

SUPREME COURT OF SEYCHELLES

Reportable

[2019] SCSC ...
CS128/2018

In the matter between

JILL CECILE LAPORTE
(rep. by Bernard Georges)

Plaintiff

and

THE ESTATE OF THE LATE JULIEN KAVEN PARCOU
REPRESENTED BY ITS EXECUTRIX ROSE PARCOU
(rep. by Serge Rouillon)

Defendant

Neutral Citation: *Laporte v Estate of Parcou* (CS 128/2018) [2019] SCSC 969

11 November 2019

Before:

Twomey CJ

Summary:

action for simultaneous declaration of *recherche de paternité* and *desaveu de paternité* – Articles 312, 321-340 Code Civil

Heard:

29 July 2019

Delivered:

11 September 2019

ORDER

The court declares that Jill Cecile Laporte is the child of Julien Kaven Parcou. Her birth certificate is to be amended to reflect the same.

JUDGMENT

TWOMEY CJ

[1] The Plaintiff brings an action simultaneously *en recherche de paternité* and *en desaveu de paternité*, claiming that although her mother was married to one Donald Laporte at the time of her birth and she bears the name Laporte she is the biological daughter of one Julien Kaven Parcou, who passed away on 20 October 2017 and hereinafter referred to as the Deceased.

- [2] The Defendant has denied the Plaintiff's averments and has put her to strict proof of the same. She has further averred that the Deceased was unable to father any children.
- [3] Evidence was led by both parties in support of their pleadings. The Plaintiff testified that she was born on 9 May 1973 and produced her birth certificate (Exhibit P1) in which her mother's name is entered as Daphne Laporte and her father as Donald Laporte. She stated that he was not her father although her mother was still married to Mr. Laporte at the time of her birth. She had known the Deceased from a very early age and she visited him regularly at his office at Victoria House. He was a businessman and operated a car hire business.
- [4] She was first taken to visit him with her mother when she was very young and he spent hours with her as they sat and talked. He was very interested in how she was doing at school and talked to her of his own parents. She was at that time living at Corgat Estate at Mont Fleuri with her mother, siblings and step dad Patrick Sanders. Her father had never been there.
- [5] When she was older she saw the Deceased on her own and would phone him first before visiting. They would meet in other places apart from his office. He was very kind and generous and provided for her so that she never needed anything. He was a very private man but would like chatting and sharing with her. They were very close and he gave her his mother's necklace when she passed away. This was a sign of his love and affection for her as he had loved his mother very much and often said how much he missed her.
- [6] Sometimes he left things with other people for her. He would leave money with the security guard at Victoria House, Ms. Lalande or his work partner, Mr. Jourdan Laurence or one Derrick. He would give her sums of money ranging from SR 500 to SR 2000 each time he saw her. Saturday was the day she normally saw him as he was less busy in the office.
- [7] After completing her education in Seychelles she went to Australia to study for her degree, came back to Seychelles, then went back to Australia for her masters and then subsequently moved to England. During that time, she corresponded with the Deceased.

She had not kept all the letters because she had moved around a lot but she had a letter which he had faxed to her (Exhibit P2). The letter is signed “With best wishes and love Kaven, Your Dad.

[8] She stated that the Deceased was her father and she had every right to be known as his daughter.

[9] In cross examination she admitted not having met any person from the Deceased’s family or his friends or other work colleagues. She also admitted that she did not have pictures of him.

[10] Mr. Jourdan Laurence corroborated the Plaintiff’s narrative on the whole. He testified that he was the manager of Avis Car Hire for forty years until he retired in 2013. The Deceased had been his director and previously the car hire business had been called Norman’s Car Hire. At some point it was also called Europe Car. The business started in 1973 and was situated at Victoria House. It then moved to Shalom Building, Le Chantier and then back to Victoria House. There were two offices, one on the ground floor and one on the first floor.

[11] He knew the Plaintiff as she used to come and see her father, the Deceased. The Deceased had told him that the Plaintiff was his daughter. In cross examination he admitted that he had fallen out with the Deceased as he had refused to pay his gratuity on retirement. He remembered the Plaintiff coming to see the Deceased every now and then after she came back from studying in the UK.

[12] Janelly Lalande also corroborated the Plaintiff’s evidence. She worked as a security officer with Victoria House and she used to sit on the ground floor level behind a little counter. The Deceased opened an office in Victoria House in room 109 on the first floor. She used to see the Plaintiff when she was small. She used to visit the Deceased with her mother and then when she was older she used to come by herself. The Deceased introduced her as his daughter and asked her to accompany her to his office in the lift. When she got bigger she would go up all by herself. Sometimes the Deceased would

leave an envelope for her. At one point she stopped coming and she was told by the Deceased that she had gone to study in Australia.

[13] Daphne Sanders, the Plaintiff's mother also testified. She had been married to Donald Laporte at one point. At that time, she was working for the Seychelles Yacht Club as a barmaid and that's how she met the Deceased. She had a relationship with him and she eventually got pregnant. He told her it was not a problem for him and he would maintain the child. The Plaintiff was born in 1973 and she divorced Mr. Laporte in 1975. Mr. Laporte was not living with her at the time of the Plaintiff's conception and the Deceased would get his driver Derrick Tirant to buy groceries and to deliver them to her house. When the Plaintiff grew up she visited him on her own.

[14] Mrs. Lucita Rose Parcou, the Deceased's widow also testified. She married Mr. Parcou in 1999 and they were together nineteen years. She had never seen the Plaintiff until the case. As the executrix of her husband's estate she had gone through all his papers and had seen nothing relating to the Plaintiff. She did not believe that the Deceased introduced the Plaintiff as his daughter to different people as he was very private. He had left everything in his will to the witness. He would not readily give out cheques of money to people and she never saw him leave cheques for people.

[15] They had gone to see a specialist about having children but after tests and a report dated 6 September 2002 revealed a poor semen count and the witness with a fibroid uterus they were advised that they could not conceive. He subsequently adopted a child. He never mentioned having another child. In cross examination she admitted that the Deceased was 57 when he first met her.

[16] Peter Moncherry testified on behalf of the Defendant. He was presently the director of Avis Car Hire and knew Mr. Parcou for 46 years as they were both freemasons. He was probably one of his best friends. He had never heard of the Plaintiff. The Deceased had never told him he had a child and would have as they were close and the Deceased was the godfather of his son. Mr. Parcou spoke and wrote English well and would not make grammatical mistakes. In cross examination he admitted that he did not know the Deceased's parent's names or that of his wife's. He admitted that Mr. Parcou was a bit

reserved but was like a brother to him. He admitted that the Deceased was also a member of the Seychelles Club.

[17] In closing submissions, after summarising the evidence adduced the Plaintiff has stated that Article 312.1 of the Civil Code sets out a legal presumption of paternity of a child conceived during marriage. Alinéa 2 of the Article allows the presumption to be rebutted on a balance of probabilities. Article 322 does not permit the child to claim status other than one in the act of birth but Article 340 allows proof of paternal descent in numerous cases including letters from the alleged father containing an unequivocal admission of paternity and contribution to the maintenance and education of the child by the father. This permits the court in a single pronouncement to rectify the act of birth by removing the name of the presumed father and substituting in its place the name of the biological father (*Quilindo & Ors v Moncherry & Ors* (SCA 29/2009) [2012] SCCA 39 (07 December 2012)). She submits that if the court is satisfied on a sufficient level to unbalance the presumption of her paternity then the Court must find on the evidence that she is the daughter of the Deceased.

[18] The Defendant has submitted that the Court should note that the Plaintiff looks nothing like the Deceased although it must be noted that no evidence of this fact was adduced. She also submits that she has failed to prove her status in relation to her father in all the circumstances. Her alleged visits to him were only to his office and not to his home. The lack of fax details on the letter produced and the grammatical mistakes therein are “not becoming of a freemason who is supposed to memorise long tracts from the bible during the rituals of freemasonry...” The letter is business like and the signature appended is not like signatures on other letters. The amounts of money allegedly given to the Plaintiff are not credible for the times in which they were given. There was no real substantial witness to support the Plaintiff’s case. The lab report showed a poor semen count in 2002. The evidence produced by the Plaintiff do not satisfy the threshold of “living notoriously” or “known to society at large” as contained in the legal provisions to satisfy proof of paternity.

[19] Counsel for the Plaintiff also cited authorities (*Quilindo v Moncherry* (supra), *Esparon v Low Wah and Ors* (CS 63/2016) [2017] SCSC 444 (29 May 2017), *Mathiot v Mathiot, Executor of the Estate of Jupiter and others* (CS70/ 2012) [2013] SCSC 103 (20 September 2013), *Payet v Anderson* (1983) SLR 39, *Pillay v Lespoir* (1984) SLR 105 and *Larue v Eulentin* (1981) SLR 122 for the principle that substantial and unequivocal independent corroborative evidence is needed to support a paternity claim pursuant to Articles 321 and 340 of the Civil Code.

[20] As I have stated in previous cases with respect to paternity suits, without the introduction of DNA evidence into Seychellois legislation the court has only arcane and outdated tools at its disposal to help it in its enquiry, namely the provisions of Article 321 and 340 of the Civil Code which provide:

“Article 321

Possession of status may be established when there is a sufficient coincidence of facts indicating the relationship of descent and parenthood between a person and the family to which he claims to belong.

The principal facts are:

That that person has always borne the name of the father whose child he claims to be;

That the father has been treating him as his child and that, in his capacity as father, he has provided for his education, maintenance and start in life;

That he has always been recognised as a child of that father in society;

That he has been recognised as such by the family...

Article 340

1. It shall not be allowed to prove paternal descent, except:

...

(b) When an illegitimate child is in possession of status with regard to his natural father or mother as provided in Article 321

...

(d) When there exist letters or other writings emanating from the alleged father containing an unequivocal admission of paternity

e) When the alleged father and the mother have notoriously lived together as husband and wife, during the period of conception.

- [21] It is trite that pursuant to the provisions above to establish paternity one has to prove either possession of status, *concubinage notoire* or the provision of maintenance by the father and that in order to prove descent one has to additionally show either of the circumstances set out in Article 340.
- [22] In the present case the Plaintiff has relied on supporting evidence of persons at her father's place of work who observed her coming to visit him and who were told that she was the Deceased's daughter. They acknowledge that the Deceased made a verbal avowal of his paternity and left sums of money for the Plaintiff to collect. That evidence is not sufficient and conclusive enough for the court to establish paternity.
- [23] However, in *Mathiot v Mathiot Executor of the Estate of Jupiter and others* (supra) Egonda-Ntende Chief Justice relied on Planiol, *Traité Elementaire De Droit Civil* translated into English as *Treatise on The Civil Law*, Volume 1, part 1 at page 838 to explain the provisions of Articles 321 and 340:

"1525 General Idea

The law did not desire to permit research of paternity except in cases where certain proof appeared to be possible. As there could be no direct proof, it became necessary to rely upon an avowal by the father, express or tacit, or upon a very strong presumption. Five cases where research is permissible were thus established and they are limitatively set forth by the law...

'Third Case: Written Avowal of Paternity

The father's avowal is a direct proof. When however, it is not adduced in the form of an acknowledgment, its effect is left to the court's discretion. Article 340, #3 provides that avowal serves solely as a basis for judicial acknowledgement of paternity. It may be contained in a letter or other private writing emanating from the father. Such writing must be produced in evidence..... It makes no difference whether the writing is or is not addressed to the mother herself or to somebody else, or whether it is signed or not provided it is written by the father... A verbal avowal is of no value... The writing should contain an unequivocal avowal of paternity... It must be precise, formal and with no secretiveness..."

- [24] I find that the letter produced by the Plaintiff can provide the basis for a judicial acknowledgment of paternity. The Deceased's writing has not been disproved. While the Defendant has claimed that the Deceased did not sign the letter the Court notes that there is no signature on the letter but rather only the words "With best wishes and love Kaven, Your Dad".
- [25] There was some attempt by the Defendant to show that this was forged. The proof offered was the evidence of Peter Moncherry that the Deceased would not make grammatical mistakes and a letter written by the Deceased to the court in 2011 to support Mr. Moncherry's evidence and the Defendant's closing submissions that a freemason is word perfect. I beg to disagree and the proof is in the letter of 2011 itself which contains several grammatical mistakes including the spelling of the word *inpack* as opposed to *impact*.
- [26] In fact, the 2011 letter does nothing but bolster the authenticity of the letter produced by the Plaintiff as the font and structure in both are identical.
- [27] The only defence of the Defendant was to put the Plaintiff to strict proof of her averments and additionally to her testimony that when tested in 2002 the Deceased had a low or zero sperm count. I note that a low sperm count in 2002 when the Deceased was 61 years does not in any way counter the evidence of the Plaintiff that she was conceived through his sexual relationship with her mother in 1972 when he was only 31 years old.
- [28] The witnesses for the Plaintiff support her claim of provision of maintenance by the Deceased. This testimony together with the letter she produced lead me to the view that the Plaintiff has satisfied the hurdle of proving her case on a balance of probabilities. She has established unequivocally that Julien Kaven Parcou is her natural father and I so find.
- [29] The case of *Quilindo & Ors v Moncherry & Ors* (supra) established conclusively that one can bring an action to prove paternity which may have the result of annulling status on a birth certificate. A declaration of paternity pursuant to section 340 of the Civil Code can rebut the presumption under Article 312 (1). I am satisfied on the unequivocal and uncontested evidence of the Plaintiff's mother that at the time of the Plaintiff's

conception her presumed father was not living with her mother although she was married to him. I therefore find that Donald Laporte was not the father of the Plaintiff and that Julien Kaven Parcou was her father.

[30] In the circumstances I find that Julien Keven Parcou is the father of Jill Cecile Laporte and I order the Chief Officer of Civil status to rectify the Plaintiff's Act of Birth accordingly.

Signed, dated and delivered at Ile du Port on 11 November 2019.

Twomey CJ