

IN THE FAMILY DIVISION OF THE HIGH COURT AT SUVA

APPELLATE JURISDICTION

<u>ACTION NUMBER:</u>	APPEAL CASE NUMBER 2015/SUV/09
<u>BETWEEN:</u>	BEENA APPELLANT
<u>AND:</u>	RAM RESPONDENT
<u>Appearances:</u>	<i>Mr. Anil Chand (LAC) for the Appellant.</i> <i>Mr. A. Nand for the Respondent</i>
<u>Date/Place of Judgment:</u>	<i>Thursday 30 May 2024 at Suva.</i>
<u>Coram:</u>	<i>Hon. Madam Justice Anjala Wati</i>
<u>Category:</u>	<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

A. Catchwords:

FAMILY LAW – APPEAL – against finding that no de-facto relationship existed between the parties – spousal maintenance dismissed –respondent to the spousal maintenance application died after hearing of appeal – appeal can no longer continue – s.165 of the FLA does not allow continuation of any pending maintenance claim against a deceased party or his legal personal representative – c.f. with s.163 (5) of Family Law Act – appeal dismissed.

B. Legislation:

Family Law Act (“FLA”): ss.163 and 165.

Cause

1. The appellant has filed an appeal against the decision of the Resident Magistrate on his findings that there was no de-facto relationship between the parties and as a result of that her application for spousal maintenance was dismissed.

Law and Analysis

2. The appellant had claimed that there existed a de-facto relationship between the parties for 4 ½ years. The respondent refuted this and asserted that the relationship was purely an employer-employee relationship.
3. The matter had initially been heard on affidavits and decided that there was no de-facto relationship. On appeal from one of the parties, the matter was sent back for re-trial on the basis that the parties were not given an opportunity to cross-examine the other party.
4. A different court then heard the matter. It was again decided that there did not exist a de-facto relationship between the parties.
5. The appeal was heard and after that the respondent died. The issue that now confronts me is whether the appeal can be continued in light of the death of the respondent.
6. S.165 of the Family Law Act states that an order with respect to the maintenance of a party to a marriage ceases to have effect upon the death of the person liable to make payments under the order.
7. If an order ceases to have effect upon the death of a person liable to make payments under the order, then any application in regards the spousal maintenance including an appeal cannot proceed. Even if the appellant is successful on the appeal, nothing further in term of continuation of the proceedings can take place.
8. If there was a property proceeding on foot then it could be continued against the legal personal representative of the respondent: *s.163 (5) of the FLA*.
9. There is no proceeding on foot in regards to the property of the parties to the marriage. There is no record of any property distribution proceeding pending. I therefore do not find it relevant anymore to decide on the appeal.

10. There is no provision in the law that allows for spousal maintenance proceedings to be continued against the legal personal representative of the deceased party. Further s.165 of the FLA precludes any such continuation.

Final Orders

11. I therefore dismiss the appeal with no order as to costs.

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Hon. Madam Justice Anjala Wati

30.05.2024

To:

- 1. Legal Aid for the Appellant.***
- 2. Kohli & Singh for the Respondent.***
- 3. File: Family Appeal Case Number: 9/2015.***