

IN THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
COMMONWEALTH OF DOMINICA

(CIVIL) -

DOMHCV 2018/0137

BETWEEN:-

CALIYAH JAMES
(By her next friend Verna Williams)

Claimant

And

THE ATTORNEY GENERAL OF THE COMMONWEALTH OF DOMINICA

Defendant

Appearances

Mrs Dawn Yearwood Stewart for the Claimant/Applicant
Mrs Joanne Xavier – Cuffy for the Defendant / Respondent

2018, October 16

RULING ON WRITTEN SUBMISSIONS

- [1] Stephenson J: The applicant in this matter seeks an order of court that the interest accruing on a fixed deposit at the National Co-operative Credit Union in the name of her minor daughter Caliyah James and the Registrar of the Supreme Court for the period July 2017 to July 2020 be paid yearly into a savings account in her name.
- [2] The application is being opposed by the Respondent.

Background

[3] The applicant is the mother and next friend of Caliyah James. Caliyah James suffered personal injuries at birth and obtained judgment by consent against the defendant in the sum of \$220,000.00¹.

[4] Pursuant to Part 23:13 of the Civil Procedure Rules 2000² an order was obtained from this court directing how the monies obtained in the judgment should be dealt inter alia that:

- a. “ The sum of \$100,000.00 is to be placed on a fixed deposit account in trust for the benefit of Caliyah James until she attains the age of 18 years. The said account is to be in the name of the mother Miss Verna Williams and the Registrar of the Supreme Court of Dominica;
- b. The sum of \$100,000 is to be paid over to Mrs Dawn Yearwood Stewart Attorney at Law for the benefit of Caliyah James represented by her mother and next best friend Miss **Verna Williams;**³

[5] The monies were deposited in the fixed deposit as ordered and the applicant now seeks to have **the interest on that fixed deposit paid into an account in the minor’s name annually for the first three years.** The applicant has stated in her affidavit sworn in support of her application that when **the fixed deposit was opened pursuant to this court’s order the instructions given to the Credit Union** by her was that the interest on the account would be added to the principal sum and that she since then sought to have the terms of the fixed deposit account changed so that the interest would be credited to a savings account in the name of Caliyah and she was informed by the credit union that this direction would have to come from her and the Registrar of the Supreme Court with whom the account is held jointly.

¹ DOMHCV64/2016

² 23.13(1) If, in any proceedings money – (a) is recovered by or on behalf of or for the benefit of a minor or patient; or (b) paid into court is accepted by or on behalf of a minor or patient; that money must be dealt with in accordance with directions given by the court under this rule and not otherwise. (2) Directions given under this rule may provide that the money must be wholly or partly paid into court and invested or otherwise dealt with.

³ Order of Court dated 24th July 2017 and entered on the 25th July 2018

- [6] Miss James does not state in her affidavit any other reason why she would want to change the mandate on the fixed deposit account and the real reason has been gleaned from the application filed herein. In the ground for making this application the applicant states that it would assist her with schooling and other incidentals as she has suffered serious financial losses as a result of the passage of Hurricane Maria which devastated Dominica on 18th September 2017.
- [7] Learned Counsel Mrs Dawn Yearwood Stewart in her very short submissions stated that the court has discretion to vary the order directing how the money recovered on behalf of the minor should be dealt with.
- [8] Learned Senior State Counsel Mrs Joanne Xavier Cuffy submitted that the sole issue for determination by this court is whether the applicant is entitled to or should be allowed to access the accrued interest on the sum which is being held in trust for the use and benefit for the minor child. I agree with submission.
- [9] Learned Counsel Mrs Xavier –Cuffy submitted that in this case the judgment obtained on behalf of the minor child was \$200,000.000 and half of that sum was paid to the applicant for the use and benefit of the said child and the other half was placed on a fixed deposit account in trust for her until she attains the age of 18 years.
- [10] Mrs Xavier Cuffy urged the court to note the spirit and purpose of Part 23.13 of CPR which is to ensure that the monies obtained in the judgment be used exclusively for the use and benefit of the child who suffered the injuries resulting in the judgment.
- [11] Learned counsel submitted that the purpose of the rule is to safeguard the money which is for the benefit of the child. Learned Counsel submitted that the funds are being held on trust and any dealing with the said funds must be in keeping with the rules governing trusts.
- [12] Reference was made to the definition of Trust by Professor Gilbert Kodilinye in his text Commonwealth Caribbean Law of Trust

“...An equitable obligation being a person (who is called a trustee) to deal with property over which he has control (which is called the trust property), for the benefit of person (who are called beneficiaries or cestuis que trust), of whom he may himself be one, and any one of which may enforce the obligation. Any act or neglect on the part of a trustee which is not authorised or excused by the terms or the trust instrument or by law is called a breach of trust” ...

[13] **Learned Counsel submitted that the Court’s order imposes a trust on the applicant and the**

Registrar and the monies on the fixed deposit including the interest forms part of the trust since the fact that the monies is on a fixed deposit means that the interest which accrues on the account forms part of the trust.

[14] That therefore any dealings with the fixed deposit must be in accordance with the terms of the trust which is for the use and benefit of the minor child. Learned Counsel submitted that the money on the fixed deposit account is in trust for the benefit of the minor child and that the trust property which is vested in the trustee is not for the benefit of the trustee but the for the benefit of the beneficiary of the trust and that any variation of the trust must be in one of two classes:

- a. A variation that would be concerned with the management and administration of the trust
- b. To vary the beneficial interest arising under the trust.

[15] The Applicant and the Registrar of the High Court are trustees of the monies currently in a fixed deposit at the National Cooperative Credit Union. As Trustees they have a duty to protect and safe guard the trust property for the benefit of the minor child solely. The trustees relationship to the trust property can be properly described as being fiduciary and as a fiduciary they must act solely in the interest of the beneficiary.

[16] The whole purpose, general aim and reason for the monies to be paid into the fixed deposit account is for the purpose of the money to grow over the period of time.

[17] I agree with learned counsel Mrs Yearwood Stewart that whether or not the application will be granted is entirely within the **Court’s discretion which discretion must be exercised judicially.**

[18] The interest of the minor child is paramount in this court.

[19] I do agree with the submissions of learned Counsel Mrs Xavier-Cuffy that the monies are for the benefit of the minor child solely and as it regards the expected expenses for her schooling and ordinary living expenses her parents are the ones who should be providing same. That is not the purpose of the monies invested in the fixed deposit upon the directions of this court.

[20] I am compelled to express my concern as to the prudence exercised by the applicant as it regards the monies already disbursed to her. It is noted that the applicant received the sum of \$100,000.00 in July 2017. I am concerned that she now comes to the court seeking access to the interest on the amount ordered invested on behalf of the child. This court is also concerned that there has been no attempt by the applicant to account for the monies already disbursed to her which amount was substantial.

[21] I am constrained to deny this application for the simple reason that to take the interest off of the fixed deposit would be to frustrate the whole purpose and general aim of directing that it be invested.

[22] I will make no order as to costs.

M E Birnie Stephenson
High Court Judge

BY THE COURT

SEAL

REGISTRAR