

**COMMONWEALTH OF THE BAHAMAS  
IN THE SUPREME COURT  
FAMILY DIVISION**

**2022**

**FAM/div/00746**

**BETWEEN**

**A R B**

**Petitioner**

**AND**

**E S B (nee M)**

**Respondent**

**Before: The Hon. Madame Justice J. Denise Lewis-Johnson MBE**

**Appearances:** Ranard Henfield of Counsel for the Petitioner  
Gary Russell of Counsel for the Respondent

**Hearing Dates:** 9<sup>th</sup> December 2025, 11<sup>th</sup> February 2026

*Family Law- Division of Assets- Ancillary Relief- Maintenance of minor child- Paternity- Paternity  
Fraud*

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**ORAL RULING**

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**Background and Procedural History**

1. By Petition filed 16<sup>th</sup> December 2022 the Petitioner prayed for the dissolution of the marriage on the ground that since the celebration of the marriage the Respondent had treated the Petitioner with cruelty.
2. Decree Nisi was granted to the Petitioner on the 31<sup>st</sup> July A.D., 2024 on the ground prayed.

3. By Notice of Intention to Proceed with Ancillary Relief filed 21<sup>st</sup> August 2025 supported by an Affidavit of the Petitioner of even date, the Petitioner sought the following relief of the Court:-
  - A. Declaration relative to paternity fraud;
  - B. An order as to custody and access;
  - C. A maintenance order.
4. The Petitioner asked the Court to rule on the paternity issue as the determination of that issue would impact the other issues before the court.

### **Evidence of the Petitioner**

5. That the parties had a child born on the 5<sup>th</sup> October 2018.
6. That the Respondent gave birth to a male child on the 25<sup>th</sup> May 2023 and that child carries my last name.
7. That the Respondent and I ceased cohabitation and intimacy some fifteen (15) months prior to the birth of the child and so I verily believe that I am not the biological father of the child born in 2023.
8. At no time did I assume parental responsibility for the child.
9. That the Respondent has committed paternity fraud as she knows that I am not the father of the child and allowed me to be listed as the father and for the legal responsibilities to be attached.

### **Evidence of the Respondent**

10. The Respondent provided no Affidavit evidence, she agreed to have the DNA test conducted.

### **Issues**

11. Whether the Petitioner has rebutted the presumption of paternity?
12. Whether there was paternity fraud by the Respondent?
13. What legal remedies are available to the Petitioner if the presumption is rebutted and if there is paternity fraud?

### **The Law**

14. Section 7(1)(a) of the **Status of Children Act** 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 –

(a) the person was married to the mother of the child at the time of its birth”

15. The court in **FRB v DCA [2019] EWHC 2816 (Fam) [2019] All ER (D) 179** held that:

*“the tort of deceit in respect of intimate matters, including ‘paternity fraud’, could exist between a husband and a wife. However, in circumstances where the husband alleged paternity fraud and brought a claim in the tort of deceit against the wife, which was listed alongside financial remedy proceedings, the Family Division ruled that the route that the husband took was plainly inappropriate and that the deceit claim could not survive. It held that Parliament had provided a statutory remedy for financial provision on the breakdown of marriage and that the allocation of the parties’ resources was to be covered by s 25 of the Matrimonial Causes Act 1973 and not by other common law remedies. Accordingly, the court ruled that the claim form and particulars of claim, concerning the deceit allegation, disclosed no reasonable grounds for bringing the claim and that they were an abuse of the court’s process or otherwise likely to obstruct the just disposal of the proceedings.”*

16. Sir John Blofeld in **A v B 2007 2 FLR 1051** stated:

*“The real question is whether there should be liability in deceit in a domestic context, i.e. as between a cohabiting couple.” “I see no reason why a confidence tricker who obtains money or other property from a woman by lying to her and living with her, possibly for a short period, should be outside the scope of liability for tort; and the same must apply to a woman who fraudulently deceives a man in order to obtain his money and property...This reasoning is convincing to me, and I adopt and follow it.”*

### **Decision**

17. The presumption that a child born during a marriage is the child of the husband is a rebuttable one. It is customary that the husband is listed on the birth certificate as the father and the child is given the husband's last name.
18. The Petitioner alleges there was paternity fraud as the Respondent knew or ought to have known that he was not the father of the child and allowed him to be listed as the father on the birth certificate. In the circumstance of marriage the presumption is that the Petitioner is the father of the child. The Court notes that the Respondent took no steps to declare that

the Petitioner was not the father, and her failure to act has caused the Court to have to determined paternity and if the child is a child of the family.

19. Paternity fraud has been described in the case of **RCS SR v. TS (nee B) 2022FAM/div/00644** as “where a mother of a child allows/deceives her husband into believing he is the biological father of the child, knowing that he is not, allowing him to continue as the presumed father or where she knows that possibility exists and fails and/or refuses to tell the presumed father of that possibility and fails to take such steps [DNA testing] to definitively determine if he is the biological father.”
20. This Court ordered a paternity test of the Petitioner and the said child, the results showed that the probability of the Petitioner being the father of the child was 0.0%. The Court accepts the results.
21. The Court is satisfied that Respondent knew or ought to have known that the Petitioner was not the father of the child. She must have known the possibility of having unprotected sex with someone other than the Petitioner could result in that person being the father of the child. It was a risk she took and failed to advise the Petitioner of that possibility. If the Court accepts the Petitioner’s evidence, that there was no intimacy between the parties for more than 15 months prior to the birth of the child, then she knew it was an impossibility that the Petitioner was the father. It is unfortunate that she failed to take the necessary step to avoid this legal issue.
22. As stated above in the cases of **FRB** and **A v B** the Court found that paternity fraud is a part of the tort of deceit and that matrimonial laws provide the remedies for it.
23. In the case of **A v B** the court held “that the tort of deceit was made out as, representations were made, those representations were false and the Defendant knew they were untrue. She intended the Claimant to rely on them and he suffered damage. The Court found the Claimant was entitled to an award of general damages and such an award was not contrary to public policy. The award was limited, as the Claimant’s devastation did not require medical attention.” Similarly, in this case, the representation of the Respondent was false, she knew they were, the Petitioner relied on them and suffered damages.
24. In this case the Petitioner quickly questioned the paternity of the said child and did not treat the child as a child of the family. He did not take responsibility for the child’s welfare and maintenance. He did not seek to develop an emotional parental bond with the child and he

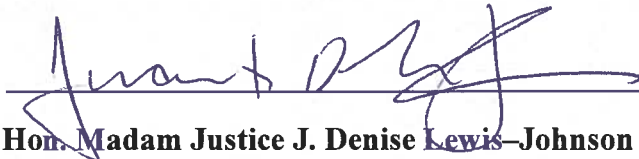
did not accept him as his own. While the Petitioner may have suffered some embarrassment, his financial loss was not significant. His entitlement to compensation is limited. The Court finds that the said child is not a child of the family.

25. Fortunately, the child is very young and thus is not impacted by the loss of a relationship with the presumed father. There is an opportunity to create that relationship with the biological father.

26. For all the reasons stated above, the Court having considered the evidence and the relevant law finds as follows: -

- a. A Declaration that the presumption of paternity is rebutted as to ARB born the 25 May 2023, he is not the biological child of the Petitioner, ARB and not a child of the marriage or the family.
- b. That the Registrar General Department is ordered to correct the Register of Birth by removing the Petitioner ARB as the father of ARB born the 25 May 2023 to ESB.
- c. Petitioner is discharged from all parental responsibility relative to the said child pursuant to Section 6 (1) of the Child Protection Act and any right to access or custody of the child.
- d. The Respondent is to reimburse the Petitioner for the cost of the paternity test.
- e. The Respondent is condemned in cost in the amount of \$3,500.00.
- f. The Court finds there was paternity fraud by the Respondent and damages are to be assessed.
- g. Other ancillary matters adjourned sine die.

Dated this 11<sup>th</sup> day of February, A.D. 2026



**The Hon. Madam Justice J. Denise Lewis-Johnson MBE**