IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN FAMILY DIVISION

CLAIM NO. 2003 D2056

BETWEEN	RODGER MICHAEL ADAMS	PETITIONER
AND	BEVERLY ANDREA ADAMS	RESPONDENT

Carlene McFarlane instructed by McNeil & McFarlane for the petitioner.

Arlene Beckford for the respondent.

Heard 23rd June 2004 and 2nd July 2008

Campbell J.

(1) The parties to this proceeding were married on the 11th April 1998, and on 12th May 2004, the husband was granted decree nisi. The court certified the arrangements made in respect of the relevant children of the marriage. An Answer was filed out of time, stating concerns with the arrangements as certified. The wife contended that the husband "had embraced her son," Chevas Webb as a child of the marriage, the child should therefore be considered a relevant child. Chevas was born out of a previous relationship.

(2) On the 9th June 2005, the husband filed an application for decree absolute, his affidavit of delay explained that the wife had filed an application to set aside the decree nisi granted. Her application was heard on the 23rd June 2004 and finally withdrawn on 25th May 2005. An application by the husband for decree absolute was met with the wife's objection.

(3) On the 30th January 2007, Mr. Justice Sykes made orders by consent, granting joint custody of the three children to the parties and care and control to the respondent. The court also made orders for the maintenance of the wife and children. In respect of the Chevas Webb, the court ordered that the hearing be adjourned to the 11th June 2007 at 2:00 pm. The parties were to file and serve affidavits in respect of hearing, not later than 29th May 2007.

(4) Before me, it was submitted that the wife had not filed any notice for orders for Chevas to be declared a child of the family, neither had any relevant information concerning expenses, living arrangements, educational or financial arrangements been provided to the Court; that the wife had failed to comply with the order of Justice Sykes.

(5) The court heard from Daisy Thompson, an aunt of the husband, who alleged that on more than one occasion she had met with the natural father of Chevas, whilst on visits to Canada. She alleged that the purpose of those visits was to collect money and clothing for Chevas. She had never heard Chevas called the petitioner daddy. In cross-examination she says she has had discussion with Chevas' father, who told her he wanted his child, but the respondent had refused to give the child to him.

Petitioner's Submission

(6) It was submitted on behalf of the husband that the wife had the obligation of showing that Chevas was treated as a child of the family and further, the Maintenance Act provided that every parent has an obligation to maintain the parent's unmarried child who is a minor.

The Act defines a parent as a person who is a party to a marriage or co-habitation and accepts as one of the family, a child of the other party to the marriage or co-habitation.

Section (9) (4) of the Act provides that in considering the circumstances of a dependent who is a child, the court should have regard to several matters including;

a) The extent if any to which that party has on or after such acceptance of the child assumed responsibility for the child's maintenance, and;

b) The liability of any other person other than the persons who co-habited to maintain the child.

(7) The first issue is, was the child, Chevas Webb, accepted by the husband as a **child of the family**? The evidence before the court is sparse, and for the most part comes from the husband, the wife having failed to comply with the orders made by Justice Sykes. In **Bowlas v Bowlas (1965) 3 All ER 40,** Davies L J remarked, "As my Lord has said, it was necessary for the wife to prove before she could obtain an order for maintenance in respect of these two boys, that the husband had accepted them as 'children of the family'."

(8) In **Bowlas** case, the husband had married the wife for a few days before he ran away to his mother's home. Within two weeks of the wedding it had become clear that there was no intention on the part of the husband to resume living with his wife. The wife took out summons for her maintenance and that of two children from a previous marriage. She was in receipt of an order from a court in America for the maintenance of the children. She testified that the orders were unenforceable in the United Kingdom.

The justices made an order for maintenance of the children, stating, "We accept the wife's evidence relating to the two children of the family and we are of the opinion that the husband knew full well the position regarding these children, and in particular regarding their maintenance." The husband appeal to the Divisional Court was dismissed.

Willmer L.J was of the view that the divisional court had assumed that the mere fact of marriage was sufficient to prove that he had unconditionally assumed responsibility for the maintenance of the children and felt "in my judgment the evidence which was given before the justices (and I have referred to what I think is the only really relevant evidence on the subject) was insufficient to justify that conclusion without further inquiry."

(9) There is no evidence of what was the understanding, if any, in relation to the child when the parties contemplated marriage. The evidence before the court is that the natural father of the child is desirous of having the child with him in Canada and provides financial support for the child. The relationship between the child and the husband appears strained and seems to have led to a physical confrontation on at least one occasion. It is not enough for the applicant to simply prove a marriage and that "the Petitioner embraced the child".

In **Dixon v Dixon (1967) 3 All E.R 659**, the court held that:

> "there could not be acceptance of a child into a family without some mutual arrangement between the spouses, and that mutual arrangement must be an arrangement that the child should be treated by both spouses as the child of both; proper enquiry into the acceptance of the boy as a child of the family had not been made, and, in the circumstances, the case would be remitted for re-hearing (see p. 660, letter I, p. 661, letter G, and p. 662, letter A)."

In **Bowlas v Bowlas**, I find that the burden placed on the plaintiff to prove her case has not been discharged, there is an insufficiency of evidence upon which a court could hold that Chevas was accepted by the petitioner as a member of the family.

(10) Although that disposes of the wife's application, I shall point out that there is also no evidence of an assumption of responsibility. After dealing with the issue of the child being a member of the family, Willmer L. J next turned his attention to what is the second consideration in section 9 (4) of the Jamaican Maintenance Act. He said at page 45,

> "So far, the other (and I think most vital) matter is concerned (viz. the extent to which the husband assumed responsibility for the maintenance of

these children), it seems to me that the evidence leaves the matter wholly in the air."

That is also the position in this matter. The evidence before the court is totally unhelpful. Even if the child was the beneficiary of the petitioner's occasional kindness (there is no suggestion he was), that in my view would be insufficient to demonstrate that he had assumed responsibility. Courtesy, care and kindness extended to child under ones roof do not, to my mind, demonstrate an assumption of responsibility for the child's maintenance.

Lord Reid, in **W v W** (referred to with approval in **Applin v Race Relations Board** (1975)) A.C. 259 illustrates the distinction between civility and the assumption of obligations, where he examines the issue of a child being treated as a child of the family.

> "**People who invite the children of their friends to stay with them generally treat them as members of their family, but that does not mean that for their short stay such children become members of their host's family, they are guest. There is a world of difference between treating a child as a member of the family and in fact making him a member of the family**"

The evidence of the petitioner's aunt demonstrates that the natural father of Chevas assumes some measure of responsibility for his son. The court is not given any indications of the child's financial needs, or of the extent of his natural father's contribution.

The wife has failed to discharge the onus placed on her to prove that the husband has accepted Chevas Webb as a child of the family and that the husband had assumed responsibility for the child. No order for maintenance can therefore be made, and the child, Chevas Webb, cannot be regarded as a relevant child of the marriage.