

Low Guang Hong David and others v Suryono Wino Goei
[2012] SGHC 93

Case Number : Originating Summons No 151 of 2012
Decision Date : 03 May 2012
Tribunal/Court : High Court
Coram : Tay Yong Kwang J
Counsel Name(s) : Gregory Vijayendran and Vidhya Mahentharan (Rajah & Tann LLP) for the plaintiffs; Tan Yew Cheng (Leong Partnership) for the defendant.
Parties : Low Guang Hong David and others — Suryono Wino Goei

Probate and Administration – intestate succession – interpretation of s 3 Intestate Succession Act – whether definition of “child” includes “stepchild”

Statutory Interpretation – definitions – “child” – whether definition includes “stepchild”

Words and Phrases – definitions – “child” – whether definition includes “stepchild”

3 May 2012

Judgment reserved.

Tay Yong Kwang J:

Introduction

1 The marriage in December 1975 between Mr Low Kim Huat (“Mr Low”) and Madam Lina Halim (“Mdm Lina”) did not produce any children. However, Mr Low had children from his previous marriage and they are the plaintiffs in this originating summons. They were said to have been treated by Mdm Lina as if they were her own children. They were all adults when Mr Low and Mdm Lina got married. When Mr Low passed away in 1994, he bequeathed his estate to Mdm Lina. She died on 21 April 2011 without leaving a will. An unsigned will apparently leaving her estate to the plaintiffs was, however, found in her safe deposit box with a bank after her demise. No evidence was adduced as to how this unsigned will came about.

2 Mdm Lina’s estate comprises [\[note: 1\]](#):

- (a) A HDB flat – Block 4 Upper Aljunied Lane #05-10 Singapore 360004
- (b) A freehold private property - 2 Jalan Setia Singapore 368420
- (c) Jewellery and cash in a safe deposit box in OCBC Bank.

3 As Mdm Lina, who was not a Muslim, did not leave a will, the Intestate Succession Act (Cap 146, 1985 Rev Ed) (“the Act”) governs the distribution of her estate. The plaintiffs commenced this action for a declaration that, as the step-children of Mdm Lina, their claims in respect of her estate rank higher in priority over the claim of Mdm Lina’s single brother, the defendant.

4 Section 3 of the Act defines a child as follows:

Interpretation

3. In this Act —

“child” **means** a *legitimate child* and **includes** any *child adopted* by virtue of an order of court under any written law for the time being in force in Singapore, Malaysia or Brunei Darussalam;

...

[emphasis added]

5 The issue that has to be determined in these proceedings is whether “child” under s 3 of the Act is to be interpreted as including a step-child. If the answer is yes, the plaintiffs would be deemed to be the “children” of Mdm Lina for the purposes of the Act. Under the rules of distribution in s 7 of the Act, if the plaintiffs are considered Mdm Lina’s children for the purposes of the Act, they are entitled to Mdm Lina’s estate in equal portions to the exclusion of all other parties pursuant to Rule 3 in that section. However, if the plaintiffs are not regarded as Mdm Lina’s children under the Act, then her estate will go to the defendant as her only surviving family member under Rule 6 in the said s 7.

Plaintiffs’ Submissions

6 The plaintiffs’ submissions were made by Mr Gregory Vijayendran (“Mr Vijayendran”) and comprised two parts. The first was to persuade me that there is no obstacle in the Act which prevents me from interpreting “child” to include a step-child. The second part was an attempt to convince me why I should do so.

7 In the first part of his submissions, Mr Vijayendran stated that the Act does not expressly or impliedly exclude step-children, unlike illegitimate children. According to him, the word “includes” indicates an inclusionary and enlarging definition. It makes clear that the definition includes a matter that otherwise would or might be taken as outside it (see *Dilworth v Commissioner of Stamps* (1899) AC 99 and *Lui Chang Soong v Public Prosecutor* [1992] 1 SLR(R) 229). Therefore, there is no restriction on reading “child” to include a step-child.

8 Mr Vijayendran then made four arguments as to why a step-child should be included within the definition of “child”. He submitted, firstly, that this would be in line with Parliament’s intention. In the Parliamentary debates during the second reading of the Intestate Succession Bill (Singapore Parliamentary Debates, Official Report (12 December 1966) Volume 25 at column 565 [\[note: 21\]](#)), the Minister for Law said the Act was intended to replace the outmoded Statute of Distributions. Mr Vijayendran read this to mean that the Act was intended to accommodate local customs and needs. As there were polygamous marriages in the past, there would have been the well known phenomenon of step-children. Parliament could not have been oblivious to such stepchildren [\[note: 31\]](#) and was likely to have impliedly included them within the Act.

9 Mr Vijyanedran’s second argument was that the law on maintenance obligations before and after the death of a step-parent would be better rationalised if the definition of “child” in s 3 of the Act included a step-child. Section 70 of the Women’s Charter (Cap 353, 2009 Rev Ed) (“WC”) provides that where a person has accepted a child who is not his child as part of his family, it shall be his duty to maintain that child while he remains a child so far as the father or mother of the child fails to do so. This obligation terminates upon death and if the said person dies intestate, the step-child may not be provided for. However, if “child” in s 3 of the Act includes a step-child, then step-children will still be provided for even after the death of their step-parent.

10 Mr Vijayendran's third and fourth arguments were pre-emptive counter-arguments. A policy reason why step-children should not come under the Act was the possibility of "double-dipping", where step-children could potentially claim under the estate of their biological as well as their step-parents. In respect of this policy reason, he argued that this possibility did not appear in the records as a matter of concern for Parliament. Citing *Re Leach (deceased)* [1985] 3 WLR 413 and *Re Callaghan (deceased)* [1985] Fam 1, he further argued that the double-dipping problem would be mitigated in cases where the step-child was treated as a child of the step-parent and if the deceased step-parent's estate comprised largely of assets which were derived from the step-child's biological parent. The fact situation here falls within these two mitigating factors.

11 Fourth, in *AAG v Estate of AAH, deceased* [2010] 1 SLR 769 ("*AAG v AAH*"), the Court of Appeal at [37] said that:

... the ordinary literal meaning of "daughter" would appear to have nothing to do with the legal state of legitimacy but with a biological fact.

This suggests that there has to be a biological connection which, in turn, would preclude a step-child from being considered a "child" under the Act. Mr Vijayendran sought to distinguish *AAG v AAH* on the basis that the statute in question there was the Inheritance (Family Provision) Act (Cap 138, 1985 Rev Ed) ("*IFPA*") and that the focus in that case was on illegitimate children who, unlike step-children in the Act, were impliedly excluded.

Defendant's Submissions

12 Ms Tan Yew Cheng ("Ms Tan") made two main submissions on behalf of the defendant. She submitted that the use of terms like "issue" and "descendants" suggests an inheritance structure based on blood ties. She also referred to s 6(b) of the Act which states that a person related by half-blood to the deceased ranks after one who is related by whole blood. As step-children do not have blood ties to their step-parent, they cannot claim against the latter's estate under the Act.

13 Second, there are statutes which define a "child" or "family member" to include a step-child. In the light of these statutes, Parliament's decision not to expressly include a step-child within the definition of "child" in the Act suggests that a step-child was not intended to come within the Act's purview. The said statutes are:

- (a) Maintenance of Parents Act (Cap 167B, 1996 Rev Ed) ("*MPA*")

Interpretation

2. In this Act, unless the context otherwise requires —

...

"child" includes an illegitimate or adopted child and a *step-child*;

[emphasis added]

- (b) S 64 of the WC

Interpretation of [Part VII of the WC]

64. In this Part, unless the context otherwise requires —

...

“family member”, in relation to a person, means —

- (a) a spouse or former spouse of the person;
- (b) a child of the person, *including an adopted child and a step-child*;
- (c) a father or mother of the person;
- (d) a father-in-law or mother-in-law of the person;
- (e) a brother or sister of the person; or
- (f) any other relative of the person or an incapacitated person who in the opinion of the court should, in the circumstances, in either case be regarded as a member of the family of the person;

...

[emphasis added]

The decision of the court

14 The significance of the word “includes” in a definition may be very different when it is used in the phrase “means ... and includes”. On its own, the word “includes” makes a definition extensive (see *Chin Seow Noi and others v Public Prosecutor* [1993] 3 SLR(R) 566 at [77]). In contrast, the phrase “means ... and includes” may serve two purposes. The word “includes” can either illustrate the main meaning or it can extend the main meaning beyond its natural import (see *Pan-United Marine Ltd v Chief Assessor* [2008] 3 SLR 569).

15 With these principles in mind, I turn to s 3 of the Act. In my view, “legitimate child” is the main meaning and “adopted child” is the enlarged definition beyond the natural import of the word “child”. Taken as a whole and in its proper context, the Act requires a legal and biological connection between parent and child and hence the exception for lawfully adopted children who satisfy the legal but not the biological requirement.

16 By impliedly excluding the claims of illegitimate children, the word “legitimate” indicates a legal connection is required. The Court of Appeal in *AAG v AAH* commented on the Act at [38(c)]:

Under the Intestate Succession Act, only legitimate children are entitled to claim against their natural parent’s estate. To permit an illegitimate child to claim for maintenance against his or her deceased parent’s estate would be to indirectly allow that child to claim for a share in the intestate parent’s estate, contrary to the provisions of the Intestate Succession Act.

17 A commonsensical reading of the Act would show that a biological connection between the intestate and the child is also needed. The word “child” has various definitions, the most common being a reference to a non-adult. The terms used in the Act, such as “issue” and “descendants”, do point quite conclusively to the need for a biological connection. It must therefore follow that a step-

child is not meant to be covered by the Act. Even though the statute in question in *AAG v AAH* was the IFPA, the Court of Appeal's statements (quoted at [16] above) are at least highly persuasive. In that case, the Court of Appeal also noted (at [37] of the case) that the ordinary literal meaning of "daughter" concerned a biological fact and not the legal state of legitimacy.

18 Mr Vijayendran accepted that a step-child would not fall within the main meaning of s 3, i.e. "legitimate child". His contention was that a step-child comes under an open category indicated by the word "includes". In other words, the definition has been broadened to encompass adopted children but it does not necessarily confine itself to adopted children only. It could, it was argued, be extended by judicial interpretation to include step-children because this category was not expressly excluded in the Act. Though I appreciate Mr Vijayendran's valiant attempts to advance the cause of his clients, I have to disagree with him. The maxim, *expressio unius est exclusion alterius*, means that when Parliament has expressly included one thing, it should be assumed that it did not intend to include other things. On its own, the word "includes" may in some cases suggest an open category where different classes of children could be added over time. However, when the word "includes" is part of the phrase "means ... and includes" as in the present case, it simply enlarges the main meaning to include adopted children and only to that extent. This is reinforced by the other provisions in the Act referred to by Ms Tan at [12] above. Therefore, step-children do not fall within the definition of "child" in s 3 of the Act.

19 There was no extraneous legislative or other evidence adduced that would lead to a different conclusion. As Mr Vijayendran contended, Parliament must have been aware of the phenomenon of step-children during the debates leading to the Act. By choosing not to include them in the definition of "child" while expressly enlarging the said definition to embrace lawfully adopted children, Parliament has made its intention clear. There is no evidence to show that Parliament's intention was to provide for step-children in the event of intestacy. Step-children were not discussed during the parliamentary debates or in the Report of the Select Committee on the Intestate Succession Bill, Parl 5 of 1967, 7 March 1967. The decision to define "child" to include a step-child in other statutes (see [13] above) and not to do likewise in the Act (whether at its inception or subsequently when the other statutes were being considered) suggests that Parliament did not intend step-children to be entitled to the estate of an intestate step-parent. I declined Mr Vijayendran's invitation to consider various foreign authorities as those involved statutes that were not *in pari materia* with the Act.

20 The first plaintiff deposed in his first affidavit how Mdm Lina treated him and his siblings as her own children [note: 4], for example, how she would introduce the first plaintiff and his wife as her son and daughter-in-law respectively. He also asserted that Mdm Lina's estate rightfully belonged to him and his siblings as their biological father had paid for most of it. These comments relate to the equities of a particular case but have no influence on proceedings to determine the meaning of words in a statute. We are concerned here with the question whether step-children are within the definition of "child" in the Act, not whether the plaintiffs here deserve to be treated as "children" for the purposes of the Act. Similarly, we are not concerned with the question whether the defendant deserves to have a claim to the whole or part of the estate of his deceased sister. Both parties rightly agreed that the equities of this case form only the background facts and are irrelevant to the task of statutory construction. Love and filial piety do not make a person a "child" of the intestate if that person does not come within the ambit of the Act. Even if equities do matter, the step-child is normally not completely without recourse. He would still be entitled to the estate of his biological parent in an intestacy. In this case, however, the plaintiffs' biological father chose to give everything to Mdm Lina who unfortunately did not leave a will. The parties agreed, again quite rightly, that in the absence of evidence concerning the unsigned will (see [1] above), it would be highly speculative to make any submissions concerning it. It is therefore incumbent on step-parents wishing to provide for their step-children's entitlement to their estate to expressly state so in a proper will.

Conclusion

21 I declare that "child" under s 3 of the Act does not include step-children. Accordingly, since Mdm Lina did not have any children or other descendants for the purposes of the Act, the defendant is entitled to her entire estate. Whether the defendant wishes to make some provisions out of her estate for the plaintiffs out of goodwill is of course his prerogative but it will be a very good gesture on his part and I would certainly encourage him to do so.

22 In accordance with the parties' agreement, I order that their costs for these proceedings be paid out of Mdm Lina's estate.

[\[note: 1\]](#) Plaintiffs' Written Submissions dated 9 April 2012 at [4]

[\[note: 2\]](#) Plaintiffs' Bundle of Authorities Tab 26

[\[note: 3\]](#) Plaintiffs' Written Submissions dated 9 April 2012 at [28]

[\[note: 4\]](#) Plaintiffs' Written Submissions dated 9 April 2012 at [3]; Plaintiff's First Affidavit dated 20 February 2012 at [7] to [13]

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