

IN THE FAMILY DIVISION OF THE HIGH COURT APPELLATE JURISDICTION	
CASE NUMBER:	FAMILY APPEAL 05 OF 2019
BETWEEN:	HANIFF
AND:	SUMINTRA
Appearances:	Mr. S. Sharma for the Plaintiff Ms. S. Devi of the LAC for the Defendant
Date of hearing	20 th August 2019
Date/Place of judgment:	30 th October 2019
Judgment of:	M. Javed Mansoor, J
Category:	<i>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.</i>
Anonymised Case Citation:	HANIFF v. SUMINTRA– Fiji Family High Court Appeal Case Number: 05 of 2019
JUDGMENT OF THE COURT	
<i>Legislation</i>	
<i>FAMILY LAW: Appeal – Child maintenance – maintenance for child above the age of 18 – Family Law Act, Sections 46, 89, 90, 91 & 92 – whether parents have equal responsibility to maintain a child</i>	

1. This is an appeal against the decision of the Magistrate delivered on 25 April 2019, and sealed on 22 May 2019. In her decision, the Magistrate of the Labasa Magistrate Court ordered the Appellant *inter alia* to pay \$80 per week as child maintenance and half of the child’s tertiary education fees. Although the Respondent – by her application dated 11 September 2017 – also sought spousal

maintenance for herself, that relief was not granted; this refusal though has not been challenged in these proceedings.

2. These were the Appellant's grounds of appeal:

I. *That the learned trial magistrate erred in law and in fact by ordering the respondent man to pay child maintenance at the rate of \$80.00 per week which is high and excessive in all circumstances.*

II. *That the learned trial magistrate erred in law and in fact by not taking into account the respondent's expenses from the gross income before making orders for maintenance.*

III. *That the learned trial magistrate erred in law and in fact in not considering the amount of educational expenses the child needs before determining the quantum of \$80.00 per week.*

IV. *That the learned magistrate erred in law and in fact in not taking into account that the applicant lady has the equal parental responsibility to support the child's education.*

3. The parties do not dispute that their daughter had completed 18 years at the time the child maintenance application was made to the Magistrate Court. Their child was born in 1999. That the child was continuing her education at the university, by following a foundation course, is also not in contention.

4. Counsel for the Appellant contended that the Respondent did not adduce evidence regarding the child's total education fees and her weekly expense. He rightly contended that the Court must not make a child maintenance order in relation to a child who is aged 18 or over unless the court is satisfied that the provision of maintenance is necessary.¹ Section 92 provides *inter alia* that maintenance should be necessary to enable the child to complete his or her education; or, because of a mental or physical disability of the child. It was the counsel's contention that the Magistrate had not correctly applied the provisions of Section 92. He submitted that there was no evidence before the Magistrate

¹ Section 92, Family Law Act 2003

about the time needed to complete the child's education. He also submitted that parents had an equal responsibility to maintain a child in terms of Section 46 of the Family Law Act, and, therefore, half the expenses should be borne by the Respondent, in sharing parental responsibility.

5. In pleading her case before the Magistrate, the Respondent detailed the following weekly expenses in the Form 5²: \$30 for food, \$10 for household supplies, \$20 for clothing & shoe, \$20 for education expenses and \$26.25 for bus fare. Aggregate weekly expenses excluding tuition fees amounted to 106.25. The Respondent in her evidence stated that the child's tuition fees amounted to \$683.00 for two units per semester, and that this expense was likely to increase with time. The Respondent had borne the child's tuition fee at the time of giving evidence in court.
6. In Form 6, the prescribed Response to the Application for Maintenance or Contribution, the Appellant, a shop keeper, declared an income of \$450 before tax. His aggregate commitments are shown as \$400. He disagreed with the orders sought on the basis that the child was above 18 years at the time of the application to the court. However, in terms of his Form, the Appellant agreed to pay child maintenance of \$100 per week. Likewise, while giving evidence, the Appellant agreed to pay the daughter's tuition fees and bus fare. Though the Appellant declared his income as \$450 in Form 6, in his evidence he stated his income as \$350. In Cross Examination, he explained that his income had reduced from what it was when he submitted Form 6 to the court. In his evidence, he declared \$150 as his weekly savings. The Magistrate has taken his weekly savings into account in determining the application.
7. The Respondent in her evidence stated that she made \$100 a week, that the Appellant paid for the rent, electricity and water for the house occupied by her, that their daughter was not a recipient of the Tertiary Education Loan Scheme and that the Appellant had agreed to pay the child's tuition fees. She gave evidence stating that her weekly expenses amounted to \$133; she spent for her child's clothing, bus fare, food and school fees. The Respondent spent \$683 for

² Prescribed by the Family Law Rules 2005

the child's education for a semester covering two units at the university. Counsel for the Respondent submitted that the Magistrate has considered the amount of educational expenses as well as the basic necessities needed by the child in order to complete her studies.

8. Either parent could apply to the Magistrate Court for a child maintenance order in respect to a child. Child maintenance is governed by Sections 89 (2), 90, 91 & 92 of the Family Law Act. The parents of a child are imposed with the *primary duty* to maintain a child³. *Parental responsibility* in relation to a child, means all the duties, powers, responsibilities and authority which, by law, parents have in relation to children. In proceedings for a child maintenance order, the court may, subject to the provisions of the statute, make any child maintenance order it thinks proper⁴. This vests the Magistrate Court with a broad discretion to order child maintenance with statutory guidance from Sections 90 & 91 of the Family Law Act. Section 92 limits the court's discretion to make a child maintenance order in relation to a child aged 18 or over.
9. In dealing with the Respondent's application for child maintenance, the Magistrate has considered the weekly savings of the Appellant, which, as admitted, was \$150. The Magistrate has found that the Respondent's income of \$100 was insufficient to maintain the child, and that, on a balance of probabilities, there was a need for child maintenance by the Appellant towards the upkeep of the child. The Magistrate accepted the evidence of the Respondent, albeit, noting some inconsistency in her evidence, and ordered the Appellant to pay the child \$80 a week and to pay half of the tertiary fees of the child. As an aside, it is useful to bear in mind that the Magistrate refused spousal maintenance on the basis that the Respondent was running her own business, paying for her expenses and the child's own education.
10. There appears to be no reason to interfere with the orders of the Magistrate on the basis of the aforesaid findings. Although the Magistrate's orders do not reflect a precise mathematical calculation, they appear to be on the basis of the

³ Section 86, Family Law Act 2003

⁴ Section 89, Family Law Act 2003

evidence led by the parties. Moreover, such precision, in the context of this case, was not warranted. The only matter that appears to have been overlooked by the Magistrate is in failing to impose a time limit to the payment of child maintenance to match the period of education. The university foundation course followed by the child was for a year's duration. This evidence does not seem to have been clearly led, denying the Magistrate the benefit of this fact. The Appellant's duty to maintain the child should not have exceeded a period of one year. This has not been clearly spelt out in the order.

11. That the Appellant's concern was the open ended nature of the order to pay maintenance became clear during the course of the hearing. Counsel for the Appellant submitted that his client would meet the obligation to maintain his daughter if payments can be limited to the period of education. This is only fair, and accords with the law. There is a statutory duty on Court⁵ to avoid making a child maintenance order in relation to a child that extends beyond the day on which the child will turn 18 unless the court is satisfied that the provision of the maintenance beyond that day is necessary for the reasons prescribed by law.
12. The Appellant's grounds of appeal, therefore, are without merit. The first ground of appeal relates to the Magistrate's order to make payment of \$80 per week as child maintenance. That this amount is not excessive is evident from the evidence before court. The second ground is that the Magistrate failed to consider the Appellant's expenses prior to making an order for maintenance. The record of proceedings shows that the Magistrate has given due consideration to the Appellant's expenses, and has relied upon the testimony of the Appellant in making the maintenance order. The third ground is that the Magistrate did not consider the amount of educational expenses before determining the quantum of \$80 per week. There is no merit in this ground. In fact, the Appellant himself declared in his testimony that he was willing to maintain his daughter and pay for her tuition. The fourth ground is that the Respondent had equal parental responsibility, and that this was not considered by the Magistrate. The law does not recognize such a thing as equal parental responsibility.

⁵ Section 92 (2), Family Law Act

13. For these reasons, the Appellant's appeal is dismissed. The order of the Magistrate, dated 25 April 2019, is affirmed subject to the variation that the maintenance order will not extend beyond the duration of the child's education at the university. In the event, the child wishes to continue her education beyond a year, an application could be made on behalf of the child, and the Magistrate, if satisfied, could make an appropriate order after considering the relevant circumstances at that point of time.

ORDERS

- A. The Appeal seeking to set aside the Magistrate's order, dated 25 April 2019, is dismissed.
- B. The Magistrate's order, dated 25 April 2019, is varied to the extent that the maintenance order will not extend beyond the year's duration of the child's education at the university, where she is following the foundation level.
- C. The Appellant is directed to pay the Respondent costs summarily assessed in a sum of \$400.00 within two weeks of the date of this judgment.

Delivered at Suva this 30th day of October, 2019

M. Javed Mansoor
Judge of the High Court