

IN THE COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

COMMON LAW AND EQUITY DIVISION

2023/CLE/gen/No. 01054

IN THE MATTER of the Birth Certificate of G.L.P.G. dated 7th day of November, A.D. 2016

IN THE MATTER of Section 12 and 24 of the Birth and Deaths Registration Act, Ch. 188

BETWEEN:

S. THOMPSON

Claimant

And

REGISTRAR GENERAL OF THE BAHAMAS

First Defendant

And

THE MINISTER RESPONSIBLE FOR THE REGISTRY OF RECORDS

Second Defendant

Appearances: Erin Adderley for Claimant

Nevado Fraser for First and Second Defendants

Hearing Dates: 8th January 2024; 29th February 2024; 25th April, 2024; 24th May 2024

RULING

Birth registration, alteration to birth certificate, declarations during birth registration process, presumptions of paternity, where no presumption arises, establishing paternity, courts ability to order importance of knowledge of paternity to child's identity, DNA testing to establish paternity, child's interest paramount

THE APPLICATION

1. The Claimants brought an application by Re-Amended Originating Application (with leave) seeking the following reliefs:
 - i. A Declaration pursuant to Section 10 of The Status of Children Act, Ch. 130 that RJG is the father of G.L.P.J.

- ii. An order pursuant to **Section 17 of the Status of Children Act Ch. 130**, that the entry birth of G. L. P. J. in the Births Registry be amended by substituting the name G. L. P. J. currently on record with G. L. P. G. and by substituting the name of the father currently on record B. L. J. with R. J. G. the natural father of the said child.
 - iii. That the Applicant is the mother of G. L. P. G., a minor, born on the 4th day of February, A.D., 2019.
 - iv. That the minor's birth was duly registered and recorded in the Birth's Registry at the office of The Registrar General.
 - v. At the time of the said registration B. L. J. was entered as the father of the said minor under the mistaken belief held by all parties that he was his natural father.
 - vi. It was subsequently confirmed by paternity test that R. J. G. is in fact the natural father of the said minor and the said R. J. G. has accepted this paternity and executed an affidavit for the purpose of confirming same.
 - vii. This action is brought for an Order pursuant to **Sections 10 and 17 and the Status of Children Act Ch. 130 at the Direction of the Registrar General his servants or agents.**
 - viii. The following written evidence will be used at the hearing of the application;
 - i. Re-Amended Affidavit of S. Thompson in support filed herein.
2. The Application was accompanied by a Certificate of Urgency filed 1st December, 2023.
 3. Miss Thompson's Affidavit reads as follows;

"I, S. Thompson of the Western District of The Island of New Providence, one of the Islands of the Commonwealth of the Bahamas, make oath and say as follows that;"

 - i. *I am the mother of G.L.P.G. born on 14th day of February, A.D., 2019 and the applicant herein.*
 - ii. *My son's birth was duly registered and recorded in the Birth's Registry at the office of the Registrar General. Attached hereto and marked "S.T.-1" is a copy of the Birth Certificate.*
 - iii. *At the time of the said registration, B.L. J. was entered as the father of the said G.L.P. G. under the mistaken belief held by all parties that he was the natural father.*
 - iv. *On the 13th day of March, A.D., 2019, I subjected my son to a paternity test, the results of which confirmed that the said B.L. J. is not the natural father of the said child.*
 - v. *It was also confirmed by the said paternity test that R. J. G. is the natural father of the said child and the said R. J.G. has accepted this paternity and executed an affidavit for the purpose of confirming the same. Attached hereto and marked "S.T. - 2" is a copy of the said affidavit.*

- vi. *My son has since 24th day of March A.D., 2019 been known as G.L.P. G. and has been issued the following official records of identification in the name of G. L.P. G. Attached hereto and marked "S.T.-3" are copies of the said official records.*
- vii. *That the said B.L.J. has made numerous threats and demands that I remove his name from any and all records of my son's birth and existence and I would like nothing more than to satisfy his aggressive obsession that I get this done on the most urgent timeline.*
- viii. *Accordingly, I make this Affidavit in support of an application requesting that this Court make an Order the entry of the birth of G.L.P.J. in the Birth's Registry be amended by substituting the name G.L.P. J. currently on the record with G.L.P. G. and substituting the name of the father currently on record B.L. J. with R.J.G. the natural father of the said child.*

4. The Claimant's application is brought pursuant to the Status of Children Act, Chapter 130 (SOCA) of the Statute Laws of The Commonwealth of The Bahamas (SLCB):

STATUS OF CHILDREN ACT (SOCA)

S.10. (1) Where there is no person presumed under section 7 to be the father of a child, any person may apply to the court for a declaration that a male person is his father, or any male person may apply to the court for a declaration that a person is his child.

(2) An application may not be made under subsection (1) unless both persons, in respect of whom the relationship is sought to be established, are living.

(3) Where the court finds, on a balance of probabilities, that the relationship of father and child has been established, the court may make a declaratory order to that effect, and, subject to sections 12 and 13, that order shall be recognized for all purposes.

S. 17. Nothing in this Act shall be construed to require the Registrar General to amend any prior registration showing parentage other than in recognition of an order made under section 9, 10 or 12.

5. Other relevant legislation to be referred to in this ruling are:

- 1) The Child Protection Act, Ch. 132 SLCB (CPA) – S.3; S.4; S.15
- 2) The Status of Children Act, Ch.130, SLCB (SOCA) – Sections 7, 9, 12 & 14
- 3) The Births and Deaths Registration Act Ch. 188 SLCB (BDRA) –S.12, S.14, S.14 (b), S.15, S.24
- 4) United Nations Convention on the Rights of the CHILD, 1989. Article 7

BACKGROUND:

6. Upon scrutiny it is apparent that the birth certificate of GLPG ("the said child") did in fact list the name B.L. J. as father of the child G.L.P. J. I confirm also that an Affidavit of 24th March, 2019, and recorded in the Registry of Records in the City of Nassau, at Book 13220 at page 137 142, by oath sworn jointly by the applicant and R.J. G., avers to the child's name being incorrectly recorded as G.L.P. J. and now confirmed that the child'

name is and should in future be known as G.L.P. G. It is also important to note that the swearing and recording of the Affidavit was done days after the date of an alleged paternity test on 13th day of March, 2019.

7. Also attached to the affidavit of the applicant were several other documents described by the claimant as “*official records of my son’s birth and existence*” which were being relied on by the applicant in support of her contentions about the child’s name, they include;

- i. A copy of the photo page of the Bahamas Passport of R.J. **G.** # ER 0173085.
- ii. A copy of the photo page of Bahamian passport Number AA259345 issued to G. L.P. **G.**
- iii. A copy of a Bahamas National Insurance Card in the name of G.L.P. Green and;
- iv. A copy of a Bahamas Department of Public Health Immunization Record in the name of G.L.P.G. Clinic Number 76533.

8. Counsel for the named Defendants, The Registrar General of the Commonwealth of The Bahamas and The Minister Responsible for the Registry of Records, recognizing at the first hearing that the Claimants application had been misconceived in its initial casting caused the Claimants to seek amendments to their documents. The amendment sought was ordered as prayed hence the reference to the Re-Amended Originating Summons and Amended Affidavit of the applicant. Counsel for the Defendants have posed no objection to the reliefs being sought by the Claimants. Notwithstanding the absence of any objections taken by the Defendants I consider it prudent to give reasons for the decision to reserve judgment on the reliefs sought by the Claimant at this juncture and to order that a DNA test be carried out on RJG and the child. I do so now. In this connection I feel it appropriate also to acknowledge the submissions made by both counsels Adderley and Fraser which were comprehensive, well presented and salient to the issues at hand.

DISCUSSION AND ANALYSIS

9. On 4th February, 2019 a son (GLPG) was born to unmarried mother **S. M. Thompson, (ST)** the Claimant herein. The birth certificate exhibited to the originating application lists the child’s father as B. L. J. It attests to the fact that the registration of the child’s birth was in conformity with the established timeline for doing so being within Twenty-one days of its birth:

(See S. 12 (b) of the Birth’s and death’s Registration Act.

S.12. In the case of every child born alive it shall be the duty of the midwife or other person who delivered the child and, in default of such midwife or other person, the following persons, that is to say —

(a) each person present at the birth of the child;

(b) the father and mother of the child;

(c) the person having charge of the child;

(d) any occupier of the house in which to his knowledge the child was born within twenty-one days next after such birth, to give to the registrar or assistant registrar information of the particulars required to be registered concerning such birth.

10. This certified copy of the Birth Certificate issued out of the Birth's Registration Registry of The Commonwealth of The Bahamas in its' standard form contains Two (2) Certificates. One certification from B.L.J, the father which states; "***I certify that the above stated Particulars are true to the Best of My Knowledge Information and Belief.***" The above stated information is of course the inclusion of his name in the space provided to list the name of the father. This certificate was signed by BLJ attesting as to the truth of the information. The Second certification appears immediately beneath BLJ's signature and is from the Registrar, Sally-Ann Pratt and reads "***I am satisfied As to The Correctness and sufficiency of This Statement and register the birth this 18th day of February, 2019.***" The Registrar's signature appears immediately beneath this certificate. The importance and seriousness of providing information of paternity is underscored by the requirement of the certificate. It is also useful for the purposes of this application to note that below the Registrar's signature is a space provided for Corrections and Additions. The Registrar attested to the sufficiency of the statement of parentage provided to her by the informants, SMT and BLJ together as required by **S. 14 (b)** of the BDRA.

S. 14 I (b)

(a) 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.

11. I am satisfied from what is apparent on the birth certificate itself that the Registrar was satisfied that the child's father was indeed BLJ having been provided the requisite declaration.

12. Exactly One (1) month and 4 days after the Birth was recorded by ST and BLJ, ST together with a different man **R.J.G.** swore an Affidavit of name before a Notary Public that a male child was born to them on 4th February, 2019 and was given the name **G. L. P. J.** (being the surname of BLJ.) They state in the Affidavit that the child's name was ***incorrectly recorded***, that the Affidavit was made to not only establish them together as the parents of the child but

also to establish that his name thence forth should be known as **G.L. P.G. (being the surname of RJG) instead of G.L.P.J.** This Affidavit was recorded in the Registry of Records in Volume 13220 at pages 136 – 141.

13. The Claimant not having addressed it in adducing evidence, what if anything was done with the Affidavit once recorded, it remains unclear what if anything was done to have the father's name altered to reflect RJG on the child's birth certificate. Such amendment is possible pursuant to S. 15 (1) of the Birth's and Death's Registration Act which provides;

When the birth of any child has been registered and the name (if any) by which it has been registered is altered, or if it was registered without a name then when a name is given to the child, the parent or guardian of such child or other person procuring such name to be altered or given may at any time after such birth apply to the Registrar General for a name to be altered, or registered, as the case may be. Such application shall be in the form of an affidavit or declaration sworn or made before a justice of the peace, or a notary public and the Registrar General may give effect to such application by amending without obliteration or adding to the original entry. (Emphasis mine)

14. With Affidavit in hand the alteration of the child's name could have been altered or amended indeed notwithstanding that the alteration was so substantial that it goes to the heart of the child's identity. is indeed possible. The BDRA S. 24 (1) (b) provides;

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

(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; (emphasis mine)

15. At the stage of the swearing of the affidavit, seems the most appropriate time to have made an application to alter the existing birth record. It is apparent from the evidence before me that no **application** was made to the Registrar to do so. The failure to do so has led to the present dilemma. S. 15 (1) supra puts the obligation on the person (s) seeking the alteration in the record to apply where it says "**may at any time after such birth apply to the Registrar General for a name to be altered**". (Emphasis mine).

16. **Apply** is the operative word in the provision which is buttressed by S. 24 (1) (b) of the BDRA which places the onus on the person seeking the alteration to **produce** a declaration of the error and the intended correction to the registrar before such correction can be made. S. 24 is repetitive of the requirement for the sworn declaration but goes on to describe the methodology of alteration of the record by the Registrar, which is "**by amending without obliteration or adding to the original entry.**"

S 24 (1) (c) re-enforces the requirement for conformity with S. 15; “any alteration in a register of births may be made in conformity with the provisions of section 15 of this Act.”

17. The BDRA is clear that notwithstanding that the alteration of the father listed on the Birth Certificate may be substantial the Act contemplates that errors of fact or substance are indeed capable of alteration. I am therefore of the view that the certificate was indeed capable of alteration at that stage. Had the applicants produced the birth certificate and the Affidavit containing the declaration, of the description of the error and what the correction should truly be or the facts as they ought to have been to the Registrar, it’s difficult to see that the alteration sought would have been refused. However, the Registrar could not move to make the correction of her own volition.

18. The nature of the error in this instance came about due to the mistaken belief of the Applicant and BLJ that the child was born to them. There was no error in the information that the Registry recorded at the time that the information of the child’s birth was declared to the Registrar. The error of their mistaken belief came to light sometime in that period of time between recording the birth and the swearing of the affidavit by the Applicant and RJG. The Claimant alludes to causing DNA tests to be conducted by BLJ and RJG. As no court was involved in the process it is easy to conclude that they willingly participated in obtaining these tests. The Claimant asserts in her affidavit that the test results confirmed that BLJ is indeed not the father of the child, but RJG is in fact the father. The DNA tests were apparently not challenged by either of these men. The DNA test results were not included in the evidence adduced to the court by the Applicant.

19. The burning question for determination is which if any of the pieces of evidence before the court is determinative of this child’s parentage. Should the birth certificate take precedence over the Affidavit or *vice versa*? There are presumptions in law which arise regarding a person’s parentage which dictate a resolution of the dilemma.

20. An affidavit sworn before a notary Public or a Justice of the Peace, bearing the necessary attestation and seals together with a declaration by the mother of that child is sufficient to invoke the *presumption* that a male person is recognized in law to be the father of that child. Pursuant to **S. 7 (1) of the Status of Children Act**, which reads as follows;

SOCA 7. (1) 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 —

S. 7 (1) (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 notarized 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.

21. Both B.L. J. (by his name appearing on the Birth Certificate) and R.J.G. (by his swearing and recording of the affidavit on 24th March, 2019) have acted separately in a manner where the presumption could arise that he is the father of the child. Between the Two (2) of them all of the provisions of S. 7 (1) - (f) - (g) - (h) - (i) and (j) have been fulfilled. However where the existing situation invokes the presumption of paternity for more than one possible father, the law prescribes that, in that circumstance, no presumption survives at all:

S. 7 (2) of the Status of Children Act, - 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.

22. Given that no presumption arises with respect to this child's paternity the Applicant is empowered to make her application to have paternity determined.

SOCA S. 9. (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.

23. Paternity must therefore be determined by this court through evidence. It is only upon the obtaining of a court order that the Registrar is empowered to make the alteration, see;

SOCA S. 17. Nothing in this Act shall be construed to require the Registrar General to amend any prior registration showing parentage other than in recognition of an order made under section 9, 10 or 12.

24. Given the Applicant's position and the affidavit sworn by her and RJG I consider it prudent to add RJG as a party to these proceedings. He has made positive assertions of parentage and together with the fact that all of the child's documents subsequent to the birth certificate bears his surname swings the pendulum towards him being the biological father of the child. Confirmation of RJG's contentions can be obtained through present day modern technology by way of DNA testing and this court is empowered to order RJG to take a DNA test pursuant to Section 15 of the CPA which provides;

S. 15. (1) Where a court has to determine the issue of parentage in any proceedings under this 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. (emphasis mine)

(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. The ascertainment of the paternity of this child was initially treated as a peripheral issue to the achievement of the amendment to the Registry's birth records. However, it became obvious that the amendment being sought in the circumstances of the case could not be made without a court order as provided by S. 17 SOCA. I see it as the duty of this court and in this child's best interest to without undue delay address the elephant in the room which is first to establish this child's paternity to enable the alteration to his birth certificate.

ADDRESSING COUNSEL'S SUBMISSIONS

26. At the present time there exists no order under S. 9, 10 or 12. In order for this court to make an order under S. 9 (1) (a) this court must be satisfied based on the best evidence that can be provided that RJG is the father of GLPG rather than BLJ. The best evidence has been alluded to by the Claimant but has not been brought forward and put in evidence by the Claimant.

27. The Claimant's attorney has submitted that at paragraph 5 of the Re-Amended Affidavit of the Claimant filed 18th April, 2024 that the birth father has been proven by way of a positive DNA test to be R. J. G. dispelling any presumption of paternity. I do not accept this to be the case. No DNA evidence has been put before this court.

28. It is also pellucidly clear that despite counsel for the Applicant's submissions that the provisions of S. 12 SOCA apply I find that this provision is not applicable to the present application as it is *not an application for variation or discharge of a declaration* and most importantly no declaration has been made under Section 9 or 10., there was no previous hearing and so the evidence presented to this court could not be considered "new."

29. I am ever mindful of the overarching principle as expounded in S. 3 (1) (a) of the CPA that the welfare of the child is of *paramount consideration*. The knowledge of one's true parentage is important to the identity and the psychological development of a child. This is

recognized in the United Nations Charter on the Rights of the Child (UNCRC) Art. 7 & 8 and the ECHR Art 8 (Gaskin v United Kingdom (9189) EHRR 36.) Counsel for the Defendants put it this way; ***“The identification of the child’s parentage is a fundamental aspect of the child’s identity and will engage the child’s right to identity.”***

30. It is my view that, conversely, it may well be argued that the absence of the knowledge of one’s true parentage or the calling into question of a stated parentage might well have an even greater impact on an individual’s psychological development. In ***Re H (A Minor) (Blood Tests: Parental Rights) [1997] Fam 89 the Court of Appeal in referring to Art 7 of the UN Convention on the Rights of the Child*** determined that every child has the right to know the truth of his identity unless disclosure is clearly contrary to his best interests.

31. In ***Re T (A Child) (DNA Tests: Paternity) [2001] 2 FLR 1190*** it has been held that ***“it is in the best interests of the child that paternity doubts should be resolved on the best evidence and that the child should be told the truth as soon as possible and that there are few cases where the best interest of the children can be shown to be served by suppression of the truth.”***

32. Counsel for the Defendants have also demonstrated the far-reaching effects of identity and parentage in commending the case of ***Re S (A Child) (Declaration of Parentage) [2012] ALL ER (D)140 (Aug) at 24***, where it was stated:

“Issues of status, such as parentage, can be expected to be approached with some formality. They concern not only the individual but also the public generally which has an interest in the status of an individual being spelled out accurately and in clear terms recorded in properly maintained records.”

33. It is strikingly obvious that this application was taken out in haste as the approach of the Five (5) year deadline for alterations and amendments to the birth certificate of the child approached. The certificate of urgency is quite telling. Unfortunately the application in the initial format was ill conceived and the allotment of time for the amendments to take place delayed this process. The granting of a Court order to amend offends the provisions of S. 24 (2) of the BDRA.

(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.

34. The child was born on 4th February, 2019. The entry in the Births registry was made on 21st February, 2019. This means that the deadline for any alteration or amendment would have been 21st February, 2024. The Re-Amended Application was filed 22nd March, 2024 beyond the statutory limitation period for altering or amending the birth record. Any order to amend or alter the child’s birth certificate is outside of the statutory period and may be considered otiose. However I note that the prayer in the originating Application referred to the application being made “*at the direction of the Registrar*” which leads to the conclusion that the request for alteration was made, recently and the applicant was directed by the Registrar to seek the court order. This may mean that the Registrar considers the application to have beaten the five (5) year deadline and may nevertheless adhere to the request for the alteration or amendment.

35. However, I am firmly of the view that if the birth record cannot be altered or amended at this stage there is value in obtaining the court order declaring who is the true father of this child. The Court Order may in the future be utilized along with the sworn Affidavit to help to explain to the world at large the discrepancy in the names between the child’s birth certificate and other legal documents as well as the name by which he is known to others. This court considers it paramount that this child knows who his biological father is and therefore it is in his best interest for the court to determine the identity of his true biological father.

CONCLUSION

1. The application to amend the entry of the name of **G. L. P. J.** in the Registry of Births to **G. L.P. G.** is reserved pending the outcome of the paternity proceedings.
2. **R. J. G.** shall be added as an Applicant to these proceedings.
3. That pursuant to powers of the **S. 15.(1) of the Child Protection Act**, **R. J. G.** the proposed natural father, having executed the Affidavit dated 24th March 2019 is to undergo a DNA test for this court from a properly licensed facility for conducting such tests here in the Bahamas or abroad for presentation in evidence before this court. Such test to be conducted within Twenty-eight (28) days of the date hereof.

4. The DNA test results are to be included in a sworn Affidavit which is to be filed by 31st December, 2024.
5. This matter is adjourned to Monday 27th January, 2025 at 2:30 p.m. in the afternoon for continuation pending receipt of the DNA test results and its further determination.

Date this 17th day of October, A.D. 2024



The Hon. Madam Justice C.V. Hope Strachan

