

IN THE SUPREME COURT OF NEW ZEALAND

AUCKLAND REGISTRY

**No Special
Consideration**

NO.

BETWEEN [REDACTED] SAVIGNY
Petitioner
AND [REDACTED] SAVIGNY
Respondent
AND [REDACTED] HEY
Co-Respondent

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Hearing: 8th April, 1975

Counsel: Miles for Petitioner
Ennor for Respondent

Judgment: 8th April, 1975

(ORAL) JUDGMENT OF WILSON, J.

This is an application by the former wife for maintenance of the younger child of the marriage, ahson who is in her custody as the result of an order made in that respect, by consent, on 21st August of last year. At the same time, after a contested hearing, I gave custody of the elder child (a girl) to the petitioner. This application, as I say, seeks maintenance for the boy, [REDACTED].

It is known to the Court from the previous affidavit filed by the respondent, that she is gainfully employed. In November of 1973 she swore that her wages from the Savings Bank in which she is employed, were \$67 a week. She has not seen fit to bring that figure up to date, so (as Mr. Miles said) what she is earning now is a matter for conjecture, but I can surely take judicial notice of the trend over the past 16 months, and it would surprise me to know that she was at present receiving less than \$80 a week gross. Mr. Ennor suggests that I should ignore that, and that I make an order based on the traditional view that it is the father's duty to maintain his children. That is the traditional view because when that tradition became established the father was the only one who had an income. That has completely

changed in most cases today, certainly in most cases that come before the Court. As in this case, the wife or former wife is herself in receipt of an income which in many cases is comparable with that of her former husband, and I think that that is the situation here.

He has the obligation, of course, to maintain the girl who is in his custody. He has re-married. He has bought a new home for himself, his second wife and his daughter, and the expenses of that home are significantly greater than those which he was called upon to meet in respect of the previous home. Mr. Ennor says that shows some degree of extravagance. Mr. Ennor also points to the fact that the girl is attending a private school, and that the fees for that are not negligible, and he says that that is a further extravagance. Indeed \$12.50 per week is a substantial amount to pay, but I remind myself that the petitioner incurred responsibility for the more expensive home and for the private schooling of his daughter at a time when he had every reason to believe that his regular salary from the [REDACTED] could and would be substantially augmented by his earnings as a part-time player in the [REDACTED]. It is clear from his affidavit that that augmentation is of very doubtful continuity. Indeed the [REDACTED] is, according to his affidavit (and it is not contradicted), becoming fully professional and will be relying on full time professional [REDACTED], and of course he cannot engage in that without giving up his present position. So it means this: if I were to accede to the respondent's application now the petitioner would have to take his daughter away from a private school where he installed her at a time when he had every reason to believe that he could afford to do so, or he would have to sell his present home and get a cheaper one. The evidence is, and I can confirm this from my own conversation with the girl at the time of the

custody application, that she is very happy at this school and doing well. I think it would be inhumane of me to do anything which would jeopardise her continued attendance at that school where, after the upset attendant upon the separation and ultimate divorce of her parents and the legal argument over her custody, she is settling down and doing very well.

The petitioner swears and indeed it is obvious from figures produced, that he has been unable to exercise access to his son which was reserved to him, because he cannot afford the air fares necessary. If I were to make this order, that would put that access further out of his reach, and it would delay still further the objective which I thought so desirable at the time of the custody order - that these two children should have the maximum opportunity of meeting each other.

I think there are no merits in this application. It has not been shown that the respondent, who has custody of this child, and who is gainfully employed, cannot afford to keep him properly from her own earnings. On the other hand it has been shown that if I were to encroach on his father's earnings for his maintenance, it could only be to the detriment of the daughter in the petitioner's custody. I think these matters properly depend very largely on the welfare of the children who are the innocent victims of the breakup of the marriage.

The application is dismissed. I think this is a proper case for costs to be awarded against the respondent. If she is not legally aided I order that she pay the sum of \$30 costs plus disbursements, to the Petitioner. If she is legally aided then I certify that that is the amount which I would have awarded.

Solicitors:

Buddle Weir & Co., Auckland for Petitioner
Glaister, Ennor & Kiff, Auckland for Respondent