

ANGUILLA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. AXAHCV 0054/2009

BETWEEN:

HULDA STANLEY

Claimant

And

LANVAL E. PHILLIPS

(as Administrator of the Estate of Cuthbert Ambrose Phillips aka Ambrose Phillips, deceased)

Defendant

Before: The Hon. Madame Justice Louise Blenman

Appearances:

Mrs. Keesha Carty for the Claimant

Ms. Merline Barrett and Ms. Michelle Smith for the Defendant

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2010: September 29
November 30
December 7
2011: January 13
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JUDGMENT

[1] **BLENMAN, J:** Ms. Hulda Stanley seeks a declaration that she is a beneficiary of the Estate of Cuthbert Ambrose Phillips (Mr. Cuthbert Phillips) deceased. In order to obtain this declaration, she requests a declaration that she was the child of Mr. Cuthbert Phillips, deceased. She says that she was born to him, out of wedlock. Should she prevail in her application, she also seeks an order from the court for an inventory and accounts of the assets of Mr. Cuthbert Phillips' estate.

[2] She has filed the claim against Mr. Lanval Phillips as Administrator of the Estate of Mr. Cuthbert Phillips, deceased. Mr. Lanval Phillips is one of the two children who were born in wedlock to Mr.

Cuthbert Phillips. Mrs. Hulda Stanley is now married; before marriage she was known as Hulda Williams. At birth Mrs. Hulda Stanley's, her mother's name was Cynthia Williams.

- [3] Mr. Lanval Phillips strenuously opposes Mrs. Hulda Stanley's claim. He denies that she is Mr. Cuthbert Phillips' child and says that Mrs. Hulda Stanley is not entitled to a share in his deceased father's estate. Neither is she entitled to receive any inventory or account of his assets. Importantly, he says that Mr. Cuthbert Phillips never treated, held out or acknowledges Mrs. Hulda Stanley as his child.

Background

- [4] Mrs. Hulda Stanley who was born on 23rd November 1958 of the body of Cynthia Williams says that Mr. Cuthbert Phillips, deceased was her biological father. She says that during his lifetime her father (Cuthbert Phillips) acknowledged her as his child and introduced her to his sisters and other relatives, as such. This was in addition to taking her on several trips to Anguilla to visit his relatives. At this time, she lived with her grandmother in St. Kitts. Mrs. Hulda Stanley says that her mother Cynthia Williams and her father were not married and this explains the reason for his name not appearing on her birth certificate.
- [5] Mrs. Hulda Stanley states that, in addition to Mr. Lanval Phillips, her father had a daughter Rosamund Innis who was born in wedlock. At all times, Mrs. Hulda Stanley states that her father treated her and held her (Hulda) out as his child. She is adamant that both of her father's children were aware that she was also his child and treated her as their sister.
- [6] Her father died intestate on the 11th June 1996 in St. Kitts and his body was shipped to Anguilla for burial. She attended the funeral and grieved and sympathized with Mr. Lanval Phillips. During the funeral, Mr. Lanval Phillips treated her as his sister.
- [7] Mrs. Hulda Stanley says that her father died without making a Will, leaving property in Anguilla and therefore she is entitled to share in his estate. She says that she subsequently learnt that Mr. Lanval Phillips had obtained Letters of Administration to (her father) Mr. Cuthbert Phillips' estate.

The application he (Lanval) stated that his father died leaving only himself and sister Rosamund as the persons entitled to benefit under the estate. This precipitated her request of Mr. Lanval Phillips for an inventory and accounts of the Estate of Cuthbert Phillips. He has refused to provide the information saying that she is not a child of his father and therefore not entitled to obtain the information.

[8] It is against that background that Mrs. Hulda Stanley has filed the claim in which she seeks the above reliefs. As part of the proceedings, Mrs. Hulda Stanley requested that Mr. Lanval Phillips take a DNA test in an effort to determine the probability of them being brothers and sister. He has refused to do so. She had initially sought an order from the court compelling him to submit himself to DNA testing. During the course of the trial, Mrs. Hulda Stanley did not pursue this aspect of her claim.

[9] Mr. Lanval Phillips strenuously denies that his father treated Mrs. Hulda Stanley or acknowledged her as his child. He says he never treated her as his sister and was never aware of her claim to be Mr. Cuthbert Ambrose child until the distribution of his father's estate arose. He vigorously opposes his claim.

Issues

[10] The issues that arise for the court to resolve are as follows:-

(a) Whether Mrs. Hulda Stanley is entitled to a declaration that she is the child of Mr. Cuthbert Ambrose Phillips, deceased.

(b) Whether Mrs. Hulda Stanley is entitled to a share in the estate of Mr. Cuthbert Ambrose Phillips, deceased (the latter who died intestate).

(c) Whether Ms. Hulda Stanley is entitled to receive an inventory and account of the assets of the estate of Mr. Cuthbert Ambrose Phillips, deceased, from Mr. Lanval Phillips who is the Administrator of the Estate.

Evidence

- [11] Mrs. Hulda Stanley, her mother Mrs. Cynthia Osbourne, Mrs. Geraldine Harrigan, Mr. John Harrigan, Mr. James Harrigan and Mr. Leroy Rogers testified on behalf of the Mrs. Hulda Stanley. Mr. Lanval Phillips testified on his own behalf.

Defendant's Submissions

- [12] Learned Counsel Mrs. Merline Barrett said that Mr. Lanval Phillips opposes Mrs. Hulda Stanley's application for a declaration on the basis that (i) the deceased only had two children, namely himself and Rosamund Innis; (ii) Mr. Lanval Phillips has never during his lifetime admitted to having any other children; (iii) he is not nor was he aware, prior to him administering the estate, that she was claiming to be a child of the deceased; and (iv) the alleged acts of acknowledgment are fabricated.
- [13] Learned Counsel Ms. Merline Barrett said that it is not disputed that actions for declaration of paternity fall to be classified as civil proceedings. In civil proceedings, the standard of proof is on a balance of probabilities. It is also not disputed that the phrase "*balance of probabilities*" has been subjected to varying interpretations. What is disputed, however, is the level to which the evidence must rise in order to satisfy the applicable standard of proof.
- [14] Ms. Merline Barrett said that Mrs. Hulda Stanley contends that in determining the balance of probabilities all the court would have to decide is whether the relationship of father and child existed. Mrs. Hulda Stanley refers to as "*paternity simpliciter*". This contention, taken to its logical conclusion, suggest that all the evidence must show is that it is more likely than not that the deceased was the father of Mrs. Hulda Stanley. Ms. Merline Barrett submitted that to accept this low evidentiary threshold is to disregard the clear admonition contained in a long line of cases which has had to decode what is meant by "*balance of probabilities*" and which have consistently held that when one is determining whether a case is proved on a balance of probabilities," the probability is a sliding scale and regard must be had to the gravity of the issue before the court.

[15] The issue before the court is whether the court should make a paternity order, the effect of which will allow Mrs. Hulda Stanley to benefit from the deceased's estate. In **Re JS (A Minor)** the court took the view that issues of legitimacy and paternity are grave and thus it follows that the standard of proof is a heavy one. It is therefore not surprising that Ormrod J at page 151 of the judgment after reformulating the test of balance of probabilities to say "*the plaintiff (or the party on whom the burden rest) must satisfy the court that it is reasonably safe in all the circumstances of the case to act on the evidence before the court, bearing in mind the consequences that will follow*" went further to say this:

"The learned judge, rightly in our opinion, adopted this test. In the course of her judgment she said: "The degree of probability in an issue of paternity should, in my opinion, be commensurate with the transcending importance of that decision to the child. We would express the proposition differently. In our judgment, if there is power to make a bare declaration that "A" is the father of "B" the court should not exercise its discretion to make such a declaration unless the evidence is conclusive or very nearly so".

[16] Ms. Merline Barrett said, that the cases clearly show that the argument in succession cases all that needs to be established is paternity simpliciter is misconceived and does not accord with the authorities. Mrs. Hulda Stanley relies on the dicta of **Saunders JA in David Adolphus McKenzie v David Sampson**. However, that case, and the case of **David Sampson v David Adolphus McKenzie** clearly show that in cases where succession to property is in issue, it is not sufficient to show that the relationship of father and child exists, that is, a finding of paternity simpliciter is not enough. These cases show that the standard of proof is a higher one. In particular **in David Sampson v David McKenzie Rawlins JA**, as he then was, had this to say:

"I do not doubt that the evidence that was adduced on behalf of Mr. McKenzie was cogent and credible. However, a declaration of paternity for the purposes of succession to property must not only be cogent and credible, it must also be of the quality to satisfy the requirement of section 7 (1) (b) of the Act. Although it is a question of fact, it is also a question of sufficiency of evidence to meet the statutory requirement, which is within the purview of this court. On the authority of David Adolphus McKenzie, what section 7 (1) (b)

of the Act requires is some evidence that is other than the types of evidence specified in section 8 of the Act, though not less convincing which shows that the deceased admitted paternity of Mr. McKenzie, or that paternity was established, during the lifetime of the deceased. Unfortunately, it is a particularly onerous requirement given the oral tradition that there is in the Caribbean. So that although there are members of the family who are of the view that the relationship between the deceased and Mr. McKenzie was similar to the relationship of a father and a son, this was not sufficient for the purpose of section 7 (1) (b) of the act.

- [17] Learned Counsel Ms. Merline Barrett argued that it is therefore abundantly clear, from the authorities relied on by Mrs. Hulda Stanley, that where succession to property is in issue, a finding that the relationship of father and child existed is not sufficient under the Status of Children's Act of St. Vincent and the Grenadines. To use the words of Mitchell J in ***Wendy Hilda Carter nee Marsden and Michelle Amanda McCree***.

"Although the standard of proof in the High Court in paternity declarations is the civil standard of proof on a balance of probabilities, the Legislature has provided that the High Court must look for a higher level of evidence than is acceptable in the Magistrate's Court in affiliation proceedings. Mere corroboration is not sufficient in applications under the act as it is when applications are made under the Maintenance Act."

- [18] Ms. Merline Barrett learned counsel submitted that in proscribing a different test where issues of succession to property were at stake, the legislature in St. Vincent and the Grenadines was merely seeking to preserve the common law position that where succession is in issue, the standard of proof in paternity cases should be a heavier one.

- [19] Ms. Merline Barrett therefore argued that a simple finding that the relationship of father and child exists should also not be sufficient under Anguillian law. In ***W.v.K*** (Proof of Paternity) the court did not apply that test. The court in that case took the view that there was a strong probability as to amount to a virtual certainty that the father of the child was the appellant. Similarly, in ***Re JS (A Minor)*** the court was of the view that the evidence of paternity must be conclusive or very nearly

so. By requiring such a high standard to be met, the cases have shown that it is not sufficient to show that a relationship of father and child existed.

- [20] Ms. Merline Barrett stated that in suggesting to this court that the test is mere paternity simpliciter, Mrs. Hulda Stanley is attempting to lower the standard of proof because she is aware that her evidence, taken at the highest, does not meet the required standard. There is need for corroboration.

Principles which should guide the Court

- [21] Ms. Merline Barrett referred the court to *Wendy Hilda Carter* nee *Marsden* ibid in which *Mitchell J* in underscoring the importance of corroboration in paternity cases where issues of succession arise. He said at paragraph 13 that:-

“the High Court is not seeking to determine whether or not the mother has proved that the child is the child of the alleged father, it is seeking to determine whether it is satisfied on a balance of probabilities that the father admitted paternity during his lifetime, or that paternity has been established during the lifetime of the father. It is within this context that corroboration becomes relevant.”

Defendant’s Basis for Refuting Evidence

- [22] Ms. Merline Barrett submitted that the evidence given by Mrs. Hulda Stanley and all of her witnesses, taken at its highest, is neither conclusive nor very nearly so and, falls well short of having a high probability so that there is a virtual certainty that the cases demonstrated is required in order for a court to make a finding of paternity.

- [23] Ms. Merline Barrett stated that the evidence of Mrs. Hulda Stanley herself falls well short of the required standard:

- i. Although she claims that the deceased used to take her on many trips to Anguilla and elsewhere, Ms. Geraldine Harrigan in her evidence stated that Mrs. Hulda Stanley often came by herself to Anguilla. Moreover, the evidence before this court is that Mrs. Hulda Stanley started coming to Anguilla at age 15 which would mean that many of the visits, if indeed they happened, must have occurred when Mrs. Hulda Stanley was an adult and did not need anyone to take her to Anguilla or anywhere else for that matter. This also flies in the face of the evidence of Mr. John and Mr. James Harrigan both of whom are asking this court to believe that Mrs. Hulda Stanley, when she started coming to Anguilla, was so young that she required the care and the protection of someone who would watch over her and make sure she was safe at all times.
- ii. She has not produced and/or relied on the evidence of any independent person in St. Kitts and particularly in Challenges/Palmetto Point St. Kitts or in Anguilla who could attest to the fact that the deceased acknowledged her as his daughter although in her affidavit of 15th December, 2009 she contends that there were numerous persons in St. Kitts who knew this to be so.
- iii. The evidentiary value of the baptismal certificate that Mrs. Hulda Stanley relies on has been undermined by the fact that: (i) it does not give the name of Mrs. Hulda Stanley; (ii) the information contained therein appeared not to have been given by Mrs. Hulda Stanley's mother or the alleged father (child's name is incorrect); (iii) the deceased was also not present at the baptism and therefore could not have consented for his name to be included on the certificate.

[24] Also, Ms. Merline Barrett said that the evidence of Mrs. Hulda Stanley's mother, Cynthia Osbourne, falls short of the required standard not only because it is self-serving but primarily because many of the claims made by her are unsubstantiated in particular:

- i. The evidence of the relationship between the deceased and herself is uncorroborated by any other evidence.

- ii. Her evidence that she did not put the deceased's name on Mrs. Hulda Stanley's birth certificate because she wanted to save him the ridicule is inconsistent with the explanation alleged to have been given to Mrs. Hulda Stanley when she asked why the name was not on the birth certificate. The court would recall Mrs. Hulda Stanley told the court that her mother told her that she was an outside child and that was why his name was not on the birth certificate.
- iii. Her evidence of the deceased's treatment of Mrs. Hulda Stanley in her early years cannot be relied on because she admitted in cross examination that Mrs. Hulda Stanley grew up with her grandmother and that she stopped living with Mrs. Hulda Stanley when Mrs. Hulda Stanley was about 5 years old.
- iv. Her evidence of the deceased open and unbridled acceptance of Mrs. Hulda Stanley is inconsistent with her failing to take any steps to have him put his name on Mrs. Hulda Stanley's birth certificate.

[25] Ms. Merline Barrett submitted that the above failure lends itself to the inference that Mrs. Hulda Stanley's mother is not being candid with the court and that the reason the deceased's name was not placed on Mrs. Hulda Stanley birth certificate was because she knew the deceased was not Mrs. Hulda Stanley's father. The court would recall the answer she gave in response to a question in cross examination as to whether she took any steps after the death of deceased's wife to ensure that Mrs. Hulda Stanley was properly provided for by the deceased, her response was "*No, that time I was not studying that*". When she was asked why she was "*studying*" it now she said "because Ambrose told me that they had land and Hulda will get a piece". When asked when the deceased told her that and whether she took any step to make sure this happened she said he told her sometime in the 80's and that she did not take any steps between that time and his death in 1996.

[26] Ms. Merline Barrett submitted that Mrs. Hulda Stanley's mother is only now coming forward with this evidence of Mrs. Hulda Stanley's paternity solely because she knows that there is an

inheritance from which she and or Mrs. Hulda Stanley could benefit. The sole reason for this claim when she said in her own words "*Ambrose told me that they had land and that Hulda will get a piece*".

[27] The evidence of the other witnesses, Ms. Geraldine Harrigan/Mr. John Harrigan/Mr. James Harrigan and, Mr. Leroy Rogers, should also not be relied on because they are replete with unsubstantiated assertions, assumptions and conjectures. The common thread running through the evidence of these witnesses is that it was they, not the deceased, who acknowledged and treated Mrs. Hulda Stanley as a child of the deceased. The law is very clear that evidence that other family members accepted and treated Mrs. Hulda Stanley as a child is not sufficient to prove that the deceased acknowledged paternity.

[28] Ms. Merline Barrett, therefore, urged the court to dismiss the claim.

Claimant's Submissions

[29] Learned Counsel Mrs. Keesha Carty said that the main issue to be determined is whether or not this court is satisfied, on a balance of probabilities, that Mrs. Hulda Stanley is the child of the deceased Mr. Cuthbert Ambrose Phillips aka Ambrose Phillips.

[30] Mrs. Keesha Carty said that the defence has conceded that if Mrs. Hulda Stanley is declared by this court as a child of the deceased, then she would be entitled to an equal share of the deceased's estate pursuant to sections 3 (1), 4 (1) and 5 of the *Intestates Estates Act RSA c. 130*.

The Legal Burden and Standard of Proof

[31] The established legal principle of he who alleges must prove is applicable in this matter. It is therefore for Mrs. Hulda Stanley to prove that she is the illegitimate child of the deceased. Mrs. Keesha Carty accepted that the standard of proof is on a balance of probabilities, as it is in all civil

matters. This court therefore must be satisfied that more likely than not, Mrs. Hulda Stanley is the illegitimate child of the deceased.

[32] Mrs. Keesha Carty said that Anguilla does not have a Status of Children's Act, as in other jurisdictions or the equivalent of same, so that the relevant test is paternity simpliciter.

[33] His Lordship Rawlins JA in the case of *David Sampson (intended Administrator of the Estate of Elisha Sampson, deceased) v David Adolphus McKenzie* Civil Appeal No. 6 of 2005 St. Vincent and the Grenadines (unreported) referred to Saunders JA's description of the standard of proof for paternity simpliciter in the case of *David Adolphus McKenzie v David Sampson (intended Administrator of the Estate of Elisha Sampson)* Civil Appeal No. 13 of 2003 St. Vincent and the Grenadines (unreported), as:

"whether the alleged father is alive or dead, a court merely has to be satisfied that the relationship of father and child exists or existed in order to make a declaration of paternity. This he stated is what has been referred to as a declaration of paternity simpliciter"

[34] These two cases primarily discuss the criteria and satisfaction of the Status of Children's Act in St. Vincent and the Grenadines. They also show that in light of the traditions in the Caribbean, the burdens of those jurisdictions which have the Status of Children's Acts are particularly onerous and unreasonably high. Since Anguilla has no legislation equivalent to the Status of Children's Act or which contains the factors to be considered in determining paternity, Mrs. Carty submitted that the test is one of paternity simpliciter as explained by His Lordship Saunders JA.

[35] The English Court of Appeal in the case of *Re J S (A Minor)*, endorsed the fact that the standard of proof is one of balance of probabilities, and explained what that meant in relation to paternity in the following words at page 151.

"The civil burden might be formulated on analogous lines, the plaintiff (or the party on whom the burden rests) must satisfy the court that it is reasonably safe in all the

circumstances of the case to act on the evidence before the court, bearing in mind the consequences which will follow”.

[36] Mrs. Keesha Carty surmised that it is not therefore that the standard of proof had or has changed, but that the court sought to explain in clear language what the meaning of “*balance of probabilities*” was.

[37] Learned Counsel Mrs. Keesha Carty said that it is for this court to determine whether it is reasonably safe in all the circumstances to determine that the relationship of father and daughter existed between Mrs. Hulda Stanley and the deceased. Whether Mrs. Hulda Stanley satisfies this test depends on the evidence adduced at the trial. Saunders JA noted in *David Adolphus McKenzie v David Sampson (intended Administrator of the Estate of Elisha Sampson*, that “*it is better to err on the side of hearing all the evidence*” and “*it was the totality of the evidence at trial and not necessarily the content of the affidavits filed that needed to meet the requirements*”.

[38] Mrs. Keesha Carty referred the court to the evidence of Mrs. Hulda Stanley in paragraph 4 of her affidavit of 29th May 2009 *that*:

“I always knew that my biological father was Cuthbert Ambrose Phillips aka Ambrose Phillips. I knew this because my mother told me, because my father maintained me financially and emotionally and because there is an unmistakable resemblance between myself and my father and his siblings”.

[39] It is clear in cross examination of Messrs John and James Harrigan, Ms. Geraldine Harrigan and Mr. Leroy Rogers that they each had strong convictions that Mr. Lanval Phillips knew that Mrs. Hulda Stanley was his sister. Mrs. Keesha Carty submitted that whether or not the Mr. Lanval Phillips knew is not the issue. Mr. Lanval Phillips under cross examination admitted that the fact that he was not told by his father that Mrs. Hulda Stanley was his sister, did not mean that she was not. Further, Mr. Lanval Phillips admitted under cross examination that from a child he heard rumors that Mrs. Hulda Stanley was his sister. It is therefore not correct for Mr. Lanval Phillips to

state in paragraphs 4 (iii) and 4 (iv) of his Affidavit of 26th October 2009 that he was surprised and taken off guard by the allegations contained in Ms. Geraldine Harrigan's Statutory Declaration.

[40] Mrs. Keesha Carty said that Defence Counsel put to Mrs. Hulda Stanley, which she quickly rejected, that her purpose in contacting Mr. Lanval Phillips was because there was land to be shared. Mrs. Hulda Stanley rejected all of Defence Counsel's suggestions that her intentions in the case at bar were less than honest, and insisted that she was the child of the deceased; that she was always acknowledged and introduced by the deceased as same; and that she was acknowledged and treated by the deceased as the daughter she was.

[41] It is also part of Mrs. Hulda Stanley's case that "there is an unmistakable resemblance between myself and my father and his siblings". Mr. John Harrigan also stated that "Based upon my uncle's words to me and his treatment of Mrs. Hulda Stanley in my presence, as well as Mrs. Hulda Stanley's resemblance to my uncle and our family, I am convinced that Mrs. Hulda Stanley is the child of my deceased uncle". Mrs. Keesha Carty submitted that while the court cannot be solely guided by family resemblance, that it is something which the court can observe and attach the necessary weight to. Just as the court must observe and attach the appropriate weight to the demeanor of the witnesses in assessing their truthfulness, the court can equally have regard to the features of the witnesses and attach the appropriate weight to the evidence of their resemblance.

Evidence of Mrs. Cynthia Osbourne

[42] Turning to the evidence of Mrs. Cynthia Osbourne, Mrs. Carty said that Mrs. Hulda Stanley's mother both in her affidavit of 17th February 2010 and under cross examination was insistent that the deceased was the father of Mrs. Hulda Stanley and that he at all times treated her like his daughter. Learned Counsel Mrs. Carty submitted that Mrs. Osbourne was a strong and consistent witness, who was adamant that the father of her daughter was the deceased and that he always treated her like his daughter. She further rejected Defence Counsel's attempts to suggest that she was giving evidence because of the fact that the deceased left property.

Evidence of Geraldine Harrigan

[43] Mrs. Carty said that the evidence of Ms. Geraldine Harrigan not only corroborates the claims of Mrs. Hulda Stanley, but is also the best evidence since Ms. Harrigan is the sister of the deceased and had the opportunity to observe the relationship between the deceased and his daughter, Mrs. Hulda Stanley.

[44] Short of scientific evidence, the best evidence is that of family members, and especially Mrs. Hulda Stanley's aunt Ms. Geraldine Harrigan. Ms. Harrigan, in her affidavit of 25th February 2010 seeks to show how she knew Mrs. Hulda Stanley to be her deceased brother's daughter. These instances are as follows:

- i. *"I came to know all three of my brother's children by him introducing them to me and him sending them to Anguilla to visit with me and our family here"*
- ii. *"I know Mrs. Hulda Stanley to be the biological daughter of my deceased brother, Cuthbert Ambrose Phillip aka Cuthbert Ambrose Rogers because my brother told me so during his lifetime. Specially in or about 1974, my brother.... brought to my home a minor girl whom he introduced to me as his daughter Hulda Williams. My brother introduced Hulda to other family members in my presence and did so as his daughter".*
- iii. *"My brother at all times acknowledged Hulda as his child and treated her with the love and respect he showed to his two other children".*

[45] Mrs. Keesha Carty submitted that Ms. Geraldine Harrigan was a strong and confident witness under cross examination. She appeared forthright and honest in her statements and in her conviction that Mrs. Hulda Stanley is the daughter of the deceased and that it was the deceased who introduced her as such to both her (Geraldine) and her family and to their sister Mary and her family as his daughter.

[46] Also corroborative and equally as convincing was the evidence of Messrs John and James Harrigan and Mr. Leroy Rogers. These three cousins of Mrs. Hulda Stanley each gave evidence and maintained under cross examination the close relationship they witnessed between Mrs. Hulda Stanley and the deceased Mr. Cuthbert Phillips and the deceased's acknowledgment to each of them that Mrs. Hulda Stanley was his daughter.

[47] Mrs. Keesha Carty conceded that Mr. Lanval Phillips has nothing to prove in his defence. However, it was noticeable that Mr. Lanval Phillips entire defence surrounded his claim that his father never told him that he had an outside child. Yet Mr. Lanval Phillips admitted under cross examination that whether or not his father told him does not mean it was not so. Mrs. Keesha Carty submitted that Mr. Lanval Phillips appeared not to be willing to seek for or accept the truth in any event since he refused to volunteer for a DNA test; and even in the face of his aunt and cousins giving evidence in this matter for Mrs. Hulda Stanley, he still insists that because he had no direct knowledge that it could not be so.

[48] Mrs. Keesha Carty submitted that the court ought to look at the evidence of all the witnesses; their demeanour and conviction on the witness stand; the striking family resemblance; and the Caribbean traditions which would explain Mrs. Hulda Stanley's birth and baptismal certificates. Mrs. Keesha Carty advocated that the evidence of the deceased travelling to Anguilla with Mrs. Hulda Stanley and introducing Mrs. Hulda Stanley to his family members as his daughter was consistent and corroborated. Further, it is an act which a father would normally do with his children, as Ms. Geraldine Harrigan stated he did with all three of his.

[49] The Court should therefore make the declarations which are sought.

Entitlement of Mrs. Hulda Stanley if she is declared a child of the deceased

[50] Learned Counsel Mrs. Keesha Carty posited that if the court is satisfied, upon the evidence, that more likely than not Mrs. Hulda Stanley was the daughter of the deceased, then it follows that Mrs. Hulda Stanley is entitled to one third of the deceased's estate. Mrs. Hulda Stanley would be an

illegitimate child of the deceased pursuant to The Law Reform (Illegitimacy) Act RSA c. L30 which provides as follows:

2 (1) *“Where either parent of an illegitimate child dies intestate as respects all or any of his or her real or personal property, the illegitimate child, or if he is dead, his issue, shall be entitled to take any interest therein to which he or such issue would have been entitled if he had been born legitimate.*

Section 9: *This section does not affect any right under intestacy of a person dying before 1st January 1983.*

Section 10: *In conformity with the provisions of this Act, the Intestates Estates Act shall have effect as if-*

(a) Any reference to the issue of an intestate included a reference to any illegitimate child of his and to the issue of any such child;

(b) Any reference to the child or children of the intestate included a reference to any illegitimate child or children of his”.

[51] The division of an Estate among illegitimate children whose parent died without leaving a Will is provided for by the Intestates Estates Act RSA c 130 which provides as follows:

Section 3 (1) The residuary estate of an intestate shall be distributed in the manner or be held on the trusts mentioned in this section, namely-

(b) If the intestate leaves issue but no husband or wife, the residuary estate of the intestate shall be held on the statutory trusts for the issue of the intestate.

Section 4 (1) Where under this Act the residuary estate of an intestate, or any part thereof, is directed to be held on the statutory trusts for the issue of the intestate, the same shall be held upon the following trusts, namely-

(a) In trust, in equal shares if more than one, for all or any of the children or child of the intestate, living at the death of the intestate, who attain the age of 18 years or marry under that age, and for all or any of the issue living at the death of the intestate who attain the age of 18 years or marry under that age or any child of the estate who predeceases the intestate, such issue to take through all degrees, according to their stocks, in equal shares if more than one, the share which their parent would have taken if living at death of the intestate, and so that no issue shall take whose parent is living at the death of the intestate and so capable of taking.

[52] Learned Counsel Mrs. Keesha Carty submitted that when the court considers all of the evidence presented by Mrs. Hulda Stanley, that it does discharge the burden and standard of proof to convince the court, on a balance of probabilities, that Mrs. Hulda Stanley was the daughter of the deceased. Mrs. Keesha Carty said that this is a safe and reasonable conclusion in light of the corroborative evidence of the family members of the deceased, and in particular the deceased's sister, Ms. Geraldine Harrigan.

[53] Mrs. Hulda Stanley also seeks an order that she should be vested with her portion of her father's estate after the payment of all of the Estate's debts.

Court's Analysis and Conclusions

[54] The court was provided with the opportunity to carefully observe the witnesses who testified in the matter and to assess their credibility and reliability. The court has also paid careful consideration to the very helpful submissions of all learned counsel.

- [55] The court pays regard to the relevant test as referred to by both learned counsel, to be applied in its determination of whether Mrs. Hulda Stanley has established that the relationship of father and daughter existed between herself and father. It is the law that the proper test to be satisfied in the case of paternity is that of the balance of probability and the onus of proof is on the Claimant. The court must be satisfied that the party on whom the onus is placed has discharged it. The court in coming to its decision must take into account the gravity of the decision and determine the sufficiency of evidence which is required to satisfy the requirement of the balance of probabilities.
- [56] In *W v K* (Proof of Paternity) [1998] 1 FLR 86 it was held that the standard of proof where paternity is in issue is a high one and was commensurate with the gravity of that issue.
- [57] Where the father is dead, under the Status of Children's Act of St. Vincent and the Grenadines the law is that if the claimant is disinterested in making a claim against the estate, then the court merely has to be satisfied that the relationship of father and child existed in order to make a declaration of paternity. See Saunders JA, as he then was, in *David Adolphus McKenzie v David Sampson* *ibid*. On the other hand, where the alleged father is dead and the applicant wishes to go further and succeed to the property of his/her deceased father, then the applicant can only succeed if evidence of (a more stringent nature) as stipulated by section 8 is forthcoming.
- [58] Saunders JA quite properly, with respect, lamented the fact that the sort of evidence that is required to be able to obtain a declaration in the latter case. He said "many applicants for such a declaration would be seeking to persuade a court to grant the declaration on the basis of some evidence that is other, though not less convincing, than the types of evidence specified in section 8.
- [59] The court also finds very helpful the pronouncements of Rawlins JA, as he then was, in *David Sampson v David Adolphus Mckenzie* when he stated that the court should seek to ascertain whether the evidence presented was cogent and credible, but importantly whether it was sufficient.
- [60] In the case at bar, even though there are no stipulated statutory requirements the court must determine whether the evidence adduced by Mrs. Hulda Stanley is sufficient to establish that

during the lifetime of Cuthbert Phillips he acknowledge and treated Mrs. Hulda Stanley as his daughter. Further, the court is guided by the very helpful pronouncements of Saunders JA and Rawlins JA, as they then were, when they stated that in many cases given the oral traditions of the Caribbean there could be equally compelling evidence of proof, even though not of the same nature as stipulated in the Status of Children's Act. The court has no doubt absent the Status of Children's Act there is no basis for requiring a claimant to adduce evidence to satisfy the requirements of the Act.

[61] Indeed, the court has paid regard to the very helpful judicial pronouncements of Saunders JA, as he then was, in *David Adolphus Mc Kenzie v David Sampson* (Intended Administrator of the Estate of Elisha Sampson) *ibid* and Rawlins JA, as he then was, in *David Sampson (Intended Administrator of the Estate of Elisha Sampson, deceased) v David Adolphus Mc Kenzie* *ibid*. The court is cognizant of the fact that in Anguilla there is no Status of Children's Act, unlike the situation in Saint Vincent and the Grenadines. There are therefore no express or statutory provisions which stipulate the factors that the court must take into consideration in determining the question of paternity in High Court proceedings.

[62] The court also finds very instructive the pronouncements of the English Court of Appeal in *Re JS (A minor)* namely:

"The civil burden might be formulated on analogous lines, the plaintiff (or the party on whom the burden rests) must satisfy the court that it is reasonably safe in all the circumstances of the case to act on the evidence before the court bearing in mind the consequences that would follow."

[63] In so far as there is no provision that is similar to section 7 (1) (b) of the Status of Children's Act St. Vincent and the Grenadines, the court finds much benefit to be derived from the examination of the evidence in order to determine whether there was sufficient evidence to establish that the deceased admitted paternity of Mrs. Hulda Stanley during his life time, on a balance of probabilities. The court must ensure that it is reasonably safe to arrive at its conclusion, on all of the evidence.

[64] In this regard, the court finds the approach of Rawlins JA, as he then was, in *David Sampson (Intended Administrator of the Estate of Elisha Sampson, deceased) v David Adolphus McKenzie* very helpful, so too are the pronouncements of Saunders JA in *Adolphus McKenzie v David Sampson* *ibid*. It is clear that in circumstances where the court is required to determine the issue of paternity in circumstances in which the father is alive or there is no claim being made to the property, the Claimant merely required to satisfy the court on a balance of probabilities. Where however, the alleged father is deceased and there is a claim or a potential claim against his estate even through the standard remains one of being satisfied on a balance of probabilities, the court must take care in examining the evidence. It would be appropriate, even in the absence of the Status of Children's Act in Anguilla for the court to exercise great caution in its determination of whether or not Mrs. Hulda Stanley proven that she is the child of Mr. Cuthbert Phillips. There should be the presence of very cogent proof of paternity before a person should be able to make claims against an estate.

[65] Accordingly, in the claim at bar, the court is of the considered opinion that given the very far reaching consequences of an order that Mrs. Hulda Stanley is the deceased's child, the onus of so proving must be higher than that which is required to establish paternity simpliciter.

[66] The court must seek to determine whether or not it is satisfied on a balance of probabilities that the father either admitted paternity during his lifetime or that paternity was established during the lifetime of the father. See Mitchell J in *Re Cato* judgment of St. Vincent and Grenadines High Court Civil Suit No. 43 of 2000. Further, the court is required to ascertain whether the evidence that Mrs. Hulda Stanley has adduced suffices to prove that Mr. Cuthbert Phillips accepted and acknowledged that she was his child.

[67] The court proposes to examine the evidence that was led on behalf of Mrs. Hulda Stanley.

Mrs. Hulda Stanley

- [68] Mrs. Hulda Stanley struck the court as an honest, straight forward and truthful witness. Her evidence was credible and reliable. Let it be clear that where there is any conflict between the evidence of Mrs. Hulda Stanley and that of Mr. Lanval Phillips, the court accepts her evidence as true, in relation to the material matters.
- [69] The court believes Mrs. Hulda Stanley when she said that Mr. Cuthbert Phillips, deceased maintained her financially, treated and held her out as his child, accepted that he was her father. Also, there is no basis to reject her uncontroverted evidence that the deceased Cuthbert Phillips took her to Anguilla to visit with his sisters Ms. Geraldine Harrigan and Ms. Mary Petty. She would also visit her father and assisted him to clean his house. She met her cousins Mr. John Harrigan and who testified as to the veracity of Mrs. Hulda Stanley's evidence.
- [70] While there are a few inconsistencies in relation to the frequencies of her visits to her relatives the (deceased's sisters) in Anguilla and the circumstances of those visits, while she was a child, it is pellucid that Mr. Cuthbert Phillips accepted paternity of Mrs. Hulda Stanley and treated her and held her out to his family and relatives as such. The court has no doubt that she spoke the truth when she said that Mr. Cuthbert Phillips acknowledged her as his child.
- [71] The court is equally satisfied that Mrs. Hulda Stanley is truthful when she said that prior to the death of Mr. Cuthbert Phillips, she contacted Mr. Lanval Phillips to get to know him better. She had several conversations with him, with a view to forging a relationship with him. This had nothing whatsoever to do with any land that belonged to the deceased and was before Mr. Cuthbert Phillips' passing.
- [72] The court accepts that the Baptism Certificate, which is presented in evidence, is genuine even though it has a typographical error in the spelling of Hulda's middle name, it clearly referred to her. For what it is worth, it lists her father's name as Cuthbert Ambrose. This bit of evidence flies in the face of the allegation that Mrs. Hulda Stanley and her mother are only now alleging that Mr.

Cuthbert Phillips was Mrs. Hulda Stanley's father, because they wish to have Mrs. Hulda Stanley benefit from his estate.

Ms. Cynthia Osbourne

[73] Ms. Osbourne is 72 years old. The court has no doubt that there was great benefit to be derived from actually seeing and hearing her testify. She was extremely truthful with the court when she said that she had a relationship for Mr. Cuthbert Phillips, who was married. Herself and Mr. Cuthbert Phillips gave birth to a girl who they called Hulda. Due to the fact that Mr. Cuthbert Phillips was married, she did not put down his name on Hulda's birth certificate. At all times, Mr. Cuthbert Phillips acknowledged Hulda as his daughter. There is consistency between her evidence and that of the other witnesses' evidence that Mr. Cuthbert Phillips acknowledged Hulda as his daughter, treated and held her out as such.

Mr. Leroy Rogers

[74] Mr. Leroy Rogers stated that when he visited his uncle Mr. Cuthbert Phillips, with whom he was very close, his uncle took him and introduced him to Mrs. Hulda Stanley. I believe him when he said that Mr. Cuthbert Phillips told him that Mrs. Hulda Stanley was his daughter, while she was a young girl. The court also accepts that in her maturity Mr. Cuthbert Phillips acknowledged paternity of Hulda and introduced her to other relatives as his daughter. He also stated that while Mrs. Hulda Stanley was a child Mr. Cuthbert Ambrose Phillips, his uncle sent her to stay with his (Rogers mother) Ms. Mary Petty and his aunt Ms. Geraldine Harrigan.

[75] Even though there were inconsistencies in his evidence given during cross examination they do not detract from the common thread that runs through the evidence of all of the witnesses namely that Mr. Cuthbert Phillips acknowledged that he was Hulda's father.

Mr. James Harrigan

[76] The court accepts the evidence of Mr. James Harrigan that Mrs. Hulda Stanley spent several holidays in Anguilla with his mother Ms. Geraldine Harrigan and his aunt Mary. Mr. Cuthbert Phillips personally told him that Mrs. Hulda Stanley was his daughter. This evidence corroborates Mrs. Stanley's evidence.

Mr. John Harrigan

[77] Mr. John Harrigan did not have much to say but his evidence clearly corroborates that of the other witnesses in relation to the issue of whether Mr. Cuthbert Phillips acknowledged Hulda as his child.

[78] The witnesses, Mr. John Harrigan and Mr. James Harrigan's evidence both testified and provided the court with evidence which clearly shows that Mr. Cuthbert Phillips took or sent Hulda to Anguilla when she was a child. She would stay either with their mother Ms. Geraldine Harrigan or their aunt, Ms. Petty.

Ms. Geraldine Harrigan

[79] The court found tremendous help in the evidence of Ms. Geraldine Harrigan, who is 85 years old and the sister of the deceased. Ms. Harrigan was very candid with the court in providing evidence which clearly indicated that her deceased brother Mr. Cuthbert Phillips acknowledged Mrs. Hulda Stanley as his daughter.

[80] The court accepts that Mr. Cuthbert told his sister that Mrs. Hulda Stanley was his daughter and that on several occasions he took Mrs. Hulda Stanley to visit with Ms. Geraldine Harrigan and her sister, Ms. Mary Petty, this bit of evidence was corroborated by Mr. Leroy Rogers.

[81] Ms. Harrigan, despite minor inconsistencies, in her evidence was a very unshakable witness. On the essential aspects of her evidence, she was very consistent and did not resile from her evidence under intense cross examination.

- [82] The court believes Ms. Harrigan when she said that when Mr. Lanval Phillips came to her to swear "*the affidavit*", in order for him to be able to administer his father's estate, that she enquired of him about Hulda's share in the estate. Mr. Lanval Phillips assured her that he would include Mrs. Hulda Stanley. The court accepts Ms. Harrigan's evidence, without any reservation, that subsequently when someone else brought the affidavit for her to sign that she noticed that it stated that only Mr. Lanval Phillips and Rosamund Innis were the only two children that Mr. Cuthbert Ambrose had and that she (Ms.Harrigan) told the clerk that was incorrect, in fact the deceased had 3 children.
- [83] Also, Ms. Geraldine Harrigan told the court that the deceased took all three of his children to Anguilla to her home (not all at the same time) and introduced them to her. During the vacation, Mrs. Hulda Stanley spent time with her. The court has absolutely no reason to disbelieve her.
- [84] It bears repeating that the court found Ms. Geraldine Harrigan a formidable and unshakable witness despite her very advanced age of 85 years. Her evidence stood up well despite the very rigorous cross examination to which she was subjected. While there are a few inconsistencies in her evidence under cross examination, they in no way undermine her reliability or credibility as a witness. She was forthright and honest. The court is not of the view that Ms. Geraldine Harrigan has any interest to serve apart from ensuring that the case is justly determined. She is from the old school and struck me as a principled lady who simply wishes to ensure that all of her deceased brother Cuthbert's children are treated fairly.
- [85] Even though this is not a strictly relevant fact, the court finds it noteworthy that Ms. Harrigan being of the view that Mr. Lanval Phillips would not give Mrs. Hulda Stanley any of her deceased brother's property, has gifted Mrs. Hulda Stanley a piece of land. This evidence clearly puts paid to the assertion that Ms. Harrigan is only providing the court with the evidence she did because of her annoyance at Mr. Lanval's refusal to sell Ms. Harrigan's son, John, a piece of the property at a reduced sum.
- [86] Accordingly, there is an abundance of evidence on which it can be properly concluded that Mr. Cuthbert Phillips took Mrs. Hulda Stanley, when she was a minor and introduced her to Ms.

Harrigan as his daughter. The court is sure that Mr. Cuthbert Phillips introduced Mrs. Hulda Stanley to his sister Ms. Geraldine Harrigan, as his daughter.

Mr. Lanval Phillips

[87] The court had the benefit of paying very careful attention to Mr. Lanval Phillips' evidence and observing him particularly as he testified during cross examination that sought to test his credibility and reliability. It was very clear that Mr. Lanval Phillips was not forthright nor candid with the court when he sought to give the impression that his father never accepted that Mrs. Hulda Stanley was his child.

[88] The court accepts without reservations that Mr. Lanval Phillips was aware that his father treated Mrs. Hulda Stanley as his (Cuthbert's) child and accepted paternity. The court is equally satisfied that Mr. Lanval Phillips was aware and accepted Mrs. Hulda Stanley as his sister.

[89] A careful examination of Mr. Lanval Phillips evidence leads the court to conclude that since he was a young person, he had heard rumours that Mrs. Hulda Stanley was his father's child. In addition, shortly after his father death in 1996, at the very latest, Mrs. Hulda Stanley had contacted him to say to Mr. Lanval Phillips that she was Mr. Cuthbert Phillips' child.

[90] The court is convinced that Mr. Lanval Phillips was fully aware that his father acknowledged and treated Mrs. Hulda Stanley as his child. The court does not for one moment accept as Mr. Lanval Phillips would have the court believe, that Mrs. Hulda Stanley, her aunt and cousins have all concocted this claim simply because Mr. John Harrigan is upset that Mr. Lanval Phillips did not sell him a parcel of land of the estate at a good price. While the court has no doubt that Mr. John Harrigan sought to purchase a piece of land from the estate, this is not the say that Mrs. Hulda Stanley fabricated a false claim in relation to her paternity.

[91] The court digresses to state that while it cannot properly compel Mr. Lanval Phillips to take a DNA test in order for Mrs. Hulda Stanley to prove her case, it may have been in his interest to do so if he is so sure that the deceased is not Mrs. Hulda's. The court is aware that DNA test between

siblings are frequently used in an effort to determine the paternity of one of the alleged siblings. Even utilizing the higher and more onerous standard of proof while still applying the civil standard of proof, there is cogent evidence on which the court could properly conclude that Mr. Cuthbert Phillips held out and acknowledged Mrs. Hulda Stanley to his relatives as his child.

[92] In addition to the other evidence that was placed before the court, Mrs. Carty Learned Counsel for Mrs. Hulda Stanley has urged the court to look at the unmistakable resemblance between Mrs. Hulda Stanley, Mr. Lanval Phillips and Ms. Rosamund Innis and so conclude that they are siblings. The court recognizes that very little weight if any should be attached to an apparent resemblance, even though there does seem to be a very striking resemblance between them.

[93] Also applying the principles enunciated in *Re JS (A Minor)* the court has no doubt that it is satisfied that it is reasonably safe, in all the circumstances of the case at bar, to act on the evidence before the court, bearing in mind the consequences that will follow. The court has no doubt that Mrs. Hulda Stanley has adduced overwhelming evidence to establish that during the lifetime of Mr. Cuthbert Ambrose Phillips, he acknowledged his paternity of her and treated her as his daughter.

[94] Accordingly, the court has no doubt that the overwhelming evidence which Mrs. Hulda Stanley has presented in support of her claim satisfies the court that the relationship of father and daughter existed between herself and Mr. Cuthbert Phillips. Mrs. Hulda Stanley has satisfied the court that she is the illegitimate child of Mr. Cuthbert Phillips, deceased.

[95] Accordingly, the court declares that Mrs. Hulda Stanley nee Williams is the child of Mr. Cuthbert Ambrose Phillips, deceased.

[96] Learned Counsel Ms. Barrett has quite professionally and properly conceded that if the court were to find that Mrs. Hulda Stanley was the child of Mr. Cuthbert Phillips she would be entitled to a one third share in his estate. Also, that she would be entitled to receive the inventory and accounts of his estate.

[97] Indeed, if Mrs. Hulda Stanley proves that she is a child of Mr. Cuthbert Phillips she would be entitled to an equal share in his property. This would be the conjoint effect of section 3 (1), 4 (1) and 5 of the Intestate Estates Act. For the avoidance of any doubt, the court would nevertheless make the declaration that is sought in this regard.

Conclusion

[98] In view of the premises, Mrs. Hulda Stanley has made out her claim against Mr. Lanval E. Phillips (As administrator of the Estate of Cuthbert Ambrose Phillips aka Ambrose Phillips, deceased).

[99] It is hereby declared that Mrs. Hulda Stanley nee Williams is the child of Mr. Cuthbert Ambrose Phillips, deceased.

[100] It is further declared that as a child of Mr. Cuthbert Ambrose Phillips, deceased, Mrs. Hulda Stanley is entitled to a one third share in the estate. She is also entitled to receive an account and inventory of the estate.

[101] Costs are awarded to Mrs. Hulda Stanley in the sum of US \$20,000.00, as agreed, to be paid from the Estate of Cuthbert Ambrose Phillips.

[102] The court commends all learned counsel for their tremendous and very professional assistance.

Louise Esther Blenman
Resident High Court Judge
Anguilla