

IN THE SUPREME COURT OF NEW ZEALAND
GREYMOUTH REGISTRY

N/O.

BETWEEN

[REDACTED]

HAYDEN

Petitioner

A N D

[REDACTED]

HAYDEN

Respondent

No Special Consideration

Counsel: A.W. Jamieson for Petitioner to Oppose
B.L. Lovell for Respondent in Support

Hearing and Judgment: 25 October 1974

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ORAL JUDGMENT OF O'REGAN J.

An application by the respondent husband first, for orders as to the custody of the two children of the marriage with a reservation of reasonable access to the petitioner and secondly, an application for an order that the respondent wife pay such weekly sums as the Court thinks fit for the maintenance of such children.

The parties were divorced on the wife's petition on the grounds of the husband's adultery with a woman whom he has now married. The decree nisi was made on 30 July 1973 when the learned Judge made an order that the petitioner should have custody of the two children of the marriage but the respondent should have reasonable access to them. Not at that time nor at the making of the decree absolute nor by any other proceedings has the maintenance liability of the husband respondent been determined. He was, however, at the outset paying the petitioner \$20 p.w. for the maintenance of herself and the two children and paying also the outgoings on the matrimonial home which was then occupied by the petitioner and the children.

He married shortly after the making of the decree absolute and now has a child by that marriage. He was then working in Westport and living in Carters Beach in rented premises. In November 1973 he reduced the payments he was making for maintenance from \$20 to \$10 p.w.. This appears to have been done arbitrarily. On 6 February 1974 the petitioner delivered the two children to the respondent at his home in Carters Beach and intimated to him that she was handing over the responsibility for them and the house to him. She, at that time, left the matrimonial home and went to live elsewhere. The respondent then arranged with his employers to be transferred to their Greymouth branch and he and his family took up residence in the matrimonial home. As at 18 February 1974 he was earning \$56.17 net p.w. and the petitioner as at March last was earning \$51 p.w. as a kitchen hand. It is clear that the petitioner relatively is in much the stronger financial position. However, as I see it, the situation is this. The respondent caused the break up of the marriage and to that extent is the author of his own financial ills at the moment. When the children were handed back to him, he was paying the outgoings on the Cobden property and paying \$12 p.w. for the furnished cottage that he had at Carters Beach. He was also paying a sum of \$10 for the composite maintenance of his former wife and the two children of his marriage with her. By returning to Greymouth and occupying the matrimonial home, he has in essence improved his financial position in as much as he no longer has the commitment for \$12 p.w. for the Carters Beach tenement, nor has he the liability for maintenance of the two children. If the wife had retained the children and sought maintenance orders, it would be unlikely that she would get maintenance for herself because of the quantum of her earnings, but on the face of it, she would be entitled to some maintenance at least for the children.

Her action in handing back the children and in particular in vacating the matrimonial home, has had the effect of - in cash terms - the respondent being relieved of payments totalling \$22. Of course in lieu of the \$10 p.w., he now has to feed and clothe and otherwise provide for the children but all in all I think he has bettered his position as a result of her action in handing back the children to him. In those circumstances, the prescription of the Statute is that the Court shall do in these matters what it thinks just and having regard to all the circumstances, I think it is just that the situation remains as it is and the order is refused.

However, there will be an order that the husband have the custody of the two children, [REDACTED] with a reservation of reasonable access to the petitioner.

Solicitors for Petitioner to Oppose: Messrs Guinness and
Kitchingham, Greymouth

Solicitors for Respondent in Support: Messrs Cottrell, Lovell
and Maitland, Westport
