

1983 September 5

{TRIANTAFYLIDIS, P., A. LOIZOU, MALACHTOS, JJ.}

CHRYSTALLA ANTONIOU,

*Appellant.*

v.

HARRIS ANAYIOTOS,

*Respondent.*

(Civil Appeal No. 5758).

*Illegitimate Children Law, Cap. 278—Affiliation proceedings—Sections 8 and 9 of the Law—Standard of proof—Not that required in criminal proceedings but that applicable in civil proceedings, namely that of the balance of probabilities—Meaning of “satisfied” in section 9(1) of the Law—Section 11(2)(a) of the Law.* 5

*New trial—Evaluation of the evidence by trial Judge tainted by an erroneous approach to the standard of proof required—New trial before another Judge ordered.*

The sole issue in this appeal was whether in affiliation proceedings under sections 8\* and 9\* of the Illegitimate Children Law, Cap. 278 the standard of proof required was that of proof beyond reasonable doubt or on the balance of probabilities. 10

*Held*, (1) that the use of the word “satisfied” in section 9(1) of Cap. 278 cannot lead to the conclusion that it was intended to require satisfaction beyond reasonable doubt (*Blyth v. Blyth* [1966] 1 All E.R. 524 followed); that, therefore, in affiliation proceedings under sections 8 and 9 of Cap. 278 the standard of proof cannot be held to be that which is required in criminal proceedings, namely proof beyond reasonable doubt, and that it is the standard of proof which is applicable in civil cases, namely that of the balance of probabilities (see, also, in this respect, Rayden on Divorce, 13th ed. Vol. 1, p. 1197 and section 11(2)(a) of the Law). 15 20

\* Sections 8 and 9 are quoted at pp. 650–651 post.

(2) That as the trial Judge in the present case has evaluated the evidence adduced before him in a manner tainted by an erroneous approach to the standard of proof required, in that he held that paternity of the illegitimate child in question had to be proved by the appellant beyond reasonable doubt, the course properly open to this Court is to order a new trial of this case, before, necessarily, another Judge of the District Court of Nicosia.

*Appeal allowed.*

10 Cases referred to:

*Constantinou v. Symeonides* (1969) 1 C.L.R. 412;

*S. v. E.* [1967] 1 All E.R. 593 at pp. 596, 597;

*Blyth v. Blyth* [1966] 1 All E.R. 524 at pp. 536, 538, 539, 541.

### Appeal.

15 Appeal by applicant against the judgment of the District Court of Nicosia (Papadopoulos, S.D.J.) dated the 29th October, 1977 (Appl. No. 2/75) whereby her application under section 8 of the Illegitimate Children Law, Cap. 278, for an affiliation order against the respondent in respect of her illegitimate daughter was dismissed.

*E. Efstathiou*, for the appellant.

*A. Triantafyllides* with *E. Lemonaris*, for the respondent.

*Cur. adv. vult.*

25 TRIANTAFYLLIDES P. read the following judgment of the Court. The appellant has appealed against a judgment of the District Court of Nicosia by means of which there was dismissed her application, under section 8 of the Illegitimate Children Law, Cap. 278, for an affiliation order against the respondent in respect of her illegitimate daughter whose father is allegedly the respondent.

30 The trial judge has dismissed the application because he found that he was not satisfied beyond reasonable doubt that the respondent was actually the father of the said illegitimate child.

35 It has been contended by counsel for the appellant that it was wrongly held by the trial Court that the standard of proof required was that of proof beyond reasonable doubt; and that, in any event, on the evidence adduced the trial Court ought to

have found the respondent to be the putative father of the child concerned, and, consequently, should have made the affiliation order applied for by the appellant.

It is useful to refer first to the relevant provisions of Cap. 278, which are sections 8 and 9 thereof and read as follows:-

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“8. Subject to any Rules of Court -

(a)(i) the mother of an illegitimate child, at any time before the birth of the child or at any time within five years from such birth; or

(ii) when the mother is dead the person having the custody of the child, or where the child is a charge on public funds a welfare officer, at any time within five years from the birth of the child,

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may apply to the Court for an affiliation order: Provided that, where such mother is a married woman, no such application shall be made by her, unless at the time of the conception of the child and since that time she was living apart from her husband;

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(b) if the Court is satisfied that there is a prima facie case for the alleged father to answer, the Court shall issue a summons to him to appear before the Court on a date fixed in the summons and shall cause such summons to be served on him:

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Provided that the Court shall refuse to issue a summons if satisfied that there is reasonable cause to believe that the person alleged to be the father of the child is not in truth and in fact the father of such child or that such application is not made bona fide but made for the purpose of intimidation or extortion.

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9.(1) Subject to any Rules of Court, on the date fixed in the summons, the Court shall proceed to hear the case and, if satisfied upon the evidence that the alleged father is in truth and in fact the father of the child, the Court shall adjudge him to be the putative father of the child and make an affiliation order subject to such terms and conditions as the Court may deem fit to impose:

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5 Provided that the Court shall not adjudge the alleged father to be the putative father of the child unless there is evidence as to the paternity of the child implicating the alleged father and such evidence is corroborated in a material particular.

10 (2) The alleged father shall be deemed to be the father of the child if he has co-habited with the mother, to the exclusion of all other male persons, at any time during the period of possible conception specified in subsection (3), unless it is made to appear that it is impossible that the mother has conveyed the child in consequence of such co-habitation.

15 (3) The period of possible conception mentioned in subsection (2) is the period between the one hundred and eighty-first day and the three hundred and second day, both inclusive, before the birth of the child."

As has been held in *Constantinou v. Symeonides*, (1969) 1 C.L.R. 412, section 9 of Cap. 278 reproduces substantially the corresponding relevant English statutory provisions.

20 It is clear, in our opinion, that affiliation proceedings are essentially civil, and not criminal, proceedings (see, in this respect, inter alia, *S. v. E.*, [1967] 1 All E.R. 593, 596, 597, and Rayden on Divorce, 13th ed., vol. 1, p. 1196).

25 In view of the fact that in section 9(1) of Cap. 278 there is to be found the phrase "if satisfied upon the evidence that the alleged father is in truth and in fact the father of the child" it has been argued by counsel for the respondent that the paternity of the child, as alleged by the appellant, had to be proved beyond reasonable doubt; and it was attempted to strengthen this  
30 contention by referring, by way of analogy, to the standard of proof required in matrimonial causes.

We do not think that we have to deal in the present judgment with the matter of the standard of proof in matrimonial causes in order to decide which is the standard of proof in affiliation  
35 proceedings; but, certain dicta in the judgments delivered in *Blyth v. Blyth*, [1966] 1 All E.R. 524, which has been cited by counsel on both sides, may usefully be referred to for the purposes of the present judgment:

In the *Blyth* case, supra, Lord Denning stated (at p. 536) the following, regarding the meaning of the word "satisfied" in section 4 and other relevant provisions of the Matrimonial Causes Act, 1950, in England:

"I hold, therefore, that in this statute the word 'satisfied' 5  
does not mean 'satisfied beyond reasonable doubt'. The  
legislature is quite capable of putting in the words 'beyond  
reasonable doubt' if it meant it. It did not do so. It  
simply said on whom the burden of proof rested, leaving it  
to the Court itself to decide what standard of proof was 10  
required in order to be 'satisfied'".

In the same case Lord Pearce said (at pp. 538, 539):

"The mischief is created by writing into a statute words 15  
which are not there and which could easily have been  
inserted had Parliament so intended - the words 'beyond  
reasonable doubt'.

I think that Parliament did not intend the section to  
define the degree of proof which is necessary to satisfy the  
Court. The section merely informs the Court what must 20  
be proved and by whom to the satisfaction of the Court.  
I cannot accept the argument that the repetition of the word  
'satisfied' in the various sections is a constant reminder of  
the great weight of the proof to be attached to such serious  
matters as those with which the various reliefs contained 25  
in the Act are concerned. The word 'satisfied' is a neutral  
word which leaves to the court the duty of assessing its own  
satisfaction. I would rather regard 'satisfied' as expressing  
a minimum such as is needed by any court in giving any  
relief in any interlocutory, procedural or final matter in 30  
civil or other proceedings. And it is, I think, to be found  
in many statutes or rules of court even in trivial matters".

Furthermore, again in the same case, Lord Pearson stated the  
following (at p. 541):-

"The phrase used in s. 4(2) of the Act of 1950 is simply 'is 35  
satisfied', with no adverbial qualification. The formula  
'satisfied beyond reasonable doubt' has been a very familiar  
one for a great many years, and if that meaning had been  
intended the formula could and should have been used.

5 The phrase 'is satisfied' means, in my view, simply 'makes up its mind'; the court on the evidence comes to a conclusion which, in conjunction with other conclusions, will lead to the judicial decision. There is no need or justification for adding any adverbial qualification to 'is satisfied.'

10 If the phrase is thus allowed to have its natural and ordinary meaning, there is no difficulty in giving the same meaning to that phrase in relation to each of the matters specified in sub-paragraph (a), (b) and (c) of the subsection. The degree or quantum of proof required by the Court before it comes to a conclusion may vary according to the gravity of the subject-matter to which the conclusion relates, but in relation to each subject-matter the specified conclusion is reached or not reached by the end of the trial: the

15 Court either is or is not satisfied on each point."

In the light of the foregoing we are of the view that the use of the word "satisfied" in section 9(1) of Cap. 278 cannot lead to the conclusion that it was intended to require satisfaction beyond reasonable doubt. Nor does the use, in the same provision,

20 of the expression "in truth and in fact" can be treated as leading to such a conclusion, especially as in the proviso to section 8(b) of the same Law - Cap. 278 - it is stated that "The Court shall refuse to issue a summons if satisfied that there is reasonable cause to believe that the person alleged to be the father of the child is not in truth and in fact the father of such child" and it would be, indeed, absurd to hold that in order to refuse under the aforesaid proviso to issue a summons it is not sufficient for the Court to be satisfied on the balance of probabilities that the person alleged to be the father of the child is not the father of

25 the child, but that it should be so satisfied beyond reasonable doubt.

We are, therefore, of the opinion that in affiliation proceedings under sections 8 and 9 of Cap. 278 the standard of proof cannot be held to be that which is required in criminal proceedings,

35 namely proof beyond reasonable doubt and that it is the standard of proof which is applicable in civil cases, namely that of the balance of probabilities (and see, also, in this respect, Rayden on Divorce, supra, p. 1197).

A further indication that our above opinion is correct is the

40 fact that section 11(2)(a) of Cap. 278 provides that an affiliation

order may be discharged at any time upon proof that a putative father is not the father of the child; it could hardly be consistent with this provision in section 11(2)(a) to hold that the paternity of an illegitimate child should be proved, for the purpose of making an affiliation order, beyond reasonable doubt and then that it should be disproved, for the purpose of discharging an affiliation order, again beyond reasonable doubt. 5

As the trial judge in the present case has evaluated the evidence adduced before him in a manner tainted by an erroneous approach to the standard of proof required, in that he held that paternity of the illegitimate child in question had to be proved by the appellant beyond reasonable doubt, we have reached the conclusion that the course properly open to us is to order a new trial of this case, before, necessarily, another judge of the District Court of Nicosia. 10 15

In line with the trial Court which has not made an order as to the costs of the trial we will not make an order as to the costs of this appeal.

*Appeal allowed. Re-trial ordered. No order as to costs.* 20