

COMMONWEALTH OF THE BAHAMAS
IN THE SUPREME COURT
Commercial Division
2022/CLE/gen/00030

BETWEEN

RENEA CRYSTAL HUMES

First Applicant

AND

RASHAD ALEXANDER POITIER

Second Applicant

AND

ELIAS MATTHEW ISRAEL POITIER

(A minor by way of his mother and next friend, Renea Crystal Humes)

AND

THE REGISTRAR GENERAL OF THE COMMONWEALTH OF THE BAHAMAS

First Respondent

AND

THE ATTORNEY GENERAL OF THE COMMONWEALTH OF THE BAHAMAS

Second Respondent

Before Hon. Chief Justice Sir Ian R. Winder

Appearances: Christina Galanos for the Applicants
David Whyms for the Respondents

2 June 2022, 18 August 2022, 27 July 2023

JUDGMENT

WINDER, CJ

This is the application of the first applicant (Humes) seeking to rectify the Register of Marriages and Births following the discovery of the fraudulent use of her identity to procure a sham marriage.

[1.] The action was commenced by the applicants by Originating Summons dated 17 January 2022 seeking the following relief:

- (1) A declaration that pursuant to section 52(3) of the Marriage Act, 2008, Chapter 120 of the Statute Laws of the Commonwealth of The Bahamas, the purported marriage between the First Applicant and one Occilien Lesperance is null and void;
- (2) Pursuant to section 52(3) of the Marriage Act, 2008, Chapter 120 of the Statute Laws of the Commonwealth of The Bahamas, an Order directing the First Respondent to remove and/or delete any and all records of the said purported marriage in the Registrar General's Department;
- (3) Pursuant to section 52(3) of the Marriage Act, 2008, Chapter 120 of the Statute Laws of the Commonwealth of The Bahamas; and Order directing the First Respondent to remove and/or delete the Married Surname: "Lesperance" from the birth certificate of the Third Applicant;

[2.] The application is supported by the affidavit of Humes. The Respondents opposed the application and filed the affidavit of the Registrar General, Camille Gomez-Jones (Gomez-Jones) in support of their case.

[3.] Humes states in her affidavit that:

- (1) In or about the summer of 2018, she and the Second Applicant (Poitier) had decided to get married and filled out the requisite forms, which were obtained online from the Registrar General's Department website. They proceeded to the Registrar General's Department and were directed to a Justice of the Peace who was present in the office at the same time. They were advised that the sum of \$300 would be the fee. They all proceeded to the open space next to the library on Shirley Street where vows were exchanged. They were told that they would be called when the marriage certificate was obtained.
- (2) Two to three weeks later, Poitier received a call from the Justice of the Peace, who performed the marriage. He informed Poitier that according to the system, Humes was already married and Poitier should call the police because she had committed a crime.
- (3) The following day, she and Poitier went to the marriage department of the Registrar General's Department where they were advised that there was a record of a marriage to her and a person by the name of Occilien Lesperance.

She denied that a marriage had taken place between her and the said Occilien Lesperance.

- (4) The Justice of the Peace involved in the sham marriage was James S. Sweeting.
- (5) She went to the Central Detective Unit where the matter was reported. She gave a statement and provided handwriting samples. A few months later she was informed that they had located James Sweeting. Sweeting refused to engage in a confrontation with her but denied the sham marriage. Sweeting became very ill and had to be taken to the hospital.
- (6) On 12 April, 2019, she gave birth to a baby boy whom she and Poitier named Elias Matthew Israel Poitier. Approximately two to three weeks after giving birth, she and Poitier went to the Registrar General's Department to obtain their son's birth certificate. On this occasion, the Registrar General informed them that as the sham marriage between she and Occilien Lesperance was still in the system, the child's registration had to bear the surname Lesperance.
- (7) She learnt that:
 - (a) Occilien Lesperance could not be located by the Police and it was feared that he had left the country. A wanted notice was issued for Occilien Lesperance.
 - (b) James S. Sweeting had been charged before the Magistrate's Court with facilitating other sham marriages. In particular he was involved in the fraudulent use of the identity of Chantiz Lashea Williams in a similar manner as her identity was misused.
- (8) She and Poitier are unable to get married or have their marriage registered and her surname is incorrectly listed on the Third Applicant's birth certificate as "Lesperance".

[4.] Humes was cross-examined extensively on her affidavit. Having seen and heard Humes as she gave her evidence I have no hesitation in indicating that I accepted her evidence as truthful. I am satisfied that Humes did not voluntarily enter into a sham marriage and that she played no role in the registration of the marriage by James Sweeting and *Occilien Lesperance*. Whilst the Respondents did not accept Humes' story, they offered no direct evidence that she was a party to any fraudulent marriage. In fact, the matter only surfaced on her seeking to be married and her report to the police. Neither action was indicative of a person aware that the fraudulent marriage took place.

[5.] Having accepted Humes' evidence, the only issue remains is whether the relief sought by her can be granted by the Court.

[6.] The relevant legislation are the following:

Section 52 of the Marriage Act provides:

52. (1) No alteration in any register of marriages shall be made except as authorised by this Act.

(2) Any clerical error which may from time to time be discovered in any such register, may be corrected by the Registrar General or any person authorised in that behalf by him, subject to any rules made under this Act.

(3) Any error of fact or substance in any such register may be corrected by the Registrar General upon production to him by either of the parties to the marriage, or in the case of his or her death, by the issue or other lawful representative of such party, of a declaration setting forth the nature of the error and the true facts of the case.

Section 24 of the Births and Deaths Registration Act provides:

24. (1) No alteration shall be made in any register of births and deaths except as in this section provided, that is to say —

- (a) any clerical error which may from time to time be discovered in any such register may be corrected by the Registrar General;
- (b) any error of fact or substance in any register may be corrected by entry in the margin or end of the register (without any erasure or alteration of the original entry) by the Registrar General upon production to him by the person requiring such error to be corrected of a declaration setting forth the nature of the error and the true facts of the case and made before a notary public or justice of the peace by two persons required by this Act to give information concerning the birth or death with reference to which the error has been made or in default of such persons then by two credible persons having knowledge of the truth of the case;
- (c) any alteration in a register of births may be made in conformity with the provisions of section 15 of this Act.

(2) Notwithstanding the provisions of subsection (1) of this section no alteration of any error of fact or substance shall be made to any register of births after the expiration of five years from the date of registration of the birth in respect of which the application to alter is made.

(3) In this section the expression "clerical error" means —

- (a) year, wrong or omitted;
- (b) month, wrong, where it is evident from the preceding and succeeding entries;

- (c) omission of sex, where the same is apparent from the name supplied;
 - (d) error or omission in copying a Christian name from a baptismal certificate or certificate of naming;
 - (e) error in spelling any word which is not a Christian name or surname, or the misplacement or repetition of any word;
 - (f) any other error apparent from other entries made; and "error of fact or substance" means all errors which are not defined as clerical errors.
- (4) This section shall be retrospective in its operation.

[7.] The Respondents say in their submissions that:

- (1) the Court should refuse to exercise its discretion in acceding to the applicants' request unless the conditions of the errors defined in the statute is satisfied.
- (2) Humes cannot successfully seek any relief under section 52(3) of the Marriage Act, 2008 as the court's original jurisdiction to grant declarations is at present narrower than its supervisory jurisdiction. Except in proceedings by the Attorney General, it is confined to situations to where the plaintiff can show that his private rights have been infringed, are threatened with infringement or that he has suffered special damage in consequence of some breach of public duty by the defendant.
- (3) Humes has either refused and/or failed to plead or demonstrate in her Affidavit any example where any private rights have been or will be threatened or plead and prove special damages.

[8.] The applicants say, in their submissions, as follows:

- (1) Section 52(3) of the Marriage Act clearly makes provision for any error of fact or substance in any such register. "Any error of fact or substance" definitely encompasses a fraudulent marriage. and "any such register" definitely encompasses the register of births.
- (2) Section 24 of the Births and Deaths Registration Act is also instructive as:
 - (a) The error contained on the birth certificate of the Third Applicant is an error of fact or substance. It is clearly not a mere clerical error.
 - (b) The date of registration of the birth is 1 December, 2021, in keeping with section 24(2), it can be altered at this stage, as they are clearly within the five-year period.
 - (c) Section 24(1)(b) clearly gives the Registrar General the power to correct any error of fact or substance "by entry in the margin or end of the register (without any erasure or alteration of the original entry)". Clearly, the third relief sought in the Originating Summons does not offend any of the provisions in the Births and Deaths Registration Act. In fact, the

relief sought is actually in keeping with the provisions found therein. To hold otherwise, would be an absurdity as it would render the Court powerless in correcting what it has already determined to be an incorrect entry made as a result of a fraudulent marriage. It is inconceivable that Parliament would have intended such an outcome.

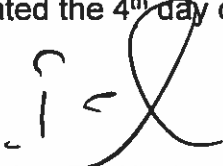
[9.] I accept the applicants' submissions that the legislation makes provisions for the Register to be corrected where errors of the type identified are made. Having accepted that the Register contains erroneous entries through no fault of Humes, but through the criminal acts of Occilien Lesperance and James S. Sweeting, the Marriage Register ought to be corrected to reflect a proper record. I therefore grant the reliefs sought in paragraphs (a) - (b) and (c) of the Originating Summons.

[10.] Having corrected the marriage register, I am satisfied that the Births Register quite naturally has to be corrected, as it erroneously does not reflect the proper name of the child born to Humes and Poitier.

[11.] Having regard to the importance of securing a proper register it was not unreasonable for the respondents to have defended the application and await the Court's declaration and determination as to the Humes' truthfulness.

[12.] In the circumstance I make no order as to costs.

Dated the 4th day of October, 2023

A handwritten signature in black ink, appearing to read 'I. Winder', with a large, stylized flourish extending from the end of the signature.

Sir Ian R. Winder
Chief Justice