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**IN THE GRAND COURT OF THE CAYMAN ISLANDS
FAMILY DIVISION**

CAUSE NO. FAM 35 OF 2018

BETWEEN:

AND



MP

Applicant

BC

Respondent

Appearances: Ms. Natasha Boddan of Bush Attorneys-at-Law for the Applicant
The Respondent in person

Before: Hon. Justice Richard Williams

Heard: 13 March 2018

Transcript Circulated: 14 March 2018

HEADNOTE

Application for financial provision order pursuant to Schedule 1 Children Law (2012 Revision) – application for declaration of paternity pursuant to s.10(1) the Status of Children Law (2003) – application for parentage testing order pursuant to s.15 Status of Children Law (2003) – Procedure for application for parentage testing pursuant to GCR Order 112

TRANSCRIPT OF EX TEMPORE RULING

Introduction

1. Having regard to the procedural issues raised, I feel it appropriate to deliver an Ex Tempore Ruling. A transcript of this ruling will be provided to the parties.

The Application

2. The matter comes before me on the Applicant mother's application for various orders set out in a C1 Form filed by her on 5 February 2018 and purportedly brought under the Children Law (2012 Revision) which relate to her daughter M who was born on 31 January 2009 and is therefore 9 years of age.

3. The orders sought by the mother as set out in the C1 Form are "*financial provision, residence order and paternity.*" Interestingly, the reason provided for making the application given at paragraph 7 of the C1 Form is:



"I would like the Court to acknowledge (M) as a Caymanian from her father (biological) (BC) for her to remain in the Cayman Islands hence I am in proceedings of a divorce from my husband who has a residence order for M."

In the Form C9 dated 5 February 2018 the mother added:

"M is 9 years old now and (BC) have never give or done anything towards her and it gets harder on me as she gets older."

4. The mother has today clarified that she is not now pursuing any application in relation to residence. This being the case, there is no issue with JP, her husband who has parental responsibility and a shared residence order in relation to M, not being served with the Application and Notice of this Hearing. I formally give leave to the mother to withdraw the residence application.

5. In his Form C6 Acknowledgement dated 27 February 2018 BC states:

"I don't agree I am the biological father. (JP) has already been granted parental responsibility and residence order."

Background

6. On 15 July 2015 the mother and her husband, JP, applied for a shared residence order and for a parental responsibility order for JP in relation to M. The mother stated in the C1 Form that they were making the application because:

"I the mother is now married and want her to live with me & my husband. Biological father is a Caymanian & was never a part of her life. Want my daughter to be acknowledged as a Caymanian."

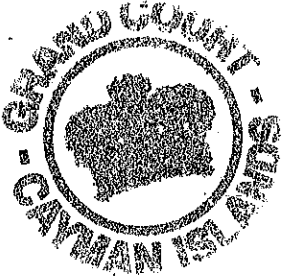
JP stated in the Form C3, in support of his application for leave to apply, that the reason for doing so:

"Want her to live with me and my wife. Want to send her to school here."

7. Although BC, whose name does not appear on M's birth certificate, did not have parental responsibility for M, he was served with those proceedings. In his Form C6 Acknowledgement dated 28 July 2015 BC stated:

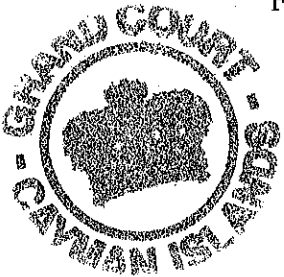
"I don't agree that I am the biological father, but I don't oppose the application for residence order and parental responsibility order."

8. On 7 August 2015, having granted leave to JP to make the applications, the Summary Court made a Shared Residence Order in relation to M in favour of the



mother and JP. The Summary Court also granted a Parental Responsibility Order to JP in relation to M.

9. However, on 15 January 2018 JP filed a C3 Form seeking a discharge of the Shared Residence Order and the Parental Responsibility Order made in his favour in relation to M. The reasons he gave for the application at paragraph 4 in the C3 Form were:



"I plan to file by divorce with the mother of the child (MP) on the grounds that we separated and have little contact. I have not seen them since August 2016. My wish is that the Court understands I have no personal issues with the child. Due to the breakdown of the marriage I do not wish to be held legally responsible."

10. Upon a review of the file, on 23 January 2018 the Learned Chief Magistrate transferred JP's application to the Grand Court. She noted that the:

"Applicant declared his intention to file for divorce. This is a child of the marriage under the Matrimonial Causes Law. This application would be best dealt with alongside or as a part of the divorce."

11. I have been informed today by MP that she has been served with divorce proceedings. I trust that JP's Children Law application will be listed for a mention on the same date as that allocated for the First Appointment Hearing in the divorce proceedings.

Issue of paternity

12. It appears from the mother's pleadings that BC has played no role in M's life and his name does not appear on the child's birth certificate. These are matters that the mother should address in her affidavits in support of her application for a declaration of paternity and a parentage testing order.



13. On the evidence presently before me, there is no presumption pursuant to s.7 of the Status of Children Law, 2003 ("the Law"), that BC is the father of M.

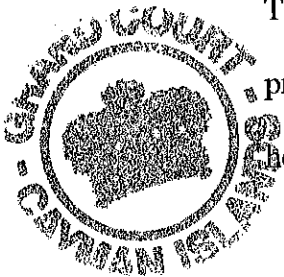
14. The mother who contends that BC is M's the father has wrongly applied within the Children Law proceedings for there to be an order made in relation to paternity and testing. The Children Law does not contain any provisions in relation to those types of orders.

15. The appropriate application needed to be made pursuant to the Law, where s.15 (1) provides that if a declaration of paternity is sought pursuant to s.10(1) by a woman alleging that any person is the father of a child, a Court may make a parentage testing order.

16. When deciding whether to make such an order the Court, pursuant to s.15(3) of the Law, shall consider and determine any objection made by, in this matter, BC on account of medical, religious and other grounds. If the Court determines that

any such objection is valid it will take the objection into account when deciding whether to make the order.

17. If the Court makes the order and BC refuses to comply with the order, the Court may, pursuant to s.15(5) of the Law, draw such inferences as it thinks appropriate. Today, very sensibly, BC has indicated to the Court that if an application is properly brought for a parentage testing order and for a declaration of parentage he would submit to the testing.



Procedure for applications for a declaration of paternity and for a parental testing order

18. Pursuant to GCR O.112, r.2 the application for a declaration of paternity pursuant to s.10 of the Law shall be made by Writ or Originating Summons.
19. Pursuant to GCR O.112, r.3(1), except with leave of Court, the application for a parentage testing order shall be made on notice to every other party in the proceedings. Pursuant to GCR O.112, r.3(2) the application must be made by Summons supported by an affidavit.
20. I see no reason in this case to depart from the normal procedure set out in GCR O.112, r.(3), namely that the applicant mother should pay the fee payable to the accredited laboratory. However, I note that pursuant to GCR O.112, r.3(5), the Court may make orders for costs of the application as it sees fit. Therefore, if the

test establishes that MC is the father, the Court may order that he refunds the mother for the cost of the laboratory testing fees.

21. The "*accredited laboratory*" is the Cayman Islands Forensic Laboratory. The parties and the testing laboratory must have regard to the strict parentage testing procedures set out in GCR O.112 and ensure that Forms 401 and 402 are properly completed. It is vital that the report, for it to be admissible is in accordance with GCR O.112, r.6 and be in accordance with Form 403.

Orders

22. Accordingly, I adjourn the application for a financial provision order brought pursuant to Schedule 1 of the Children Law. When I do so I am conscious of the delay principle set out at s.3(1) of the Children Law.
23. Upon the indication from Counsel for the mother that an application for a declaration of paternity and an application for a parentage testing order will be made, I direct that the financial provision application should be restored for further directions to be given at the hearing of the parentage testing application.


**THE HONOURABLE MR. JUSTICE RICHARD WILLIAMS
JUDGE OF THE GRAND COURT**

