

NZLR

IN THE SUPREME COURT OF NEW ZEALAND  
NORTHERN DISTRICT  
AUCKLAND REGISTRY

M. 87/73

BETWEEN BRIAN ROBERT ECCLES c/-  
Maximum Security, College  
Hill, Ponsonby

Appellant

A N D MARGARET ELIZABETH ECCLES  
OF 9 Gemini Place, Birkdale,  
Married Woman

Respondent

Hearing: 15th May, 1973.

Counsel: Miss Elias for Appellant.  
Miss Cole for Respondent.

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JUDGMENT OF HENRY, J.

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This is an appeal by a husband against the quantum of maintenance awarded for the support of his wife and two children. There were three children of the marriage whose names and dates of birth are as follows:-

Wain. Bruce Eccles born on 31st October, 1962.

Simon David Eccles born on 29th May, 1966.

Lisa Dianne Eccles born on 25th July, 1967.

The eldest son is with the husband.

Two points were taken on appeal, viz. (1) that insufficient weight was given to necessary expenditure which must be incurred by the husband, and (2) that the potential earning capacity of the wife was not taken into account. I reject the second ground. She has two young children to attend to, she is not in good health, and suitable work is not really available to her. The matter therefore turns on the first ground. It is clear that the husband must have sufficient to live on if he is to maintain himself and his family. To make an order which he cannot cope with means default and all its attendant cost and worry. The learned Magistrate gave weight to the respective proportions of the division of the husband's earnings in comparison with his and

the eldest son's support and the support of the wife and the other two children. He also pointed out that the only solution in view of the shortage of available funds was for the eldest son or the husband and the eldest son to return to the matrimonial home. This factor appeared to weigh in the allocation of maintenance. However, it is clear that a reconciliation is out of the question and there is a custody order for the eldest son, so the Court must proceed on those matters as established facts.

The orders made total \$32.00 weekly, being \$20.00 for the wife and \$6.00 for each child. The husband's weekly income is \$72.32. He must pay bus fares amounting to \$5.60, which leaves \$66.72. The following items are reasonable and ought to be provided for:-

Rent ... ..	\$ 14.00
Food and toiletries ...	13.00
Milk and bread... ..	1.50
Power ... ..	2.00
School fees, bus fares and incidentals..	2.00
(for eldest son)	
Clothing and shoes ...	<u>4.00</u>
	\$ 36/50

This leaves \$30.12. Clearly he cannot pay \$32.00 weekly. Moreover, the above figures leave out incidental expenses for the husband. They are set out in his budget.

At the hearing I indicated that the orders ought to be reduced to a total of \$25.00 weekly. This will leave a further \$5.00 for the husband to meet other necessary expenditure. He is indebted and is trying to repay a car repair account and a clothing account incurred by his wife. These may have to await payment. I cannot see that the husband can manage to cope with the payment of more than \$25.00 weekly whilst keeping himself and the eldest child.

The appeal will be allowed and the prior order is cancelled and in lieu thereof an order is made in favour of the

wife for \$15.00 per week, and for each of the said children at \$5.00 per week. Some payments have been made at the old rate, but thereafter the rate is to be as above. Counsel intimated to the Court that the date could be agreed on. If not, the matter may be referred back for the fixing of such date.

Solicitors:

Turner, Hopkins & Partners, Auckland, for Appellant.

Von Sturmer & Ramsay, Takapuna, for Respondent.