

IN THE FAMILY DIVISION OF THE HIGH COURT AT SUVA

APPELLATE JURISDICTION

ACTION NUMBER:	APPEAL CASE NUMBER 08 OF 2018
BETWEEN:	GANIKA APPELLANT
AND:	MAANVIR RESPONDENT
APPEARANCES:	<i>Ms. A. Prakash for the Appellant</i> <i>Mr. R. Goundar for the Respondent.</i>
DATE/PLACE OF JUDGMENT:	<i>Friday 19 January 2024 at Suva.</i>
CORAM:	<i>Hon. Madam Justice Anjala Wati</i>
CATEGORY:	<i>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.</i>

JUDGMENT

Catchwords:

FAMILY LAW – *CHILD AND SPOUSAL MAINTENANCE* – *Whether the Court was correct in ceasing the maintenance of the mother on the basis that she had the capacity to earn – Whether the Court was correct in reducing the maintenance for the 2 children when the father could continue to pay the amount considering that he no longer had the obligation to pay spousal maintenance.*

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Cause and Background

1. The mother is appealing the order of the Family Division of the Magistrates' Court of 27 July 2018. The orders made on this day were that:
 - (i) *The father is to continue paying spousal maintenance in the sum of \$20.00 per week for 2 months up to 28th September 2018 to enable the mother to get a job. Spousal maintenance to cease on 28 September 2018.*
 - (ii) *The father is to repair the house including the roof and the tin on the side of the house as well as construct a floor for the house. The repair works are to be completed within 4 months.*
 - (iii) *The father will continue paying \$20.00 per week per child in child maintenance totaling to \$60 per week for the two children.*
 - (iv) *The total maintenance payable by the father up to 28 September 2018 is \$60 per week. Thereafter, maintenance reverts to \$40 per week for the children's maintenance.*
2. The judgment was delivered after a hearing on the mother's application for variation of spousal maintenance orders. The orders sought in the variation application were that:-
 - (i) *The spousal maintenance order for the father to pay to the mother a sum of \$20 per week which was suspended by consent on 29 April 2013 be re-activated.*
 - (ii) *The spousal maintenance be increased to \$200 per week.*
3. The application by the mother was objected to by the father.
4. Before the application for variation of spousal maintenance order was made, there were in place the following orders:

- (i) 10 January 2012 – child maintenance order in the sum of \$20 per week for each child totalling \$40 per week for 2 children. Spousal maintenance order in the sum of \$20 per week.
- (ii) 29 April 2013 – the order for spousal maintenance was suspended.
- (iii) 15 February 2016 – child maintenance orders increased to \$30 per week for each child totalling to \$60 per week for 2 children. A further order was made for additional \$30 to be paid towards the arrears.
- (iv) 15 May 2017 – interim order that there be child maintenance of \$20 per week per child totalling to \$40 per week for 2 children. The Court had also activated the spousal maintenance of \$20 per week.

Magistrates' Court's Findings

- 5. The Court had found that since the spousal maintenance order was activated on 15 May 2017, the issue before it was whether the interim spousal maintenance should be increased to \$200 per week or whether the spousal maintenance should be ceased as per the father's contention.
- 6. The Court found that the mother was capable of earning for herself and that she had been doing temporary work as an Examination Supervisor. It found that maintenance for 2 months up till 28 September 2018 should be allowed to enable her to find work for herself.

The Appeal

- 7. The mother contends that the Court erred in law and in fact in deciding the quantum and duration of spousal maintenance. She also contends that the Court erred in law and in fact in dealing with the quantum of the child maintenance when the application before the Court did not concern child maintenance or variation.

Determination

8. I will deal with the issue of spousal maintenance first. On the evidence before the Court, it was open to the Court to make a finding that the mother was not entitled to maintenance as she was capable of earning.
9. At the time of the making of the order, she had control of children who were under the age of 18 years. Both the children were attending school. If the mother wanted, she could still find work to provide for herself.
10. She asserted in her evidence before the trial Court that one child was suffering from rheumatic heart disease and receiving monthly injection. She therefore could not work.
11. I have regard to the mother's evidence that one of the child has rheumatic heart disease. However, this child used to attend a normal school and did not have any special needs which required the mother to stay home full time and look after the child thus precluding her from working. Further the child is now over 18 years and would not be in school anymore. The mother therefore cannot continue to assert her sickness and not find work.
12. I therefore find that the Court had correctly found that the mother should find work and support herself.
13. In regards to reducing child maintenance, the Court had not reduced child maintenance. All it did was to confirm the interim order of 15 May 2017. However what concerns me is this: before the spousal maintenance order was activated, the two children were receiving a sum of \$30 each per week making a total sum of \$60 per week.
14. When the spousal maintenance order was re-activated, the child maintenance order of \$60 per week got reduced to cater for the spousal maintenance. The children were then paid \$20 per week each totalling to \$40 per week and the collective amount payable to the family was \$60 per week. This was based on the father's contention

that he could pay \$60 per week and not more than that. The sum was therefore always based on the father's capacity to pay the maintenance.

15. During the hearing of the mother's application for variation of spousal maintenance, the father confirmed that he would continue to pay \$60 per week. If that was his consent and he demonstrated the capacity to pay \$60 per week, then it was not just and proper to deprive the family of that income that they relied on for a considerable period of time.
16. It can be seen that whenever spousal maintenance was suspended, the children's maintenance was increased to \$30 per week per child totaling to \$60 per week for 2 children. In effect the family had for quite some time been receiving a sum of \$60 per week. They were dependent on that income. I do not find that it ought to have been reduced and deprived of that financial support when the father was happy and able to pay that amount.
17. I therefore find that when the spousal maintenance was ceased, the order of 15 February 2016 ought to have been reinstated. The order was child maintenance of \$30 per week per each child. This should have been paid from 28 September 2018 when the spousal maintenance ceased. I however do not think that it is now justifiable to back date the maintenance orders of \$60 per week with effect from 28 September 2018.
18. The father was obliging with the order for payment of a lower amount. He should now not be burdened with the arrears when he was ordered to pay a lower amount without being informed about the potential of having to pay more. It would be burdensome for a casual worker to be imposed with such liability.
19. I therefore find that it is just and fair to reinstate the order of \$30 per week per child maintenance totalling to \$60 per week for 2 children.
20. I note that both the children are now over 18 years of age. Since I am not aware of the circumstances of the children in terms of whether they are still attaining education, I

will make the orders on appeal without factoring in this situation. It is for the parties to raise relevant applications to address this concern.

Final Orders

21. I allow the appeal partly. I dismiss the appeal in regards the spousal maintenance. I allow the appeal in respect of the maintenance of the children and order maintenance for each child in the sum of \$30 per week totalling to \$60 per week for 2 children with effect from 19.01.2024.

22. Both the children are now over the age of 18 years and any orders for continuity and cancellation of maintenance is a matter for the Magistrates' Court, if faced with an application.

23. Each party shall have their own costs of the appeal proceedings.

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Hon. Madam Justice Anjala Wati

19.01.2024

To:

1. *Legal Aid Commission for the Appellant.*
2. *Ravinesh Goundar Lawyers for the Respondent.*
3. *File: Family Appeal Case Number: 08/2018.*