

IN THE SUPREME COURT OF FIJI

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A T SUVA

Appellate Jurisdiction

Civil Appeal No. 7 of 1984

Between : ALCHA WILLIAMS Appellant
A n d : FRANK HAZELMAN Respondent

J U D G M E N T

On 11th October, 1983, in the Magistrate's Court, Suva, the respondent was adjudged to be the putative father of a child born to the appellant on 1st May, 1983, and he was ordered to pay \$6.50 per week for the child's maintenance. That was under section 18 of the Maintenance and Affiliation Act (Cap. 52).

Only the appellant and the respondent gave evidence. The Magistrate's record of the brief proceedings reads as follows:

"11.10.83

Complainant present
Defendant served/present

Court :

Complaint read to the Defendant.

Defendant :

I admit paternity.

Complainant - ALCHA WILLIAMS
of 46 Pilau Street, Nabua
Secretary

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Sworn on Bible in English.

I gave birth to a child on 1.5.83 at Morrison Maternity Unit, Suva.

The Defendant is the father of the said child. This is the birth certificate of the said child. I tender it.

Court:

Birth Certificate accepted as exhibit 1.

Defendant : FRANK HAZELMAN
of Korovou Prison Compound
Prison Officer
Sworn on Bible in English.

I admit that I am the father of the child born to the Complainant. My income is \$36.50 per week. I am employed as a Prison Officer. I offer \$6.50 per week maintenance for the said child. I ask for Attachment of Earnings Order.

Court :

I adjudge the defendant to be the putative father of the child born to the complainant. I order the defendant to pay maintenance to the Complainant for the said child at the rate of \$6.50 per week with effect from today"

This appeal was brought on the following ground:

"That the Court's Order for payment of \$6.50 per week is inadequate and unreasonable having regard to the evidence adduced regarding the income of the Respondent".

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That was not quite the ground I permitted to applicants counsel, Mr A. Singh, to argue. His argument was that the magistrate could not properly have made an order without having heard any evidence either about the financial resources of the appellant - for all the magistrate knew she might have been destitute, or about the financial needs of the child - for all the magistrate knew it might have needed special, and expensive, care and attention.

The appellant was not represented in the court below and, apparently, was not questioned by the Magistrate about such matters.

In my view there is merit in Mr Singh's argument. Such matters are not specifically required by our Act to be taken into account, as they are in the United Kingdom by Section 4 of the Maintenance and Affiliation Act, 1957. However, common sense dictates that they should be taken into account.

It seems to me that I could, under Section 319 (1) of the Criminal Procedure Code, read with Section 29 of the Maintenance and Affiliation Act, in normal circumstances remit the matter to the Magistrate's Court for enquiry into such matters. However, the Magistrate who made the order is no longer a Magistrate. The Criminal Procedure Code, in accordance with which affiliation applicants are required to be made (by Section 26, Cap. 52) allows one magistrate to continue an enquiry or trial part-heard by a magistrate who has ceased to exercise jurisdiction:

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see Section 196. However, I doubt that Section 196 allows the second magistrate to continue an enquiry or trial after the first magistrate has reached and recorded his final decision.

Alternatively, I have considered hearing further evidence myself under Section 320 of the Criminal Procedure Code. But that would probably impose hardship on the parties who apparently reside in Suva.

In the circumstances, I think that the safest and fairest course would be to order a new trial.

The appeal is allowed. The finding that the respondent is the putative father, and the maintenance order, are quashed. I order, under Section 319 (1) of the Criminal Procedure Code, that there be a new trial in the court below.

I trust that the new trial will take place as soon as practicable and that the trial magistrate will consider the provisions of Section 25 of the Maintenance and Affiliation Act.

Handwritten initials

LAUTOKA
1st January, 1985

R. A. Kearsley
(R. A. Kearsley)
JUDGE