

IN THE FAMILY DIVISION OF THE HIGH COURT OF FIJI AT SUVA
ORIGINAL JURISDICTION

ACTION NUMBER:	FAMILY APPEAL NO. 5 OF 2022 MAGISTRATE'S COURT FILE NO. 19/SUV/0417
BETWEEN:	RAGHBIR APPELLANT
AND:	PALVI RESPONDENT
APPEARANCES:	Appellant in Person Ms Aradhna. A. Singh (Kohli & Singh Suva) for Respondent.
DATE OF HEARING:	Friday 14 July 2023
DATE OF RULING	Monday 21 August 2023
CORAM:	Hon. Mr. Justice Chaitanya Lakshman
CATEGORY:	All identifying information in this judgment have been anonymized or removed and pseudonyms have been used for all persons referred to. Any similarity to any persons is purely coincidental.

JUDGMENT

A. Introduction

1. The Appellant had filed 3 Separate Notices of Appeal. The **first** was filed on 8th April 2022. The **second** on 29th August 2022 and the **third** on 9th December 2022. The first related to Form 1 (Dissolution of Marriage (Divorce)), second to residence and contact of the child of the parties, and the third was in relation to Form 7 - Contempt Ruling by the Learned Magistrate against the Respondent. On the day of the hearing of the appeal the Appellant withdrew the first two appeals. He only proceeded with the third appeal.

B. Analysis

2. In the notice of appeal, the Appellant is not clear with his grounds of appeal. The Appellant is in person. What can be summarised from the grounds of appeal is that the Appellant is not satisfied with the Ruling of the Learned Magistrate on the Form 7 contempt filed against the Respondent. The appellant is seeking a fair hearing and a fair judgment and change of Magistrate.
3. The Appellant in the Form 7 had alleged that from “23/03/2021 onwards the Respondent/Lady was to bring child for contact at where the Applicant was serving. The child was to have contact with the Applicant on the last Saturday of the month.” The parties had entered into consent orders for the residence and contact of the child. The Respondent had residence, while the appellant, while serving in the correctional facility was to have contact with the child every last Saturday of the month from 9am to 3pm at the correctional facility under the supervision of the Respondent.
4. The Learned Magistrate in the contempt application found on the evidence before her that the Respondent did not wilfully disobey the orders. The child did not wish to go and visit the Appellant. The Learned Magistrate found that the child refused to visit the Appellant in Prison and that it was not that the Respondent wilfully disobeyed the court orders.
5. The child had previously visited the Appellant in prison. Once she started schooling the child did not want to visit the appellant. She also did not want to talk to the appellant. These were the evidence before the Learned Magistrate. The Learned Magistrate assessed that “*children have a mind*

of their own and there are many a case before the Court where orders for contact could not be complied with the parent having residence because of the refusal by the children to have contact with the non-resident parent.” Having perused the decision of the Learned Magistrate, this Court finds that she properly dealt with the matter, she evaluated the evidence before her and was fair in her decision. On the evidence before her she did not find the Respondent guilty of contempt. The standard of proof in contempt cases is beyond reasonable doubt. The Magistrate was not satisfied beyond reasonable doubt that the Respondent wilfully disobeyed the Court orders.

C. Conclusion

6. For the reasons given here, the appeal is dismissed. No orders as to costs.

D. Court Orders

- (a) Appeal Dismissed.
(b) No orders as to costs.

.....
Chaitanya Lakshman
Acting Puisne Judge