



Neutral Citation Number: [2022] EWFC 142

Case No: P022P70194

IN THE FAMILY COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24 November 2022

Before :

MR JUSTICE MOSTYN

Between :

**AMY BOUDEWIJN
- and -**

Applicant

**ASHLEY PAUL JOHNSON (as Representative of
the Estate of ERROL WASHINGTON JOHNSON)**

First Respondent

- and -

BRIDGET SUMPTER BOUDEWIJN

Second Respondent

The Applicant appeared in person by video
The First Respondent did not appear
The Second Respondent appeared by telephone

Hearing date: 23 November 2022

Approved Judgment

.....
MR JUSTICE MOSTYN

This judgment was delivered in private. The judge has given leave for this version of the judgment to be published. In no report of these proceedings or this judgment may the addresses of the persons referred to as Amy, Denise, Bridget and Pieter be given. All persons including representatives of the media must strictly comply with this condition breach of which will be a contempt of court. There are no other reporting restrictions.

Mr Justice Mostyn:

1. This is my judgment on the application by Amy Boudewijn (“Amy”) in Form C63 issued on 26 May 2022, seeking a declaration of parentage under s55A of the Family Law Act 1986. Specifically she seeks a declaration that Errol Washington Johnson (“Errol”) was her biological father. I say “was” because Errol died on 25 July 2002.
2. Amy’s objective is to get the Registrar-General for Births and Deaths to amend her birth certificate pursuant to Births and Deaths Registration Act 1953, s.14A so as to identify Errol as her father.
3. Amy has acted in person on this application at all times.
4. The application came before me on 4 July 2022. My order of that date dealt with a number of procedural matters. On that occasion I noted that the procedural issues were similar to those in *Aylward-Davies v Chesterman & Anor* [2022] EWFC 4 at [5] – [32].
5. My order on that day noted that pursuant to FPR r. 8.20(1) the following were automatically joined as respondents to the application:
 - (1) Errol
 - (2) Bridget Sumpter Boudewijn, Amy’s adoptive mother (“Bridget”)
 - (3) Pieter Ernest Boudewijn, Amy’s adoptive father (“Pieter”)
 - (4) Denise Peever, Amy’s birth mother (“Denise”)
6. On that occasion I heard an oral application by Amy to discharge Pieter and Denise as parties to the application . My order stated:

“Although there is explicit power in a children case (FPR r.12.3(3)) and in a financial remedies case (FPR r. 9.26B(1)) to remove a party, there is no explicit power to do so for declaration of parentage applications made under FPR Part 8 and governed procedurally by FPR Part 19;

In circumstances, however, where for all civil proceedings there is power to remove a party with the court’s permission (CPR r.19.4(1)), a comparable power must be implied into proceedings brought under FPR Part 8.”
7. I confirm my view that such a power exists in proceedings under FPR Part 8. Indeed, I consider that the power exists in all forms of family proceedings.
8. Amy’s reasons for seeking Pieter and Denise to be discharged as parties were stated to me orally and were put in writing in a witness statement dated 4 July 2022 filed shortly after the hearing concluded.
9. Amy’s witness statement explained that her relationship with Denise broke down irretrievably over 10 years ago. She tried to contact her in May 2019 but Denise did not wish to kindle a relationship. Amy considers that this is because she (Amy) is a constant

reminder of the painful events leading to Denise giving her up for adoption. As for Pieter, she explained that he is a Hare Krishna monk who has lived at a temple since 2000 and has limited access to modern technology. Further, she submitted that it would not be appropriate for him to be a party for medical reasons.

10. Having considered these reasons I granted Amy’s application to discharge Pieter and Bridget as parties.
11. I then raised the question of who might be the appropriate representative of Errol’s estate. Amy indicated that her brother Ashley Johnson, would be an appropriate representative, and I ordered accordingly.
12. Next, I considered the order of His Honour Judge Levey dated 9 June 2022 which purported to transfer Amy’s application to the Principal Registry of the Family Division. I noted that there was no power for him to do so (see FPR r.29.17(3)-(4)). I have pointed on countless occasions that the power of transfer to the High Court is limited to puisne judges of the High Court (and judges of yet higher seniority). The limitation has been there for nearly nine years since the creation of the Family Court. Yet I see order after order made by circuit and district judges purporting to transfer proceedings to the High Court. It is completely inexplicable to me why this rule is not known and understood. Its terms were spelt out with crystal clarity in paras 26 – 28 of the President’s Guidance – *Jurisdiction of the Family Court to High Court Judge level and transfer of cases from the Family Court to the High Court* dated 28 February 2018 (as updated and reissued on 24 May 2021).
13. That Guidance does not require Amy’s application to be issued in the High Court, as it is made under Part III of the Family Law Act 1986 and is therefore excepted from Item No.3 of the Schedule to the Guidance. I therefore determined that there was no good reason why Amy’s application should be heard in the Family Division, and treated the order of 9 June 2022 as having allocated this application to High Court Judge level within the Family Court.
14. I next considered whether Amy’s application would be heard in open court or in private and whether there should be any reporting restrictions.
15. An application under s55A of the Family Law Act 1986 is governed procedurally by FPR Part 8 Chapter 5. FPR rule 8.1 states:

“Subject to rules 8.13 and 8.24, applications to which this Part applies must be made in accordance with the Part 19 procedure”
16. Rules 8.13 and 8.24 are not relevant to this application. It is therefore governed by the Part 19 procedure. An application under Part 19 procedure is heard in private under FPR rule 27.10, although members of the press and legal bloggers are entitled to attend under rule 27.11.
17. In *Aylward-Davies v Chesterman & Anor* [2022] EWFC 4 at [27] – [29] I held that where there were no minor children affected even peripherally by the application, there was no basis upon which a reporting restriction order could be made (see *H v News Group Newspapers Ltd* [2011] 1 WLR 1646 at para 21) and further that there was no good reason to depart from the principle of open justice by anonymising the judgment.

18. At the hearing on 4 July 2022 I informed Amy of the need to apply for a reporting restrictions order if she should wish the media to be restricted in either attending the hearing, or reporting the proceedings. Further, if she wished the judgment to be anonymised she would have to apply for such an order, which would have to be served on the media and heard fully on its merits. Amy indicated she did not wish to make any such application and has not since done so.
19. I therefore give this judgment without anonymisation.
20. Finally I ordered that Amy had to file, and serve on Ashley and Bridget, a witness statement containing all the evidence upon which she wishes to rely to prove that Errol was her biological father, exhibiting any documents relied on by her (including any DNA test results). She duly did so. Ashley and Bridget were allowed to file witness statements in reply. They did not do so.
21. I now turn to the substance of the application.

The background

22. I have read Amy's two witness statements and heard her oral evidence from which I am able to state the following facts.
23. Amy was born on 19 October 1979 in Portsmouth. Her birth name was Hailey Marie Peever. As stated above her biological mother is Denise who was 18 at the time of Amy's birth. Her biological father was Errol (as I will find and declare below), a marine engineer mechanic in the Royal Navy. Errol was born on 6 April 1958 in Jamaica.
24. At such a young age Denise was not physically, financially or emotionally able to care for Amy. Matters were made more difficult by Errol refusing to support her to raise Amy. According to Amy, Denise's father threatened to harm Errol's naval career. Denise therefore chose to give up her baby for adoption.
25. Amy was adopted when she was 7 months old by Pieter and Bridget. They lived on the Isle of Wight. Pieter was a planning engineer. The adoption order was made on 23 May 1980 by Bournemouth County Court and the adoption certificate is dated 23 August 2000. Amy's name was formally changed by her adoptive parents from Hailey Marie Peever to Amy Boudewijn.
26. In 1999 Errol took steps to make contact with his daughter. Amy was by then 19. He contacted Hampshire Social Services to request contact with her. He explained that he had not earlier attempted to contact Amy as his then wife Barbara was opposed to the idea of it. In October 1999 Hampshire Social Services wrote to Errol, stating that they had managed to make contact with Amy's adoptive parents, who had discussed his request with Amy, who was willing to begin indirect contact. Letterbox contact began through Hampshire Social Services between Errol and Amy on 6 November 1999, but shortly thereafter Amy and Errol met in person, following which they spent much time together, including going on holiday to Florida, until his death on 25 July 2002.
27. Amy has exhibited to her witness statement letters, cards and photographs exchanged between her and Errol since 1999. It is clear that Errol shared a loving father-daughter bond with Amy and that he regarded her as nothing less than his daughter.

28. Amy has also exhibited several photographs of her with members of Errol's family in Jamaica in 2005, 2007, 2017 and 2021. It is clear that Amy was fully accepted as Errol's daughter and comfortably integrated into Errol's family.
29. As stated, Errol died on 25 July 2002. Errol included Amy in his will, referring to her as Hailey Peever in 1998. A redraft in 2001 corrected her name to Amy Boudewijn, although this draft will was not executed before his death.

The application

30. Amy's application for a declaration of parentage under the Family Law Act 1986, section 55A was issued on 26 May 2022. As explained above, Amy wishes to have Errol recognised in law as her father and for him to be named on her birth certificate.
31. Amy wishes to have it formally acknowledged that Errol was her father to complete the paper trail for her Jamaican heritage and ancestry. Amy is seeking to obtain Jamaican citizenship by descent and the process requires Errol's name to be on her birth certificate. Having Errol's name on her birth certificate will be important to Amy in respect of her cultural and racial identity as well as for her two children. Lastly, Amy believes it would have been Errol's wish to have been formally recognised as her father.
32. Amy's application is supported by Ashley, the representative of Errol's estate, and by Bridget.

The legal framework and disposal of the application

33. The Family Law Act 1986, section 55A(2) provides:

“A court shall have jurisdiction to entertain an application under subsection (1) above if, and only if, either of the persons named in it for the purposes of that subsection –

 - (a) is domiciled in England and Wales on the date of the application, or
 - (b) has been habitually resident in England and Wales throughout the period of one year ending with that date, or
 - (c) died before that date and either –
 - (i) was at death domiciled in England and Wales, or
 - (ii) had been habitually resident in England and Wales throughout the period of one year ending with the date of death.”
34. I am satisfied that I have jurisdiction to entertain the application. Amy is domiciled in England and Wales and was on 26 May 2022 habitually resident in England and Wales throughout the period of one year ending with 26 May 2022.
35. I also note incidentally that Errol was domiciled in England and Wales at the time of his death

36. Section 55A(3) and (4) provide:

“(3) Except in a case falling within subsection (4) below, the court shall refuse to hear an application under subsection (1) above unless it considers that the applicant has a sufficient personal interest in the determination of the application (but this is subject to section 27 of the Child Support Act 1991).

(4) The excepted cases are where the declaration sought is as to whether or not:

(a) the applicant is the parent of a named person;

(b) a named person is the parent of the applicant; or

(c) a named person is the other parent of a named child of the applicant.”

37. This is an “excepted case” pursuant to sub-section (4)(b) because Amy seeks a declaration that Errol was her father. Therefore, Amy does not need to show that she has a sufficient personal interest in the determination of the application, although I am, in fact, completely satisfied that she does have a sufficient personal interest in it.

38. As no children are involved in this application, sub-section (5) is not relevant.

39. As the court has not refused to hear this application under subsection (1), subsection (6) is also irrelevant.

40. Section 58 of the Family Law Act 1986 contains general provisions as to the making and effect of declarations. Sub-section (1) provides:

“Where on an application to a court for a declaration under this Part the truth of the proposition to be declared is proved to the satisfaction of the court, the court shall make that declaration unless to do so would manifestly be contrary to public policy.”

41. My reading of this provision is that I must be satisfied on the balance of probabilities (the ordinary civil standard) on the evidence before me that Errol was Amy’s father and if I am so satisfied, then I am required to make a declaration to that effect unless to do so would be manifestly contrary to public policy. The court has no discretion to withhold the declaration once the facts are proved subject to the question of public policy.

42. I turn to now consider whether the facts are proved.

43. Ashley and Darren Lee Johnson (“Darren”) are Errol’s biological children. In July 2022, Ashley, Darren and Amy were genetically tested by King’s College London. On 27 July 2022 Dr Denise Syndercombe Court reported as follows:

“You have asked us to consider the genetic evidence that Amy Boudewijn is related to Darren Lee Johnson and Ashley Paul Johnson, who are full siblings, as a half sibling. Please note that

it is not possible to differentiate, genetically, between an uncle/niece, grandparent/grandchild or half-sibling relationship and so any comments made about the strength of a relationship apply to all of these.

Considering the genetic results, the most likely relationship is that Amy Boudewijn is a half sibling of the other two, that being more than 1600 times more likely than them being unrelated. In my opinion this offers strong evidence, relative to the claim, that Amy Boudewijn, Darren Lee Johnson and Ashley Paul Johnson are closely related, with Amy Boudewijn being a half sibling or a genetically equivalent relationship. This opinion is based on a statistical assessment using an African Caribbean population to evaluate the results. that it is likely that Amy is their half-sibling, in fact 1600 times more likely than them being unrelated. This was confirmed by on a statistical assessment using an African-Caribbean population to evaluate the results. ”

44. The stated degree of likelihood of Amy being a half-sibling of Ashley and Darren (and that therefore Errol was her father) corresponds to a probability of 99.9375%. This evidence alone completely satisfies me that it is far more likely than not that Errol was Amy’s father. Indeed on the basis of this evidence I would say that I am sure that Errol was Amy’s father.
45. Had this scientific evidence not been available I can say that the remaining evidence adduced by Amy satisfies me on the balance of probability that Errol was Amy’s father.
46. I say this to make clear for the benefit of any future case that there is no requirement that scientific testing must be undertaken on an application for a declaration of parentage.
47. Finally, I do not consider that there is any reason as to why the making of the declaration sought would be manifestly contrary to public policy.
48. I am therefore satisfied that I can and should make the declaration sought, namely that Errol was Amy’s father.
49. Section 55A(7) of the Family Law Act 1986 provides:

“Where a declaration is made by a court on an application under subsection (1) above, the prescribed officer of the court shall notify the Registrar General, in such a manner and within such period as may be prescribed, of the making of that declaration.”
50. Amy seeks the amendment of her birth certificate, which I cannot directly do. However, in accordance with the provision stated above, a court officer will send a copy of the order arising from this hearing to the Registrar General for Births and Deaths within 21 days of the date of the order so that he may consider the re-registration of the birth of Amy under the Births and Deaths Registration Act 1953, section 14A.

51. In the light of my declaration it should follow that the Registrar General for Births and Deaths will amend Amy's birth certificate to name Errol as her father.
 52. Set out below is the order which I have made, redacted to obscure the addresses of Amy, Denise, Pieter and Bridget. Those addresses shall not be given in any report of these proceedings or this judgment.
-



**In the Family Court
Sitting at the Royal Courts of Justice**

No: PO22P70194

The Family Law Act 1986, section 55A

After consideration of the documents filed by the applicant.
After hearing the applicant in person and the second respondent in person.
After no attendance by the first respondent.

**ORDER AND DECLARATION MADE BY MR JUSTICE MOSTYN ON SITTING IN
OPEN COURT FOLLOWING A REMOTE HEARING CONDUCTED BY
MICROSOFT TEAMS ON 23 NOVEMBER 2022 AND A WRITTEN JUDGMENT
GIVEN ON 24 NOVEMBER 2022**

The parties

1. The applicant is Amy Boudewijn.
The first respondent is the estate of Errol Washington Johnson.
The second respondent is Bridget Sumpter Boudewijn.

Recitals

2. The applicant has made an application for a declaration of parentage in Form C63 issued on 26 May 2022.
3. The judge read the witness statements of the applicant dated 4 July 2022 and 27 July 2022.
4. The judge heard oral evidence from the applicant.
5. The court found that the jurisdictional requirements set out in Family Law Act 1986, section 55A(2) have been satisfied.
6. The court was not of the opinion that it was necessary to direct that the papers in the case should be sent to the Attorney-General to allow him to intervene and make representations in the proceedings pursuant to Family Law Act 1986, section 59.
7. Person A is Errol Washington Johnson who was born on 6 April 1958 and who died on 25 July 2002.
8. Person B is Amy Boudewijn who was born on 19 October 1989 and whose address is [REDACTED]

9. The following other person is currently named on the birth certificate as a parent of Person B:
10. Denise Peever who was born on 19 January 1961 and whose address is [REDACTED]
11. The following persons are named as adopters on the adoption certificate of Person B:
 - a. Pieter Ernest Boudewijn, whose address is [REDACTED]
 - b. Bridget Sumpter Boudewijn, whose address is [REDACTED]

IT IS DECLARED THAT:

12. Person A was the parent of Person B.
13. A court officer shall send a copy of this order and a copy of the application leading to this order to the Registrar General for Births and Deaths within 21 days of the declaration being made (i.e. by no later than 14 December 2022) so that he may consider the re-registration of the birth of Person B under Births and Deaths Registration Act 1953, section 14A.

IT IS ORDERED THAT:

14. There shall be no order as to costs.

Dated 24 November 2022