

**IN THE FAMILY DIVISION OF THE HIGH COURT  
AT SUVA APPELLATE JURISDICTION**

**ACTION NUMBER: 14/Suv/ 0006  
(From 11/Nau/0111)**

**BETWEEN: PABLO  
APPELLANT**

**AND: AASHNA  
RESPONDENT**

*Appearances: Mr. A. Chand for the  
Appellant. Mr. E. Koroi for the  
Respondent.*

*Date/Place of Judgment: Monday 13 July 2015 at Suva.*

*Coram: Hon. Madam Justice Anjala Wati.*

*Category: All identifying information in this judgment have been  
anonymized or removed and pseudonyms have been used  
for all persons referred to. Any similarities to any persons is  
purely coincidental.*

*Anonymised Case Citation: Pablo v. Aashna – Fiji Family High Court Appeal  
Case Number: 14/Suv/0006.*

## **JUDGMENT**

**Catchwords:**

**FAMILY LAW – APPEAL – CHILD MAINTENANCE – Proper amount for the maintenance of the child.**

1. On the mother's application for child maintenance, the Court ordered the father to pay \$75.00 per week towards the maintenance of the child.

2. The parties have only one child of the marriage.

3. The parties were married in 2003 and separated in 2011. Their marriage was dissolved in 2013.

4. In ordering the maintenance the Court found that a sum of \$150 per week is necessary for the maintenance of the child. The sum of \$150 was allowed as follows:

- Food - \$50.00
- Water and Electricity - \$02.00
- Clothing/Shoes - \$05.00
- Travelling - \$ 50.00
- Educational expenses - \$05.00
- Baby Sitting - \$30.00
- Medical - \$20.00

5. The above calculates to \$162.00 per week however the Court used the figure of \$150.00 to order maintenance for the child.

6. The Court found that the mother earned \$264 net per week and that her expenses were not known.

7. The Court found that the husband was earning \$158.24 net per week. In his oral evidence he stated that he needed \$100 for his weekly expenses which he itemized as follows:

- Food - \$25.00
- Electricity - \$3.75
- Water - \$0.25
- Cleaning - \$2.50

- Mortgage - \$44.25
- Hire purchase for groceries - \$7.50
- Insurance for child - \$10.50
- Rent - \$62.50

8. The above expenses calculate to \$156.25. The Court found the expenses for food, electricity, water, cleaning and mortgage to be reasonable. The Court also found that when the parties were living together, the husband used to pay \$250.00 per month, that is, \$62.50 per week. Now that the husband was living alone, he ought to find a cheaper accommodation to cater for the maintenance of the child for whom he has a primary obligation to maintain.

9. The Court also found that the hire purchase for groceries is a duplicated expense and that was not to be allowed.

10. The Court further found that the husband did private jobs and claimed to earn \$20.00 -

\$30.00 from that in a month. The Court stated that given his qualification, he would be earning more than he claims to when he does private jobs.

11. The Court finally found that the husband has the capacity to pay at least half the expenses of the child.

12. The husband appealed on the grounds that the Court erred in:

**1. determining the expenses of the child in absence of any supporting evidence.**

**2. in determining the income and expenses of the appellant.**

**3. In determining the contribution to be made by either party in respect of the child maintenance.**

13. The husband sought that the child's expenses be allowed to the extent of \$80.00 per week for the child, he be ordered to pay only \$30.00 per week for the child, and the mother be ordered to pay \$50.00 per week for the child.

14. I have heard the counsel for both the parties and have also gone through the Court records in analyzing the appeal before me.
15. This child is a special needs child. She suffers from developmental problems. What must be borne in mind is that it is not simple at all to look after children who are not properly developed when compared to normal children.
16. These children with special needs need special food, and I accept the evidence that cooking needs to be done separately for this child. They need extra attention and more clothes and school stationaries than normal children would require. Even normal young children require stationary every day because they are not able to take care of what they have.
17. I do not find that the Court erred in analyzing that this child will need at least a minimum of three proper balanced meals in a day. On the evidence and the facts of the case, the Court did not make an error in calculating the expenses of the child
18. The wife's expenses were not given but the husband's expenses according to the husband would be \$100.00 despite the fact that his expenses calculated to \$156.25.
19. It is not an easy task for the mother to look after the child financially and physically and provide the child with the requisite mental and emotional support. The burden on the mother is a heavier one. It even comes to a stage where the care giver will have to make most sacrifices for the proper upbringing of the child.
20. In this case the burden on the mother is much more than the father who is only required to provide to the child financially and the aspect of raising of the child is taken care of by the mother.
21. In this circumstance, the Court was not factually incorrect in ordering that the father at least caters for half the expenses of the child although the mother earns at least a

\$100 more than the husband in a week.

22. In cases of children, there always suddenly arises a need to spend money on them like unexpected sickness, food and clothing. In that case the mother will have to spend the money on the child as she is the care giver. It is therefore justified that she has some available money at hand to be able to readily cater for the expenses and it is this earning of the mother that would be useful to the child needless to say that the mother is also responsible for the daily expenses of the child.
23. I find that the Court was correct in disallowing the father's rental expenses at that rate. The father can now find a shared accommodation as he is the only person in the house and save money in that regard. His rental accommodation expenses can be allowed to the extent of \$150 per month. His groceries expense through hire purchase is indeed duplicated with the food expenses and was properly disallowed by the Court.
24. Although the Court did not mention about the mortgage repayments, that property is registered in the names of both the parties and properly both the parties should be responsible for the debt and if one party is not paying towards the debt and it is becoming financially burdensome to the father, then it is proper that proper orders be sought from the Court for contribution towards payment of the debt or an order for sale of the property.
25. I also note that this mortgage payment will only last for the next 15 months or so until it is fully paid.
26. The Court will however not allow the mortgage payment to hold up the life of a child who needs to be maintained by the parents. If this mortgage was for payment of some basic necessity like accommodation, it would have been proper to allow the expenses as a priority expense but this is not the case.
27. If the expenses for the rent is reduced and the mortgage payments shared or cancelled in lieu then the father will be in a position to pay for the expenses of the child to half the amount. I do not lose sight of the fact that he has the ability to do private work. The Court appears to have accepted the evidence of the mother that the father does private jobs every day.

28. Although he is not being asked to work day and night but small mechanical work which can be finished in an hour or two can be undertaken at least thrice a week after hours for the benefit of the child.

29. On the available evidence J find that the Court was correct in ordering maintenance at the rate of \$75.00 per week for the child. I uphold the order of the Court and dismiss the appeal.

30. The husband is to pay the sum of \$75.00 per week in child maintenance.

31. Each party must bear their own costs of the proceeding.

Anjala Wati  
Judge  
13.07.2015

To:

1. Legal Aid Commission.
2. Koroil Law.
3. File: 14/Suv/0006