In the Commonwealth of The Bahamas

In The Supreme Court

Common Law & Equity Division

CLE/gen/00856/2023

IN THE MATTER of the Status of Children Act, Chapter 130 of The Statute Laws of The Bahamas

AND

IN THE MATTER of the Child Protection Act, Chapter 132 of The Statute Laws of The Commonwealth of The Bahamas

AND

IN THE MATTER OF S. A. C. A Minor

BETWEEN:

S. M.

Claimant

AND

A.D.

Defendant

Before: **The Honourable Justice C. V. Hope Strachan, Justice of The Supreme Court of The Commonwealth of The Bahamas**

Appearances: **Regina E. Bonaby for the Applicant**
Ramona Farquharson along with Samuel Taylor for the Defendant

Hearing Dates: 6th December, 2023; 19th February, 2024; 29th April, 2024

originating application – status of children act – child protection act – births and deaths registration act –united nations convention on the rights of the child – what evidence assists in proving paternity - declaration of putative father –presumptions of paternity –blood and dna

tests to determine parentage - objection in limine – strike out application – frivolous, vexatious, abuse of the process of the court.

RULING

Introduction

1. This application was begun by way of an Originating Application filed on 27th September, 2023 in which the Claimant sought the following relief:

    a) A Declaration pursuant to Section 9 of the Status of Children Act, Chapter 130 of the Statute Laws of The Bahamas ('the Act"), that the Defendant is the putative father of S.A.C., born on the 16th day of November, A.D., 2015 ("the said minor child").

    b) A Declaration that the Defendant is subject to the duty to maintain the said minor child in accordance with section 33 of the Child Protection Act, Chapter 132 of the Statute Laws of The Bahamas.

    c) A Declaration that the presumption of paternity in relation to the minor child to Mr. A.C. pursuant to the Status of Children Act section 7 (1) subsection (d) and (j) is rebutted.

    d) A Declaration that Mr. A.C. is not to be subjected to the duty to maintain the said minor child in accordance with Section 33 of the Child Protection Act, Chapter 132 of the Statute Laws of The Bahamas.

    e) An Order pursuant to Section 14 of the Status of Children Act, that the Claimant obtain a blood test of the Defendant to determine parentage of the said minor child.

    f) An Order that the Defendant pay maintenance and be granted reasonable access with care and control of the said child to the Claimant.

    g) An Order that the Claimant and the Defendant shall share equally all educational, medical, dental, optical, general clothing expenses, and extra-curricular activities of the said minor child until she attains the age of eighteen (18) or completes tertiary education.

    h) Such further or other relief that the Court deems just and fit.

    i) And that costs of and occasioned by this action be provided for.

2. The Claimant's grounds of the application are that the said minor child's welfare and upbringing is the paramount consideration pursuant to section 3 of the Child Protection Act.

3. The originating Application is supported by the Affidavit of the Claimant filed 27th September, 2023 the parts which are relevant to ***this*** application I have extracted verbatim:

> ***3. " That the Defendant and I are parents of the said minor child, now called S.A.C. born 16th day of November A.D., 2015 who was born out of wedlock at St. Mary's Medical Center, West Palm Beach, Palm Beach County, United States of America. That now produced and shown to me marked "SM-2" is the copy of my Birth certificate of S.A.C."***
>
> ***5. That I verbally and via text message the Defendant at 1-242-457-1321 concerning the child and his contact is saved in my mobile phone as Mickey.***
>
> **Previous DNA testing**
>
> ***6. That on the 1st February 2019, Mr. A.C. conducted a DNA test on S.A.C and it was determined that Mr. A.C. is not the putative biological father. That now produced and shown to me marked SM-3 is the copy of the Paternity Test from DDC DNA Diagnostic Center for S.A.C.***
>
> ***7. That on 7th March 2019, Mr. A.D. and I conducted a DNA test on S.A.C. and it was determined that the Defendant is the putative biological father. Now produced and shown to me marked SM-4 is the copy of the Paternity Test from DDC DNA Diagnostic Center for S.A.C.***
>
> **Passport**
>
> ***8. That I have paid for two passports for the said minor child in the amount of $50.00. That now produced and shown to me marked "SM-5" is a copy of the passports.***
>
> The Claimant's affidavit continues:
>
> ***40. That I commenced proceedings in the Magistrate's Court and the Defendant denied paternity of the said child to which the Magistrate's Court had no jurisdiction pursuant to Section 7(2) of the Status of Children Act, Chapter 130, Statute Laws of The Bahamas.***
>
> ***41. That I humbly request that this Honourable Court order a blood paternity test to be conducted and after such that a Declaration of Paternity be granted with an order for maintenance, clothing allowance of twice a year, half of medical, dental, optical, educational expenses and arrears as the Defendant was aware and acknowledge the bills owing."***

Defendant's Objection in Limine

4. The Defendant (hereinafter called "the Applicant") opposes the Claimant's claim and by way of a Notice of Application filed 12th April, 2024 he has applied for the matter to be struck out as frivolous, vexatious, scandalous and an abuse of the process of the

court's process and that it is likely to obstruct the just disposal of the proceedings. The grounds of the application are stated as follows:

i. Another man that being A.C. has signed the minor child's birth certificate.
ii. The Claimant must make a separate application to remove A.C. and/or to allow A.C. to renounce his parentage to the minor child.
iii. Costs to the Defendant/Applicant to be taxed if not agreed.
iv. This Application is supported by the Affidavit of A.D.
v. A draft of the Order is attached to the Affidavit of A.D.

6. Objections taken by the Applicant in Limine are presented in writing and are inter alia as follows:

i. ***That the child bears and carries the surname of another man and in that case another man is deemed to be the legal father.*** Counsel relies upon S. 4 of the Status of Children Act, S. 7 (1), 7 (2) to support her arguments that "***the Defendant ought not be subjected to a paternity test where another man has shown to be the father of the minor child through the child's birth certificate.***" (emphasis mine). Further that the father's name on the birth certificate ought to stand as he has not renounced his parentage through any legal documents.

ii. The Applicant's Counsel further questions ***whether the paternity tests of the legal father, Mr. C., can be accepted.*** Counsel submits that ***the DNA tests results should not be accepted because the court was not involved in the process. Further that the Respondent should not be subjected to a DNA test because the minor child has adopted the surname of another man and that man has not renounced his parentage nor provided any legal documents in this matter.***

The Issues

7. The issues for the court's determination are:
   i. Is the Originating Application filed by the Claimant frivolous, vexatious, scandalous and/or an abuse of the process of the court as defined in law?
   ii. What is the effect of the fact that the child carries a surname other than the Defendant's?
   iii. Does the fact that the child carries the surname of another man deem him to be the biological/putative father of the child?
   iv. Whether the DNA tests adduced by the Claimant under the circumstances can be relied on as proof of paternity?
   v. Is the court empowered in the circumstances of the case to order the Defendant to submit to a DNA test?

8. Legislative authority for this application resides in the following Acts; The Child Protection Act, 2007, Ch. 132 (CPA); The Status of Children Act, 2002, Ch. 130 (SOCA); Birth's and Death's Registration Act, Ch. 188 (BDRA); the United Nations Convention on the Rights of the Child (UNCRC), and The Evidence Act, Chapter 65.

Background

9. This application involves a minor female child S.A.C ("the child") born out of wedlock to S.M. ("the Claimant") on the 16th day of November, 2015 at St. Mary's Medical Center, West Palm Beach, Palm Beach County, Florida in the United States of America. She is aged Nine (9) years old and attends Pace Christian Academy. It is important to note even at this introductory stage that the parentage of the child on the birth certificate lists only the mother's name which is listed as S.E.M. No father's name is listed on the birth certificate at all. The Claimant is a Bahamian Citizen and although born in the United States the child is also the holder of a Bahamian passport copies of which have been exhibited to the Claimant's Affidavit.

10. The Claimant offers no explanation as to how or why the gentleman she refers to in her Affidavit as A.C., who shares a surname with the child had a DNA test conducted on 2nd January, 2019 to determine whether he is the biological father of the child. The DNA test determined that the probability of A.C. being the father of the child was 0%.

11. On 3rd July, 2019, the same year another DNA test was conducted, this time it was the Defendant herein, A. D. who was tested and found to the degree of 99.999999% to be the biological father of the child.

12. As there is no indication whatsoever that these tests were done in any manner other than voluntarily, which required the attendance of the reputed fathers at the DNA Diagnostics Center, located abroad, for the tests to be conducted, I am forced to conclude that both men consented to have the tests conducted and carried through their agreement. It is therefore difficult to understand the challenge to the same before this court.

13. What followed thereafter was a series of demands by the Claimant for the Defendant to provide financial support and maintenance for the child. This included paying school fees, buying clothing and purchasing groceries.

14. The Defendant apparently accepted that he was the father and had an obligation to maintain the child financially. His apparent acceptance of that position is being advanced by the Claimant who says they had an agreement that he would do so. A thread of WhatsApp messages between the Claimant and the Defendant, which the Claimant exhibited to her affidavit in support of her Claim alludes to this fact. The

Defendant, made provision for the Claimant to obtain groceries from Super Value on more than one occasion, apparently for the child. When the Claimant suggested in her WhatsApp message exhibited as **"SM 12"** that $40.00 a week was not enough, the Defendant responded ***"I'm trying to do the best I can with no employment"*** Further confirmation of the Defendant's acknowledging that he is the father of the child, and of his obligation to maintain said child, is found when in response to the Claimant informing him of the of $150.00 school fees for the child, the Defendant responded ***"I'm only able to assist with that after March due to some other problems."*** However the Defendant failed to honour the agreement. What is germane to me is that the WhatsApp messages are dated during the months of April, May 2020 and December 2021 respectively, after the results of the DNA tests referred to in the Claimant's affidavit.

15. The Claimant took out proceedings in the Magistrates Court in August, 2023 for the Defendant to maintain the child. That application did not bear fruit apparently because of jurisdictional issues. In the application before this court the Claimant claims the total sum of $5,369.00 for various expenses including costs for obtaining passports for the child, school tuition, school supplies, clothing, extra-curricular activities, medical bills and purchase of weekly grocery vouchers.

Discussion and Analysis

16. The Defendant's Counsel's application is misconceived. She bases the application on the premise that the person named A.C. is listed on the child's birth certificate as the father when in fact this is not the case. There is no father at all on the child's birth certificate. Therefore her argument that "***the Respondent ought not be subjected to a paternity test where another man has shown to be the father of the minor child through the child's birth certificate"*** must fail.

17. A passport was issued to the child as an infant and then again at the age of Eight (8) years. Both passports attribute the surname "C" (as in A.C) to the child. The Claimant's Affidavit evidence fails to explain how the passports came to identify the child's surname as C. She does not include any copies of the forms submitted to any governmental agency, for example the Passport Office that issued the passports or The Registrar General's office, where any attribution of the surname made to the child would have required the production of an Affidavit and declarations by the parents, to that effect.

18. The **Births and Death's Registration Act, Ch. 188** provides as follows:
    S. 14 – **"In the case of the birth of a child born out of wedlock —**
    (a) no person shall as father of such child be required to give information under this Act concerning such birth;

(b) a registrar or assistant registrar shall not enter in any register the name of any person as father of such child unless at the joint request of the mother and the person acknowledging himself to be the father, such request taking the form of a written declaration witnessed by the registrar, or an assistant registrar, or justice of the peace or a notary public."

19. Until the contrary is proven, this court can presume that the passport issued to an individual is authentic and properly issued to the recipient. In ***Darren Lester v The Registrar General of The Bahamas and another [2021] 1 BHS J. No. 59***

> Justice Ian Winder as he then was said ***"relying on Section 98 of the Evidence Act, Chapter 65 which states "When any document is produced before a court purporting to be a document which by any statue at the time in force is admissible in evidence provided that it is signed or stamped or sealed, or otherwise authenticated as required by the statue, the court shall presume until the contrary is shown -- (a) that the signature, stamp, seal or other authentication of the document is genuine; (b) that the person signing, stamping, sealing or otherwise authenticating it had at the time when he so signed, stamped, sealed or authenticated it the official or other character which he claims: Provided that the document is substantially in the form, and purports to be executed in the manner directed by the law in that behalf."***

20. I accept that the issuance of such a document would have required both father and mother in the case of an unmarried couple to present, in the absence of a certified copy of a birth certificate, some form of properly notarized, authenticated and recorded document which speaks to the child's parentage, particularly the name of the father. Should this matter proceed beyond the objection in limine, this court will be bound to recognize this presumption and accept the same, once the criteria for its acceptance in evidence as to its authentication is fulfilled, and unless otherwise rebutted.

The Status Of Children Act, Ch. 130

21. How a man acts towards a child can play a significant role in establishing the paternity of a child. The law recognizes that certain behaviour toward the mother of a child or the child leads to the presumption of fatherhood.

> **"S.7. (1) SOCA ; Unless the contrary is proven on a balance of probabilities, there is a presumption that a male person is, and shall be recognised in law to be, the father of a child in any one of the following circumstances —**
>
> **(a) the person was married to the mother of the child at the time of its birth;**
>
> **(b) the person was married to the mother of the child and that marriage was terminated by death or judgment of nullity within 280 days before the birth of the child, or by divorce where the decree nisi was granted within 280 days before the birth of the child;**

(c) the person marries the mother of the child after the birth of the child and acknowledges that he is the natural father;

(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;

(e) the person has been adjudged or recognised in his lifetime by a court of competent jurisdiction to be the father of the child;

(f) the person has, by affidavit sworn before a justice of the peace or a notary public or by other document duly attested and sealed, together with a declaration by the mother of the child contained in the same instrument confirming that the person is the father of the child, admitted paternity, but such affidavit or other document shall be of no effect unless it has been recorded with the Registrar General;

(g) the person has acknowledged in proceedings for registration of the child, in accordance with the law relating to the registration of births, that he is the father of the child;

(h) the mother of the child and a person acknowledging that he is the father of the child have signed and executed a deed to this effect in the presence of a counsel and attorney, but such a deed shall be of no effect unless it is notarised and recorded with the Registrar General prior to the death of the person acknowledging himself to be the father;

(i) a person who is alleged to be the father of the child has given written consent to that child adopting his name in accordance with the law relating to the change of name; or

(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."

22. I have determined that Mr. A.C., at some time during the creation of the passport and several other documents exhibited by the applicant made a declaration that he is the father of the said child and in the normal course of events his so declaring would operate to invoke the presumption that he is the father of the said child. However, the Act contemplates that there may be instances where presumptions may arise with respect to more than one father. S. 7 (2) SOCA provides "***where circumstances exist that give rise to presumptions of paternity in respect of more than one father, no presumption shall be made as to paternity." S.7 (2) SOCA.***

23. Notwithstanding that the provision of photocopies of the voluntary DNA tests provided by the Claimant cannot be relied upon by this court as proof of the contents of the document without more based on requirements dictated by rules attendant to the adducing of evidence, this court will not ignore the sworn statements about paternity made by the Claimant in her Affidavit.I am ever mindful of this court's obligations towards the child as provided in The Child Protection Act.

The Child Protection Act, Ch. 132

24. S. 3. (1) CPA;

Whenever a determination has to be made with respect to —

(a) the upbringing of a child; or (b) the administration of a child's property or the application of any income arising from it, the child's welfare shall be the paramount consideration.

(2) In all matters relating to a child, whether before a court of law or before any other person, regard shall be had to the guiding principle mentioned in subsection (1) and that any delay in determining the question is likely to be prejudicial to the welfare of the child.

(3) In determining any question relating to circumstances set out in paragraphs (a) and
(b) of subsection (1), the court or any other person shall have regard in particular to —
(a) the ascertainable wishes and feelings of the child concerned considered in the light of his or her age and understanding;
(b) the child's physical, emotional and educational needs;
(c) the likely effects of any changes in the child's circumstances;
(d) the child's age, sex, background and any other circumstances relevant in the matter;
(e) any harm that the child has suffered or is at the risk of suffering;
(f) where relevant, the capacity of the child's parents, guardians or other persons involved in Guiding principle the care of the child in meeting his or her needs

S. 4. CPA; A child shall have the right —

(a) of leisure which is not normally harmful, and the right to participate in sports and positive cultural and artistic activities;

(b) to a just call on any social amenities or other resources available in any situation of armed conflict or natural or man-made disasters;

(c) to exercise, in addition to all the rights stated in this Act, all the rights set out in the United Nations Convention on the Rights of the Child (the Convention) subject to any reservations that apply to The Bahamas and with appropriate modifications to suit the circumstances that exist in The Bahamas with due regard to its laws

S. 151. (1) CPA; Where a court has to determine the issue of parentage in any proceedings under his Act the court may, on the application of any party to the proceedings or on its own motion, make an order, upon such terms as may be just, requiring any person to give any evidence which may be

material to the question, including a blood sample for the purpose of blood test or for DNA analysis.

(2) Any person sought to be tested shall be made a party to the proceedings and the court may draw such inferences as it thinks appropriate from any refusal by a party to submit a sample of his blood to facilitate a test.

25. It is abundantly clear that even at this stage of the proceedings, an objection in limine, does not preclude me and in fact I am mandated to keep the guiding principle that the welfare of this child is of paramount consideration to the forefront of the decision. I consider the paternity of a child to be critical and fundamental to a child's identity. This is also acknowledged in the United Nations Convention on the Rights of the Child, 1989, Article 7.

United Nations Convention on the Rights of the Child, (1989), ("the Convention") Article 7:

1. **The child shall be registered immediately after birth and shall have the right from birth to a name the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.**

2. **States parties shall ensure the implementation of these rights in accordance with their national laws and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless."**

26. These considerations are consistently recognized in courts of countries that are signatories to the convention, and in the House of Lords decision *of* ***J v C [1969] 1 All ER 788 where Guest J citing with approval Lindley, J in Re McGrath (infants) [1893] 1 Ch. 143 stated;***

> ***"The dominant matter for the consideration of the Court is the Welfare of the child. But the welfare of a child is not to be measured by money only, nor by physical comfort only. The word welfare must be taken in its widest sense. The moral and religious welfare must be considered as well as its physical wellbeing. Nor can the ties of affection be disregarded."***

27. The Bahamas became a signatory to the United Nations Convention on the Rights of the child on 30th October 1990 and those provisions of the convention, I believe, would have, to all intents and purposes, influenced the Status of Children Act 2002, and the Child Protection Act 2007 ***supra.***

28. **Reference was made to Article 7 of the Convention in Re H (A Minor) (Blood Tests: Parental Rights) [1997] Fam 89 when the Court of Appeal in determining the matter stated that "*every child has the right to know the truth of his identity unless disclosure is clearly contrary to his best interests. There must be cogent reasons for denying the child that knowledge."***

29. Counsel for the Applicant submits that the question of whether or not a man is the father of a child is a question of fact. Barnett CJ in the case of ***Barr v Laing APP/MAG 27 of 2011 or BS 2012 SC 56*** put it succinctly:

> ***"Whether the appellant or another man was the father of the child is a question of fact. It is a fact not determined simply by whom the mother says the father is but by who is in fact the father. Once that fact has been determined, the father has a statutory obligation to maintain his child."***

30. This court unreservedly accepts that the mother's word about who the father of her child is, may not be sufficient in many circumstances. In order to determine who in fact the father is, may require a much deeper and more comprehensive investigation. This is one of those instances. If Counsel prevails in her objections the aborted proceedings would prevent the court's deeper, more comprehensive investigations, which to all intents and purposes would involve the court ordering that the Defendant/Applicant A.D. undergo DNA testing. DNA tests are aimed at assisting the court to determine whether or not a man is the father of a child. A serious obligation not only for the parties but also for the court as will be demonstrated hereafter. Not to mention that such evidence will also buttress the evidence of the Complainant that he, A.D. is the father.

31. **S. 3. (1) SOCA**; is permissive of a deeper investigation of this issue where it provides

> **"Subject to the provisions of sections 6 and 16, for all the purposes of the law of The Bahamas the relationship between every person and his father and mother shall be determined irrespective of whether the father and mother are or have been married to each other, and all other relationships shall be determined accordingly."**
>
> **S. 3 (2) SOCA The rule of construction whereby in any instrument words of relationship signify only legitimate relationship in the absence of a contrary expression of intention is *hereby abolished* (emphasis mine).**

32. In my estimation the Convention together with the SOCA has levelled the playing field for children born in wedlock and out of wedlock. The stigma that was attached to children born out of wedlock that plagued much of society prior to these juridical pronouncements has been abolished by law and all but annihilated in society.

33. It is also my view that the SOCA and the CPA are legislative mammoths solely in recognition of children and the importance of ensuring that they are properly nurtured, that they have rights and a voice. These principles are so fundamental to their existence that they have been given international recognition by the United Nations so that they may be applied across the board to any and all children. Every child is entitled to a name, to nationality and to be cared for by his or her parents;

Establishment of Paternity

34. **9.** ***(1) SOCA; 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.

S. 19 (1) Where an application is made to the court to determine the parentage of a child, the court may give directions to the applicant to obtain blood tests of such persons as the court specifies and to submit the results in evidence.

35. The Claimant's application for a declaration of fatherhood for her child is significantly important for the future wellbeing of this child. Knowing her true identity is fundamental to her growth, development and future socialization and in my view the substance of the application is pivotal to my final determination on this application in limine.

36. I turn now to the issues of whether the claimant's case is frivolous, vexatious and or an abuse of the process of the court entitling the Applicant to have the Claim struck out. Strike out applications are governed by the provisions of the Supreme Court Civil Procedure Rules 2022 (CPR).

(1) In addition to any other power under these Rules, the Court may strike out a statement of case or part of a statement of case if it appears to the Court that —
(a) –
(b) -
(c) - the statement of case or the part to be struck out is frivolous, vexatious, scandalous, an abuse of the process of the Court or is likely to obstruct the just disposal of the proceedings; or
(d) -

The applicant has failed to indicate under which provision his application falls but in utilizing the exact wording of **CPR 26.3 (1) (c)** the assumption can be made that the application is grounded in those provisions. In quoting what I deem to be the rationale for the application lifted from the pleading verbatim are the factual basis or grounds for the application;

i. ***"Another man that being A.C. has signed the minor child's birth certificate.***
ii. ***The Claimant must make a separate application to remove A.C. and/or to allow A.C. to renounce parentage to the minor child."***

37. Frivolous claims are reserved for cases which are obviously unsustainable. Use of the word 'obviously' in this context requires the court to observe that the claim is unsustainable from a mere scrutiny of the pleaded documents. That unsustainability must be clear, noticeable and easily recognizable. In ***Bodie and another v. Storr***

(Administratrix of the estate of Joseph Alexander Storr) [2018] 1 BHS J. No. 88 Winder J. quoted

> *Bowen L.J, in Willis v. Earl of Beauchamp (1886) 11 P. 59, 63* ***stated that the Court has the inherent power to prevent the abuse of its legal machinery which would occur, if for no possible benefit, a party is to be dragged through litigation which must be long and expensive. The frivolous claim is reserved for cases which are obviously unsustainable. (emphasis mine).***

38. This principle has not changed over more than a century and in ***Rocky Farms Nurseries Limited v Brett Stubbs [2020] 1 BHS J. No. 94*** per Hon. Mr. Justice Ian R. Winder as he then was reiterated;

> *"The* ***frivolous*** *claim is reserved for cases which are obviously unsustainable."*

39. Lindley, L.J. in the leading Court of Appeal case of ***Attorney-General of the Duchy of Lancaster v. London and North Western Railway Company [1892] 3 Ch. 274,*** considered a similar order which allowed pleadings to be struck out and dismissed on the ground of being frivolous and vexatious. The learned judge at page 277 said that:

> ***"It appears to me that the object of the rule is to stop cases which ought not to be launched - cases which are obviously frivolous or vexatious, or obviously unsustainable"***

40. I find nothing frivolous in the Claimant's application for a declaration as to who is this child's father. Some synonyms for the word frivolous are playful, frolicsome, lighthearted, merry, dizzy, giddy, laughing, flippant and silly. Nothing in the Claimant's application and in particular her supporting affidavit, could be equated to any of those words. The Claimant's intentions are made clear from the face of the pleading and she has supported it with credible evidence. Moreover there is ample legislative provisions empowering her and her ability to make the application which she seeks. I find that her case is **not "*obviously unsustainable*"**.

41. Vexatious claims can be equated with claims that have no prospect of success. In **Halsbury's Laws of England - Consumer Protection (Volume 21 (2022)) – *758 under the rubric Vexatious litigants by use of the case of Re Vernazza [1959] 2 All ER 200,*** Lord Parker CJ, Donovan and Salmon jj demonstrates the threshold for such a finding;

> ***"In considering whether any proceedings are vexatious, the court must look at the whole history of the matter; and proceedings may be held to be vexatious, notwithstanding that in each individual case taken singly the pleading discloses a cause of action: -***
>
> ***In 1935 V sued a company for £158,982 for breach of contract and/or wrongful dismissal. The action was dismissed in 1937. In 1938 V brought an action in the Chancery Division claiming that the judgment in the earlier action should be set aside; in this action the statement of claim was struck out as vexatious. In 1938, 1939, 1940,***

1952, 1953, 1957, 1958 and 1959 he took further proceedings or steps in proceedings before the courts arising out of the same claim as had been the subject of the action; all these were dismissed or refused. On a motion for an order under s 51(1) of the Supreme Court of Judicature (Consolidation) Act, 1925, that no legal proceedings should be instituted by V without the leave of the High Court or a judge thereof, it was contended on V's behalf that as the process issued disclosed a cause of action, except in the second action where the statement of claim was struck out, the proceedings were not vexatious.

Held– ***In determining whether proceedings were vexatious the court must look at the whole history of the matter, not solely at the question whether the pleadings had throughout disclosed a cause of action, and in the present case, so regarded, the order should be granted.***

42. It has been said in ***Re L & N D Development and Design Ltd. Dixon v Myers and another (as administrators of L & D Development and Design Ltd. [2021] 2 BCLC 110*** Per Millet J "***The expressions frivolous and vexatious or no reasonable prospect of success were synonymous with the test for summary judgment under CPR Pt. 24."***

43. The British CPR Pt. 24 is the corresponding provision to the Bahamas' CPR 2022, Pt. 15.2 which provides that the Court may give summary judgment on the claim or on a particular issue if it considers that the –

    (a) claimant has no real prospect of succeeding on the claim or the issue; or

    (b) defendant has no real prospect of successfully defending the claim or the issue.

44. Scrutiny of the originating application and the Affidavit in support which lays out the history of the matter, the rationale for the application and remedy sought supports the view that this claim is not in the least vexatious. I determine it to be the case not solely on the basis that the pleadings do disclose a cause of action but also in consideration of the courts investigative functions as discussed earlier herein but also given the empowerment of the courts with a wide discretion where the court has to adhere to the principle that the welfare of this child is to be its paramount consideration.

Abuse of The Process of the Court

45. Claims of Abuse of the process of the court may find footing is many different situations and circumstances in the course of litigation. Where an applicant achieves success the claim is liable to be struck out. In ***Financial conduct Authority v Papadimitrakopoulos and others [2023] (Comm) 804*** per Smith J:

    "It is common ground that CPR 3.4 (2) provides that the court may strike out a statement of case if it appears to the court that the Statement of case "is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings."

"Before the court can strike a claim for abuse of process, it must first determine whether the conduct complained of is properly characterized as an abuse. The categories of abuse are many and are not closed. ..... recognized aspects of abuse of process include Henderson v Henderson abuse, bringing the administration of justice into disrepute and proceedings which are manifestly unfair to the other party. (See JSC VTB Bank v Skurikhin [2020] EWCA Civ. 1337, [2021 WLR 434, [2020] All ER (D) 39 (Nov), at [51] per Phillips LJ). The court should consider whether as a matter of fact, a party has used the courts procedures for a purpose or in any way significantly different from its ordinary and proper use."

"Where the court determines that conduct amounts to an abuse of process it must then consider whether to exercise the courts discretion to strike out the claim. A finding of abuse will not inexorably lead to a strike out, any decision to strike out must involve a balancing exercise – the court's decision must be consistent with the overriding objective and must be proportionate to the abusive conduct (see Walsham Chalet Park Ltd. (trading as The Dream Lodge Group) v Tallington Lakes Ltd. [2014] EWCA Civ 1607, [2015] 1 Costs LO 157 at ([44]).

In Financial Conduct Authority v Papadimitrakopoulos and other [2023] 1 All ER (Comm) 804 , Smith J opined "***Proceedings can be struck out as an abuse of process "where there has been no unlawful conduct, no breach of relevant procedural rules, no collateral attack on a previous decision and no dishonesty or other reprehensible conduct..."***

46. However, notwithstanding that the court may determine that there has been abuse of the process, the court still has a discretion whether to strike out the claim.

    Phillips J continued that a finding of abuse will not inexorably lead to a strike out. ***"Any decision to strike out involves a balancing exercise- the court's decision must be consistent with the overriding objective and must be proportionate to the abusive conduct."***

47. Phillips J also quoting Lord Neuberger's observations in ***Prince Abdulaziz Bin Abdulaziz Al Saud v Apex Global Management Ltd. 2014*** that "***the striking of a Statement of Case is one of the most powerful weapons in the court's case management armory and should not be deployed unless its consequences can be justified."***

Harrington Scott Ltd. v Coupe Bradbury Ltd. [2022] EWHC 2275 (Ch) per Judge Hodge KC;

"I accept that the Court has an inherent jurisdiction to strike out proceedings where the claimants conduct past and reasonably

apprehended put the fairness of the trial in jeopardy; where it is such that any judgment in favour of the claimant would have to be regarded as unsafe; or where it amounts to such an abuse of the process of the court as to render further proceedings unsatisfactory, abuse of the process of the court from doing injustice to the defendant. If it were necessary to identify a source for this jurisdiction in the Civil Procedure Rules (which it is not, because the court has an inherent jurisdiction to act so as to preserve the integrity of the trial process), it is to be found in the duty imposed on the parties, by CPR 1.3, to help the court to further the overriding objective of enabling the court to deal with the case justly, thereby engaging (in addition to the inherent jurisdiction) the jurisdiction to strike out under CPR 3.4 (2) (c) for noncompliance with CPR 1.3. I note that at the end of his concurring judgment in Arrow Nominees at [77], Ward LJ explained that he had added his observations to the judgment of Chadwick LJ…" simply to underline that the principles to apply are those in the new procedural code. They are encapsulated by the need to do justice, case by case. In this case it is no more than justice in that broad sense that the petitioner."

48. In my view objecting to a Claimant's matter on the basis that it is an abuse of the process of the court should not be flippantly advanced. Moreover if it is done it should at least be supported by some claim of what of the Claimant's actions qualify or amount to abuse. The instances of abuse mentioned herein above provides examples of what may be considered abuse in many instances, although it is evident that the list is not exhaustive. Utilizing some of these examples I have found nothing in the Claimants pleadings or the case which is manifestly unfair to the Defendant thereby calling the administration of justice into disrepute as demonstrated in the case of **Henderson v Henderson supra**. Nor has the Claimant utilized the court procedures for a purpose significantly different from its ordinary or proper use as described by **Phillips LJ** in **JSC VTB Bank v Skurikhin [2020] EWCA Civ. 1337, [2021 WLR 434, [2020] All ER (D) 39 (Nov), at [51].**

49. This Claimant has not in my opinion engaged in ***"any unlawful conduct, no breach of relevant procedural rules, no collateral attack on a previous decision and no dishonesty or other reprehensible conduct…"of the kind described in Financial Conduct Authority supra."***

50. I accept that striking out a Claim as an abuse of the process of the court is the most powerful weapon in the court's arsenal and I am prepared to regard it so even in this matter and at this stage of the proceedings as per ***Phillips J also quoting Lord Neuberger's observations in Prince Abdulaziz Bin Abdulaziz Al Saud supra.***

51. The idea that the matter before the court should be dismissed as "likely to obstruct the just disposal of the proceedings" is simply illogical so I dismiss the Applicant's submissions in that regard.

52. In balancing the interests of the parties and against the backdrop of the overriding objective of enabling the court to deal with the case justly, and to dispense justice case by case, and notwithstanding the court's wide powers and discretion to strike out under its inherent jurisdiction, I decline the Applicant's invitation to this court to strike out the Claimants case. I find no reason to do so. In the premises I conclude as follows:

CONCLUSION

1. **The Notice of Application filed by the Defendant/Applicant on 12th April, 2024 to strike out the Claimant's matter on the grounds that it is frivolous, vexatious and an abuse of the process and is likely to obstruct the just disposal of the proceedings is dismissed.**

2. **The Defendant/Applicant, A.D. is ordered to undergo a DNA test in relation to the child S.A.C. from a properly licensed, reputable lab here in the Bahamas. Such test to be undergone on or before 30th November, 2024.**

3. **The results of the said DNA test are to be included in a sworn affidavit and filed on or before 31st December, 2024 by the Defendant/Applicant.**

4. **The matter is adjourned to Tuesday, 28th January, 2025 at 2:30 p.m. in the afternoon.**

5. **Costs of the application to the Claimant to be fixed by the court.**

Date the 6th day of November, A.D., 2024

The Honourable Madam Justice C.V. Hope Strachan