

PARLIAMENT OF THE COMMONWEALTH OF THE BAHAMAS

Status of Children Act

Status of Children Act, Ch. 130, LRO 1/2006 (Bahamas) · No. 6 of 2002

SUMMARY

The Status of Children Act (Chapter 130) of The Bahamas abolishes the common law distinction between legitimate and illegitimate children, providing that the parent-child relationship is determined irrespective of the parents’ marital status for all purposes of Bahamian law, and abolishing the rule of construction that words of relationship imply only legitimate relationship. The Act establishes nine rebuttable presumptions of paternity (including marriage, cohabitation, and various forms of acknowledgment) and sets out procedures for obtaining court declarations of paternity or parentage, including where no presumption applies. It empowers the Supreme Court to direct blood tests and draw adverse inferences upon refusal, and contains transitional provisions preserving prior law for dispositions and intestacies that occurred before the Act’s commencement.

CASE DETAILS

COURT	Parliament of the Commonwealth of The Bahamas
JURISDICTION	Other
DOCKET	6 of 2002
DISPOSITION	other
PRECEDENTIAL VALUE	legislation

TOPICS

- family law
- evidence
- civil procedure
- probate
- constitutional law

PRACTICE AREAS

- Family Law
- Estates and Trusts
- Evidence
- Civil Procedure

KEY QUOTATIONS

- “Subject to the provisions of sections 6 and 16, for all the purposes of the law of The Bahamas the relationship between every person and his father and mother shall be determined irrespective of whether the father and mother are or have been married to each other, and all other relationships shall be determined accordingly.” (Section 3(1))
- “The rule of construction whereby in any instrument words of relationship signify only legitimate relationship in the absence of a contrary expression of intention is hereby abolished.” (Section 3(2))

FACTUAL BACKGROUND

The Status of Children Act reforms family law by providing for the equal status of all children, abolishing the common law distinction between children born to married parents and those born outside marriage. It establishes that parent-child relationships are determined irrespective of the parents' marital status, and kindred relationships follow accordingly. The Act sets out presumptions of paternity, procedures for court declarations of paternity and parentage, the use of blood tests as evidence, and transitional rules for dispositions and intestacies that occurred before its commencement.

PROCEDURAL HISTORY

This is a statute enacted by the Parliament of The Bahamas, assented to on 31 January 2002 and commenced on 1 February 2002. It is codified as Chapter 130 in the Statute Law of The Bahamas.

DISPOSITION

other

OPINION

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LAW OF THE BAHAMAS CHAPTER 130 STATUS OF CHILDREN An Act to reform the law
relating to children by providing for their equal status.

[Assent 31st January, 2002] [Commencement 1st February, 2002] PART I PRELIMINARY 1. This
Act may be cited as the Status of Children Act. 2. In this Act — “blood tests” means blood tests
carried out and includes any test made with the object of ascertaining the inheritable
characteristics of blood; “court” means the Supreme Court; “parent” in relation to a father or
mother, as the circumstances require, includes an adoptive father or mother.

PART II EQUAL STATUS OF CHILDREN 3. (1) Subject to the provisions of sections 6 and 16, for all the purposes of the law of The Bahamas the relationship between every person and his father and mother shall be determined irrespective of whether the father and mother are or have been married to each other, and all other relationships shall be determined accordingly.

(2) The rule of construction whereby in any instrument words of relationship signify only legitimate relationship in the absence of a contrary expression of intention is hereby abolished. 6 of 2002 S.I. 36/2005 Short title. Interpretation. All children of equal status. CH.130 – 4] STATUS OF CHILDREN STATUTE LAW OF THE BAHAMAS LRO 1/2006 (3) Nothing in the section shall affect or limit in any way any rule of law relating to — (a) the domicile of any person; (b) the citizenship of any persons; (c) the provisions of the Adoption of Children Act which determine the relationship to any other person of a person who has been adopted; (d) the construction of the word “heir” or of any expression which is used to create an entailed interest in real or personal property.

4. The parent and child relationship as determined in accordance with section 3 shall for all purposes be followed in the determination of other kindred relationships flowing therefrom. 5. Unless a contrary intention appears, any reference in an enactment or instrument to a person or class of persons described in terms of relationships by blood or marriage to another person shall be construed to refer to or include a person who comes within the description by reason of the relationship of parent and child as determined in accordance with sections 3 and 4.

6. Subject to subsection (3) of section 3, this Act shall apply in respect of every person, whether born before or after the commencement of this Act, and whether born in The Bahamas or not, and whether or not his father or mother has ever been domiciled in The Bahamas. PART III ESTABLISHMENT OF PATERNITY 7.

(1) Unless the contrary is proven on a balance of probabilities, there is a presumption that a male person is, and shall be recognised in law to be, the father of a child in any one of the following circumstances — (a) the person was married to the mother of the child at the time of its birth; (b) the person was married to the mother of the child and that marriage was terminated by death or judgment of nullity within 280 days before the birth of the child, or by divorce where the decree nisi was granted within 280 days before the birth of the child; Ch. 131 Kindred relationships.

Rule of construction. Application. S.I. 36/2005. Presumptions of paternity. STATUS OF CHILDREN [CH.130 – 5 LRO 1/2002 STATUTE LAW OF THE BAHAMAS (c) the person marries the mother of the child after the birth of the child and acknowledges that he is the natural father; (d) the person was cohabiting with the mother of the child in a relationship of some permanence at the time of the birth of the child, or the child is born within 280 days after they ceased to cohabit; (e) the person has been adjudged or recognised in his lifetime by a court of competent jurisdiction to be the father of the child; (f) the person has, by affidavit sworn before a

justice of the peace or a notary public or by other document duly attested and sealed, together with a declaration by the mother of the child contained in the same instrument confirming that the person is the father of the child, admitted paternity, but such affidavit or other document shall be of no effect unless it has been recorded with the Registrar General; (g) the person has acknowledged in proceedings for registration of the child, in accordance with the law relating to the registration of births, that he is the father of the child; (h) the mother of the child and a person acknowledging that he is the father of the child have signed and executed a deed to this effect in the presence of a counsel and attorney, but such a deed shall be of no effect unless it is notarised and recorded with the Registrar General prior to the death of the person acknowledging himself to be the father; (i) a person who is alleged to be the father of the child has given written consent to that child adopting his name in accordance with the law relating to the change of name; or (j) a person who is alleged to be the father of the child has by his conduct implicitly and consistently acknowledged that he is the father of the child.

(2) Where circumstances exist that give rise to presumptions of paternity in respect of more than one father, no presumption shall be made as to paternity. CH.130 – 6] STATUS OF CHILDREN STATUTE LAW OF THE BAHAMAS LRO 1/2002 8.

For the purposes of section 7, where a man and a woman, in good faith, go through a form of marriage that is void, they shall be deemed to be married for the period during which they cohabit, and the presumption referred to in paragraph (b) of section 7(1) applies accordingly. 9.

(1) Any person who — (a) being a woman, alleges that any named person is the father of her child; (b) alleges that the relationship of father and child exists between himself and any other person; or (c) being a person having a proper interest in the result, wishes to have it determined whether the relationship of father and child exists between two named persons, may apply in such other manner as may be prescribed by rules of court to the court for a declaration of paternity, and if it is proved to the satisfaction of the court that the relationship exists the court may make a declaration of paternity whether or not the father or the child or both of them are living or dead.

(2) Where a declaration of paternity under subsection (1) is made after the death of the father or of the child, the court may at the same or any subsequent time make a declaration determining, for the purposes of paragraph (f) of subsection (1) of section 7, whether any of the requirements of that paragraph have been satisfied. 10.

(1) Where there is no person presumed under section 7 to be the father of a child, any person may apply to the court for a declaration that a male person is his father, or any male person may apply to the court for a declaration that a person is his child.

(2) An application may not be made under subsection (1) unless both persons, in respect of whom the relationship is sought to be established, are living. (3) Where the court finds, on a balance of

probabilities, that the relationship of father and child has been established, the court may make a declaratory order to that effect, and, subject to sections 12 and 13, that order shall be recognised for all purposes.

Determination of paternity in void marriages. Application for declaration of paternity. Application for declaration of paternity where no presumption. STATUS OF CHILDREN [CH.130 – 7 LRO 1/2002 STATUTE LAW OF THE BAHAMAS 11. A written acknowledgement of parentage that is admitted in evidence in any civil proceeding against the interest of a person making acknowledgement is prima facie proof of that fact.

12. Where a declaration has been made under section 9 or 10 and evidence becomes available that was not available at the previous hearing, the court may, upon application for the variation or discharge of such declaration, vary or discharge that declaration or give such directions as are ancillary thereto. 13. An appeal lies from a declaration under section 9 or 10 or a decision under section 12 to the Court of Appeal.

14. (1) Where an application is made to the court to determine the parentage of a child, the court may give directions to the applicant to obtain blood tests of such persons as the court specifies and to submit the results in evidence.

(2) Any directions given under subsection (1) may be given subject to such terms and conditions as the court determines. (3) Where directions are given under subsection (1) and a person named therein refuses to submit to the blood tests, the court may draw such inferences as it thinks appropriate.

(4) A person specified in directions granting leave to obtain blood tests under subsection (1) shall be deemed to have consented — (a) where the person is a minor, but — (i) understands the nature and purpose of the blood tests and consents thereto; or (ii) the person having his charge consents; and (b) where the person is without capacity for any reason other than minority, if the person having his charge consents and a medical practitioner certifies that the giving of a blood sample would not be prejudicial to his proper care and treatment.

Acknowledge- ment against interest. Effect of new evidence. Appeals. Blood tests. CH.130 – 8] STATUS OF CHILDREN STATUTE LAW OF THE BAHAMAS LRO 1/2002 PART IV MISCELLANEOUS 15. The Rules Committee established under section 75 of the Supreme Court Act may make rules — (a) respecting blood tests for which directions are given under section 14, including, without limiting the generality of the foregoing — (i) the method of taking blood samples and the handling, transportation and storage thereof; (ii) the conditions under which a blood sample may be tested; (iii) designating the persons who are authorised to conduct blood tests and the facilities that may be used in connection therewith; (iv) the procedure in respect of

the admission of reports of blood tests in evidence; (v) the prescribed forms to be used for the purposes of section 14; and (b) generally to give effect to this Act.

PART V TRANSITIONAL PROVISIONS 16. (1) All dispositions made before the commencement of this Act shall be governed by the enactments and rules of law which would have applied to them if this Act had not been passed.

(2) Where any disposition to which subsection (1) applies creates a special power of appointment, nothing in this Act shall extend the class of persons in whose favour the appointment may be made, or cause the exercise of the power to be construed so as to include any person who is not a member of that class.

(3) The estates of all persons who have died intestate as to the whole or any part thereof before the commencement of this Act shall be distributed in accordance with any enactments and rules of law which would have applied to them as if this Act had not been passed. Rules. Transitional provisions regarding dispositions. STATUS OF CHILDREN [CH.130 – 9 LRO 1/2002 STATUTE LAW OF THE BAHAMAS (4) In this section “disposition” means a disposition of real or personal property whether inter vivos or by will or codicil executed before the commencement of this Act.

17. Nothing in this Act shall be construed to require the Registrar General to amend any prior registration showing parentage other than in recognition of an order made under section 9, 10 or 12. Amendment of prior registration.