

IN THE FAMILY DIVISION OF THE HIGH COURT AT LAUTOKA

APPELLATE JURISDICTION

ACTION NUMBER: 0004/2014
(Original Case Number: 0B/Ltk/015B)

BETWEEN: SURESH
APPELLANT

AND: SHONAL
RESPONDENT

Appearances: Appellant in Person.

Ms. Choy for the Respondent.

Date/Place of Judgment: Friday 11 November 2016 at Lautoka.

Coram: Hon. Madam Justice Anjala Wati.

Category: All identifying information and contents in this judgment have been anonymized or removed and pseudonyms have been used for all persons referred to. Any similarities to any persons are consequential.

Anonymised Case Citation: Suresh v. Shonal - Fiji Family High Court Appeal Case Number: 0004/2014 (08/Ltk/0158).

JUDGMENT

Catchwords:

FAMILY LAW - CHILD MAINTENANCE - Maintenance for 3 children of the marriage under the age of 18 years; father consents to an amount - Court ordered maintenance on the amount consented to - Subsequently challenge that the amount is improper on the grounds that he cannot pay the sum on medical grounds - medical condition must be to an extent that it precludes a party from obtaining gainful employment.

1. The father appeals the decision of the Resident Magistrate ("RM") delivered in 2014 ordering him to pay maintenance for his 3 children. The sum ordered was \$60.00 in total per week for the 3 children.

2. The parties were married in 1986. Their marriage was dissolved in 2013.

3 In 2008, the Court had initially ordered the father to pay \$80.00 a week in interim maintenance. The application for final orders was not heard until the wife filed an application for variation of maintenance .

4. The Court then realized that the final order application had been overlooked and decided to give a ruling on the final order application after hearing the evidence of the parties in 2010. The ruling was delivered 2 years later and due to the delay in the ruling, the Chief Magistrate ordered that the orders that he would grant would only be interim and he allowed the parties to tender fresh evidence for final orders.

5. The Chief Magistrate's judgment was delivered in 2012. He ordered that the interim maintenance was to continue at the rate of \$60.00 per week.

6. The order of the Chief Magistrate confuses me in that it says that the interim maintenance of \$60 per week must continue when the order for interim maintenance was \$80.00 per week.

7. The matter was then heard by a different Magistrate in 2013 which resulted in a final order for maintenance for \$60.00 per week. This is the order that is subject to appeal.

8. The father says that the sum of \$60.00 per week is excessive as he earns only \$40 per week. He is not of good health and his medical condition was made known to the Court. He argued that his wife and children are living in the house and that he should not be paying any maintenance as such. He said that he was willing to transfer the property to the wife.

9. The father raised a further concern that he had six children for whom he was initially paying maintenance and now the three out of the six are over 18 years and he is still paying the same amount of maintenance.

10. The father said that at the time of the hearing he was in prison and his evidence was not considered. He is therefore prejudiced that his evidence was not considered.

11. Ms. Choy appearing for the respondent argued that the father was in Court at the date of the hearing and that he was not prejudiced. He gave the evidence in Court.

12. It was further submitted by Ms. Choy that during the cross - examination, the father was asked whether he can pay \$60.00 per week and he said he could and it would be easy for him to pay that amount. Based on his consent the orders cannot be flawed.

13. Ms. Choy further argued that there was no medical certificate tendered in Court to establish that the father was suffering from any ailment that would preclude him from working.

14. She argued that the father is a degree holder from a university in Fiji. He has a degree in Vernacular and he works as a clergyman. He earns a lot of money in from his work as a clergyman and receives donations. He also sells items from his house that he receives in donation. He stays alone and does not have to maintain anyone else. On that basis he should be able to support his children from his earnings.

15. The wife's evidence in Court basically was that she needs at least a sum of \$70 to \$80 a week for maintenance of the three children who are schooling. When she had six children, her expenses were high but now it has decreased. She used to sell vegetables before but now she is sickly and cannot do that.

16. She also gave evidence that she receives in donation groceries worth of \$50.00 per month from a religious donor. She needs the financial assistance from the father to maintain the children.

17. The father testified that he had suffered a road accident some long time ago and from that time he has problems in working. His legs were fractured. He conducts work as a clergyman and most of

the time he cannot find work because the respondent goes around telling people that he is not a good person. His maximum earnings per week were \$40.00.

18. The father agreed in his evidence that he could pay \$60.00 per week for the 3 children, He lived in his sister's house and sister lived in Australia. He did not have to pay any rent.

19. It is very clear from the evidence that the father was not in prison at the time of the hearing. He was physically present in Court and gave evidence. He also consented or agreed to pay \$60.00 per week for the children.

20. Further, there was no medical evidence to suggest that the father had medical conditions that precluded him from finding work to support his children.

21. The father is a qualified person to find other work apart from his work as a clergyman and even from his work as a clergyman he is in a position to derive income to support his family. He has the capacity to make more money than he is currently professing that he earns.

22. The court record shows that in 2009 he had savings in the vicinity of 20,000 from his work. He had accounts in different banks and savings in almost 3 accounts in the sum more than \$20,000. If he is able to have savings of such nature, his contention that he earns \$40.00 per week from his work as a clergyman is contradicted by his own evidence.

23. Apart from the evidence which established his ability to pay, he had, at all times agreed that the sum that he could easily pay was \$60.00 per week. In light of that agreement the orders of the Court cannot be flawed as it reflects his consent to pay the monies.

24. If he did not have the ability to pay, he ought not to have consented to such an order being made. I find that the reason why he consented to such an order is because he has the income and the earning capacity to meet the order in the sum of \$60.00 per week.

25. I find that the appeal does not have any basis and I dismiss the same with an order that each party bears their own costs of the proceedings.

Anjala Wati

Judge

11.11.2016

1. Appellant in Person.
2. Legal Aid Commission for the Respondent.
3. File: Appeal 0004 /14 (08/Ltk/0158).