

THE EASTERN CARIBBEAN SUPREME COURT
SAINT VINCENT AND THE GRENADINES

IN THE HIGH COURT OF JUSTICE

SVGHCV2017/0150

IN THE MATTER OF THE STATUS OF CHILDREN ACT NO. 21 of 2011

and

IN THE MATTER OF AN APPLICATION BY MERIEL MARILYN VERONA JOHN-FRANCOIS FOR A
DECLARATION OF PATERNITY

BETWEEN:

MERIEL MARILYN VERONA JOHN-FRANCOIS

CLAIMANT

and

REGISTRAR OF THE HIGH COURT OF SAINT VINCENT
AND THE GRENADINES

DEFENDANT

Appearances:

Mr. Grant Connell for the claimant.

Mr. J'Lany Williams for the defendant.

2018: Apr. 6, 11

Apr. 18

JUDGMENT

BACKGROUND

[1] **Henry, J.:** The claimant Meriel Marilyn Verona John-Francois alleged that Rufus Hamilton Williams

deceased was her father. She filed¹ a Fixed Date Claim Form ('FDCF') for a declaration that he is her biological father and for an order that his name be entered as father on her birth certificate. Her claim was unopposed. The Registrar of the High Court of Saint Vincent and the Grenadines ('the Registrar') was the sole named defendant. The matter proceeded to summary trial on 7th March 2018 and concluded on 11th April 2018.

[2] Mrs. John-Francois testified that she is one of 10 children born to Keturah Adina John aka Victoria John and Rufus Hamilton Williams deceased. She explained that her parents married in 1978. She deposed that she lived with her parents and siblings since her birth on 18th May 1978.

[3] Her mother corroborated her testimony and added that the father's name was omitted from Mrs. John-Francois' birth record due to inadvertence. She stated that Mrs. John-Francois was the 8th child born to her and her husband before they wed. She produced a copy of their marriage certificate. She supported her daughter's claim for a declaration that the deceased is her biological father. Mrs. John-Francois has established that the relationship of father and child existed between her and the deceased. A declaration of parentage is therefore granted to her.

ISSUES

[4] The issues are:

1. Whether Mrs. John-Francois is entitled to a declaration that the deceased Rufus Hamilton Williams is her biological father? and
2. Whether Mrs. John-Francois is entitled to a declaration of parentage as between the deceased Rufus Hamilton Williams and her?

PRELIMINARY NOTE

[5] The heading of the FDCF when originally filed, identified the relevant Act as the 'Status of Children Act Chapter 243 of the Revised Laws of Saint Vincent and the Grenadines 2009'. During the trial, the legal practitioner for Mrs. Meriel Marilyn Verona John-Francois made an oral application to amend the heading of the FDCF by replacing all references to 'Chapter 243 of the Revised Laws of

¹ On 6th October 2017.

Saint Vincent and the Grenadines 2009' with 'No. 21 of 2011' the legislation which is now in force ('the Act'). The application was granted and the heading amended accordingly.

ANALYSIS

Issue 1 – Is Mrs. John-Francois entitled to a declaration that the deceased is her biological father?

- [6] Under cross-examination Mrs. John-Francois stated that she maintained a daughter father relationship with Rufus Hamilton Williams all of her life. She said that her mother and her witnesses all acknowledged that he was her father. She produced a copy of her birth certificate which reflects that her birth was recorded in the Register of Births for the Second Registration District, Volume Year 1972, page 2 entry number E206.
- [7] Mrs. John-Francois explained that the deceased owned parcel of land at Biabou on which three houses were constructed. She testified that his wife (her mother Keturah Williams) now lives in one of the houses, her brother lives in another while she occupies the third.
- [8] Ms. Delma Woodley² testified that she and Mrs. John-Francois are cousins. She said that the deceased was her uncle. She recalled that he showed Mrs. John-Francois love and support. She attested that a father daughter relationship existed between them and asserted that he was Mrs. John-Francois' putative father.
- [9] For her part, Ms. Desrie Collins testified that she took care of Mr. Williams for three years immediately before his death. She described herself as his caretaker. She observed during that time that a bond existed between Mrs. John-Francois and the deceased, akin to a father daughter relationship.
- [10] Ms. Anna Bacchus-Merchant deposed that she caused a 'Legal Paternity Notice' to be published in the Searchlight Newspaper on 16th June 2015. She exhibited a copy which reflected that notification was being given to readers that Mrs. John-Francois intended to file an application for a declaration that the deceased is her father. It stated that any objection to the application should be

² Surname corrected from 'Williams' to 'Woodley' pursuant to CPR 42.10, to reflect the witness' correct name.

submitted to the Registrar within 2 weeks of the publication. Ms. Anna Bacchus-Merchant averred that no objections had been lodged.

[11] Mrs. John-Francois and the Registrar submitted that the court is empowered by section 8 of the Act to make a declaration of paternity if satisfied that the relationship of father and child existed between the deceased and Mrs. John-Francois. The Registrar added that this is so even if the 'parent' is deceased. They both cited the case of **Treldon Connell v Alison Connell**³ in support.

[12] The Registrar submitted further that Mrs. John-Francois claims that the deceased acknowledged the father daughter relationship from birth and that the deceased was her father. The Registrar referred to Mrs. John-Francois' assertions that the deceased maintained her. However, while she pleaded that the deceased provided for her financially during her childhood Mrs. John-Francois led no such evidence.

[13] Section 8 (1) of the Act states:

'8. (1) A person who:

- (a) alleges that any named person is a parent of a child;
- (b) alleges that the relationship of father and child exists between him and another named person;
- (c) alleges that the relationship of mother and child exists between her and another named person; or
- (d) having a proper interest in the result, wishes to have determined the question whether the relationship of parent and child exists between two named persons;

may apply to the Court for a declaration of parentage and the Court may, if satisfied that the relationship exists, make such declaration whether or not the mother, father or child is, or all of them are, living or dead.' (underlining added)

[14] Section 7 (3) of the Act provides that the Registrar shall:

1. cause a copy of any such declaration to be filed in the Registry;

³ SVGHCV2016/0019 (unreported).

2. amend the 'child's' birth certificate by inserting the name of the natural father on it with appropriate words signifying that parentage has been established by declaration of the Court; and,
3. file a copy of the declaration in the Registry of the High Court.

[15] Section 5 (1) of the Act is relevant to a consideration of the issue. The material portions state:

'5. (1) Unless there is proof to the contrary, on a balance of probabilities, there is a presumption that a person is, and shall be recognized in law to be, the natural father of a child in any one of the following circumstances:

- (a) ...
- (b) ...
- (c) the person marries the mother of the child after the birth of the child and acknowledges by word or conduct that he is the natural father of the child;' (underlining added)

[16] Mrs. John-Francois and her witnesses have painted a picture of a marital relationship between her mother and the deceased which was legitimized by their marriage in 1978. Their testimony regarding the interaction between Mrs. John-Francois and the deceased was sparse. It was provided primarily by Ms. Delma Woodley. Her account was credible and it satisfies one aspect of the presumption captured in section 5 (1) (c) of the Act. In this regard, Ms. Woodley's testimony provides evidence of the deceased's conduct and attitude towards Mrs. John-Francois.

[17] The reality of a marriage between Mrs. Keturah John and the deceased coupled with Mrs. John-Francois' prior birth, fulfills the second aspect of that provision. I am therefore satisfied that Mrs. John-Francois has thereby established circumstances which lead to the irresistible conclusion and presumption that the deceased was her natural father.

[18] Mrs. John-Francois' claim expressly sought a declaration that the deceased is her biological father. The Act⁴ permits the Court to issue directions requiring a parentage testing procedure to be carried

⁴ Section 9 of the Act.

out to obtain information for the purpose of determining a child's parentage. In such a case, bodily samples may be obtained from the child and parents. The information gathered would assist the court to determine whether a biological relationship exists between the child and alleged father. No such evidence was provided in this case. Neither party referred to the applicable law or addressed this issue. I am unable to make a finding as to whether the deceased is Mrs. John-Francois' biological father as there is insufficient evidence of such biological connection. I make no such order.

Issue 2 – Is Mrs. John-Francois entitled to a declaration of parentage as between the deceased Rufus Hamilton Williams and her?

[19] Although Mrs. John-Francois did not expressly seek a declaration of parentage, the Court is empowered⁵ to grant such relief if it appears from the evidence and emerges from the pleadings. This is the approach taken in the interests of justice to avoid multiplicity of proceedings, as far as possible.

[20] I am mindful that Mrs. John-Francois appears to have secured an interest in the land which the deceased purportedly owned at Biabou. This was not probed by either party. Similarly, the parties did not explore the implications which flow from a finding of a father daughter relationship between the deceased and Mrs. John-Francois, relative to succession. In this regard, the court observes that Mrs. John-Francois testified that she was unaware if Letters of Administration or Probate in connection with his estate had been extracted.

[21] Notice of the proceedings was published in a newspaper circulating in Saint Vincent and the Grenadines long before the FDCF was filed. This would have afforded any interested person an opportunity to lodge objections or to intervene in the proceedings. Likewise, it would seem that any person interested in the subject property would not be prejudiced by the making of declaration sought. Their remedies would remain available with or without such declaration.

⁵ Eastern Caribbean Supreme Court (Saint Vincent and the Grenadines) Act, Cap. 24 of the Revised Laws of Saint Vincent and the Grenadines, 2009, sections 19 and 20.

[22] I am satisfied that Mrs. John-Francois has proved on a balance of probabilities that the relationship of father and daughter existed between Rufus Hamilton Williams deceased and her. I conclude that a presumption arises pursuant to section 5(c) of the Act that he was her natural father. She is therefore entitled to the declaration of parentage. The Registrar is required to make the necessary entries in the Register of Births and the Registry as stipulated by law.

Costs

[23] Costs usually follow the event. However, it is unusual to award costs in favor of the Crown save in exceptional cases. This is not an extra-ordinary case. I therefore make no order as to costs

ORDER

[24] It is declared and ordered:

1. The relationship of father and child exists between Rufus Hamilton Williams (deceased) and Meriel Marilyn Verona John-Francois.
2. Rufus Hamilton Williams (deceased) is declared to be the natural father of Meriel Marilyn Verona John-Francois.
3. The Registrar-General of Births and Deaths is directed to insert the name Rufus Hamilton Williams as father in the Register of Births for the Second Registration District, Volume Year 1972, page 2 entry number E206, in respect of the birth of Meriel Marilyn Verona John.
4. The Registrar is directed to make the relevant entries and filings in the Registry as stipulated by section 7 of the Status of Children Act No. 21 of 2011.

[25] I am grateful to counsel for their written submissions.

Esco L. Henry
HIGH COURT JUDGE

By the Court

Registrar