

IN THE FIJI COURT OF APPEAL

Civil Jurisdiction

Civil Appeal No. 33 of 1981

Between:

CHRISTINE HELEN VALENTINE

Appellant

- and -

STEPHEN DONNAN

Respondent

Date of Hearing: 20 July 1981
Date of Judgment: 24 July 1981

Mrs. Hoffman for Appellant
Jaswant Singh for Respondent

JUDGMENT OF THE COURT

Marsack, J.A.

On this appeal the essential facts are not in dispute and may be shortly set out. Respondent admits that he is the father of a child born - out of wedlock - to the appellant on the 7th August 1980. It is conceded that the appellant is entitled to an affiliation and maintenance order. Such an order was made in the Magistrates' Court on the 18th December 1980 when the maintenance payable was fixed at \$6 per week with effect from the day of the judgment. Respondent appealed to the Supreme Court, and the learned Judge reduced the maintenance payable to \$1 per week. When the proceedings were first brought, the Magistrate, acting on a clause in an

affidavit of the appellant to the effect that the respondent was about to leave Fiji before the hearing of the case, ordered that respondent be arrested and brought to Court in custody. On his appearance he was released on bail on condition that he handed over his passport to the Court until the matter was decided. That passport is still held by the Court.

Respondent is a British citizen domiciled in the United Kingdom. He is in Fiji on holiday, staying with his father who is working in Fiji under a work permit which expires at the end of this year. Respondent is now 18 years of age and is due to leave Fiji as soon as he may, in order to resume his attendance at college in London. Appellant is a Fiji citizen, is not employed, and is not earning any money.

At the hearing of this appeal - which, under Section 12 of the Court of Appeal Act is limited to points of law - appellant asks that this Court make two orders:

1. That the order of the Magistrate be restored to the extent that maintenance payable her in be fixed at \$6 per week from the 18th December 1980;
2. That the Court retain possession of the respondent's passport until satisfactory security for payment of moneys due under the maintenance order is furnished by the respondent.

On the first ground we regret that we are unable, with respect, to agree with the learned Judge as to the amount of maintenance payable. The matter was made more difficult for decision by the Court in that no evidence was produced, on either side, as to the financial position of the respondent. It is clear that certain moneys must have been made available to him, as otherwise he would not have been able to pay the fares for his journey from Great Britain to Fiji and return,

and also to provide him with the means necessary to meet his daily needs. The facts are definitely distinguishable from those in the case of Stephen v. Stephen (1931) P.197 on which the learned Judge's decision was substantially based. In our opinion it was necessary, in view of the fact that the mother was without means, to make such an order as would provide for the subsistence of the child. From the practical point of view the order for a nominal sum would have placed the appellant in a very difficult position; as the onus would have lain on her to make enquiries - through agents - from time to time as to the financial position of the respondent and then to institute proceedings in the British Courts asking for a substantially increased maintenance order. There appears no doubt that the respondent will be returning to England at an early date and accordingly, as the learned Judge points out, it will be necessary for the appellant to have the order registered in England.

For these reasons we agree that the appellant must succeed on the first ground. The appeal on this point is allowed and the amount payable under the maintenance order is fixed at \$6 a week payable from the 18th December 1980.

On the second ground we agree with the opinion of the learned Judge that this Court has no power to order that the respondent's British passport be retained in Court. Accordingly it is ordered that this be returned forthwith to the respondent.

In view of all the circumstances of this case we are not prepared to make an order as to costs.

Chadwick

 (Judge of Appeal)
M. Spring

 (Judge of Appeal)
M. Linnell

 (Judge of Appeal)