

# JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO. 109/2004

BEFORE: THE HON. MR. JUSTICE PANTON, J.A.  
THE HON. MR. JUSTICE COOKE, J.A.  
THE HON. MRS. JUSTICE HARRIS, J.A.

BETWEEN: PAM (Mother) APPELLANT

AND: WCC (Father) RESPONDENT

Written submissions by Mrs. Jacqueline Samuels-Brown, for the Appellant.

The Respondent, unrepresented.

October 24, 2006 and November 10, 2006

PANTON, J.A.

1. On November 8, 2004, Donald McIntosh, J. refused an application for a declaration that WCC is the father of TMC. He did so, notwithstanding that WCC admitted paternity in an affidavit sworn to on September 8, 2004. The purpose of this appeal is to overturn that decision, and to bring finality to the issue of paternity.

2. TMC was born to PAM on May 28, 1997, in the London Borough of Brent, England. They, as well as WCC, now live in Jamaica. In refusing the application, the learned judge noted that WCC's affidavit had referred to the fact that his middle name had been "mistakenly noted to be Andy on TMC's birth certificate".

The judge then said:

"It seems clear to me that the problem that needed to be addressed was the Birth Certificate. That the parties needed to have same corrected to reflect the correct middle name of WCC."

He went on to decline jurisdiction on the ground that the birth certificate had originated in the London Borough of Brent.

3. The Grounds of Appeal are stated thus:

- "(a) The application herein was made for Declaration of Paternity and pursuant to the Status of Children's Act and not for correction of error on a Certificate of Birth or addition of a father's name.
- (b) Declaration of Paternity relative to a child pursuant to the Status of Children's Act constitutes conclusive evidence of paternity.
- (c) A Certificate of Birth whether from Jamaica or elsewhere as a matter of law constitutes only prima facie evidence of paternity.
- (d) The Appellant is entitled to a Declaration of Paternity relative to her son as conclusive evidence of his paternity.
- (e) The evidence supplied in support of the Appellant's claim establishes beyond probability

that **WCC** is the father of the Appellant's son **TMC**.

- (f) The question of any error or defect in a Certificate of Birth cannot per se be a bar to a declaration of paternity being granted."

4. Written submissions were made by Mrs. Jacqueline Samuels-Brown on behalf of the appellant. These submissions were in response to the invitation of the single judge of appeal who thought that this matter was ideal for determination on paper, without oral submissions in open court. The **Court of Appeal Rules 2002** provides for this.

5. Mrs. Samuels-Brown submitted that the learned judge had made an error in not granting the declaration. The only application that was before the Court, she submitted, related to the declaration of paternity and so the issue of the error in respect of the respondent's middle name was ancillary. She contended that the declaration of paternity would be superior to any endorsement on the birth certificate. The jurisdiction of the Court did not flow from the certificate. Rather, she submitted, it flowed from Section 10 of the **Status of Children Act**. An error of name cannot operate to cancel or nullify the primary fact of paternity, she concluded.

6. Section 10(1) of the **Status of Children Act** reads thus:

"10.-(1) Any person who -

- (a) being a woman, alleges that any named person is the father of her child; or
- (b) alleges that the relationship of father and child exists between himself and any other person; or
- (c) being a person having a proper interest in the result, wishes to have it determined whether the relationship of father and child exists between two named persons,

may apply in such other manner as may be prescribed by rules of court to the Supreme Court or the Family Court for a declaration of paternity, and if it is proved to the satisfaction of the Court that the relationship exists the Court may make a declaration of paternity whether or not the father or the child or both of them are living or dead.”

From the above, it will be seen that section 10(1)(a) governs the application in the instant case, seeing that PAM, a woman, is alleging that WCC is the father of her child.

7. The fixed date claim form shows that PAM is seeking a declaration that, by virtue of the **Status of Children Act**, WCC is the father of TMC. The claim is supported by affidavits from the appellant mother and the respondent father. There was no contest before the learned judge. The parties were referring to the same child. If there was an error on TMC’S birth certificate, and there is no doubt that there was, that would be essentially an administrative matter.

8. The recognition of paternity is very important under our law. For example, it has consequences in respect of succession to property. Section 7 of the **Status of Children Act** provides thus:

"7.-(1) The relationship of father and child, and any other relationship traced in any degree through that relationship shall, for any purpose related to succession to property or to the construction of any will or other testamentary disposition or of any instrument creating a trust, be recognized only if -

- (a) the father and the mother of the child were married to each other at the time of its conception or at some subsequent time; or
- (b) paternity has been admitted by or established during the lifetime of the father (whether by one or more of the types of evidence specified by section 8 or otherwise):

Provided that, if the purpose aforesaid is for the benefit of the father, there shall be the additional requirement that paternity has been so admitted or established during the lifetime of the child or prior to its birth.

(2) In any case where by reason of subsection (1) the relationship of father and child is not recognized for certain purposes at the time the child is born, the occurrence of any act, event, or conduct which enables that relationship, and any other relationship traced in any degree through it, to be recognized shall not affect any estate, right, or interest in any real or personal property to which any person has become absolutely entitled, whether beneficially or otherwise, before the act, event, or conduct occurred."

9. In the instant case, the mother and father not being married, it is important that paternity be admitted or established during the lifetime of WCC.

Section 7(1)(b) refers to the establishment of this fact through one or more of the types of evidence specified in section 8. One type of such evidence is a certified copy of the entry in the register of births. It appears that it is this provision that may have led the learned judge to conclude that he could not make the declaration seeing that the certified copy had an error. However, he ought to have recognized that the application for the declaration was not founded on the certificate of registration. It was based instead on the sworn admission of the father WCC. In my view, that admission determines the matter, and the child should not be deprived of having his father judicially declared as such.

10 In the circumstances, I would allow the appeal, set aside the decision of the learned judge, and grant the declaration sought in the fixed date claim form.

**COOKE, J.A.**

I agree.

**HARRIS, J.A.**

I agree

**PANTON, J.A.**

**ORDER:**

Appeal allowed. Decision of the Court below set aside. Declaration sought in the fixed date claim form granted.