

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
Family Division**

**2022  
FAM/div/No.00437**

BETWEEN

**IN THE MATTER OF THE STATUS OF CHILDREN ACT 2002. Ch. 130 of the Statute  
Laws of the Commonwealth of The Bahamas**

AND

**IN THE MATTER OF** an Application for a Declaration of paternity pursuant to Section 9  
(1) a of the Status of Children Act 2002 Ch 130 of the Statute Laws of the Commonwealth of  
The Bahamas

AND

**IN THE ESTATE OF CASEY MICHAEL CUNNINGHAM** late of #1491 Donahue  
Terrace of Golden Gates No.2, South-Western District on the Island of New Providence, one  
of the Islands of the Commonwealth of The Bahamas, Deceased

AND

**KAEDYNN AMARI GRIFFIN** (a Minor)  
(by his next of friend and mother Krystalyn Antonia Griffin) Applicant

AND

**THE ESTATE OF CASEY MICHAEL CUNNINGHAM** Respondent

AND

**STACEY SHERRA CUNNINGHAM**  
(In her capacity as an Intermeddler in the Estate of Casey Michael Cunningham) Third Party

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**JUDGEMENT**

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**Before:** **The Hon. Madam Justice J. Denise Lewis-Johnson**  
**Appearances:** Tavarrie D. Smith of Counsel for the Applicant  
Moses Bain of Counsel for the Respondent & Third Party  
**Hearing Date(s):** 20th February 2023, 3<sup>rd</sup> August 2023

*Status of the Children Act Section 9 (1) (a)- Declaration of paternity- Estate-DNA-Deceased  
parent*

## **Introduction**

1. By Originating Summons filed 26<sup>th</sup> July 2022, the Applicant (*acting as his next friend and mother Krystalyn Anotonia Griffin*) sought the Courts determination on whether Kaedynn Amari Griffin (the infant) born on the 7<sup>th</sup> September A.D., 2019 is the biological child of Casey Michael Cunningham (*deceased*) and as such is the lawful heir-at-law to the estate of the deceased and entitles the Applicant to the preservation of the deceased estate until a Grant for Letters of Administration is issued by the Court.
2. Affidavits in support were filed on 26<sup>th</sup> July 2022, 11<sup>th</sup> August 2022, 3rd August 2022, and 27<sup>th</sup> April 2023 in support of the Applicants application.
3. Affidavits filed 2<sup>nd</sup> September 2022, 5<sup>th</sup> September 2022 of Stacey Cunningham and Wendell Cunningham filed an Affidavit on the 5<sup>th</sup> September 2022 outlining the Third Party's opposition to the Application.
4. The Applicant in this case is the alleged child of Mr. Casey Cunningham who died intestate on the 12 August 2020. The Applicant's mother acts as the next of friend. The Third Party to this application is the sister of the deceased.

## **Evidence of the Parties**

### **Krystalyn Griffin**

5. Ms. Griffin averred that she was estranged from her husband since 2016. That she and the deceased commenced a romantic relationship in early 2018 and shortly thereafter she and her mother moved in with the deceased.
6. That while residing with the deceased she became pregnant with the infant, and that the deceased introduced her to his cousin Wendal and his friend Johnny.
7. That the Third Party would sometimes come to the deceased home with her children where she would assist them with school work and take care of them.

8. That as a result of the high risk pregnancy complications and the arguments between her and deceased, she moved in with her mother in 2019. Prior to this she lived with the deceased for over a year.
9. The Applicant stated that during the third month of her pregnancy she was advised by her mother that her aunt expressed to the deceased that she had been in a relationship with another man and that the infant was not his.
10. That when the child was born, the deceased did not sign the birth certificate, but later requested a DNA test to be done.
11. That the DNA test was conducted on the 6 November 2019 and the results were ready on the 14 November 2019. She did not collect her copy until the deceased had passed, however the deceased collected his copy of the results which reflected that he was the father.
12. That after the deceased received the results, he informed his family that the infant was his child and maintained that position with his family until his death.
13. That the deceased came to her mother's house every day to see the infant and only missed days if he was ill.
14. That the deceased provided for the infant and took him out for drives, playtime, took photos and shared his dreams for their family.
15. That the deceased only trusted her and her mother with the infant child. As a result he paid the Applicant's mother \$200.00 per week to watch the infant child.
16. That at 4 months the infant child was hospitalized and the deceased refused to leave the infant's side as he wanted to observe everything they were doing. That on the infant's first birthday, the deceased gave her funds to purchase a balloon as the infant was hospitalized and during that time he visited and fed the infant on his lunch breaks.

17. That after she lost her job due to Covid-19, the deceased financially assisted the Applicant and her mother and treated her daughter as his own.

**Carole Neymour**

18. That she is the Office Manager of The Bahamas Medical Laboratory Services "BMLS" and also a certified medical technologist.

19. That the test results provided to the Court were accurate and that the specimen received from the parties were taken using proper procedures and protocols.

20. That on the 6 November 2019 the deceased and Krystalyn Griffin attended her medical facilities to have a DNA test performed. That because of the test being requested by the deceased, he completed a Lab 4 form which was accompanied by the facility getting a copy of his passport bearing number ER0077137 and driver license number 420124234.

21. That Ms. Griffin also presented her passport bearing number ER 0061100.

22. That the parties observed one another taking the samples for the avoidance of doubt.

23. That Ms. Kendra Allen was the technician on that day and she witnessed the proper process by Ms. Allen in the collection, packaging and storage of the samples.

24. That the procedure was that four (4) swabs from the interior cheek of the deceased was taken using buccal swabs and two (2) from the minor child which were sealed by the deceased and Ms. Griffin the Applicant.

25. That the specimen were properly sent to Laboratory Corporation of America, who BMSL has been using for years. LabCorp then sent the results in a sealed Fed-ex package and both parties was contacted to collect their results.

26. That the deceased collected his results. He presented an ID to collect same and the mother's copy remained on file.

**Wendell Cunningham**

27. That he is the uncle of the Respondent and Third Party.
28. That he knew the deceased and Third Party all his life. That the deceased had health challenges and frequently went to Cuba for medical treatments.
29. That he and the deceased shared a close relationship and that the deceased never introduced the Applicant to him as his girlfriend. That prior to the Applicant, a lady by the name of Tristian lived and cohabitated with the deceased for five (5) years and that the deceased introduced her as his girlfriend.
30. That in 2018, he became aware that Applicant resided with the deceased for about six (6) weeks and was put out of the deceased residence because the deceased found out she was married.
31. That he was unaware if the deceased visited the Applicants residence. That prior to the deceased demise, he complained about the visits to the Applicant's residence and the strain on their relationship and that the deceased never informed him that the he was the father of Kaedynn Amari Griffin.

**Stacey Cunningham**

32. That she is the only sister of the Respondent and lived and resided with the Respondent for over 10 years.
33. That she and the deceased shared a close relationship as she checked up on him and followed up with his medical treatments and appointments.
34. That just before moving in with the deceased, the Applicant moved in for about six (6) weeks and she was never introduced as his girlfriend. That she and the Applicant never had a cordial relationship.
35. That the Applicant's son took sick and was unable to get National Insurance Survivors Benefit because the child's birth was not recorded in the Respondents name.

36. That she was manipulated into swearing on Affidavit which was not based on her knowledge and she cannot confirm whether the Respondent took the DNA test.

37. That the deceased did not trust anyone in his home while away or at work. That only she and a lady named Crystal had any access to the deceased home.

**Georges Obsaint**

38. That he met the deceased years ago and the deceased allowed him to build on his property. That he and the deceased spoke about everything.

39. That he and the deceased were business partners and that he first saw the Applicant when the deceased showed him a picture of her.

40. That he met the Applicant in person when she moved into the deceased home in 2018.

41. That the deceased informed him that the Applicant and her mother would be moving in and to look out for them.

42. That the deceased told him about the Applicant's pregnancy about six (6) months after they moved in the deceased home.

43. That he recalled when the deceased told him the Applicant was married, but he never denied that the minor child was his. That the deceased informed him that he had taken a DNA test and the minor child was his.

44. That the deceased told him that he was proud to be his father and he shared photos and videos that he took of them.

45. That sometimes the deceased went to the Applicant's home to see the baby or the baby came to the deceased home.

46. That anything the baby needed, the deceased purchased it and ensured that the infant got everything he needed.

47. That when the deceased was on his way to the hospital he kept calling for his son and prior to his death he told Stacey, Kendra and Crystal that he wanted his son to be taken care of.

**Elizabeth Newry**

48. That she became familiar with the Applicant in 2018.
49. That she and the deceased became really close and that the Applicant spent most of her time at the deceased residence.
50. That shortly after the Applicant got pregnant, she moved out of the deceased home and back into her home.
51. That she received a phone call, that her sister Inga Saunders told the deceased that the Applicant's child was not his. That she and the deceased spoke about this information and he was confident that the minor child was his but wanted a DNA test to ease his mind.
52. That while the Applicant was living with the Respondent they got into a disagreement which led to the Applicant moving out of the deceased home when she was seven (7) months pregnant.
53. That when the minor child was born, the deceased always came to her home to see him and carried the minor child out at least twice a month.
54. That once the infant needed gripe water, they got it from the Third Party's store and she engaged with the infant as being "aunty baby".
55. That the deceased paid her \$200.00 per month to take care of the minor child as she was also his grandmother.
56. That after the death of the deceased some of his family came to visit the infant including the Third Party, her two sons, the deceased's cousin Brooke, and his friend Johnny. That

before the deceased's passing, none of them ever visited except the deceased cousin Kendra.

57. That on one occasion the Third Party requested the correct spelling of the infant's name, as the Third Party indicated that she wanted the minor child to be taken care of and a bank account opened on his behalf as his name was spelt wrong in the obituary.

### **The Issue**

58. The sole issue before the Court is one of paternity. Whether the infant is the child of the deceased, entitling the Applicant to a preservation of the deceased estate until the time of the grant of Letters of Administration.
59. Upon the determination of the infant's paternity, other declarations and or entitlements may/can follow, such as making him the heir-in-law of the deceased estate.

### **Decision**

60. The Court must, when determining applications under the Status of the Children Act, take into account all the circumstances of the case, the relevant provisions of statute and the standard of proof required in making its decision. The court derives its jurisdiction to determine matters of this nature by virtue of the **Status of Children Act** "the Act" Section 9 which provides:

*"(1) Any person who —*

*(a) being a woman, alleges that any named person is the father of her child;*

*(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 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.*

*(2) Where a declaration of paternity under subsection (1) is made after the death of the father or of the child, the court may at the same or any subsequent time make a declaration determining, for the purposes of paragraph (f) of subsection (1) of section 7, whether any of the requirements of that paragraph have been satisfied.”*

61. In *Shannon Tyrek Rolle et al v The Attorney General* 2017/PUB/con/00014 Winder J stated:

*“In the absence of legislation, the court is left to rely principally on witness testimony to settle so an important issue. Fortunately, today, science is able to provide assistance and the best evidence available to independently assist the court in settling issues of paternity.*

62. The infant was born on 7 September 2019. The birth certificate of the infant was not signed by the deceased, the infant does not bear the deceased last name. the Applicant was not married to the deceased but was married and estranged from her husband since 2016.

63. The presumption of paternity in law in this instance is grounded in the Act, pursuant to Section 7. (1) (d) and (j) which provides:

*“Unless the contrary is proven on a balance of probabilities, there is a presumption that a male person is, and shall be recognized in law to be, the father of a child in any one of the following circumstances —*

*(d) the person was cohabiting with the mother of the child in a relationship of some permanence at the time of the birth of the child, or the child is born within 280 days after they ceased to cohabit;*

*(j) a person who is alleged to be the father of the child has by his conduct implicitly and consistently acknowledged that he is the father of the child.”*

64. The Applicant stated in her evidence that she and the deceased started a romantic relationship sometime in 2018. As a result of the romantic relationship between the two the infant was conceived. She stated that for a period of time in 2018 she along with her mother resided with the deceased.

65. While the statute is silent on rules for blood testing to prove paternity, DNA evidence is one of the strongest methods in proving the paternity of a biological child to their parent. In **Taylor v. Miller [1996 No. 90]** Sir Burton Hall stated:

*“As this type of testimony is a matter of scientific opinion, it is necessary for the parties who wish to rely on it to satisfy the court as a matter of law that the person who express the opinion is possessed of sufficient experience and training to qualify him as an expert and that the methods employed conform to accepted scientific standards. This is a necessary threshold test of whether the evidence as a matter of law could be accepted before a magistrate proceeds to decide as a matter of fact whether it should be so accepted.”*

66. While the Respondents wish the Court to reject the DNA evidence I do not find that to be a sustainable or prudent position. Globally DNA testing has been accepted as proof of paternity.

67. In the present case, Carole Neymour, a certified medical technologist and manager of the BMLS provided evidence how the DNA test was carried out and the manner in which it was done. She attest that on the 6 November 2019 the deceased, the infant and the Applicant attended BMSLS for DNA testing.

68. Ms. Neymour confirmed that ID's were requested and provided by the parties. Photographs were also taken of the parties along with fingerprints which accompanied a Chain of Custody form which was signed by the deceased and the Applicant.

69. She further attest that all parties observed the collection of specimen process and the same was sent off to Laboratory Corporation of America for testing. She stated that they received the results and the deceased collected his copy but the Applicant had not.

A copy of the results were provided to the Court which confirmed that the deceased is the biological father of the infant.

70. The Court accepts the evidence of Ms. Carole Neymour and is fully satisfied that the procedure used for testing met international standards. The evidence of Ms. Neymour went far beyond the "standard" of acceptable DNA testing in the Courts view.
71. Pursuant to Section 7(1)(d) of the Act paternity can also be established in a cohabitating relationship between the parties where a child is born within 280 days after the parties cease to cohabit. The Court accepts the evidence that the Applicant and her mother cohabitated with the deceased for a period of time and that the Applicant moved out of the deceased home when she was 7 months pregnant.
72. I do not accept the evidence of Wendell Cunningham and the Third Party that they have not known the Applicant to live with the deceased for more than six weeks.
73. The Court does not accept that the Third Party was manipulated into swearing an Affidavit of Paternity, which acknowledged the infant as the child of the deceased. The Third Party led no evidence as to how she was manipulated and coerce into signing the document. This change in evidence appears self-serving.
74. The Third party stated that she has been responsible for the upkeep and maintenance of the deceased property after his demise and took care of the deceased when he was unable to. Throughout this hearing the Third Party was admonished to keep proper accounting of the assets of the Estate, as she may have to provide an accounting to all beneficiaries.
75. The **Inheritance Act** pursuant to Section 4 B (ii) addresses distribution and succession of real and personal property on intestacy which states:

*(ii) leaves children but no husband or wife, the residuary estate shall be distributed equally among the children and where there is only one child that child shall take the whole residuary estate."*

76. I am equally satisfied that the Third Party for self-serving interest has prolonged this matter. Her actions of placing the infant's name in the obituary as the child of the deceased, along with signing an Affidavit of Paternity are strong indications that she accepted his paternity as a fact. It was only upon the realization of what she stood to financially lose that her position changed. It is a most unfortunate turn of events.

77. The Court is guided by Section 11 of the Act which states:-

*"A written acknowledgement of parentage that is admitted in evidence in any civil proceeding against the interest of a person making acknowledgement is prima facie proof of that fact"*

78. In applying this Section to the Third Parties Affidavit acknowledging Paternity, I am satisfied that the content of that Affidavit is fact and the Third Party not only intended but believed it to be factual. It is only her personal greed that has caused her to change. Her defense of this action is based on nothing but what she stands to lose.

79. Despite the Third Party currently having physical control over the deceased assets, the infant by virtue of the Inheritance Act is entitled to the whole of the deceased estate as the evidence provided to the Court reflect that upon the deceased demise he remained unmarried and having one biological child, the infant herein.

80. After careful review of the evidence and the law before it, the Court is satisfied that the deceased is the biological father of the infant.

### **Conclusion**

85. I therefore find having considered the law and evidence before me:-

- i. That Kaedynn Amari Griffin is the biological child of the late Casey Michael Cunningham;
- ii. That Kaedynn Amari Griffin name be recorded in the Birth's Registry as Kaedynn Amari Cunningham;
- iii. That Kaedynn Amari Griffin is the sole heir to the estate of Casey Michael Cunningham; and

- iv. That the assets of the late Casey Michael Cunningham be preserved until the grant of the Letter of Administration.
- v. The Third Party provide a complete accounting of all assets of and disbursements of funds from the Respondent from the date of his death.
- vi. Cost to the Applicant to be taxed if not agreed.

Dated this 13<sup>th</sup> the day of May 2024

A handwritten signature in blue ink, appearing to read "J. Denise Lewis-Johnson", written over the printed name below.

The Hon. Madame Justice J. Denise Lewis-Johnson