

**TRINIDAD AND TOBAGO**

**IN THE HIGH COURT OF JUSTICE**

**H.C.A. Cv.1477 OF 2001**

**BETWEEN**

**IN THE MATTER OF THE STATUS OF CHILDREN ACT NO. 17 OF  
1981**

**AND**

**IN THE MATTER OF AN APPLICATION FOR A PATERNITY ORDER  
PURSUANT TO SECTION 10 OF THE STATUS OF CHILDREN ACT BY  
CLAUDIA SMITH**

**CLAUDIA SMITH**

**APPLICANT**

**FRANCES NELSON**

**INTERVENOR**

**Before The Honourable Mr. Justice Stollmeyer**

**Appearances:**

**Ms. V. Badrie-Maharaj for the Applicant**

**Mr. C. Constantine for the Intervenor**

For determination is the Applicant's Originating Summons of 1<sup>st</sup> June 2001 in which she seeks an order pursuant to Section 10 of the Status of Children Act Chap. 46:07 that she be declared the child of Edward Garraway Nelson, also called Bishop Edward Nelson, who died on 13<sup>th</sup> April 1999. She also seeks consequential relief by way of an amendment to the entry of the record of her birth as it now exists in the Registrar-General's Department.

I made reference during the course of cross-examination as to the quality of the affidavit evidence which was put before me. I have to say again that it lacked the necessary quality. It might be described as being sub-optimal. I make that observation in relation both to the Applicant's evidence and the evidence put forward in support of her application, as well as to the affidavits of the Intervenor in opposition.

There are three affidavits by the Applicant herself. Those are the affidavits filed 1<sup>st</sup> June 2001, 1<sup>st</sup> October 2002 and 10<sup>th</sup> April 2003. Also in support of the application I have the affidavits of Hilton Moore filed 1<sup>st</sup> June 2001 and his supplemental affidavit of 2<sup>nd</sup> November 2001, as well as the affidavits of Edmond Griffith filed 1<sup>st</sup> June 2001 and his supplemental affidavit of 2<sup>nd</sup> November 2001. In opposition I have the affidavits of Frances Nelson filed 26<sup>th</sup> April 2002, 18<sup>th</sup> June 2002 and 6<sup>th</sup> June 2003.

As a preliminary observation what I will say is that if the affidavits in opposition had withstood the test of cross-examination then I do not think that this application would have succeeded. As Mr. Constantine pointed out it is for the Applicant to satisfy the Court that she is the daughter of the late Edward Nelson. It is not for Frances Nelson to prove that she is not. Mr. Constantine's further submission was that the weight of the evidence in support of the application was to be such that the Court must be so satisfied on a balance of probabilities. In my view, it should as a general rule be more than just a mere balance of probabilities, given that the person against whom the allegation is made is not here to defend it.

The difficulty with the evidence of and on behalf of the Applicant is that it is to a great extent hearsay. The difficulty with the evidence in opposition to the application is that it comes from one person namely Frances Nelson. While I accept Mr. Constantine's submission that if there is a person who should be able to tell us the paternity of Claudia Smith then it would be Francis Nelson,

regrettably, Mrs. Nelson's affidavit and her evidence in cross-examination do nothing in my view to give any credibility to the position she has taken.

My second observation is this. It is undisputed that this issue as to paternity is a direct consequence of a difference of opinion as between the Applicant and her mother over the property in which the Applicant now lives and which she says was given to her by Edward Nelson. I am satisfied that this is the motive for the objection to the application.

Third, it is to be remarked upon that while the mother objects, none of the siblings, or alleged siblings, takes exception or objection to it.

Let me first deal with the evidence of Mrs. Nelson. In short, her story varies with the passage of time, affidavits and cross-examination. She takes a position in her initial affidavit which changes quite substantially by the time of her third affidavit. Then in cross-examination the plank of her objection, the very foundation upon which it is based, falls away. That objection is based upon Edward Nelson being not the father of Claudia Smith, but that in fact her father is a man known to Mrs. Nelson only as "John".

I find her evidence as to her relationship with Mr. John and her absolute inability to identify him incredible. She says that she does not know if John is his christian name or surname. She knows not where he lived then, nor where he might be found now. She knows absolutely nothing of this individual. I find that quite remarkable for someone who gave birth to her first child and who, on her evidence in cross-examination, she had known and spoken with for a period of about one month.

There is, however, another matter which is equally if not more incredible. Claudia Smith was born 18<sup>th</sup> October 1950. I take judicial notice of the period of

gestation being usually no more than nine months, if that. Anything more than that in case of a human would be very, very, remarkable.

Being born on the 18<sup>th</sup> October 1950 means more likely than not that conception could not have been before very late in December 1949. It is more likely to have been around the middle of January 1950. A distillation of Mrs. Nelson's various versions of what took place towards the end of 1949 makes it clear that she enjoyed some form of relationship with Edward Nelson starting in mid to late December at the latest. It is clear that she did not at that time, much less in January 1950, have a relationship with John, whoever he might be, and wherever he might be. That relationship is said to have existed over a period of perhaps one month, with there being a single instance of "intimacy", but her further evidence, on which she was clear, is that she was two months pregnant at the time she went to live at - if not with - Edward Nelson. If that were so, then the gestation period would have been 11-12 months. That I reject without reservation.

The plank of the objection, namely that John is the true father of Claudia Smith, I do not accept. I regret it unhesitatingly.

The varying versions of events which have been given to me by Francis Nelson have so reduced her credibility and the reliability of anything she has said that I can place very little reliance, if any, at all, on the evidence she has chosen to give in relation to these issues, and as to any issue of fact.

In those circumstances, I need to look at the evidence by and on behalf of the Applicant, not only on affidavit but in cross-examination. As a consequence of that, I can say the following. First, there is no doubt that Frances Nelson is her mother. Second, there is no doubt that Edward Nelson was solely responsible for Claudia's maintenance during the time she lived with, or in the house with, him and her mother, and the lawful children of Edward and Frances. Third, I accept that there was a father/daughter relationship between the Applicant and Edward

Nelson. While I also accept that there are many instances in which someone's child may enjoy an equally good, and sometimes better, relationship with that person's spouse, common law or otherwise. I find it improbable that in the circumstances of this case Edward Nelson would register Claudia at the Febeau Government Primary School as "Claudia Nelson" if she was not in fact his child. The assertion that she was known for many years of her life as Claudia Nelson is supported by the School Leaving Certificate issued in June 1965 when she left that school.

It would be passing strange as well if on the death of Edward Nelson he would appear on the "programme" for the funeral, as it has been described, as the father of Claudia and many others if that were not in fact so. I am satisfied on the evidence that, while that programme was not printed by Mrs. Nelson as Claudia asserted initially in her affidavit, Mrs. Nelson and the rest of the family knew what was printed there, agreed with it, and accepted it.

That leads me, perhaps to one other matter relating to the credibility of Mrs. Nelson. That funeral programme refers to the late Mr. Nelson in his capacity as a minister of religion. That capacity is something which was denied initially by Frances Nelson but which at the end of the day I have no doubt it is correct. He is so referred to by more than one person.

I am also satisfied that it is not disputed that Edward Nelson put Claudia Smith in possession of the parcel of land where she now lives, and that he encouraged her to build on it. If she were not the child of Edward Nelson I would find it improbable that he would have made such arrangement, apparently in preference to his lawful children.

Finally, I am satisfied on the evidence of Mrs. Nelson that she began living with Mr. Nelson in late 1949. I do not accept that she merely occupied a part of his house. She co-habited in every sense of the word. She was pregnant in February

1950. She had been sent to Tobago by her sister shortly before then, and returned shortly thereafter first seeking out Mr. Nelson at his work place and then going to his house where she lived with him up to their subsequent marriage in December 1951, and thereafter to his death. In all the circumstances I am satisfied that he, and not John, is the father of the Applicant.

With those factors in mind, I have come to the conclusion that on a balance, on better than just a mere balance, of probabilities the application should succeed.

On the Originating Summons therefore, there will be judgment for the Applicant and an order pursuant to Section 10 (a) of the Status of Children Act that Edward Garraway Nelson also called Bishop Edward Nelson be declared the father of the applicant Claudia Smith.

There is a further order that the Registrar General amend Entry No. 454 in Volume 4/1A at page 309A of the Trinidad and Tobago Register of Births for the year 1950 by inserting the name "Edward Garraway Nelson also called Bishop Edward Nelson" in the relevant column of that Entry in the Register of Births as the father of the Applicant.

13<sup>th</sup> January 2004

C.V.H. Stollmeyer  
Judge