

1969

June 27

—  
GEORGIA  
CONSTANTINOU

v.

PANAYIOTIS  
SYMEONIDES

[JOSEPHIDES, LOIZOU AND HADJIANASTASSIOU, JJ.]

GEORGIA CONSTANTINOU,

*Appellant,*

v.

PANAYIOTIS SYMEONIDES,

*Respondent.*

(Civil Appeal No. 4759).

---

*Illegitimate Children—Affiliation order—Application for—Evidence required for the making of such order—The Illegitimate Children Law, Cap. 278, sections 8 and 9(1)(2)(3)—Corroborative evidence required—What is corroborative testimony in such cases—No such testimony in the instant case—Findings of trial Judge dismissing the mother's application for an affiliation order, reasonably open to him—Mother's appeal dismissed.*

*Affiliation order—Application for—Evidence required—See supra.*

*Evidence—Corroborative evidence—See supra.*

*Appeals—Findings of fact made by trial Courts—Credibility of witnesses—Approach of the Court of Appeal to such matters—Principles applicable well settled—Onus on the appellant to satisfy this Court that the trial Judge was wrong viz. either that his findings are not warranted by the evidence as a whole, or that the reasoning behind them is unsatisfactory—Matters of credibility of witnesses are primarily within the province of the trial Courts.*

*Findings of fact made by trial Courts—Approach of the Court of Appeal thereto—See supra.*

*Witnesses—Credibility of—Matters of credibility of witnesses are within the province of trial Court—Approach of the Court of Appeal in appeals turning on such credibility.*

This is an appeal by the mother of an illegitimate child from the dismissal by the trial Judge of her application for an affiliation order. Dismissing the mother's appeal, the Court:

*Held*, (1). Under the provisions of section 9(1) of Cap. 278 (*supra*) there must be evidence as to the paternity of the

child implicating the alleged father and such evidence has to be corroborated in a material particular.

(2) Under sub-sections (2) and (3) of the said section 9, the alleged father is deemed to be the father of the child if he has cohabited with the mother, to the exclusion of all other male persons at any time during the period of possible conception which is, approximately, between the sixth and the tenth month before the birth of the child.

(3) Here, apart from the evidence of the mother, there is no independent testimony that she was seen associating, let alone cohabiting, with the respondent, to the exclusion of all other male persons if at all, at any time during the aforesaid period of possible conception.

(4) What is corroboration in such cases is summarised in Halsbury's Laws of England, 3rd ed., volume 3, page 120, paragraph 184, and in Stone's Justices' Manual (1967), volume 1, pages 434 to 436. The principles are well settled and we need not reiterate them. Our law, section 9 (*supra*) reproduces substantially the English statute on the point.

(5) It is well settled that in an appeal the onus is on the appellant to satisfy this Court that the trial Court was wrong, that is, either that its findings are not warranted by the evidence as a whole, or that the reasoning behind them is unsatisfactory. Matters of credibility of the witnesses are within the province of the trial Courts and we are of the view that on the evidence before the trial Judge, it was reasonably open to him to make the findings which he did make in the case: See, *inter alia*, *Imam v. Papacostas* (1968) 1 C.L.R. 207 at pp. 208-9, where the principles are summarised; *HadjiPetri v. HadjiGeorghou* (reported in this Part at p. 326 *ante*).

*Appeal dismissed.*

Cases referred to:

*Imam v. Papacostas* (1968) 1 C.L.R. 207 at pp. 208-9;

*HadjiPetri v. HadjiGeorghou* (reported in this Part at p. 326 *ante*).

**Appeal.**

Appeal against the judgment of the District Court of Nicosia (Santamas Ag. D.J.) dated the 26th June 1968, (Application

1969  
June 27

—  
GEORGHIA  
CONSTANTINO  
V.  
PANAYIOTIS  
SYMEONIDES

1969  
June 27  
—  
GEORGHIA  
CONSTANTINOU  
v.  
PANAYIOTIS  
SYMEONIDES

No. 2/67) dismissing appellant's application for an affiliation order under sections 8 and 9 of the Illegitimate Children Law, Cap. 278.

*C. Myrianthis*, for the appellant.

*A. HadjiIoannou* with *C. Indianos*, for the respondent.

*Cur. adv. vult.*

The judgment of the Court was delivered by:

JOSEPHIDES, J.: In this case the mother of an illegitimate child, born on the 28th May, 1966, applied to the District Court for an affiliation order against the respondent, under the provisions of sections 8 and 9 of the Illegitimate Children Law, Cap. 278, and her application was dismissed. She now appeals against that dismissal.

Under the provisions of section 9(1) of Cap. 278 there must be evidence as to the paternity of the child implicating the alleged father and such evidence has to be corroborated in a material particular. Under the provisions of sub-sections (2) and (3) of section 9, the alleged father is deemed to be the father of the child if he has cohabited with the mother, to the exclusion of all other male persons, at any time during the period of possible conception which is, approximately, between the sixth and the tenth month before the birth of the child.

Here, apart from the evidence of the mother, there is no independent testimony that she was seen associating, let alone cohabiting, with the respondent, to the exclusion of all other male persons, or at all, at any time during the period of possible conception. What is corroboration in such cases is summarised in Halsbury's Laws of England, volume 3, page 120, paragraph 184, and in Stone's Justices' Manual (1967), volume 1, pages 434 to 436. The principles are well known and we need not reiterate them. Our law, section 9, reproduces substantially the English statute on the point.

The trial Judge in this case, apart from the mother of the illegitimate child, heard two other ladies called to corroborate her evidence. The one was her aunt and the other a second cousin. Their evidence was only in respect of an alleged incident that the respondent was seen in a compromising position in a room with the mother (appellant) in the house of a

1969  
June 27

—  
GEORGIA  
CONSTANTINOU  
v.  
PANAYIOTIS  
SYMEONIDES

certain Hambou Constantinou on the 28th January, 1966. This date is only four months before the date of the birth of the illegitimate child. It is true that the trial Judge, in rejecting the evidence of these two witnesses, did not analyse the evidence nor did he give particulars of the contradictions between their evidence and that of the mother and the contradictions between the one and the other, and in that respect we must say that his judgment leaves much to be desired. But we have read the evidence as a whole, all the evidence as appearing on the record, and we are satisfied that there are many material contradictions in the corroborative evidence, if it can be called corroborative evidence at all. We need not enter into details. We need only refer to the pages in the record where such material contradictions may be found: see pages 12Z, 13B, 15B, 16E to the bottom of the page, page 17B, and E, and page 19B.

It is well settled that in an appeal the onus is on the appellant to satisfy this Court that the trial Judge is wrong, that is, either that his findings are not warranted by the evidence as a whole, or that the reasoning behind them is unsatisfactory. Matters of credibility of the witnesses are within the province of the trial Judge, and we are of the view that, on the evidence before him, it was reasonably open to him to make the findings which he did make in the case: see, *inter alia*, the case of *Imam v. Papacostas* (1968) 1 C.L.R. 207 at pp. 208-9, where the principles are summarized; a recent case on the point is that of *HadjiPetri v. HadjiGeorghou* (reported in this Part at p. 326 *ante*).

Having read the whole evidence, we are indeed, satisfied that the trial Judge could not have reached any other conclusion.

For these reasons the appeal is dismissed. No costs are claimed. No order as to costs.

*Appeal dismissed; no order as to costs.*