel for the applicant told the court that she making the application under section 10 of the Status of Children Act.
- [6] Having read the Claim and the affidavits in support thereof, as well as the documents exhibited thereto, and having heard counsel for the Claimant, and having regard to section 28 (3) of the Births and Deaths (Registration) Act, Chapter 53, and having regard to the circumstances of this case, I am of the opinion that this court has no power to direct the Registrar of the High Court to amend the Register in the terms prayed for. Additionally, based on the factual matrix, I do not agree that Section 10 of the Status of Children Act is applicable to the circumstances of this case as counsel for the Claimant has contended.
- [7] In the Jamaica case of LEON CHAMBERS V LAWRENCE BEECH ET AL, [2015] JMSC CIV 197, the court was faced with similar circumstances. And the court, at paragraph [6] stated as follows:
- "[6] I have come to the conclusion that this court has no power to direct the Registrar General to amend the Register in the circumstances of this case. This is not an application for mandamus or some other relevant public law remedy. There is no suggestion that the Registrar General acted unlawfully or unreasonably in the Wednesbury sense. Indeed, the Registrar General is not a named party to this litigation. Therefore in the absence of an expressed statutory power this court cannot make the orders claimed."

[8] Section 28 (3) of the Births and Deaths (Registration) Act (the Act) gives the Registrar-General power to correct an error of fact or substance in any Register:

Section 28.(3) reads:

"An error of fact or substance in any register may be corrected ---

(a) by entry in the margin without any alteration of the original entry; or

(b) if the Registrar-General deems it necessary, by the making of a further entry with a reference therein to the original entry by the Registrar-General or by a person duly authorized in that behalf by the Registrar-General,

upon production to the Registrar-General or such duly authorized person, by the person requiring such error to be corrected, of an affidavit setting forth the nature of the error and the true facts of the case, and made by the person required to give information concerning the birth ... with reference to which the error has been made, or in default of such person, then by two credible persons having knowledge of the truth of the case."

[9] I am of the view that in the light of the circumstances of this case, and the evidence proffered, that the register contains an error of fact or substance and thus, the procedure set out under section 28 (3) of the Act is applicable and ought to be followed by the Claimant.

[10] The Claimant wishes the court to declare that he is not the biological father. I can see no impediment to my doing so, based on the evidence before me, which evidence stands uncontroverted. However, it is for the Registrar-General to decide, having regard to the material circumstances as shown in the affidavit material before her, whether an amendment to the register is appropriate or advisable. I express no opinion whatsoever on that question.

[11] The Claimant who is the person registered as the father of the minor child, has made the application to correct the register. He has filed an affidavit in support setting out the facts upon which he relies to support his case, and he has produced documentary evidence to substantiate his case. The Defendants have filed no such application, and they have filed no affidavit in support of the application. So there is no consent.(if consent were necessary) by the Defendants to amend the Register. But there is no contest either. These documents may satisfy the requirements of Section 28 (3) (b) of the Act. Here again, I express no opinion. This is within the purview of the Registrar-General.

[12] In the foregoing premises, I make the following declarations and orders

1. It is declared that HUGH A. BAILEY JR is not the biological father of the minor child AQUASIA AKEERO RETAHGI BAILEY.

And it is further declared that

2. JASON SMITH is the biological father of the minor child AQUASIA AKEERO RETAHGI BAILEY
3. The Claimant is entitled to invoke Section 28 (3) of the Births and Deaths (Registration) Act and make the appropriate application to the Registry-General
4. The Claimant shall have his costs, such costs to be assessed if not agreed.

Pearletta E. Lanns
High Court judge [Ag]