IN THE GRAND COURT OF THE CAYMAN ISLANDS
CIVIL DIVISION

G167 OF 2021 (ASJ)

WILMA EBANKS V TABITHA PHILANDER (AS GUARDIAN AD LITEM AND INTERIM RECEIVER FOR DARIC EBANKS)

James Chapman for Wilma Ebanks, Plaintiff/Applicant
Kim Grandage of KSG Attorneys for Tabitha Philander, Defendant/Respondent
Coram: Hon Justice Sir Anthony Smellie

Ruling on Application on the Papers

1. By summons filed on her behalf by Mr Chapman on 4 November 2022 ("the November 2022 Summons"), the Plaintiff/Applicant seeks, among other relief, leave to appeal against an order made by me in this Cause on 24 May 2022 ("the Order").

2. The Order was made upon the hearing of the Plaintiff/Applicant's summons dated 13 May 2022 ("the May 2022 summons") refusing the relief sought in the May 2022 summons in terms as follows:

   > "1. *The Plaintiff's application for the Hon Chief Justice to recuse himself as set out at paragraph 3 of the summons is dismissed save that the Hon Chief Justice will not hear the trial of GC 167 of 2021.*
   >
   > *2. There be no order as to the costs of the plaintiff*".

3. Written reasons for the making of the Order were given on 7 October 2022 ("the Reasons"). They necessarily involved contextual examination, not only of this Cause itself, but also of others which had been instituted by Mr Chapman on behalf, not only of the Plaintiff/Applicant but also purportedly on behalf of Daric Ebanks (despite there being an extant order of guardianship in place in relation to him) and Donovan Ebanks, Daric's father. As explained in the Reasons, this is a proliferation of law suits which, if allowed to go unchecked, could consume much of Daric's trust funds and was therefore likely to be inimical to his best interests.

4. For seeking to act on behalf, not only of the Plaintiff/Applicant but also conflictingly, on behalf of Daric Ebanks and Donovan Ebanks variously as plaintiff in those suits, Mr Chapman was himself the subject of criticism in the Reasons.

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5. However, far from indicating an intention to heed the concerns of the Court and directions given in the Reasons, Mr Chapman has filed an affidavit in support of the present summons which purports to express views of his client the Plaintiff/Applicant, which are scathingly critical of the Reasons, going so far as to surmise that the Order and views expressed in the Reasons could only be the result of "perverse(ness)" and "corruption".

6. It would be inappropriate for me to respond to such allegations here, save to say that they shall be taken up and dealt with in another more appropriate forum. What I must and will record, is my concern at what appears to be Mr Chapman's penchant for venting his own sense of grievance through the voice of his client, as is apparent here from his arguments in the form of his client's affidavit which, by item 2 of his email of 9 February 2022, he presents as *"The Appellant's written submissions as to leave to appeal [the Order she has never seen and is not filed] are set out in her Fourth Affidavit attached filed 7th November 2022 (3 months ago)"*.

7. Arguments, including those of counsel seeking to vindicate his own actions (see especially [57] to [59] of the Affidavit), are not evidence and it is an abuse of the process of the court to use an affidavit for such purposes.

8. Indeed, ironically, at item 3 of the same email, Mr Chapman notes as follows in criticism of the stance taken by the other side: *"We are not aware of ANY evidence from the Defendant filed in this cause/matter. Justice can miscarry when submissions are mistaken as evidence"*

9. An examination of the context of this case immediately reveals the absurdity of the criticisms of bias and even more so, the absurdity of the other even more crass allegations against the Court and its judges.

10. The only issue at stake in this action is whether or not Mr Chapman's client, Wilma Ebanks, is owed money held on trust for her by the Defendant. What is said is that $102, 964.65 (within the larger global award made for Daric) was awarded to her by Justice Swift in relation to her care for Daric during his recovery and this is not denied by the Defendant. Indeed, as explained in the Reasons, some $60,000 had already been paid, leaving some $42,964 to be paid. To this had been added a further claim for interest on the entire sum, due to what is alleged to be unconscionable delay in the payment. On behalf of the Respondent, it was explained to the Court that payment of the remaining amount of $42,964 had not been made because of the Respondent's concern to have a valid release from Daric, his capacity to give one being in doubt. A further concern was the alleged liability for interest.

11. This remaining claim <u>and nothing else</u> is what this Court has described as being eminently suitable for settlement. This is in light also of the Defendant's willingness expressed through her attorneys, to settle the matter provided that there will be no further claims against her by Daric for making the payment out and, in the context where the Plaintiff, Wilma Ebanks herself, can have no further claims once this claim is settled.

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12. But it is apparent from the steps he has taken that Mr Chapman's real agenda does not stop with his client's claim in this action. His real agenda is to persuade her, and through her, Daric, that he can bring a much larger claim against the Respondent for breach of trust in relation to the management of Daric's fund and it is that agenda that motivates his allegations against the Court (and myself in particular) of bias in favour of the Defendant, allegations which he bandies about even while he has no standing to represent Daric in the matter.

13. I will make no further comment here about this putative claim here save to note again my concern, as earlier expressed in the Reasons, that Mr Chapman should not be given control over Daric's fund so as to enable him to pursue such a claim of his own discerning at Daric's expense.

14. I was informed at the May 2022 hearing leading to the Order, by Mr Kennedy on behalf of the Defendant, that ongoing delay in the handing over of the Fund to a professional trustee to be managed for Daric's benefit is the result of the action threatened by Mr Chapman. This includes an application filed by him for an injunction preventing her from doing so pending the action which he threatens. This is all despite an order made by Justice Kawaley, as long ago as in October 2019, permitting her to do so.

15. As I observed at [40] of the Reasons, this appalling situation which has brought about a state of paralysis in the management of Daric's affairs, may not be allowed to continue unchecked. In my view, the latest steps being taken by Mr Chapman, who speaks interchangeably as if acting for Daric as well as his mother, require the intervention of the Court. I have therefore invited the Chief Justice to refer the matter for the intervention of the Attorney General in his role as *parens patria* and in the public interest in its proper and timely resolution, given especially the allegations now being so recklessly leveled against the Court and its judges.

16. As to the application for leave to appeal against my order refusing to recuse myself, it is patently an abuse of process and a waste of Court time. The Reasons make it plain why the application was misconceived and should not have been made in the first place. An appeal would be bound to fail. The application is therefore refused.

17. As noted above, it was an application which should not have been made. The present application for leave to appeal against the Order only compounds the abuse of process and waste of costs. I am therefore bound- to consider whether a wasted costs order should be made against Mr Chapman for having made it and in so doing, causing wasted costs for his client and the Respondent. He is invited to make submissions in writing within 10 days of receipt of this ruling, if he is minded to oppose the making of such an order. KSG Attorneys are also invited to make submissions in writing on the matter. I reserve my decision until after I will have read the submissions.

18. By his client's summons, Mr Chapman also seeks an order embargoing further publication of the Reasons which have been available on the Judicial Administration's website since October 2022. The argument for this seems to be Mr Chapman's perception that the Reasons contain inaccurate descriptions of his conduct in the matter or that the Reasons are otherwise embarrassing to him.

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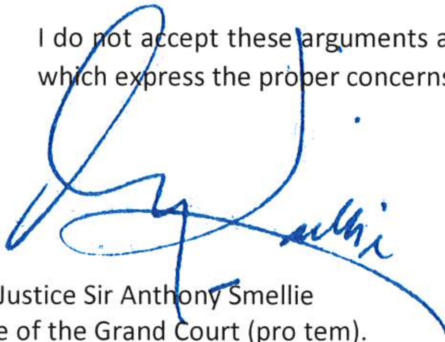
I do not accept these arguments as proper basis for embargoing the publication of the Reasons which express the proper concerns of the Court. This application is also refused.



Hon Justice Sir Anthony Smellie
Judge of the Grand Court (pro tem).

31 March 2023

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