IN THE FAMILY DIVISION OF THE HIGH COURT	
CASE NUMBER:	11/SUV/0005
BETWEEN:	NASONI
AND:	MIRIAMA
Appearances:	Appellant in Person. No Appearance of the Respondent.
Date/Place of judgment:	Wednesday 14 January 2015 at Suva
Judgment of:	The Hon. Justice Anjala Wati
Category:	*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 are purely coincidental.*
Anonymized Case Citation:	NASONI V MIRIAMA – Fiji Family High Court Case number: 11/SUV/0005

JUDGMENT OF THE COURT

Catchwords:

FAMILY LAW – APPEAL – Child Maintenance – Paternity in question – matter undefended at trial Court – At appeal father given time /opportunity to undergo DNA test on his request – father failed to make arrangements for parentage testing– paternity deemed admitted for failure to defend- finding of paternity also made on evidence without a parentage testing report – quantum of maintenance: is it proper?

Legislation:

1. *Family Law Act No. 18 of 2003 ("FLA"): ss. 132;134.*

1. The appellant appeals against the order of the Magistrates' Court of 20 June 2011 where he was declared the putative father of the child, a female, born on 9 September 1997.

2. The appellant did not defend the proceedings at the trialCourt.

3. The Court found that the respondent had cohabited with the appellant and had been in exclusive sexual relationship with the appellant from 1996 to 1998. It found, that as result of that relationship and union, the subject child was born.

4. On the issue of maintenance the Court found that the proper amount to be awarded was $40 per week until the child attains the age of 18 years or upon further variation.

5. The order was to take effect from the date of filing of the affidavit of service of the sealedorder.

6. The form in which the appeal is drafted is meaningless to a large extent. I will thus summarize the important grounds. The appellants avers that:

   1. ***The Court erred in only relying on the respondent's evidence to establish paternity without analyzing s. 132 of theFLA.***

   2. ***That s. 134 of the FLA was notestablished.***

   3. ***The child's expenses were notestablished.***

   4. ***The evidence of the respondent wasfabricated.***

   5. ***There is no evidence of any contribution by the respondent.***

7. At the appeal, the appellant made a request that the parties be sent for DNA testing which would finally resolve the matter. Since the respondent mother was not available in Court, the Registry was asked to contact her and ascertain whether she was prepared to undergo DNA test with the child.

8. The Court was provided information that the mother was prepared to undergo the DNA test with the child but she was not prepared to pay for the costs. The appellant indicated that he would pay for the costs.

9. The Court then allowed the parties' time to undergo parentage testing. They were given time from 7 May 2014 when the appeal was listed for hearing. Neither party made any efforts to make arrangements for DNA testing.

10. The respondent mother then requested the Court to deliver the judgment. She has written numerous letters to the Court and in all letters incorrectly stated that the Court had given an oral judgment. At no point in time was an oral judgment delivered in the matter as the Court had been waiting for parties to undergo the DNA test and provide a report which would have resolved the issue of paternity. When the respondent wrote to indicate that she wanted a judgment, the Court was left with no option but to deliver a judgment on theappeal.

11. The respondent showed lack of interest to defend the appeal. She gave no reasons why she did not defend the matter.

12. The appellant says that s. 132 and 134 of the FLA was not established. The two sections states there is presumption of paternity arising from cohabitation and from findings of Court. In fact the presumption under those sections goes against theappellant.

13. The Court had found that there was presumption of paternity against the appellant based on the two sections. The Court specifically stated that ***"on the evidence led in Court and based on sections 132 and 134 of the Family Law Act, the applicant has established on the balance of probability that the respondent Nasoni is the putative father of the child born in September 1997".***

14. The parties lived with each other for 2 years before the child was born. The evidence that the mother of the child had exclusively lived and had sexual relationship with the respondent was not contradicted and thus the presumption under s. 132 was not rebutted by the appellant. The Court therefore made a finding under s. 134 that the appellant was the father of thechild.

15. Given the evidence before the Court, there is no other finding that the appellate Court can arrive at. There is therefore no basis for this Court to alter the findings of paternity made by the Court.

16. The appellant also states that the respondent's evidence at the trial Court was fabricated. The appellant did not defend the matter and contradict any evidence of the respondent. The Court also did not find any inconsistency in her evidence for it to make a finding that the evidence was fabricated. There is no basis therefore upon which this Court can make a finding that the lower Court was wrong in accepting the evidence of the respondent.

17. The appellant also raised the ground that the child's expenses were not established. The respondent had claimed that the child had expenses of $80.00 per week. The Court only granted her half of the expense she claimed because at the trial stage the Court stated that the respondent had not provided any substantive evidence of the expenses and her contribution towards thoseexpenses.

18. In fact it was for the appellant to challenge the expenses and he failed to do so. He therefore was deemed to have accepted that the child's expenses were in fact what the mother claimed to be. Since the Court has ordered only half of the amount, the mother is left to cater for the balance half of theexpenses.

19. The child is almost 18 years and going to school. There is no doubt that a child of that age has a lot of expenses like food, clothing, medication, school expenses andlikewise.

20. If the father is ordered to pay a sum of $40.00 per week, the amount, in my finding is neither exorbitant norunreasonable.

21. If the father did not have capacity to pay the maintenance, it was for him to raise that issue at the trial. He cannot raise these matters on appeal. He is deemed to have the capacity to pay the maintenance.

22. Further, the matter was heard on an undefended basis. The proper procedure for the appellant was to have asked for a setting aside of the orders. However if he faces difficulty in meeting the expenses he has the right to apply for variation of the orders based on his financial circumstances. These are not matters for the appellateCourt.

23. There are no merits in any of the grounds of appeal. I therefore dismiss the appeal and affirm the orders of the lower Court.

24. Each part must bear their own costs of the proceedings.

Anjala Wati
Judge
14.01.2015

To:

1. ***Appellant.***
2. ***Respondent.***
3. ***File: 11/Suv/0005.***