

IN THE HIGH COURT OF NEW ZEALANDM. 273/73AUCKLAND REGISTRY

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IN THE MATTER of the Matrimonial
Property Act 1976BETWEENJMULLIGANAPPLICANTA N DJNICHOLSONRESPONDENT

Judgment: 12 June 1984
 Hearing: 12 June 1984
 Counsel: J.K. Guthrie for Applicant
 A.W. Grove for Respondent

 ORAL JUDGMENT OF CASEY J.

This application arises out of unresolved matters left over from a judgment of Mahon J. of 18th December 1977 dealing with the substantive issue between these parties. He found that they were entitled to the former matrimonial home in equal shares but that the Respondent, who had the care of the children, should remain there and directed that the property be valued and, after allowing for mortgage, the equity be allocated in equal shares between them, subject to a deduction of what then stood as the arrears of maintenance owed by Mr Mulligan of \$2,302. Counsel now agree, after what appears to have been an earlier misunderstanding, that on the valuation which is now accepted, the balance due to him under that judgment (which was to be a charge on the property) was \$10,036.70.

No charge was ever registered and in due course the Respondent sold the property and went to Australia, and for reasons connected with substantial maintenance arrears then owing, she neglected or refused to pay out her former husband. He now comes to Court to seek an order for payment and Counsel accept the above figure as at July 1977, the main issue before me being how the question of payment is to be

treated in the light of subsequent events. Mr Guthrie submitted that s.33(1) of the Matrimonial Property Act would authorise the Court to award interest at least from 8th July 1980, which was the day Mrs Nicholson signed the transfer and came into possession of the money. But he wished to go even further back and suggested that I had jurisdiction, in the exercise of these ancillary provisions and in order to do justice between the parties, to award interest from the date of Mahon J's. order. It is quite clear from a perusal of his decision that the question of interest on the amount to be charged against the property was specifically considered by him and he declined to award it for the reasons he set out. However, as I mentioned to Mr Grove, I am satisfied that his decision in that respect related only up to the period when the property was sold. I think it is open to this Court, in the exercise of its general ancillary discretion, to look at the position from that time onwards and decide whether or not it is appropriate for interest to be paid.

Mr Guthrie quite rightly abandoned his alternative submission that I should have another look at the date of valuation of the property. It is clear to me that the matter of interest over the period of the charge and the date and method of valuation were settled by the judgment and I cannot interfere with those. Since the property was sold, the maintenance which was due by Mr Mulligan under the Court order continued to increase and at one stage it approximated at over \$9,000. It was those arrears which apparently prompted Mrs Nicholson in her decision not to make any payment, although I gather she has set aside \$5,000 in a bank account to cover any claims her former husband might have. With hindsight it may well be that matters could have been handled rather more effectively by the parties' former legal advisors but, whatever the reason, Mr Mulligan has been out of the money that he could have expected shortly after July 1980.

The maintenance question was ultimately resolved by his successful application for cancellation of the order and remission of arrears, the result being that arrears were remitted after 31st March 1979, and it is accepted that the

total sum now owing for maintenance is \$5,075, which includes that figure I have already mentioned as the arrears due up to the date of Mahon J's. judgment of 1977. Consequently, there should be deducted from any amount owing to him the balance of \$2,773. I am satisfied that this is an appropriate case where interest should be awarded from 7th July 1980 to the date of payment. Mr Guthrie suggested it should be at the Judicature Act rate of 11 percent but I believe this would not effectively take into account interest on the arrears of maintenance which Mrs Nicholson was deprived of over such a long period. As I suggested to Counsel, I think a proper way to meet the claims of both parties under this heading is to a discount on the rate of interest to be calculated on the balance due to Mr Mulligan. I propose fixing it at 7 percent. There will be an order directing payment to him of the sum of \$10,036.70 less the figure of \$2,773, the balance to bear interest at 7 percent from 8th July 1980 until the date of payment.

On the question of costs, I think this matter was properly brought before the Court by the Applicant in order to have it resolved. On the other hand, there were on the face of it good reasons why Mrs Nicholson felt she should not have to pay. She has been partially successful on her interest claim. Looking at the matter broadly, I think costs should lie where they fall and I make no order.

W. Casey J.

Solicitors:

Anderson Lloyd Jeavons & Co., Dunedin, for Applicant
Anthony Grove & Darlow, Auckland, for Respondent