



[2018] JMSC Civ. 119

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2018 HCV 01758

BETWEEN	NADINE EVANS	CLAIMANT
AND	UNIVERSITY HOSPITAL OF THE WEST INDIES	1st DEFENDANT
AND	ADMINISTRATOR-GENERAL OF JAMAICA	2nd DEFENDANT

IN CHAMBERS

Mr. John Clarke and Mr. Isat Buchanan for the Claimant

Ms. Stephanie Ewbank instructed by Myers, Fletcher & Gordon for the 1st Defendant

Heard: 19th June & 28th August, 2018

Sections 22, 24, 32, 35 and 36 of the Registration (Births and Deaths) Act - Section 6 of the Coroners Act - Whether the University Hospital of the West Indies has any legal basis for refusing to release the body of the deceased to her next of kin.

Cor: Rattray, J.

[1] It is said that the only thing certain in life is death. But even death has its uncertainties, as Ms. Nadine Evans, at least by now would realize. This matter concerns an unfortunate set of circumstances surrounding the death of her daughter, Ms. Carrell Kerisha White, who died on the 19th December, 2017, while an inpatient at the University Hospital of the West Indies ("the Hospital"). Subsequent to her death, her

attending physician ordered that a post mortem should be done by the Hospital, in order to determine her cause of death. This information was required to register her death with the Registrar General of Births and Deaths (The Registrar). In order to proceed with the post mortem, the Hospital informed Ms. Evans that her consent was required, as she was Ms. White's next of kin. As a precondition to consenting to the post mortem, Ms. Evans requested that an independent doctor be present to observe the post mortem on her behalf. However, the Hospital in essence refused her request, and indicated that it was their practice to allow independent observers in coroner's cases, and her daughter's death was not a coroner's case.

[2] Consequently, Ms. Evans has refused to give her consent for the post mortem to be done. In light of her posture, the Hospital has refused to release the body to her, as they contend that they are unaware of the cause of Ms. White's death, and are adamant that a post mortem is needed before they can effect the said release. Since then, the Hospital has proposed solutions for a position to be agreed upon as to how the post mortem is to be done. Unfortunately, the parties have been unable to agree on an amicable resolution of the matter.

[3] Frustrated with the stance taken by the Hospital, Ms. Evans commenced these proceedings, by way of Fixed Date Claim Form, filed on the 4th May, 2018 seeking the following reliefs: -

- a) That the Claimant be appointed Administrator ad litem for her daughter Carrell Kerisha White for the purpose of these proceedings;
- b) A Declaration that the 1st Defendant has no legal basis to refuse to release to the Claimant the body of her daughter Carrell Kerisha White who died at the 1st Defendant's facility on the 19th December, 2017;
- c) An Order that the 1st Defendant release to the Claimant or her duly nominated funeral home, the body of Carrell Kerisha White to facilitate the burial of her body;

d) Further or other relief as the Court may deem fit;

e) Costs.

[4] When the matter first came before the Court on the 25th May, 2018, the learned Judge appointed Ms. Evans the Administrator ad litem for the estate of her daughter, for the purpose of these proceedings. The Judge thereafter adjourned the matter to the 19th June, 2018, for consideration of the other reliefs being sought from the Court by Ms. Evans.

[5] In Jamaica, section 22 of the **Registration (Births and Deaths) Act (RBDA)** mandates, that all deaths and the causes of death of all persons must be registered. That section states that: -

"The death of every person dying in Jamaica after the coming into operation of this Act, and the cause of such death, shall be registered by the Registrar in the manner directed by this Act."

[6] Section 32 of the **RBDA** also provides: -

"(1) The Registrar, upon registering any death, or upon receiving such written notice of the occurrence of a death accompanied by a medical certificate as is before provided by this Act, shall forthwith, give, without fee or reward, to the person giving information concerning the death or sending the notice, a certificate under his hand in the prescribed form that he has registered or received notice of the death, as the case may be.

(2) In the case of the death of any person in which a Coroner, Justice of the Peace or Officer or Sub-officer of the Constabulary shall either-

(a) direct a medical practitioner to make a post mortem examination under the Coroners Act of the body of the deceased person and upon the receipt of the report on such examination shall authorize the burial of the body; or

(b) decides, after investigation, that the circumstances of the death are not such as to require the making of a post mortem examination under the Coroners Act,

the said Coroner, Justice of the Peace or Officer or Sub-Officer of the Constabulary shall deliver to the person causing the body to be buried an order for burial in the prescribed form and shall notify the Registrar in writing within forty-eight hours that the said order has been delivered to the said person.

(3) Every certificate of the Registrar and every order for burial issued under this section shall be delivered to the person effecting the burial of the body of the deceased person, and any person to whom such certificate was given by the

Registrar who fails so to deliver or cause to be delivered the same shall be liable to a penalty not exceeding five hundred thousand dollars.

(4) *The body of a deceased person shall not be buried before a certificate of the Registrar or an order for burial issued under this section has been delivered to the person effecting the burial, that is to say-*

(a) *in the case of burial in a burial ground, to the person who has control over or ordinarily buries bodies in such burial ground;*

(b) *in the case of burial not in a burial ground, to the relative, friend or legal representative having charge of or being responsible for the burial;*

(c) *in the case of burial in a public cemetery to the keeper of the cemetery;*

Provided that a person effecting the burial may proceed with the burial, if he satisfies himself by obtaining a written declaration in the prescribed form that a Registrar's certificate or order for burial has in fact been issued in respect of the deceased.

(5) *The person effecting the burial of the body of a deceased person shall, within ninety-six hours of the burial, deliver to the Registrar in the prescribed manner a notification as to the date and place of the burial.*

(6) *Any person who effects the burial of the body of a deceased person in contravention of this section or who fails to deliver to the Registrar a notification of the date and place of the burial as required by this section shall be liable to a penalty not exceeding five hundred thousand dollars."*

[7] The RBDA indicates who has the ultimate responsibility for providing the necessary information to the Registrar, so that a death can be registered. The identity of the person who has that responsibility, will depend primarily on where the death occurred. Section 24 of the Act governs the circumstances where a person dies in any place which is not a house, and provides as follows: -

"Where a person dies in a place which is not a house, or a dead body is found elsewhere than in a house, it shall be the duty of every relative of such deceased person having knowledge of any of the particulars required to be registered concerning the death, and in default of such relative of every person present at the death, and of any person finding, and of any person taking charge of the body, and of the person causing the body to be buried or cremated, to give to the Registrar, within the five days next after the death or the finding, such information of the particulars required to be registered concerning the death as the informant possesses, and in the presence of the Registrar to sign the registration form and counterfoil."

[Emphasis supplied]

[8] Section 2 of the aforementioned Act provides that a house includes a public institution. A public institution is defined by that same section, as meaning “a prison, lock-up, work-house, mental hospital, hospital, and any prescribed public or charitable institution conducted by the Government of Jamaica, or by the Kingston and Saint Andrew Corporation or by any Parish Council.” The Act also provides at section 2, that a private hospital means “any hospital or nursing home, not being a public institution, which is established under any enactment and any nursing home registered under the **Nursing Homes Registration Act.**”

[9] From the evidence before the Court, the deceased died at the University Hospital of the West Indies, which is a private hospital established by the **University Hospital Act.** It is therefore evident that the Hospital is not a house as defined by the **RBDA.** Therefore, representatives of the Hospital would fall under the category of persons required under section 24 of the **RBDA**, to provide information to the Registrar for the death to be registered, as the Hospital had taken charge of the deceased’s body. The obligation therefore rests with the agents of the Hospital, to ensure that Ms. White’s death is properly registered with the Registrar.

[10] Additionally, section 35(b) of the **RBDA** also mandates, that a certificate of cause of death should be submitted to the Registrar, in relation to any person who has been attended during his last illness by a registered medical practitioner. The section reads: -

“35. With respect to certificates of the cause of death the following provisions shall have effect-

(a)...

(b) *“In case of the death of any person who has been attended during his last illness by a registered medical practitioner that practitioner shall sign, and give to some person required by this Act to give information concerning the death, a certificate stating to the best of his knowledge and belief the cause of death, and such person shall upon giving information concerning the death, or giving notice of the death, deliver that certificate to the Register, and the cause of death as stated in that certificate shall be entered in the register, together with the name of the certifying medical practitioner.*

The cause of death shall in such certificate be stated as nearly as may be in plain English.”

[Emphasis supplied]

[11] On an examination of section 35, I am of the view that that section does not mandate that a post mortem must be done before the registered medical practitioner can issue a certificate of cause of death. What it does indicate is that the practitioner must state to the best of his knowledge and belief, the cause of death of the person. However, the circumstances may be such that the practitioner cannot state to the best of his knowledge and belief the cause of death, as is the situation in the present case. I am mindful then that a post mortem would be of great assistance, and would be a necessary requirement for the medical practitioner, in light of the fact that Ms. White's cause of death is unknown. However, that section does not indicate that a post mortem is mandatory, for if that were the case, the legislation would have expressly so provided. As a consequence, I am satisfied that the Hospital cannot force Ms. Evans to consent to a post mortem, as a precondition for the issuance of the certificate of cause of death.

[12] Section 36 of the **RBDA** however, deals specifically with the situation where a certificate of cause of death cannot be obtained. This is the case in the present matter, as the medical practitioner who last attended Ms. White, is unable to state to the best of his knowledge and belief her cause of death. Further, Ms. Evans is not prepared to consent to a post mortem being conducted by the Hospital. Section 36 provides: -

"(1) In case of any death in respect of which no medical certificate of the cause of such death can be obtained and no post mortem examination under the Coroners Act has been made, the person required to give information concerning the death shall deliver to the Registrar a written declaration that no medical practitioner attended the deceased during his last illness or, if the deceased were so attended, shall declare in writing the reasons why a medical certificate cannot be obtained. On receipt of such declaration the Registrar may register the death or if it appears to him that it will be possible in the future to obtain a medical certificate of the cause of death of the deceased, the Registrar may, without registering the death, issue a certificate under section 32 that he has received notice of the death of the said deceased:

Provided that anywhere there is reasonable cause to suspect that the deceased has died either a violent or an unnatural death, or has died a sudden death of which the cause is unknown, or has died in such place or under such circumstances, as to require an inquest in pursuance of any law, such death shall not be registered until investigation under the Coroners Act shall have been made.

(2) *In any case where the Registrar has received notice of a death in respect of which no medical certificate of cause of death can be obtained and in which no post mortem examination under the Coroners Act has been ordered he shall forthwith send notice in writing of such death to the Medical Officer (Health) of the parish in which such death occurred; and if as a result of investigations into the circumstances of the death such Medical Officer (Health) shall, at any time within forty-two days of the date of the death, send a written certificate of the cause thereof, the Registrar shall enter the particulars of such cause on the counterfoil of the registration form, or on the form and counterfoil if both are still in his possession, and shall send such certificate in due course to the Registrar-General."*

[Emphasis supplied]

[13] I am satisfied that section 36 is applicable to the circumstances of the present case, as a certificate of cause of death cannot be obtained, and a post mortem under the **Coroners Act** has not been ordered. The medical practitioner from the Hospital, who last attended Ms. White must comply with the requirements of that section by making a declaration in writing, as to why a certificate of cause of death cannot be obtained, and submit same to the Registrar. Once this is done the Registrar may register the death, or without registering the death, may issue a certificate to Ms. Evans indicating that he has received notice of the death. The Registrar after receiving notice of the death from the Hospital, is statutorily obliged to send a notice in writing to the Medical Officer (Health) of the parish in which the death occurred informing him of the death. After receiving the notice, that Medical Officer is mandated to investigate the circumstances of the death, and thereafter send a written certificate of the cause of death to the Registrar.

[14] The Hospital having submitted the declaration to the Registrar, would then be in compliance with its statutory obligations under the **RBDA**. In such circumstances, there would be no reason for the Hospital to remain in possession of the deceased's body, where it is not in a position to issue the certificate of cause of death. As such, the Hospital should deliver possession of the deceased's body to Ms. Evans, so that she can begin to make the necessary arrangements for burial. It is to be noted however, that although Ms. Evans will be in possession of the body, she cannot effect the burial until she has received the Registrar's Certificate, or a Burial Order, as the case may be, as

she would be in breach of section 32(4) of the **RBDA**, which prohibits a burial taking place without either of those documents.

[15] For completeness, reference ought to be made to Section 6(1) of the **Coroners Act**. That section outlines the circumstances in which either the Coroner, a Justice of the Peace, or a police officer may order that a post mortem be done on the body of a deceased person, where there is reasonable cause to suspect that the person has died a violent, unnatural or sudden death. That section reads: -

*"(1) Subject to subsection (1A), where a Coroner, or Justice, or designated police officer is informed that the dead body or part thereof, of a person, is lying within the jurisdiction of such Coroner, or Justice, or within the parish in respect of which such designated police officer is assigned, and **there is reasonable cause to suspect that such person has died, either a violent, or an unnatural death, or has died a sudden death, of which the cause is unknown, or that a medical certificate of cause of death under the Registration (Births and Deaths) Act in respect of such person will not be forthcoming** or that such person has died in prison, or in such place, or under such circumstances, as to require an inquest in pursuance of any law, it shall be lawful for such Coroner, Justice, or designated police officer, **in his discretion, to direct any duly qualified medical practitioner to make a post mortem examination of the dead body.***

(1A) Where a coroner, Justice of the Peace or designated police officer receives information described in subsection (1) as regard any dead body and there is reasonable cause to suspect that death occurred as a result of the act or omission of an agent of the State, the Coroner or Justice of the Peace (as the case may be) shall forthwith notify the Office, and the Office may direct any duly qualified medical practitioner to make a post mortem examination of the body; and

(2) The appropriate Coroner or a Justice of the Peace who orders a post mortem examination shall forthwith notify the designated police officer of the fact of the death and that a post mortem examination has been ordered."

[16] As highlighted from the evidence before the Court, Ms. White died at the Hospital while an inpatient, and there is no evidence to suggest that her death was violent. Neither is there evidence before the Court that her death was unnatural or sudden. In essence, there is no information before the Court pertaining to the circumstances that led to Ms. White's death. As a consequence, I am of the view that the **Coroners Act** would be of no assistance to Ms. Evans. If however, Ms. Evans has any information relating to the circumstances of her daughter's death, which would lead her to reasonably believe that her death was violent, unnatural or sudden, then the matter

ought to be reported either to the Coroner, a Justice of the Peace, or a police officer, so that a coroner's post mortem can be ordered pursuant to section 6 of the **Coroners Act**.

[17] Once the death is reported to the Coroner, a Justice of the Peace, or a police officer, and there is reasonable cause to suspect that Ms. White died a violent, unnatural or sudden death, of which the cause is unknown, any of the aforementioned persons may, in their discretion, order that a post mortem be performed on the body. It must be emphasized that this Court cannot interfere with the discretion of the Coroner, the Justice of the Peace, or a police officer, so as to direct either of them to order a post mortem. The **Coroners Act** clearly provides that the question of whether or not to order a post mortem is solely a matter for the discretion of the named individuals.

[18] There is one remaining issue which the Court ought to address, and that is in relation to who has the right of ownership to Ms. White's body. The common law principle is that there is no right of ownership to a dead body. This was recently highlighted by Klein J in the case of **Anstey v Mundle and Anor** [2016] EWHC 1073 (Ch), who cited with approval the principle as stated by Lady Hale in the case of **Buchanan v Milton** [1999] 2 FLR 844, where she opined: -

"There is no right of ownership in a dead body. However, there is a duty at common law to arrange for its proper disposal. This duty falls primarily upon the personal representatives of the deceased (see Williams v Williams (1881) 20 ChD 659; Rees v Hughes [1946] KB 517). An executor appointed by will is entitled to obtain possession of the body for that purpose (see Sharp v Lush (1879) 10 ChD 468, 472; Dobson v North Tyneside Health Authority and Another [1997] 1 FLR 598, 602, obiter) even before the grant of probate. Where there is no executor, that same duty falls upon the administrators of the estate, but they may not be able to obtain an injunction for delivery of the body before the grant of letters of administration (see Dobson)..."

[19] The case of **Buchanan** illustrates that the duty to arrange for the burial of a deceased person, would rest upon the personal representative of the deceased. On the undisputed evidence, Ms. White died intestate, and as such the Administrator of her Estate would have the responsibility to arrange for her burial. Sykes J (as he then was) in the case of **Adasa Blair and Ors v Neville Blair and Anor** [2015] JMSC Civ. 3,

noted that any person, including family members can intervene to get the body for safe and satisfactory disposal. There the learned Judge stated at paragraph 33 that: -

*"The true position is that the common law imposes an obligation on the living to dispose of the body in a dignified and safe way. The underlying idea seems to be one of public health and public safety. Executors and administrators are part of the natural group of persons to whom one would look to see who is going to perform that duty. The law comes to aid of anyone who wishes to perform that duty, even if that person is a stranger, when it becomes clear that persons who would normally undertake the job are not doing, have not done or perhaps have no intention of doing it. Prudence would suggest that before a stranger takes up that task, it would be good to enquire whether the relatives, executors or administrators are willing and able to do the job but there is certainly no *prima facie* legal basis for saying that relatives, executors and administrators have a better claim to the body than a stranger. It is simply that the courts may in its discretion prevent a stranger from disposing of the body if there are relatives who are prepared to do so. Thus when executors and administrators do not interfere with the disposal of the body by relatives, it is not on the basis that the relatives have a better legal claim to the body but because, the relatives, on the face of it, are disposing of the body properly. If that is not the case, the executors, administrators and indeed any other person can intervene to get the body for safe and satisfactory disposal... Consistent with the common law, this court is not concerned with who disposes of the body so long as it being done safely."*

[Emphasis supplied]

[20] Ms. Evans has stepped forward as her daughter's next of kin, to seek possession of her body in an effort to arrange for her burial. This she has done because an Administrator of her daughter's Estate has not been appointed by the Court. Ms. Evans has only been appointed Administrator for the purpose of this Court action. She is not claiming ownership of her daughter's body, as her request is for the Hospital to release her daughter's body to her, so that she can give her a proper burial. In my view, Ms. Evans, as mother of the deceased, would be the primary person on whom the obligation would fall to properly dispose of her daughter's body in a dignified manner. Furthermore, as this Court understands it, the Hospital has not asserted any right to the deceased's body, nor has it indicated that it has a right to arrange for its proper disposal. In the circumstances, I am satisfied that there is nothing to prevent Ms. Evans, although she is not the Administratrix of her daughter's Estate, from seeking possession of her body, so as to arrange for her dignified burial.

[21] The Court therefore Declares that: -

- a) The 1st Defendant has no legal basis to refuse to release to the Claimant the body of her daughter Carrell Kerisha White, who died at the 1st Defendant's facility on the 19th December, 2017;
- b) The 1st Defendant is ordered to immediately release to the Claimant or her duly nominated funeral home, the body of her daughter Carrell Kerisha White to facilitate her burial;
- c) Costs to the Claimant to be paid by the 1st Defendant, such costs to be taxed if not agreed, and paid within fourteen (14) days of agreement or taxation.